
**Department of Homeland Security Federal
Law Enforcement Training Centers
Glynco, Georgia**

Legal Division

Practice Exams

(Use of Force, 4th Amendment, 5th and 6th
Amendments, Courtroom Evidence, Electronic
Law and Evidence, Federal Court Procedures,
Federal Criminal Law, Courtroom Testimony,
and Officer Liability)



Homeland Security

August 2015

FLETC Legal Division Practice Exam Guide – August 2015

Notes for the student:

1. The purpose of the practice exams is to help students learn how to apply legal principles in a factual situation.
2. This practice exam may not address all the EPOs you are responsible for, or all the materials you must know to master an EPO. The student is responsible for knowing and mastering the EPOs.
3. These questions may be harder or easier than those found on the actual exam.
4. Reviewing the answers - even the correct ones - will help you master the principles.
5. Use a piece of paper to cover the answers on the bottom while you are answering the question.

4th Amendment Practice Exam

1. Thompson is suspected of running a counterfeiting operation out of his garage. The garage is attached to the dwelling. Without a warrant, three officers step onto his curtilage, shine a flashlight into the garage, and take a quick look. They observe a number of what appear to be \$100 bills hanging from a clothesline. Was the observation into the garage lawful?

- a. No, because the officers physically intruded on a constitutionally protect location without either a warrant or an exception to the 4th Amendment.
 - b. No, because the use of a flashlight violated Thompson's reasonable expectation of privacy.
 - c. Yes, because the garage does not have curtilage because it is not a dwelling.
 - d. Yes, because the garage itself was not within the curtilage of Thompson's dwelling.
-

- a. No, because the officers physically intruded on a constitutionally protect location without either a warrant or an exception to the 4th Amendment.

CORRECT: The root of the question says that the officers were on Thompson's curtilage. The officers did not have a warrant to be there and there is no 4th Amendment exception. Accordingly, the observation was unlawful and the information they obtained cannot be lawfully used to obtain a warrant.

- b. No, because the use of a flashlight violated Thompson's reasonable expectation of privacy.

INCORRECT: Using a flashlight, by itself, does not violate a person's REP.

- c. Yes, because the garage does not have curtilage because it is not a dwelling.

INCORRECT: Curtilage is not limited to dwellings and includes areas surrounding a dwelling. (Review your student text.)

- d. Yes, because the garage itself was not within the curtilage of Thompson's dwelling.

INCORRECT: The garage was attached to the house so it was very likely on the curtilage. More importantly, the officers were unlawfully on the curtilage when they made their observations.

2. Agents develop reasonable suspicion that Wooster is operating a stolen credit card ring. Upon seeing Wooster driving in his car one afternoon, the agents follow him. When he arrives at a shopping mall, the agents approach him, identify themselves, and tell him to put his hands on his automobile. One of the agents frisks him and, in the upper left hand pocket, feels what is immediately apparent to him as a stack of credit cards bound by a rubber band. The agent removes the credit cards and, ultimately, determines that they are stolen. Wooster's motion to suppress the credit cards will be -

- a. Denied, because the agents had reasonable suspicion of criminal activity.
 - b. Denied, because the agents had probable cause to remove the cards from his pocket under the "plain touch" doctrine.
 - c. Granted, because the agents performed an illegal "frisk" of Wooster.
 - d. Granted, because a "frisk" may result only in the discovery of weapons on a suspect.
-

a. Denied, because the agents had reasonable suspicion of criminal activity.

INCORRECT: The officers only had reasonable suspicion criminal activity was afoot which would allow them to make a Terry stop and direct Wooster out of his car. The officers did not have reasonable suspicion that Wooster was presently armed and dangerous making the Terry frisk illegal. The crime of operating a stolen credit card ring is not the type of offense which would give R/S a person is presently armed and dangerous (like one would have with R/S someone committed a robbery or burglary.)

b. Denied, because the agents had probable cause to remove the cards from his pocket under the "plain touch" doctrine.

INCORRECT: The Terry frisk was illegal. (See a above.) The credit cards were discovered during an illegal frisk. If the officers had R/S Wooster was presently armed and dangerous, they could have frisked Wooster. Even then the plain touch doctrine would not apply because it was not immediately apparent that the credit cards were stolen (just that they were credit cards.)

c. Granted, because the agents performed an illegal "frisk" of Wooster.

CORRECT: The officers only had reasonable suspicion criminal activity was afoot which would allow them to make a Terry stop and direct Wooster out of his car. The officers did not have reasonable suspicion that Wooster was presently armed and dangerous making the Terry frisk illegal. Remember: just because you have a Terry Stop doesn't mean you automatically get a Terry Frisk! In order to lawfully do a Terry Frisk on a detained person you have to articulate facts to establish a reasonable suspicion that the person is presently armed in dangerous.

d. Granted, because a "frisk" may result only in the discovery of weapons on a suspect.

INCORRECT: A lawful Terry frisk is a pat down of the outer clothing to look for weapons or hard objects that may used as a weapon. In a lawful Terry frisk, not only may the officer retrieve weapons, he/she may also retrieve hard objects that might be a weapon and soft objects that are immediately apparent to be contraband. (Review plain touch in your student text.)

3. Johnson is arrested for drunk driving and failing to pay child support. He agrees to share information with the police to avoid prosecution. Having been personally involved in every aspect of an ongoing stolen paycheck operation, Johnson explained the intimate details to the police of what he saw and did with Fred, a co-criminal. Based on his statements alone, the officers seek a search warrant for the co-criminal's premises where Johnson stated he saw many of the stolen checks the day before. Can Johnson's statement alone establish Probable Cause to support a warrant application?

- a. Yes, because Johnson's statements amount to probable cause under a totality of the circumstances using the *Illinois v. Gates* test.
 - b. Yes, because Johnson has never provided false information to the officers in the past.
 - c. No, because the officers did not corroborate Johnson's statements.
 - d. No, because statements alone can never establish probable cause.
-

a. Yes, because Johnson's statements amount to probable cause under a totality of the circumstances using the *Illinois v. Gates* test.

CORRECT: The information known to the officers show both that Johnson was reliable and had a basis of knowledge in what he told the officers. Furthermore, because he is a co-criminal, the information he provided is presumed reliable. Under a totality of the circumstances this is enough to establish probable cause.

b. Yes, because Johnson has never provided false information to the officers in the past.

INCORRECT: Even if true, this would go to Johnson's reliability. It would not, however, establish a basis of knowledge. This alone is not enough.

c. No, because the officers did not corroborate Johnson's statements.

INCORRECT: Because the *Gates* test was satisfied (reliability and basis of knowledge under a totality of the circumstances) there was no requirement to corroborate the information.

d. Denied, because statements alone can never establish probable cause.

INCORRECT: A statement from an informant if it is reliable under the totality of the circumstances test established in *Illinois v Gates*.

4. An officer is walking down a public sidewalk in the early evening hours, just after dark. Glancing in the direction of Sweeney's home, the officer notices that, while Sweeney has drawn the curtains in the front window, there is a gap through which the officer sees what he knows to be a large marijuana plant. The following morning, based solely upon this information, the officer seeks a search warrant for Sweeney's home. The request for a search warrant will be -

a. Granted, because the officer could have entered the home the previous evening under the "exigent circumstances" exception to the warrant requirement, and seeking a warrant is nothing more than a court order of the "exigent circumstances" exception.

b. Granted, because the officer did not violate Sweeney's reasonable expectation of privacy in making the observation on which the search warrant will be based.

c. Denied, because the officer's view into Sweeney's home amounted to an intrusion into a location where Sweeney had a reasonable expectation of privacy without either a warrant or an exception to the warrant requirement.

d. Denied, because the officer had no reason to look into Sweeney's home; the observation alone did not amount to probable cause; and the officer did not enter the home at the moment she made the observation.

a. Granted, because the officer could have entered the home the previous evening under the "exigent circumstances" exception to the warrant requirement, and seeking a warrant is nothing more than a court order of the "exigent circumstances" exception.

INCORRECT: The root sets forth nothing which would establish an exigent circumstance.

b. Granted, because the officer did not violate Sweeney's reasonable expectation of privacy in making the observation on which the search warrant will be based.

CORRECT: The officer was in a public place (where he had the right to be) and the open curtain exposed the inside of the house to the public. The homeowner had no REP in what he exposed to the street outside. Accordingly, what the officer saw in the window was lawfully obtained and can establish information that may be used in the warrant.

c. Denied, because the officer's view into Sweeney's home amounted to an intrusion into a location where Sweeney had a reasonable expectation of privacy without either a warrant or an exception to the warrant requirement.

INCORRECT: Leaving the curtain open and exposing the inside of the home to public view means the homeowner did not have REP in what he exposed to the public.

d. Denied, because the officer had no reason to look into Sweeney's home; the observation alone did not amount to probable cause; and the officer did not enter the home at the moment she made the observation.

INCORRECT: The officer does not have to have a reason to look in the window. Nothing prevents the officer from looking through the window while standing in a public place. What the officer saw established PC. There is no requirement to immediately enter the house. In fact, even though the officer saw the plants and developed PC when he did so, he could not enter the house unless he had a warrant, consent, or an exigent circumstance.

5. Marsh checked a suitcase at the airline counter and got onto an airplane. Before the suitcase was placed on the airplane, it was sniffed by a drug detection dog. The dog indicated that drugs were located inside which established probable cause to search the suitcase. With this knowledge, two DEA agents entered the airplane, approached Marsh, identified themselves, and asked him if they could look in the suitcase he had checked at the counter. Marsh stated, "I'm not traveling with a suitcase." Because the plane wasn't scheduled to take off for an hour (and Marsh didn't think he would miss the plane), Marsh voluntarily agreed to accompany the agents to the suitcase, was shown the suitcase, and was asked again if they could open it. Again, Marsh denied ever seeing the suitcase. The agents opened the suitcase and discovered contraband inside. At trial, the contraband should be -

- a. Admitted, because the officers had probable cause to search the suitcase.
 - b. Admitted, because Marsh abandoned the suitcase.
 - c. Suppressed, because the officers violated Marsh's reasonable expectation of privacy.
 - d. Suppressed, because the officers did not get a valid consent.
-

a. Admitted, because the officers had probable cause to search the suitcase.

INCORRECT: Probable cause alone is never enough to conduct a search. Officers must, in addition, have a warrant, consent, or an exigent circumstance.

b. Admitted, because Marsh abandoned the suitcase.

CORRECT: By denying the suitcase was his, Marsh abandoned any REP he had in the suitcase and therefore, there was no 4th Amendment intrusion.

c. Suppressed, because the officers violated Marsh's reasonable expectation of privacy.

INCORRECT: A dog sniff of a suitcase in a public place is not a violation of REP. In addition, any REP Marsh had he abandoned when he denied the suitcase was his.

d. Suppressed, because the officers did not get a valid consent.

INCORRECT: Consent was not necessary. Marsh abandoned his REP.

6. Perry is a paid police informant and has provided reliable information to officers on seven out of seven occasions. On January 7, 2000, Perry personally witnessed four personal-use drug transactions take place in Joe Clark's apartment. On November 28, 2000, Perry tells the officer about these observations. The officer applies for a search warrant for drugs based solely on this information. The request for the search warrant should be -

- a. Denied, because the officer did not corroborated the information provided by Perry.
 - b. Denied, because the information provided by Perry is inadequate to establish probable cause.
 - c. Granted, because the officer has demonstrated probable cause.
 - d. Granted, because Perry meets the standards of Aguilar.
-

a. Denied, because the officer did not corroborated the information provided by Perry.

INCORRECT: Corroboration would do no good under the facts. The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

b. Denied, because the information provided by Perry is inadequate to establish probable cause.

CORRECT: The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

c. Granted, because the officer has demonstrated probable cause.

INCORRECT: There is no probable cause because the information is stale. Almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

d. Granted, because Perry meets the standards of Aguilar.

INCORRECT: The information is stale because almost eleven months has passed since the drugs were seen in Clark's apartment and therefore there is no PC there are drugs there NOW.

7. Police approach the home of Adams, whom they reasonably suspect is involved in a larceny. Adams is not there, but his wife is home. The officers explain they are looking for Adams and would like to talk to him about his clothing he was wearing the day before. Adams' wife states, "Those things are right here. I took them out of his duffel bag. Here they are" and hands them to the officer. The officers accepted the items. At trial, this evidence should be -

- a. Suppressed, as they were obtained illegally without either a warrant or an exception to the warrant requirement.
 - b. Suppressed, because the officers had no probable cause to seek the items.
 - c. Admitted, because the officers could have gotten a search warrant to obtain these items.
 - d. Admitted, as the items were procured through private action, and thus, were not a search under the 4th Amendment.
-

a. Suppressed, as they were obtained illegally without either a warrant or an exception to the warrant requirement.

INCORRECT: This was a private search and therefore, the 4th Amendment was not violated.

b. Suppressed, because the officers had no probable cause to seek the items.

INCORRECT: This was a private search and therefore, the 4th Amendment was not implicated.

c. Admitted, because the officers could have gotten a search warrant to obtain these items.

INCORRECT: PC, not RS, is required to obtain a search warrant.

d. Admitted, as the items were procured through private action, and thus, were not a search under the 4th Amendment.

CORRECT: This answer correctly states the applicable principle.

8. Two officers develop reasonable suspicion that Smith is about to rob a convenience store. The officers approach Smith, place him under arrest, and search him. The officer conducting the search feels what is immediately apparent to him to be crack cocaine. The officer then retrieved the substance. At trial, Smith makes a motion to suppress the crack cocaine found during the search. According to the law, this motion should be:

- a. Denied, based on the “plain touch” doctrine.
 - b. Denied, because the officers were justified in conducting a search on Smith.
 - c. Granted, because the officers acted illegally.
 - d. Granted, because an officer may lawfully retrieve only weapons during a frisk.
-

a. Denied, based on the “plain touch” doctrine.

INCORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

b. Denied, because the officers were justified in conducting a search on Smith.

INCORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

c. Granted, because the officers acted illegally.

CORRECT: The officers arrested Smith when they only had R/S. PC is required to arrest and therefore the search of Smith was illegal.

d. Granted, because an officer may lawfully retrieve only weapons during a frisk.

INCORRECT: During a terry frisk, officers may retrieve weapons, hard objects that could be a weapon, and anything that is immediately apparent to be contraband under the plain touch doctrine.

9. An officer receives a report from the dispatcher about an armed robbery in the area, along with a description of the vehicle and the three men believed to have committed the crime. Spotting a vehicle matching the description, with three male occupants inside, the officer stops the vehicle to investigate. She directs the three occupants from the vehicle, and examines the vehicle for weapons. Under the front passenger seat, the officer finds a sawed-off shotgun and some ski masks. All three men are then arrested. At trial, the men file a motion to suppress the evidence found in the vehicle. According to the law, this motion should be:

- a. Granted, because the officer did not frisk the occupants of the vehicle prior to frisking the actual vehicle.
 - b. Granted, because the officer did not have reasonable suspicion to frisk the interior of the vehicle.
 - c. Denied, because the officer had obtained valid consent to search the interior of the vehicle.
 - d. Denied, because the officer was justified in looking under the front passenger seat for weapons.
-

a. Granted, because the officer did not frisk the occupants of the vehicle prior to frisking the actual vehicle.
INCORRECT: There is no requirement to frisk the occupants before frisking the car.

b. Granted, because the officer did not have reasonable suspicion to frisk the interior of the vehicle.
INCORRECT: The report, the description, and the fact the vehicle and occupants generally matching the description is RS criminal activity is afoot. Because the crime under suspicion is one in which a weapon is often used, there is also RS the occupants are presently armed and dangerous. This permits a Terry frisk of the occupants and under the seat (as well as the passenger compartment and unlocked containers therein) for weapons.

c. Denied, because the officer had obtained valid consent to search the interior of the vehicle.
INCORRECT: There are no facts to suggest the occupants consented to the frisk of the car.

d. Denied, because the officer was justified in looking under the front passenger seat for weapons.
CORRECT: The report, the description, and the fact the vehicle and occupants generally matching the description is RS criminal activity is afoot. Because the crime under suspicion is one in which a weapon is often used, there is also RS the occupants are presently armed and dangerous. This permits a Terry frisk of the occupants and under the seat (as well as the passenger compartment and unlocked containers therein) for weapons.

10. Jones is a Park Ranger with the National Park Service. He sees Smith driving inside a national park. Based on reasonable suspicion that Smith has committed a federal felony (larceny), Jones gives chase and pulls Smith over. Jones directs Smith out of his car and after repeating the direction several times, Smith complies. Smith then is belligerent and argumentative, wanders about, keeps turning his side to Officer Jones and repeatedly reaches into the pocket that Jones can't see even after being told to keep still and keep his hands out of his pocket. Jones then places Smith into handcuffs, frisks him, places Smith into the rear of the police car, and frisks the passenger compartment and trunk for weapons. In the trunk Jones finds drugs in plain view that are offered against Smith at trial. Will the drugs be admissible at trial?

- a. Yes, because Smith's actions permitted a frisk of the trunk.
 - b. Yes, because Smith may search a mobile conveyance without PC or a warrant.
 - c. No, because ordering Smith out of the car and handcuffing him was a 4th Amendment violation making the search also illegal.
 - d. No, because Jones could not frisk the trunk under the facts provided.
-

a. Yes, because Smith's actions permitted a frisk of the trunk.

INCORRECT: Jones could frisk the passenger compartment for weapons because he had RS that Smith was presently armed and dangerous. To go into the trunk, however, Jones needed consent or PC. (The mobile conveyance exception would excuse having to obtain a warrant.)

b. Yes, because Smith may search a mobile conveyance without either PC or a warrant.

INCORRECT: Smith may search a mobile conveyance without a warrant, but PC is still required.

c. No, because ordering Smith out of the car and handcuffing him was a 4th Amendment violation making the search also illegal.

INCORRECT: An officer may direct a driver from his car during a Terry stop. Reasonable force, to include handcuffs, may be used under these circumstances because of Smith's non-compliance, walking about, and making furtive gestures after being told not to.

d. No, because Jones could not frisk the trunk under the facts provided.

CORRECT: A frisk of Jones for weapons is permissible because there is RS he is presently armed and dangerous based upon his belligerence, movements, non-compliance, and the way he kept reaching into his pockets and turning away. The vehicle can also be frisked but the trunk cannot. Also, Jones had only RS and there are no facts that give him PC to go into the trunk.

11. Two federal officers develop reasonable suspicion that Smith is about to rob the Federal Credit Union. The officers approach Smith, identify themselves as federal officers, and instruct him to place his hands on the wall. One of the officers conducts a frisk of Smith, and, upon touching Smith's right front pants pocket, discovers what is immediately apparent to him to be crack cocaine. The officer retrieves the cocaine and arrests Smith. At his trial for possession of narcotics, Smith files a motion to suppress all evidence obtained during the frisk. According to the law, this evidence will be:

- a. Admissible, because the officer discovered the cocaine through the "plain touch" doctrine.
 - b. Admissible, because a frisk for evidence, including narcotics, may always be conducted following a valid Terry stop.
 - c. Suppressed, because a Terry frisk may only be utilized to discover readily accessible weapons that a suspect may use against an officer during an investigatory stop.
 - d. Suppressed, because the officer could not lawfully conduct a frisk of Smith.
-

a. Admissible, because the officer discovered the cocaine through the "plain touch" doctrine.

CORRECT: Three elements must be present before the "plain touch" doctrine will permit evidence to be seized during a Terry frisk: First, the frisk itself must be lawful; second, the incriminating nature of the item must be immediately apparent to the officer; and third, the discovery is limited to the initial touching, without further manipulation. All three elements are present in this scenario.

b. Admissible, because a frisk for evidence, including narcotics, may always be conducted following a valid Terry stop.

INCORRECT: A frisk may not always be permissible following a Terry stop. In order to lawfully frisk a suspect, an officer must have reasonable suspicion to believe that the suspect is presently armed and dangerous. If this suspicion exists, the officer may do a protective pat-down of the suspect looking for any weapons that might be utilized against the officer during the investigatory stop. An officer may not, however, conduct a Terry frisk to discover evidence of a crime.

c. Suppressed, because a Terry frisk may only be utilized to discover readily accessible weapons that a suspect may use against an officer during an investigatory stop.

INCORRECT: While a law enforcement officer may not frisk a suspect looking for evidence of a crime, where immediately incriminating evidence is uncovered during a lawful Terry frisk, the law does not require that an officer turn a blind eye to it. In such circumstances, the officer may seize the incriminating evidence, even though the evidence is not a weapon.

d. Suppressed, because the officer could not lawfully conduct a frisk of Smith.

INCORRECT: The officers had reasonable suspicion that Smith was about to commit a robbery. Because of the nature of this offense, the officers had reasonable suspicion to believe that Smith was presently armed and dangerous. With this level of suspicion, the officers were entitled to conduct the frisk for weapons.

12. Brown is suspected of being involved in a conspiracy to traffic narcotics. Agents learn that Brown has a houseboat docked at a lake 147 miles from his home. While Brown has not been on the boat for more than two years, he has kept up the mooring fees and registration of the vessel. The agents reasonably suspect that evidence of the narcotics conspiracy will be found on the boat. Once the boat is located, three agents board the boat to conduct a search. While no evidence of narcotics trafficking is found, the agents do find evidence of an unrelated murder in the cabin. At his trial for murder, Brown makes a pretrial motion to suppress the evidence found on the boat. According to the law, this evidence will be:

a. Admissible, because the warrantless search of a mobile conveyance is an exception to the warrant requirement of the Fourth Amendment.

b. Admissible, because Brown has, through his actions, given up any reasonable expectation of privacy in the boat.

c. Inadmissible, because the mobile conveyance exception to the warrant requirement does not apply in this case.

d. Inadmissible, because the agents primary motive in searching the boat was to discover evidence of narcotics trafficking.

a. Admissible, because the warrantless search of a mobile conveyance is an exception to the warrant requirement of the Fourth Amendment.

INCORRECT: While the warrantless search of a mobile conveyance (i.e., a Carroll search) is an exception to the Fourth Amendment, the requirements for that type of search are not present in this case. A Carroll search requires probable cause, rather than reasonable suspicion. If probable cause does not exist, a Carroll search is impermissible.

b. Admissible, because Brown has, through his actions, given up any reasonable expectation of privacy in the boat.

INCORRECT: While Brown has not been on the boat for more than two years, it is clear that he has not abandoned the boat, nor his expectation of privacy in it. By keeping up the mooring and registration fees, Brown is retaining his privacy interest in the boat.

c. Inadmissible, because the mobile conveyance exception to the warrant requirement does not apply in this case.

CORRECT: The mobile conveyance exception to the warrant requirement does not apply in this case because probable cause is not present. The mobile conveyance exception requires both probable cause and ready mobility before a warrantless search can be conducted.

d. Inadmissible, because the agents primary motive in searching the boat was to discover evidence of narcotics trafficking.

INCORRECT: The agents' primary motive in searching the boat is irrelevant to the evidence that was ultimately discovered. Had the agents been lawfully on the boat, any evidence of another crime that was discovered could have been admissible under the "plain view" doctrine.

13. A federal agent is having dinner in a restaurant located in a federal park (an area of exclusive jurisdiction), when the manager, whom the agent knows, approaches him. The manager states that two young men have just left the restaurant without paying for their dinners (a federal misdemeanor), and asks the agent to arrest them before they can escape. The agent quickly leaves the restaurant and, based upon a detailed physical description given by the manager, is able to locate the two suspects walking down the sidewalk approximately two blocks from the restaurant. To arrest the suspects, an arrest warrant is:

- a. required, because the offense did not occur in the agent's presence.
 - b. required, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.
 - c. not required, because based on the statements from the manager of the restaurant, the agent had probable cause to make the arrest.
 - d. not required, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.
-

a. required, because the offense did not occur in the agent's presence.

CORRECT: Under federal law, warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. If the crime was not committed in the presence of the arresting officer, an arrest warrant must be obtained.

b. required, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.

INCORRECT: Under federal law, warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. If the crime was not committed in the presence of the arresting officer, an arrest warrant must be obtained.

c. not required, because based on the statements from the manager of the restaurant, the agent had probable cause to make the arrest.

INCORRECT: For a warrantless misdemeanor arrest in a public place, in addition to the probable cause requirement, it is also necessary that the offense occur in the law enforcement officer's presence (i.e., within sight or other senses).

d. not required, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.

INCORRECT: Under federal law, warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer.

14. Federal agents are investigating Davis for wire and mail fraud. They arrange to interview Davis at his home about the allegations. During the course of the interview, the agents ask Davis if they could search his home office for various documents. When Davis stayed silent, one of the agents responds, "Listen, if you say no, we're going to apply for a search warrant, and, if we get it, we're going to come back and search then." Davis then tells the agents they can search his home office. During the course of the search, documents are discovered linking Davis to the wire and mail fraud allegations. At his trial on these charges, Davis makes a motion to suppress the evidence found during the search of his office, claiming that his consent was not voluntarily given. According to the law, this motion will be:

- a. Granted, because Davis' consent was not voluntarily given, but was mere submission to the authority of the law enforcement agents.
 - b. Granted, because the agents did not notify Davis that he had the right to refuse to grant consent for the search.
 - c. Denied, because the agent's statement regarding his intent to apply for a search warrant was permissible.
 - d. Denied, because when David stayed silent, probable cause arose to conduct the search either with or without a search warrant.
-

a. Granted, because Davis' consent was not voluntarily given, but was mere submission to the authority of the law enforcement agents.

INCORRECT: Submission by the individual to the authority of the law enforcement officer does not constitute consent. Consent is not voluntarily given in response to an officer's statement that the officer has come to search with a warrant when, in fact, there is none, or they will get a warrant if consent is withheld. However, it is permissible for officers truthfully to advise a person that they will apply for a warrant if consent is refused.

b. Granted, because the agents did not notify Davis that he had the right to refuse to grant consent for the search.

INCORRECT: Whether consent is freely and voluntarily given is decided by the facts as decided by the court, which will consider all of the surrounding circumstances. One of these circumstances is knowledge of the right to withhold consent, though such knowledge is not essential. An officer is not required to advise a person of their right to refuse consent.

c. Denied, because the agent's statement regarding his intent to apply for a search warrant was permissible.

CORRECT: Submission by the individual to the authority of the law enforcement officer does not constitute consent. Consent is not voluntarily given in response to an officer's statement that the officer has come to search with a warrant when, in fact, there is none, or they will get a warrant if consent is withheld. However, it is permissible for officers truthfully to advise a person that they will apply for a warrant if consent is refused.

d. Denied, because when David stayed silent, probable cause arose to conduct the search either with or without a search warrant.

INCORRECT: Davis' silence cannot be used to establish probable cause for the search. Additionally, even if it could, probable cause, standing alone, is never enough for a search. Instead, the agents would need to justify a warrantless search with an exception to the warrant requirement. Based on the facts presented, no such exception exists in this case.

15. A law enforcement officer has a hunch that Roberts is trafficking narcotics. After observing Roberts speed through a stop sign, the law enforcement officer decided to pull Roberts over for the traffic violation, so that he could try to discover evidence of narcotics in the vehicle. The officer turned on his overhead lights and performed a traffic stop. Once Roberts' car stopped, the officer approached the car and instructed Roberts to roll down his window. As Roberts did so, the officer was faced with the overwhelming odor of raw marijuana emanating from the car. The officer requested Robert's identification and registration, and Roberts complied. After checking the identification through dispatch, the officer wrote out a citation, had Roberts sign it, and returned the identification and registration documents to Roberts. Before Roberts could leave, however, the officer ordered him to step out of the vehicle. Roberts complied, and the officer began to search various areas within the car. In the trunk of the vehicle, under the spare wheel, the officer discovered what later turned out to be 10 kilos of marijuana. At his trial, Roberts filed a motion to suppress the evidence because of an illegal search of the vehicle. According to the law, this motion will be:

- a. Granted, because, while the officer could detain Roberts as long as reasonably necessary to check his identification and issue a warning or citation to him, once those purposes were accomplished, the officer was required to let Roberts go.
- b. Granted, because the officer's initial traffic stop was simply a pretext used to investigate for narcotics.
- c. Denied, because the officer had the ability to perform a Terry frisk for weapons that could have been located in the vehicle.
- d. Denied, because the marijuana was found during a valid search of the vehicle's trunk.

a. Granted, because, while the officer could detain Roberts as long as reasonably necessary to check his identification and issue a warning or citation to him, once those purposes were accomplished, the officer was required to let Roberts go.

INCORRECT: An officer may detain the driver of a vehicle as long as reasonably necessary to request the driver's license and registration; request the driver to step out of the vehicle; conduct computer inquiries to determine the validity of the license and registration; conduct computer searches to investigate the driver's criminal history and to determine if the driver has outstanding warrant; and issue a warning or citation. However, once the initial reason for the stop has been accomplished, the stop must end, unless something occurs during the traffic stop that generates reasonable suspicion to justify a further detention. The smell of raw marijuana in this case provided the justification for the additional detention of Roberts.

b. Granted, because the officer's initial traffic stop was simply a pretext used to investigate for narcotics.

INCORRECT: Pretextual traffic stops have been found to be permissible, so long as either reasonable suspicion or probable cause existed for the initial stop. In this case, the traffic infraction allowed the officer to stop Roberts, so the pretextual nature of the stop is irrelevant.

c. Denied, because the officer had the ability to perform a Terry frisk for weapons that could have been located in the vehicle.

INCORRECT: Even conceding that the officers could perform a Terry frisk in this scenario, such a frisk would not have permissibly included the trunk of the vehicle, in that any weapons located in that area would not be readily accessible to the suspect.

d. Denied, because the marijuana was found during a valid search of the vehicle's trunk.

CORRECT: The odor of raw marijuana emanating from the vehicle gave the officer probable cause to search the vehicle without a warrant pursuant to the Carroll doctrine. When performing a Carroll search, an officer may look anywhere within the vehicle where what he is seeking could be hidden, which in this case includes the trunk.

16. Federal agents suspect that Martin is dealing in narcotics from his home, a felony offense, but have not been able to obtain enough evidence to justify issuance of a search or arrest warrant. They take up surveillance from various positions around the neighborhood, while an undercover officer approaches the residence in an attempt to buy narcotics. As the agents observe, the undercover officer approaches Martin, who is sitting on his front porch, and engages in a lengthy discussion. When an object is transferred between Martin and the undercover officer, the officer gives the signal that narcotics have been exchanged. The agents, dressed in raid jackets and marked vehicles, descend on the house to arrest Martin for narcotics distribution. As Martin sees the agents approach, he turns, runs directly into his home, and slams the door behind him. One of the agents breaks through the door, and is able to catch Martin as he is trying to run through the kitchen. Martin has a bag of what appears to be cocaine in his hand when he is arrested, and various other drugs are found on a table next to where the arrest occurred. Did the officers violate 18 U.S.C. § 3109 (the Federal "knock and announce" statute)?

- a. No, because an agent may always make a warrantless entry into a residence to make an arrest, so long as probable cause exists.
 - b. No, because the agents entered the house to make the arrest under exigent circumstances.
 - c. Yes, because the agents did not announce their identity and purpose.
 - d. Yes, because the statute must always be complied with whenever an officer desires to enter a private residence.
-

a. No, because an agent may always make a warrantless entry into a residence to make an arrest, so long as probable cause exists.

INCORRECT: An agent may not make a warrantless entry into a residence to make an arrest for any offense; the offense must be a felony (*Welsh v. Wisconsin*).

b. No, because the agents entered the house to make the arrest under exigent circumstances.

CORRECT: Based on the signal provided by the undercover officer, the agents had probable cause to make the arrest. When Martin turned and ran into the residence, the officers were in "hot pursuit." They had probable cause to arrest for a felony, and a general and continuous knowledge (within reason) of the suspect's whereabouts.

c. Yes, because the agents did not announce their identity and purpose.

INCORRECT: Agents who are in "hot pursuit" need not comply with Title 18 U.S.C. § 3109.

d. Yes, because officers must always comply with the statute whenever an officer desires to enter a private residence.

INCORRECT: This statement is far too broad to be close to being correct. (1) The statute provides only that the officers cannot break to enter to execute a search or arrest warrant unless the officer first identifies his authority and purpose. An officer could then enter with consent of the occupant without complying with the statute. (2). Exigent circumstances will excuse compliance with the statute. See also the justification for answer b.

17. Two federal agents have been investigating Thomas and have reasonable suspicion to believe that he is selling false identification documents out of the trunk of his vehicle. Upon seeing him parked in a public parking lot, they approach him, identify themselves as federal agents, and ask him to place his hands on top of the vehicle. During the frisk that follows, one of the officers feels what he reasonably believes is a handgun. He retrieves the item and confirms that the object is a .22 caliber pistol. Knowing that Thomas was previously convicted of a felony (theft), the agent places him under arrest for being a felon-in-possession. A search of the vehicle incident to the arrest turns up a bag of false identification documents under the back seat of Thomas' vehicle. At his trial on weapons and false identification documents, Thomas makes a motion to suppress all of the evidence recovered by the agents. According to the law:

- a. The pistol will be admitted, but the false identification documents will be suppressed.
 - b. The pistol will be suppressed, but the false identification documents will be admitted.
 - c. All of the evidence will be admitted.
 - d. None of the evidence will be admitted.
-

a. The pistol will be admitted, but the false identification documents will be suppressed.

INCORRECT: All of the evidence would be suppressed. The agents had reasonable suspicion to temporarily detain Thomas for investigation. However, they did not have the right to conduct a frisk on him, in that the offense being investigated is not generally associated with being "armed and dangerous." Because the frisk was impermissible (i.e., the agents did not have reasonable suspicion that Thomas was presently armed and dangerous), the pistol discovered during the frisk would be suppressed. The false identifications would be suppressed as the fruit of an illegal search (i.e., the fruit of an invalid search incident to arrest). Note that even if an SIA was permissible, the scope of a vehicle SIA does not include the trunk.

b. The pistol will be suppressed, but the false identification documents will be admitted.

INCORRECT: See justification a.

c. All of the evidence will be admitted.

INCORRECT: See justification a.

d. None of the evidence will be admitted.

CORRECT: See justification a.

18. Federal agents have an arrest warrant for Moore for failure to appear. At approximately 12:00 a.m. one night, the agents approach Moore's home, reasonably believing that he is inside. As they open the unlocked door and enter, all of the agents clearly announce, "Federal agents!" Immediately inside the door, Moore is found sitting on a sofa in the living room. On coffee table in front of him, the agents see a white powdery substance (later determined to be cocaine), scales, small baggies, and other pieces of drug paraphernalia. Moore is arrested, and is charged with possession of cocaine and drug paraphernalia. Which of the following statements is correct?

- a. Title 18 U.S.C. § 3109 was NOT violated because it applies only to the execution of search warrants, not arrest warrants.
 - b. Title 18 U.S.C. § 3109 was NOT violated because entering through an unlocked door does not qualify as "break[ing] open any outer or inner door" of a house, as required by Title 18 U.S.C. § 3109.
 - c. The agents executed the warrant outside of the time limit prescribed by statute, specifically, between 6:00 a.m. and 10:00 p.m.
 - d. The agents were required to comply with Title 18 U.S.C. § 3109 (knock and announce) and failed to do so.
-

a. Title 18 U.S.C. § 3109 was NOT violated because it applies only to the execution of search warrants, not arrest warrants.

INCORRECT: Title 18 U.S.C. § 3109 has been held to apply to all entries under color of law, either to search or to arrest, with or without a warrant. While the statute speaks exclusively of search warrants, case law has interpreted the statute to include entries for the execution of arrest warrants.

b. Title 18 U.S.C. § 3109 was NOT violated because entering through an unlocked door does not qualify as "break[ing] open any outer or inner door" of a house, as required by Title 18 U.S.C. § 3109.

INCORRECT: The courts have given a broad construction to this statute. For instance, the word "break" has been interpreted to include opening an unlocked door or using a passkey. In this instance, the entry clearly constituted a "breaking" by the agent, even though the door to the home was unlocked.

c. The agents executed the warrant outside of the time limit prescribed by statute, specifically, between 6:00 a.m. and 10:00 p.m.

INCORRECT: Unlike a federal search warrant, a federal arrest warrant may be executed by any authorized officer at any time within the jurisdiction of the United States, its possessions, and its territories. Pursuant to Rule 41(h) of the Federal Rules of Criminal Procedure, a federal search warrant must normally be served in the daytime, which is defined as the hours between 6:00 a.m. to 10:00 p.m.

d. The agents were required to comply with Title 18 U.S.C. § 3109 (knock and announce) and failed to do so.

CORRECT: The agents in this case failed to comply with Title 18 U.S.C. § 3109. Specifically, the agents failed to announce their authority and purpose. Merely stating "Federal agents" is insufficient. The agents must also state their purpose (e.g., "Federal agents with a search warrant"). Additionally, the agents in this case impermissibly used force to enter prior to being refused admittance. The term "refused admittance" means that an agent must wait a reasonable length of time before forcing entry, unless exigent circumstances exist.

19. Federal agents develop probable cause that Gibson's garage contains a large quantity of counterfeit social security checks. They also have reason to suspect that, earlier in the morning, their confidential informant told Gibson that they were about to apply for a search warrant, and that Gibson indicated he would destroy the evidence after he returns home from an out-of-town visit. The agents approach Gibson's home and are certain he has not yet arrived and no one is at home. After discussing their options, the agents force their way through the garage door and into the home. During the subsequent search, they seize hundreds of counterfeit social security checks. Approximately ninety minutes later, Gibson returns home and is placed under arrest. At his trial, he makes a motion to suppress the evidence discovered during the warrantless search of his home. According to the law, this evidence will be:

- a. Admitted, because the agents would have inevitably discovered the evidence once they applied for a search warrant.
 - b. Admitted, because the agents entered the home due to exigent circumstances (destruction of evidence).
 - c. Suppressed, because the agents did not have probable cause to arrest Gibson at the time of the search.
 - d. Suppressed, because the agents had time to apply for a telephonic warrant.
-

a. Admitted, because the agents would have inevitably discovered the evidence once they applied for a search warrant.

INCORRECT: The "inevitable discovery" doctrine means that the unreasonable search or seizure of evidence by one officer will not bar the use of that evidence when other officers, acting independently and without knowledge of the wrongful acts of the first officer, are searching lawfully for the evidence. Since no independent search was being conducted at the time of the illegal search in this case, the "inevitable discovery" doctrine does not apply.

b. Admitted, because the agents entered the home due to exigent circumstances (destruction of evidence).

INCORRECT: An exigent circumstances will justify a warrantless search when law enforcement officers reasonably believe that the removal or destruction of evidence is imminent, and there is not enough time to secure a search warrant. In this case, the removal or destruction of the evidence was not imminent, because the suspect was not home at the time.

c. Suppressed, because the agents did not have probable cause to arrest Gibson at the time of the search.

INCORRECT: The issue of probable cause to arrest Gibson is irrelevant to determining whether the warrantless search of the house in this scenario was reasonable under the Fourth Amendment.

d. Suppressed, because the agents had time to apply for a telephonic warrant.

CORRECT: Occasionally, law enforcement officers are confronted with a situation in which they do not have time to obtain a warrant in the traditional manner due to the impending destruction or removal of evidence. Rule 41(c)(2) of the Federal Rules of Criminal Procedure provides for a search warrant based on oral testimony, such as communicated by telephone or facsimile machine. This procedure may drastically reduce the time it takes to obtain a search warrant. Thus, if law enforcement officers have time to attempt to secure a telephonic search warrant before the removal or destruction becomes imminent, the officers should attempt to do so. Failure to attempt to secure a telephonic search warrant, if the opportunity was available, may be considered in an unfavorable manner by a reviewing court.

20. Federal agents obtain a valid premises search warrant to look for pornographic materials in Black's home. When the warrant is executed, the agents properly knock, announce their identity and purpose, and demand admittance. Black opens the door and the agents enter. Immediately, the agents notice that four other people are inside the house. One of the individuals is recognized as Black's live-in girlfriend, Courtney. The other three persons are unknown. Without hesitating, the agents order all five people to stand and face the wall, where a frisk is conducted for the safety of the officers. During the frisk of Courtney, one agent discovers what is immediately apparent to him to be crack cocaine. He reaches in, retrieves the item, and confirms that it is cocaine. Courtney is arrested. At her trial for narcotics possession, Courtney makes a motion to suppress the cocaine. According to the law, this motion will be:

- a. Granted, because, pursuant to the premises search warrant, the agents could not conduct a frisk of Courtney.
 - b. Granted, because, pursuant to the premises search warrant, the agents could only frisk Black, the owner of the property.
 - c. Denied, because the agents had a valid search warrant for the premises, and were allowed to search any occupants of the premises pursuant to that warrant.
 - d. Denied, because the agents had a valid search warrant for the premises, and were allowed to frisk any occupants of the premises pursuant to that warrant.
-

a. Granted, because, pursuant to the premises search warrant, the agents could not conduct a frisk of Courtney.
CORRECT: A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed. Instead, to frisk any individual present during the execution of a premises search warrant, agents need reasonable suspicion to believe that the individual is presently armed and dangerous. There are no facts present to support the belief that the persons in this scenario were either armed or dangerous.

b. Granted, because, pursuant to the premises search warrant, the agents could only frisk Black, the owner of the property.

INCORRECT: A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed.

c. Denied, because the agents had a valid search warrant for the premises, and were allowed to search any occupants of the premises pursuant to that warrant.

INCORRECT: A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed.

d. Denied, because the agents had a valid search warrant for the premises, and were allowed to frisk any occupants of the premises pursuant to that warrant.

INCORRECT: A premises search warrant does not allow law enforcement officers to either frisk or search persons who may be present on the premises at the time the warrant is executed. Instead, to frisk any individual present during the execution of a premises search warrant, agents need reasonable suspicion to believe that the individual is presently armed and dangerous. There are no facts present to support the belief that the persons in this scenario were either armed or dangerous.

21. An undercover officer purchased controlled substances from King yesterday and today a warrant was issued for King's arrest. Officers spotted King in his usual place in a high crime area where he had been seen selling drugs the day before from his car. King was arrested on the warrant. After arresting King and placing him in handcuffs, the officer had him sit in the back of the officer's vehicle. The officer then returned to King's vehicle and began to search it. Under the front passenger seat, the officer found a bag containing cocaine. Under the back seat, the officer found rolling papers. The officer then opened the trunk of the vehicle and began to search it. Immediately, 6 bricks of marijuana were discovered. At his trial for possession of controlled substances, King makes a motion to suppress all of the evidence found in his vehicle. According to the law:

- a. The cocaine and rolling papers will be admitted, while the 6 bricks of marijuana will be suppressed.
 - b. The cocaine and rolling papers will be suppressed, while the 6 bricks of marijuana will be admitted.
 - c. All of the evidence is admissible.
 - d. None of the evidence is admissible.
-

a. The cocaine and rolling papers will be admitted, while the 6 bricks of marijuana will be suppressed.

INCORRECT: The cocaine and rolling papers are admissible because they were lawfully found during a valid search incident to arrest of the passenger compartment of the vehicle. Based on the recent warrant, the nature of the offenses, and activities observed on the day of arrest, the officers had reasonable to believe that evidence of the crime of arrest (drug sale) was in the vehicle. The bricks of marijuana are also admissible, not because they were found during a valid search incident to arrest of the vehicle, but under the mobile conveyance exception. The discoveries in the passenger compartment established probable cause to search the trunk of the vehicle.

b. The cocaine and rolling papers will be suppressed, while the 6 bricks of marijuana will be admitted.

INCORRECT: See justification a.

c. All of the evidence is admissible.

CORRECT: See justification a.

d. None of the evidence is admissible.

INCORRECT: See justification a.

22. Law enforcement officers receive notice from their dispatcher that there has been a homicide at a local apartment building. Arriving at the designated apartment, the officers notice that the door to the apartment has what appear to be bullet holes in it, and that the lock on the door is broken. Without first obtaining a search warrant, the officers push open the door and enter the apartment. Inside, they find a deceased male and a female who is unconscious, but appears to have suffered a self-inflicted gunshot wound to the chest. Emergency personnel are called, and both bodies are removed from the scene of the crime. After securing the apartment, two of the officers begin to process the crime scene looking for evidence. In a trashcan near the kitchen, the officers find a crumpled note. Not sure if it's evidence or not, the officers read the note and discover it was written by the woman. The note indicates that she had killed the man (her husband) because of an illicit affair he was having, and that she was going to kill herself. The woman recovers and is charged with her husband's murder. At her trial, she makes a motion to suppress the note found in the trashcan. According to the law, this evidence will be:

- a. Admitted, because the officers entered the apartment and conducted the warrantless search pursuant to the emergency scene exception to the Fourth Amendment's warrant requirement.
 - b. Admitted, because the note was found in plain view during the processing of the homicide scene.
 - c. Suppressed, because the officers were not authorized to enter the apartment without first obtaining a search warrant.
 - d. Suppressed, because the search by the officers was made without either a search warrant or an exception to the Fourth Amendment's warrant requirement.
-

a. Admitted, because the officers entered the apartment and conducted the warrantless search pursuant to the emergency scene exception to the Fourth Amendment's warrant requirement.

INCORRECT: While the initial entry into the apartment was justified under the "emergency scene" exception to the warrant requirement, once the exigency ended (i.e., once the bodies were removed from the scene) the officers' legal justification for being in the apartment terminated. To process this crime scene after that point, the officers needed to secure a search warrant.

b. Admitted, because the note was found in plain view during the processing of the homicide scene.

INCORRECT: The note was not found in plain view. First, at the time the note was discovered, the officers were not lawfully on the premises. Second, the incriminating nature of the note was not immediately apparent at the time it was seized by the officers.

c. Suppressed, because the officers were not authorized to enter the apartment without first obtaining a search warrant.

INCORRECT: The officers were entitled to enter the apartment because of the emergency nature of the dispatch call. In these instances, officers do not have time to obtain a search warrant to justify their entry. This type of "exigent" circumstance is one of the few established exceptions to the Fourth Amendment's warrant requirement.

d. Suppressed, because the search by the officers was made without either a search warrant or an exception to the Fourth Amendment's warrant requirement.

CORRECT: At the time the note was found, the officers were no longer lawfully on the premises. The exigency that justified their warrantless entry no longer existed, because the victim and suspect had been removed from the scene. To continue to search at this point, the officers needed to obtain a warrant.

23. Armed with an arrest warrant for Jones for mail fraud and false statements, federal agents approach Jones' home. Surveillance has indicated that, in the previous 48 hours, no one other than Jones has entered or left the premises. The officers have no additional information that anyone other than Jones is located inside the two-story home. The agents knock on the door, announce their identity and purpose, and demand entry. When the agents hear footsteps running towards the rear of the residence, they use force to enter and make the arrest. Jones is arrested approximately ten feet from the back door of the residence. Two officers fan out to conduct a protective sweep of the home, and in the bathroom located on the second floor, discover marijuana shoved into the toilet tank. At his trial on possession charges, Jones files a motion to suppress the evidence found in the bathroom. According to the law, this motion will be:

- a. Granted, because the agents had only an arrest warrant, and not a search warrant, they were not authorized to enter Jones' home.
 - b. Granted, because the marijuana was found during a search that violated the Fourth Amendment.
 - c. Denied, because the agents discovered the marijuana during a lawful protective sweep of the residence.
 - d. Denied, because the arrest warrant authorized the agents to conduct a search of the entire home incident to Jones' arrest.
-

a. Granted, because the agents had only an arrest warrant, and not a search warrant, they were not authorized to enter Jones' home.

INCORRECT: An arrest warrant carries with it the authority to enter a suspect's home in order to effect the arrest, so long as the agents reasonably believed that the suspect was in the home at the time the warrant was executed.

b. Granted, because the marijuana was found during a search that violated the Fourth Amendment.

CORRECT: There were two problems associated with the discovery of the marijuana in the scenario. First, an extended protective sweep requires reasonable suspicion to believe that an individual is in the home that could pose a danger to the agents. No facts exist in this question to justify the extended protective sweep in this case. Second, during a protective sweep, an agent may only look in those locations where a person could be hidden. In this case, looking into the toilet tank exceeded the lawful scope of a protective sweep.

c. Denied, because the agents discovered the marijuana during a lawful protective sweep of the residence.

INCORRECT: There were two problems associated with the discovery of the marijuana in the scenario. First, an extended protective sweep requires reasonable suspicion to believe that an individual is in the home that could pose a danger to the agents. No facts exist in this question to justify the extended protective sweep in this case. Second, during a protective sweep, an agent may only look in those locations where a person could be hidden. In this case, looking into the toilet tank exceeded the lawful scope of a protective sweep.

d. Denied, because the arrest warrant authorized the agents to conduct a search of the entire home incident to Jones' arrest.

INCORRECT: While an arrest warrant does authorize agents to enter a residence to effect an arrest (at least where they reasonably believe the suspect is inside the residence), it does not authorize them to search any further than is necessary to locate the suspect. In this case, once Jones was arrested, the immediate area of the arrest could be searched incident to the arrest. This does not include the upstairs bathroom.

24. Howard is arrested on a 6 year old warrant for income tax evasion as he is getting out of his car at his home. Howard has no other criminal history, and there is no reason to suspect that he has engaged in any other instance of income tax evasion or any other crime. As soon as he is handcuffed and his person searched, he is secured in the back of the patrol vehicle. Officers then search the passenger compartment of his car incident to arrest and find 10 ounces of marijuana in one ounce packages, scales, and baggies hidden in the glove compartment. The officers then decide to search the trunk of the car under the mobile conveyance exception and find 50 more ounces of marijuana hidden inside the spare tire. All the above evidence is seized and is offered as evidence at Howard's trial for possession with intent to distribute a controlled substance. Is the evidence admissible?

- a. All the evidence is admissible.
 - b. None of the evidence is admissible.
 - c. The evidence found in the passenger compartment is admissible, but not the evidence in the trunk.
 - d. The evidence found in the trunk is admissible but not the evidence found in the passenger compartment because Howard was not an occupant of the vehicle at the time of the arrest.
-

a. All the evidence is admissible.

INCORRECT: See justification b.

b. None of the evidence is admissible.

CORRECT: The search incident to arrest of Howard's person was lawful and performed contemporaneous with the arrest. The officers could therefore search his person, and containers on his person, for weapons, means of escape, and any evidence of any crime. The search incident to arrest of the passenger compartment was not lawful. To search the passenger compartment of a vehicle when arresting an occupant or recent occupant, officers must be able to articulate that Howard still had access to the passenger compartment at the time of the search, and that was not the case as Howard was secured in the patrol vehicle. Officers could also perform a search incident to arrest of the passenger compartment if they had reason to believe that evidence of the crime of arrest was present. They had no such information. Had the search incident to arrest of the passenger compartment been lawful, the evidence found in the passenger compartment would have established probable cause there was evidence of crime in the trunk, and officers could have used the mobile conveyance exception to search there. Since the evidence found in the passenger compartment was unlawfully discovered, however, it cannot be used to establish probable cause for the mobile conveyance exception.

c. The evidence found in the passenger compartment is admissible, but not the evidence in the trunk.

INCORRECT: See justification b.

d. The evidence found in the trunk is admissible but not the evidence found in the passenger compartment because Howard was not an occupant of the vehicle at the time of the arrest.

INCORRECT: See justification b.

25. Morgan, a convicted felon, lived in a trailer owned by his girlfriend, Jones. Jones, anxious to defend herself against a charge, made by another woman, that she kept drugs at her home, invited two police officers to search the trailer. When the officers came in, Morgan was sitting in the living room. The officers explained to him that Jones had given consent for the search, and they then proceeded to make their search. In the bedroom shared by Jones and Morgan, the officers found a small bag with what appeared to be marijuana residue inside. Jones denied that the bag belonged to her, and told the officers that some of the items in the bedroom belonged to the defendant. On an upper shelf in the bedroom closet, in a jumble of boxes, tins, and bags belonging partly to Jones and partly to Morgan, the officers located a generic, unmarked tin box. In that box, they found what they believed to be a bomb made of dynamite, wires, and .9 mm. shells. During this time, Morgan remained in the living room and offered no objection to the search. Through questioning Jones, it was determined that the tin box belonged to Morgan, not her. Morgan was arrested and charged with being a felon in possession of explosives. At his trial, he made a motion to suppress the evidence found in the tin box. According to the law, the evidence will be:

- a. Admitted, because Jones had apparent authority to consent to the search of the tin box.
 - b. Admitted, because Jones can consent to the search of any item within her residence, regardless of who the item actually belonged to.
 - c. Suppressed, because Jones did not have actual authority to consent to the search of the tin box.
 - d. Suppressed, because the officers exceeded the scope of the consent given them by Jones when they searched the tin box.
-

a. Admitted, because Jones had apparent authority to consent to the search of the tin box.

CORRECT: As the owner of the trailer, Jones freely gave consent to the search of the trailer, including the bedroom. The tin box was not identified in any way as belonging to Morgan, nor did Morgan attempt to limit Jones' consent to her own personal property. It was reasonable, then, for the officers to think that the tin box was within the consent that Jones had given. It was also reasonable for the officers to think that Jones had authority not only over the premises, but also over all of their contents not obviously belonging to someone else.

b. Admitted, because Jones can consent to the search of any item within her residence, regardless of who the item actually belonged to. **INCORRECT:** For purposes of searches of closed containers, mere possession of the container by a third party does not necessarily give rise to a reasonable belief that the third party has authority to consent to a search of its contents. The key to consent is actual or apparent authority over the item to be searched. In deciding whether an individual has "apparent" authority over an item, courts consider various factors, including the nature of the container (e.g., was it a briefcase or a generic box?); whether there were external markings on the container, such as the defendant's name or the third party's name; and any precautions taken by the owner to ensure privacy, such as the use of locks or the government's knowledge of the defendant's orders not to open the container. With respect to locking mechanisms, courts also consider whether the defendant provided the third party with a combination or key to the lock.

c. Suppressed, because Jones did not have actual authority to consent to the search of the tin box.

INCORRECT: The probable cause and warrant requirements of the Fourth Amendment are not applicable where a party consents to a search, where a third party with common control over the searched premises consents, or where an individual with apparent authority to consent does so. As noted above, Jones had "apparent" authority to consent to the search, so "actual" authority is unnecessary.

d. Suppressed, because the officers exceeded the scope of the consent given them by Jones when they searched the tin box. **INCORRECT:** Generally, consent to search a space includes consent to search containers within that space where a reasonable officer would construe the consent to extend to the container. As the owner of the trailer, Jones freely gave consent to the search of the trailer, including the bedroom. The tin box was not identified in any way as belonging to Morgan, nor did Morgan attempt to limit Jones' consent to her own personal property. It was reasonable, then, for the officers to think that the tin box was within the consent that Jones had given. It was also reasonable for the officers to think that Jones had authority not only over the premises, but also over all of their contents not obviously belonging to someone else.

26. After being issued a traffic citation, Morris decided to contest the ticket in court. On the day of his hearing, he approached the courthouse door and discovered that a magnetometer had been installed, with two security guards on either side of the device. As Morris got to the doorway, he was instructed by one of the guards that GSA regulations provided that anyone entering the courthouse would need to have their belongings searched and would need to step through the magnetometer. The purpose of these searches was to look for explosives or dangerous weapons. Morris refused to place his briefcase on the conveyor belt, stating that, because he had done nothing wrong, he did not feel it was proper to force him to endure this type of treatment. When notified that he would not be permitted to carry the briefcase into the courthouse without allowing the inspection, Morris grudgingly consented. When the briefcase was opened, one of the guards discovered a small bag containing marijuana in a side pocket. Was there a Fourth Amendment violation?

- a. Yes, because the guards had no probable cause to believe that Morris had any explosives or dangerous weapons in his briefcase.
 - b. Yes, because the guards did not obtain a search warrant prior to searching Morris' briefcase for any explosives or dangerous weapons.
 - c. No, because the fact Morris was appearing at the courthouse gave the security guards reasonable suspicion to frisk his belongings prior to allowing him to enter.
 - d. No, because the search was validly conducted pursuant to GSA regulations and in compliance with the Fourth Amendment.
-

a. Yes, because the guards had no probable cause to believe that Morris had any explosives or dangerous weapons in his briefcase.

INCORRECT: Ordinarily, of course, a person should not have his person or property subjected to a search in the absence of a warrant or probable cause to believe that a crime is being committed. However, regulations that authorize warrantless inspections of persons and property entering federal courthouses comply with the Fourth Amendment. These searches are considered reasonable under the Fourth Amendment due to the balance that must be struck between the government's interest in safeguarding courthouses and the minimal intrusion that takes place during the inspection process.

b. Yes, because the guards did not obtain a search warrant prior to searching Morris' briefcase for any explosives or dangerous weapons.

INCORRECT: The key to any Fourth Amendment search, including an "administrative inspection," is reasonableness. To require that an officer obtain a warrant to examine the packages of each of the potentially hundreds of persons entering a federal facility or determine as to each person the existence of probable cause would, as a practical matter, seriously impair the power of government to protect itself against individuals who would commit destructive acts in or around courthouses.

c. No, because the fact Morris was appearing at the courthouse gave the security guards reasonable suspicion to frisk his belongings prior to allowing him to enter.

INCORRECT: Morris' appearance at the courthouse did not, in and of itself, give rise to reasonable suspicion to conduct a frisk of his belongings. Even assuming his appearance at a courthouse was sufficient justification to detain Morris, there is no evidence to support a reasonable suspicion he was presently armed and dangerous, the standard required for a Terry frisk.

d. No, because the search was validly conducted pursuant to GSA regulations and in compliance with the Fourth Amendment.

CORRECT: "Administrative inspections," though warrantless, are permissible under the 4th Amendment. A limited warrantless search of people (and their belongings) wishing to enter sensitive facilities is permitted if the search is part of a general practice (i.e., a regulation authorizing the inspection exists) and not for the purpose of securing evidence for criminal investigations. Both of those requirements are met in this case.

27. Based on their investigation, federal agents obtained a search warrant to search Smith's residence. The search warrant did not specifically list any vehicles to be searched, but rather authorized the search of the entire premises for methamphetamine. On the day the search was conducted, Smith's vehicle was parked in the driveway of his residence. During the course of the search, agents discovered numerous items of evidence, including a briefcase containing a vast quantity of methamphetamine. The agents then decided to search the vehicle, although they weren't sure any evidence was inside it. Inside the trunk of the vehicle, several kilos of cocaine were found. At his trial for drug trafficking, Smith made a motion to suppress the cocaine found in the vehicle's trunk. Did the agents violate the Fourth Amendment?

- a. No, because it was found during the lawful execution of a premises search warrant.
 - b. No, because the vehicle was searched pursuant to the "mobile conveyance" exception to the warrant requirement.
 - c. Yes, because the agents exceeded the lawful scope of the premises search warrant by searching the vehicle that was not listed in the warrant.
 - d. Yes, because the agents did not have probable cause to believe that evidence of drug trafficking was located in the vehicle.
-

a. No, because it was found during the execution of a valid premises search warrant.

CORRECT: A search warrant authorizing a search of a certain premises includes any vehicles owned or controlled by the owner of the premises searched and located within its curtilage if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant. It should be remembered, however, that if the owner of the premises has a vehicle that is parked off the curtilage, it cannot be searched pursuant to the premises search warrant.

b. No, because the vehicle was searched pursuant to the "mobile conveyance" exception to the warrant requirement.

INCORRECT: The "mobile conveyance" exception to the Fourth Amendment's warrant requirement authorizes the search of a mobile conveyance if probable cause exists to believe it is carrying items subject to seizure (contraband, means and instrumentalities, etc.). In this case, the agents did not have probable cause, so the "mobile conveyance" exception was inapplicable.

c. Yes, because the agents exceeded the lawful scope of the premises search warrant by searching the vehicle that was not listed in the warrant.

INCORRECT: A search warrant authorizing a search of a certain premises includes any vehicles owned or controlled by the owner of the premises searched and located within its curtilage if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant. It should be remembered, however, that if the owner of the premises has a vehicle that is parked off the curtilage, it cannot be searched pursuant to the premises search warrant.

d. Yes, because the agents did not have probable cause to believe that evidence of drug trafficking was located in the vehicle.

INCORRECT: The agents did not need probable cause to believe that evidence of drug trafficking was located in the vehicle. A premises search warrant authorizes the search of any vehicles owned or controlled by the owner of the premises searched, and located within its curtilage, if the objects of the search might be located in those vehicles. In essence, the vehicle is treated as if it were part of the premises covered by the warrant.

28. Federal agents obtained an arrest warrant for Smith for bank fraud. Agents determine that Smith is single, lives alone, and is the only one at his residence. Agents lawfully enter Smith's house. They find Smith standing in the first floor entryway. Agent Brown does a protective sweep of the entryway coat closet and sees a shotgun as he opens the closet door. He seizes the shotgun knowing that Smith is a previously convicted felon and possession of a firearm by him is a federal offense. Agent Rogers does a protective sweep of the back, second floor bedroom and sees and seizes a stack of child pornographic magazines lying openly on top of the bed. Concerning the admissibility of the evidence seized:

- a. Both the shotgun and the magazines are admissible.
 - b. Neither the shotgun nor the magazines are admissible.
 - c. The magazines are admissible. The shotgun is not.
 - d. The shotgun is admissible; the magazines are not.
-

a. Both the shotgun and the magazines are admissible.

INCORRECT: The search incident to arrest permits looking into the entry way closet because it was in an area immediately adjacent to the place of arrest and could conceal a person. The shotgun was lawfully seized in plain view. (Lawful presence, immediately apparent it was evidence of a crime, and lawful right to access.) The scope of the search incident to arrest was exceeded upstairs because there was no reasonable suspicion anyone was upstairs. Since the scope of the sweep was exceeded, the agent was not lawfully present in the bedroom making the plain view doctrine inapplicable.

b. Neither the shotgun nor the magazines are admissible.

INCORRECT: See justification a.

c. The magazines are admissible. The shotgun is not.

INCORRECT: See justification a.

d. The shotgun is admissible; the magazines are not.

CORRECT: See justification a.

29. Federal agents are conducting a surveillance of Johnson's house based on information that the house is being used to process and package cocaine. Agents standing on the public sidewalk look into Johnson's open living room window that is only 5 feet away. On the table in front of the window, agents see scales and bundles of what they immediately recognize as packaged cocaine. Agents knock on the door, Johnson answers, and the agents push their way in - without consent - and seize the cocaine. Concerning the admissibility of the evidence seized:

- a. The cocaine is admissible because it was seen in plain view from a public place.
 - b. The cocaine is admissible because it was seized in plain view once agents entered the house.
 - c. The cocaine is inadmissible because the plain view doctrine does not apply to the seizure of the cocaine under the facts presented.
 - d. The cocaine is inadmissible because the "discovery" of the drugs was not inadvertent - the agents knew it was there before they entered the house.
-

a. The cocaine is admissible because it was seen in plain view from a public place.

INCORRECT: Though the agents were lawfully present when they saw the cocaine, and immediately recognized it as contraband, they had to have a lawful right to access the drugs to lawfully seize it. The information they obtained from the surveillance, however, could have been lawfully used to obtain a search warrant.

b. The cocaine is admissible because it was seized in plain view once agents entered the house.

INCORRECT: See justification a. Since the agents were not lawfully present when they seized the cocaine, the plain view doctrine does not apply.

c. The cocaine is inadmissible because the plain view doctrine does not apply to the seizure of the cocaine under the facts presented.

CORRECT: See justification a.

d. The cocaine is inadmissible because the "discovery" of the drugs was not inadvertent - the agents knew it was there before they entered the house.

INCORRECT: Inadvertence is no longer a prerequisite to a lawful plain view seizure. For example, assume that agents had probable cause to search for two contraband items (A and B), but obtained a search warrant for only item A. While lawfully present executing the search warrant for A, they see item B in plain view, and immediately recognize it as contraband. Item B could lawfully be seized under the plain view doctrine. The fact that they had PC (but no warrant) to search for B before entering does not destroy the applicability of the plain view doctrine.

30. Federal agents have been trying for weeks to catch Williams, who they have a hunch is manufacturing false identification cards. Frustrated with their lack of progress and the fact that Williams "is getting away with a crime," agents walk up the sidewalk to Williams' front door, knock, and identify themselves as agents. Pursuant to the agents' request to come in and talk, Williams admits the agents into the house, where they gather in the living room. One of the agents looks down on the floor and beside his foot is what he immediately recognizes as a marijuana cigarette. The agent retrieves the marijuana, signals the other agents to leave, and all the agents depart without arresting Williams. Concerning the admissibility of the cigarette the agent seized:

- a. It is admissible because it was seized pursuant to the plain view doctrine.
 - b. It is admissible because the agents had consent to search the house.
 - c. It is inadmissible because the agents were in the house to discuss false identification documents, not a drug offense.
 - d. It is inadmissible because the agents did not arrest Williams when they found the cigarette.
-

a. It is admissible because it was seized pursuant to the plain view doctrine.

CORRECT: The agents were granted consent to enter the house. They were lawfully present in the living room when an agent saw the cigarette on the floor. The requirements of the plain view doctrine were met: lawful presence, immediately apparent the item was evidence of a crime or contraband, and a lawful right to access the evidence.

b. It is admissible because the agents had consent to search the house.

INCORRECT: See justification a. The agents did not search the house. In addition, the agents did not have consent to search it.

c. It is inadmissible because the agents were in the house to discuss false identification documents, not a drug offense.

INCORRECT: See justification a. What is important is that the agents were lawfully present when one saw what was immediately recognized as a marijuana cigarette. It doesn't matter that the reason they asked to come in was for a matter different than the type of criminal evidence one saw in plain view.

d. It is inadmissible because the agents did not arrest Williams when they found the cigarette.

INCORRECT: There is no requirement that officers arrest a defendant once probable cause develops.

31. Park Police officers see Ralston driving his car at an excessive speed on a park highway. Ralston is stopped for speeding and, during the investigation, the officers develop probable cause Ralston is driving while intoxicated. Ralston is arrested for that offense and his vehicle is towed to a secure, Park Police impoundment area. Pursuant to Park Police standardized policy to inventory all impounded vehicles within 24 hours, the officers inventory Ralston's car the next day. In the trunk they find a suitcase. They open the suitcase and discover a stash of counterfeit US currency. Concerning the admissibility of the currency in a court of law:

- a. It is admissible because Ralston had been arrested, and this search incident to arrest permitted searching the suitcase.
 - b. It is admissible because the agents lawfully opened the suitcase.
 - c. It is inadmissible because the opening of the suitcase was not contemporaneous with the arrest.
 - d. It is inadmissible because the suitcase had nothing to do with the offense for which Ralston was arrested.
-

a. It is admissible because Ralston had been arrested, and this search incident to arrest permitted searching the suitcase.

INCORRECT: The suitcase was opened pursuant to an inventory, not a search incident to arrest. A search incident to arrest under these facts would not allow the officers to go into the trunk. In addition, a search incident to arrest must be substantially contemporaneous with the arrest.

b. It is admissible because the agents lawfully opened the suitcase.

CORRECT: This was a lawful inventory because there was a standardized policy. The officers did not exceed the scope of an inventory because the suitcase is a place where a person ordinarily stores personal property. Had the officers found the currency by cutting open a spare tire, for example, they would have exceeded the scope of the inventory because one does not ordinarily store personal property there.

c. It is inadmissible because the opening of the suitcase was not contemporaneous with the arrest.

INCORRECT: Did you confuse a search incident to arrest with an inventory? An SIA must be substantially contemporaneous with the arrest. Not so with an inventory, so long as it is conducted in accordance with a standardized agency policy.

d. It is inadmissible because the suitcase had nothing to do with the offense for which Ralston was arrested.

INCORRECT: The purpose of an inventory is not to conduct a criminal search for evidence. Inventories are permitted to protect the LEO and others from dangerous objects that may be present, to protect the owner's property, and to protect LEOs from false claims about damaged or missing property when the owner retrieves the property.

32. There is probable cause to arrest Jones for felony assault, but a warrant has not yet been issued. Officers call Jones at his home, verify that Jones is home, knock at the front door, announce their identity and purpose, and demand entry. While waiting for a reply, officers on the public street see what they immediately recognize to be a marijuana plant in the living room window. The officers receive no reply, so they force open the door and arrest Jones inside the house. During the protective sweep, they seize the plant they saw in the window. Concerning the admissibility of the marijuana plant at Jones's trial for possession of marijuana:

- a. It is admissible because it was in open view from a public area and subject to seizure under the plain view doctrine.
 - b. It is admissible because the officers had probable cause to arrest, and they lawfully entered the house under hot pursuit.
 - c. It is not admissible because the protective sweep was unlawful.
 - d. It is not admissible because a protective sweep is limited to looking for people.
-

a. It is admissible because it was in open view from a public area and subject to seizure under the plain view doctrine.

INCORRECT: There was no arrest warrant and no authority (consent or hot pursuit) to enter Jones' house. This makes the protective sweep unlawful, and the fruits of the sweep will be suppressed. Though the officers saw the plant in open view from a public place, the facts provide no lawful right of access to the plant.

b. It is admissible because the officers had probable cause to arrest, and they lawfully entered the house under hot pursuit.

INCORRECT: The facts here do not support hot pursuit; Jones wasn't being pursued from a public place to a private one. The officers only knew that Jones was at home. This makes the protective sweep unlawful, and the fruits of the sweep will be suppressed.

c. It is not admissible because the protective sweep was unlawful.

CORRECT: See justification a. Because the entry was unlawful, the protective sweep was also unlawful. The officers were not lawfully present, making the plain view doctrine inapplicable.

d. It is not admissible because a protective sweep is limited to looking for people.

INCORRECT: See justification a. In addition, while a protective sweep is to look for people, anything discovered in plain view during a lawful protective sweep, which is immediately apparent to be the evidence of a crime, may be seized. Plain view will not apply here because the officers were not lawfully present.

5th and 6th Amendments Practice Exam

1. Officers arrest Fred and advise him of his Miranda rights. Fred understands his rights and verbally waives them. After 20 minutes of questioning, officers figure out that Fred is lying to them and so they tell Fred they will call the local Social Services office and have Fred's children taken away if Fred doesn't confess. Thereafter, Fred confesses. Was this confession obtained in violation of the 5th Amendment?

- a. No, because Fred was given and waived his Miranda rights.
 - b. No, because Fred was not entitled to receive Miranda warnings.
 - c. Yes, because the statement was coerced.
 - d. Yes, because Fred didn't waive his Miranda rights in writing.
-

a. No, because Fred was given and waived his Miranda rights.

Incorrect: The statement was coerced. Coercion in obtaining a statement is contrary to the 5th Amendment even if the subject waives his Miranda rights.

b. No, because Fred was not entitled to receive Miranda warnings.

Incorrect: Fred was entitled to receive Miranda warnings because he was being interrogated by known police officers at a time when he was in custody (arrested).

c. Yes, because the statement was coerced.

Correct. Coercion in obtaining a statement is contrary to the 5th Amendment even if the subject waives his Miranda rights.

d. Yes, because Fred didn't waive his Miranda rights in writing.

Incorrect: A voluntary, intelligent, and knowing waiver of Miranda rights can be done verbally, though written waivers are best when they can be obtained.

2. Officers arrest Fred for larceny, advise him of his Miranda rights and obtain a valid waiver of them. As the questioning progresses, officers believe that Fred has not been truthful. They tell Fred that his fingerprints were found on the stolen items that were recovered; this is not true. They also tell Fred that if he cooperates in the investigation, the officers will tell the AUSA (federal prosecutor) that Fred was cooperative. Fred confesses to the larceny. Was this confession obtained in violation of the 5th Amendment?

- a. No, because Fred waived his Miranda rights before being questioned by police.
 - b. No, because officers can say *anything* to get a suspect to confess.
 - c. Yes, because the police can't lie to a person being questioned.
 - d. Yes, because the statement about telling the AUSA about Fred's cooperation was improper.
-

a. No, because Fred waived his Miranda rights before being questioned by police.
Correct. (Be sure to read the justifications for the below, incorrect answers.)

b. No, because officers can say *anything* to get a suspect to confess.
Incorrect: While there was no 5th Amendment violation here, police cannot threaten or coerce a person. Also, if the interrogation technique is such that a person's free will in making a statement is overborne, that too would result in a 5th Amendment violation. That was not the case here.

c. Yes, because the police can't lie to a person being questioned.
Incorrect: Police are allowed to use trickery and deception during questioning to get to the truth, so long as the suspect's will is not overborne. Such practices, however, can NOT be used in obtaining a Miranda waiver.

d. Yes, because the statement about telling the AUSA about Fred's cooperation was improper.
Incorrect: There is nothing improper in letting Fred know that if he cooperates, his cooperation will be made known to the AUSA. Telling Fred that if he confessed that his sentence or the severity of the charges would be reduced, however, would be improper.

3. Fred is arrested for making harassing phone calls and is in custody. Some of the calls were recorded. Officers want a voice exemplar (sample) of Fred's voice to compare Fred's voice to the recordings. Without giving Fred Miranda rights, officers obtain a subpoena and court order directing Fred to give the voice exemplar. Can Fred be required to provide the voice exemplar over his objection?

a. No, because the exemplar might incriminate Fred.

b. No, because before the police can lawfully ask *any* questions of a person in custody, the suspect must first be given, and waive, his Miranda rights.

c. Yes, because once a person is in custody, they no longer have to be given Miranda rights.

d. Yes, because giving the exemplar is not protected by the 5th Amendment.

a. No, because the exemplar might incriminate Fred.

Incorrect: While the results of the exemplar might be used at Fred's trial to convict him, the exemplar is "non-testimonial" and therefore not protected by the 5th Amendment.

b. No, because before the police can lawfully ask *any* questions of a person in custody, the suspect must first be given, and waive, his Miranda rights.

Incorrect: This statement is too broad to be correct. Booking, and public and officer safety, questions of a person, for example, do not require Miranda.

c. Yes, because once a person is in custody, they no longer have to be given Miranda rights.

Incorrect: Those in custody generally do have to be given and waive Miranda rights if they are to be questioned by the police. (Those not in custody do not have such rights.) There are exceptions. See the above answer.

d. Yes, because giving the exemplar is not protected by the 5th Amendment.

Correct: The exemplar is "non-testimonial" and therefore not protected by the 5th Amendment.

4. Based on reasonable suspicion that Jack is a bank robber they are looking for, officers perform a Terry stop at gun point, put him on the ground, handcuff him, perform a Terry frisk, and place him in the back seat of the patrol vehicle. 25 minutes later, the officers leave the scene and transport him to the office downtown. 15 minutes later when they arrive at the office, officers leave Jack in the cruiser and in cuffs, and then begin to question him. At this time, officers have not placed Jack under arrest, and they have not given Jack Miranda warnings. Jack confesses. Was this confession obtained in violation of Miranda?

a. No, because Jack wasn't under arrest and therefore not in custody for Miranda purposes.

b. No, because Jack wasn't booked into a jail cell before being questioned.

c. Yes, because Jack was in custody for purposes of Miranda.

d. Yes, because Miranda warnings are required whenever one who is the subject of a Terry stop is questioned.

a. No, because Jack wasn't under arrest and therefore not in custody for Miranda purposes.

Incorrect: While Jack was not formally arrested, a reasonable person would conclude they were under arrest in these circumstances and therefore in custody for Miranda purposes.

b. No, because Jack wasn't booked into a jail cell before being questioned.

Incorrect: A person doesn't have to be physically in a jail cell before Miranda is triggered. Formal arrest, or the functional equivalent of arrest, is sufficient to trigger Miranda.

c. Yes, because Jack was in custody for purposes of Miranda.

Correct: While the officers might have intended only a Terry stop, the facts here would lead a reasonable person to believe they were under arrest given the length of time Jack was detained, the manner in which the stop was conducted, the time Jack was in restraints, and the fact that he was transported from the scene.

d. Yes, because Miranda warnings are required whenever one who is the subject of a Terry stop is questioned.

Incorrect: This statement is incorrect. In most cases, Terry stops are not "custody" for the purposes of Miranda and therefore do not require Miranda warnings.

5. Fred was arrested for selling counterfeit currency shortly after an undercover buy operation and a brief chase down a street. The arresting officer immediately performed a search incident to arrest, but was surprised to find that Fred did not have the “buy money” on his person. Without advising Fred of his Miranda rights, the officer said “Okay, Fred, show me where the money is.” Fred then pointed to some bushes 200 feet away next to the sidewalk where he had been chased, and the marked “buy money” was found there. Was this information obtained from Fred in violation of Miranda?

- a. No, because Fred wasn’t questioned or interrogated.
 - b. No, because Fred wasn’t in a jail setting and therefore not in custody.
 - c. Yes, because the officer did not obtain a valid Miranda waiver.
 - d. Yes, because Miranda rights are required before asking *any* questions of a person who has been arrested.
-

a. No, because Fred wasn’t questioned or interrogated.

Incorrect: Fred was being questioned. See the justification for question c.

b. No, because Fred wasn’t in a jail setting and therefore not in custody.

Incorrect: Fred was under arrest and that constitutes “custody” for purposes of Miranda.

c. Yes, because the officer did not obtain a valid Miranda waiver.

Correct: Whenever a known officer interrogates a person in custody, Miranda rights must first be given and a valid waiver obtained. Fred was under arrest by an officer. Law enforcement questioning includes not only asking questions that might elicit a criminal response, but any conduct that might do so. The officer’s statement to Fred is likely to elicit a criminal response (pointing). Accordingly, Miranda rights, and a valid waiver, were required before having Fred point to the money’s location.

d. Yes, because Miranda rights are required before asking *any* questions of a person who has been arrested.

Incorrect: This is an incorrect statement. Officer and public safety questions, and booking questions, for example, do not require Miranda warnings and waiver even if the person has been arrested.

6. Jack is arrested for assaulting Jill. As soon as Jack is arrested, and during the search incident to arrest and before Jack is read his Miranda rights, Jack screams out to the police, “Arrest me if you want to, but Jill got what she deserved.” The officers then ask Jack his full name, date of birth, and SSN. Jack provides the information. Which, if either, of the statements that Jack made were obtained in violation of Miranda?

a. Both statements (#1: what Jack screamed out, and #2, the information regarding his name, DOB, and SSN).

b. The first statement only.

c. The second statement only.

d. Neither statement.

a. Both statements (#1: what Jack screamed out, and #2, the information regarding his name, DOB, and SSN).

Incorrect: See the justification to answer d.

b. The first statement only.

Incorrect: See the justification to answer d.

c. The second statement only.

Incorrect: See the justification to answer d.

d. Neither statement.

Correct: The first statement was spontaneous on Jack’s part and not the result of law enforcement questioning. The second statement also did not constitute questioning (interrogation) under Miranda as it was a proper booking question.

7. Officers develop probable cause that Fred just attempted to rob a Wal-Mart at gun-point and is still inside the store. The officers find Fred and arrest him in the store. During the search incident to arrest, the officers do not find a gun. An officer asks, "Where is the gun?" and Fred says, "Over by the fishing reels." The gun is found where Fred said it was. The officer then asks, "Is this the gun that you used to try and rob this store?" Fred answers "Yes." At no time was Fred given Miranda warnings. Which of these statements was obtained in violation of Miranda?

- a. Both statements.
 - b. Neither statement.
 - c. The first statement ("by the fishing reels") but not the second.
 - d. The second statement ("yes") but not the first.
-

a. Both statements.

Incorrect: See the justification to answer d.

b. Neither statement.

Incorrect: See the justification to answer d.

c. The first statement ("by the fishing reels") but not the second.

Incorrect: See the justification to answer d.

d. The second statement ("yes") but not the first.

Correct: The first question was a proper officer safety question. Although it produced an incriminating response, the question was not designed to elicit an incriminating response but for public safety because the officers had reason to believe the gun was somewhere in the store. (A proper officer safety question can also include asking an arrestee, "Do you have any weapons or objects on you that might hurt me?") Officer and public safety questions do not require Miranda warnings. The second question is not related to officer or public safety, but instead designed to elicit an incriminating response. That question required Miranda warnings and waiver.

8. Officers arrest Fred for larceny. When giving Fred his Miranda warnings, they tell Fred he has been arrested for larceny. Fred waives his Miranda rights and talks to officers. During the course of the interview, the officers realize that Fred is not only a thief, but also possessed a small amount of marijuana (a misdemeanor). They ask him questions about his drug possession to which Fred confesses. Were Fred's statements about his drug possession obtained in violation of Miranda?

- a. No, because officers had a proper Miranda waiver.
 - b. No, because Miranda warnings are not required when officers question a person in custody about a misdemeanor.
 - c. Yes, because Fred was arrested for larceny and not drug possession.
 - d. Yes, because the Miranda warnings Fred was given did not mention drug possession.
-

a. No, because officers had a proper Miranda waiver.

Correct: Officers may, but are not required, to tell a suspect the offenses about which they intend to ask questions. Once Fred waived his Miranda rights, officers may question him about any offense.

b. No, because Miranda warnings are not required when law enforcement questions a person in custody about a misdemeanor.

Incorrect: There is no such rule of law.

c. Yes, because Fred was arrested for larceny and not drug possession.

Incorrect: See the justification to answer a.

d. Yes, because the Miranda warnings Fred was given did not mention drug possession.

Incorrect: See the justification to answer a.

9. Based upon reasonable suspicion that Fred is involved in a larceny, officers Terry stop Fred. As soon as the officers approach, Fred says, “Don’t bother asking me any questions. I have a lawyer.” After some more investigation the officers develop probable cause that Fred committed the larceny. The officers arrest Fred 10 minutes later and take him to the office. There the officers read Fred his Miranda rights which Fred waives. Fred confesses to the larceny. Did the officer’s actions violate Miranda?

- a. Yes, because Fred invoked his right to silence.
 - b. Yes, because Fred invoked his right to counsel.
 - c. No, because one cannot invoke Miranda rights in anticipation of the arrest.
 - d. No, because officers should have Mirandized Fred when they made the Terry stop.
-

a. Yes, because Fred invoked his right to silence.

Incorrect: One can not validly invoke their right to silence in anticipation of interrogation and before Miranda rights are given.

b. Yes, because Fred invoked his right to counsel.

Incorrect: One can not validly invoke their right to silence in anticipation of interrogation and before Miranda rights are given. In addition, the “request” for counsel was ambiguous.

c. No, because one cannot invoke Miranda rights in anticipation of the arrest.

Correct: See the justifications to answers a and b above.

d. No, because officers should have Mirandized Fred when they made the Terry stop.

Incorrect: Questioning of a person after a Terry stop, and where the stop is not the functional equivalent of an arrest, does not require Miranda.

10. Fred is arrested for arson. After being read his Miranda rights, Fred says, “I don’t want to talk to law enforcement.” The officers immediately end their attempt to question Fred and return him to his jail cell awaiting his initial appearance in the morning. About 2 hours later as the officers get ready to leave, they stop by Fred’s cell and ask him if he would like to talk to them. Fred says he does want to talk, and the officers re-advise Fred of his Miranda rights all of which Fred validly waives. Fred confesses. Did the officer’s actions violate Miranda?

- a. Yes, because once Fred invoked, the officers may not attempt to question Fred until he is released from custody.
 - b. Yes, because the statement Fred made was coerced.
 - c. No, because the officers can see if Fred changed his mind about talking to them anytime the officers want to.
 - d. No, because the officers were permitted to re-approach Fred.
-

a. Yes, because once Fred invoked, the officers may not attempt to question Fred until he is released from custody.

Incorrect: Because Fred invoked only his right to silence, and not counsel, officers may approach after a suitable cooling-off period to see if Fred has changed his mind.

b. Yes, because the statement Fred made was coerced.

Incorrect: There are no facts that would indicate that Fred was coerced into talking with the officers.

c. No, because the officers can see if Fred changed his mind about talking to them anytime the officers want to.

Incorrect: This statement is too broad. See the justification to answer a.

d. No, because the officers were permitted to re-approach Fred.

Correct. See the justification to answer a.

11. Fred is arrested for arson. After being read his Miranda rights, Fred says, “I want a lawyer.” The officers stop the attempt to question Fred. Consistent with Miranda, under which of the following circumstances may the officers again attempt to question Fred? (Assume Fred has no 6th Amendment right to counsel.)

- a. Once Fred has had a chance to speak with a lawyer.
 - b. After a suitable cooling off period.
 - c. Once Fred is released from custody or initiates questioning on his own.
 - d. A different set of officers attempt to question Fred or to question him about a different offense.
-

a. Once Fred has had a chance to speak with a lawyer.

Incorrect: The Miranda right is to have one’s lawyer *present*.

b. After a suitable cooling off period.

Incorrect: If Fred had only invoked his right to silence, this answer would be correct. If a suspect requests a lawyer after being Mirandized, officers may not re-initiate questioning unless the suspect’s lawyer is present.

c. Once Fred is released from custody or initiates questioning on his own.

Correct: Miranda applies only to those in custody. In addition, Fred could reinitiate the questioning on his own, and if he did, he could be lawfully questioned if he then waived his Miranda rights.

d. A different set of officers attempt to question Fred or to question him about a different offense.

Incorrect: So long as Fred remains in custody, his request for counsel must scrupulously honored as to ANY offense by ANY officers unless his lawyer is present or Fred re-initiates questioning.

12. Fred is arrested for shoplifting at the FLETC Express store (a misdemeanor). He validly waives his Miranda rights. About an hour into the interview, Fred realizes things are more serious than he thought and he says to the officers, “A lawyer might be a good idea.” May the officers continue questioning Fred?

- a. Yes, because Fred did not invoke his right to counsel.
 - b. Yes, because a request for counsel after the interview has begun is too late.
 - c. No, because the officers did not clarify what Fred meant by the statement.
 - d. No, because a request for counsel in a misdemeanor case does not have to be honored.
-

a. Yes, because Fred did not invoke his right to counsel.

Correct. Fred’s statement is not considered to be an effective assertion of the right to counsel because it was ambiguous (unclear). See also the justification to answer c.

b. Yes, because a request for counsel after the interview has begun is too late.

Incorrect: A person can invoke their right to counsel, or silence, at any time.

c. No, because the officers did not clarify what Fred meant by the statement.

Incorrect: While the Supreme Court has said that clarification of the statement is a “good police practice,” clarification is not required under the law.

d. No, because a request for counsel in a misdemeanor case does not have to be honored.

Incorrect: There is no such rule of law.

13. Fred is arrested and is placed into a physical line-up to see if witnesses can identify him as the perpetrator. This line-up violates either Miranda or the 5th Amendment due process provision if:

- a. Officers fail to give Fred his Miranda rights and obtain a waiver.
 - b. It is a “show-up” line-up conducted right after the crime was allegedly committed and near the place of the alleged crime.
 - c. Fred refuses to participate in the line-up.
 - d. In a line-up with 5 other people, Fred is at least 6 inches taller than any of the others.
-

a. Officers fail to give Fred his Miranda rights and obtain a waiver.

Incorrect: Under these circumstances, no Miranda warnings or waiver are required because Fred is not being interrogated by law enforcement, and his being in the line-up is not testimonial.

b. It is a “show-up” line-up conducted right after the crime was allegedly committed and near the place of the alleged crime.

Incorrect: While show-up line-ups are not favored under the law, such a line-up conducted near the time and place of the crime are acceptable if not otherwise unduly suggestive.

c. Fred refuses to participate in the line-up.

Incorrect: Fred cannot refuse to participate in the line-up. To make Fred participate against his will, however, would require a subpoena or court order.

d. In a line-up with 5 other people, Fred is at least 6 inches taller than any of the others.

Correct: A line-up procedure cannot be “unduly suggestive.” Line-ups where the participants are very dissimilar in appearance are unduly suggestive.

14. The Jones Corporation is under investigation for fraud. Agents have reason to believe that the corporation possesses documents that will show it is engaged in the fraud. The agents obtain a subpoena for the records and serve it on Mrs. Smith, the records custodian. Is Smith's claim that producing the records might violate the corporation's 5th Amendment right against self-incrimination valid?

- a. Yes, because the records might incriminate Smith.
 - b. Yes, because the records might incriminate the corporation.
 - c. No, because the corporation does not have a 5th Amendment privilege against self-incrimination.
 - d. No, because the agents could have obtained the information with a warrant anyway.
-

a. Yes, because the records might incriminate Smith.

Incorrect: The subpoena is directed for the corporate records, and the corporation does not have a 5th Amendment privilege against self-incrimination. If the records would tend to incriminate Smith personally, the government would not be allowed to use the fact that Smith is the one that produced the records (act of production immunity).

b. Yes, because the records might incriminate the corporation.

Incorrect: The corporation does not have a 5th Amendment privilege against self-incrimination.

c. No, because the corporation does not have a 5th Amendment privilege against self-incrimination.

Correct: The corporation does not have a 5th Amendment privilege against self-incrimination.

d. No, because the agents could have obtained the information with a warrant anyway.

Incorrect: This is not relevant. The corporation does not have a 5th Amendment privilege against self-incrimination, though they do have rights under the 4th Amendment.

15. Fred and four of his friends rob a bank, but only Fred is arrested. Agents want Fred to provide information about the other four robbers. Fred invokes both his right to silence and counsel. Agents arrange with the AUSA and obtain use immunity for Fred for his involvement in the robbery. They then subpoena Fred to testify before the grand jury and a subsequent trial. Which of the following is true about this grant of immunity?

- a. Fred can not be prosecuted for bank robbery.
 - b. Fred can not be prosecuted for perjury should he lie before the grand jury or at the trial.
 - c. Fred still has a Fifth Amendment privilege against self-incrimination concerning the bank robbery.
 - d. Evidence discovered or derived from Fred's testimony can not be used against Fred if he is prosecuted for any offense.
-

a. Fred can not be prosecuted for bank robbery.

Incorrect: Because Fred was only given use, and not transactional, immunity, he can be prosecuted for the bank robbery.

b. Fred can not be prosecuted for perjury should he lie before the grand jury or at the trial.

Incorrect: A grant of immunity is not a license to lie. If Fred lies under oath, he can be prosecuted for perjury. In addition, if he lies to agents, he could be prosecuted for false statement, 18 USC Section 1001.

c. Fred still has a Fifth Amendment privilege against self-incrimination concerning the bank robbery.

Incorrect: Because the testimony Fred is being compelled to give can no longer be used in a criminal proceeding, the grant of immunity has extinguished Fred's 5th Amendment right against self-incrimination as to the bank robbery.

d. Evidence discovered or derived from Fred's testimony can not be used against Fred if he is prosecuted for any offense.

Correct: Use immunity prohibits the government from using not only Fred's testimony against him, but information derived or discovered as a result of the immunized testimony. If the information Fred gave pursuant to the grant of immunity was already known to the government, it could be used.

16. Fred is a federal employee suspected of harassing another agency employee in the government workplace. Special Agent Jones of the agency's Office of Inspector General is conducting an internal investigation of Fred. Fred is called to an interview is held in Jones' office. Fred is not under arrest and the setting is non-custodial. Fred is advised at the outset of the interview that he is obligated to answer the agent's questions concerning the misconduct, but that his answers and any information derived from his answers cannot be used against him in a criminal case. Which of the following is true?

- a. If Fred refuses to answer the questions by asserting his 5th Amendment privilege, he cannot be fired by the agency solely for that refusal.
- b. If Fred admits to engaging in misconduct, the admission could be used to fire him, but not to prosecute him criminally.
- c. If Fred lies to Special Agent Jones, his false statements cannot be used to criminally prosecute him for making false statements.
- d. Because Fred is being compelled, under threat of possible firing, to answer the questions, any answers he gives would be obtained in violation of his 5th Amendment privilege and could not be used to either fire or prosecute him.

a. If Fred refuses to answer the questions by asserting his 5th Amendment privilege, he cannot be fired by the agency solely for that refusal.

Incorrect: By virtue of the use immunity conferred by SA Jones (called *Kalkines* immunity), Fred has no valid 5th Amendment privilege to assert (no possibility he can incriminate himself). Fred's unprivileged refusal to cooperate with an agency internal investigation is a violation of his obligation as a public employee, and he can be fired by his agency for that violation.

b. If Fred admits to engaging in harassment, the admission could be used to fire him for harassment, but not to prosecute him criminally.

Correct: The use immunity provided to Fred precludes use of his responses to criminally prosecute him. However, the immunity is limited to barring use in a criminal proceeding and does not bar use in an administrative disciplinary proceeding.

c. If Fred lies to Special Agent Jones, his false statements cannot be used to criminally prosecute him for making false statements.

Incorrect: The use immunity given to Fred does not permit him to engage in a new crime (lying to a federal officer in an official matter). Fred's false statements can be used to criminally prosecute him for the false statements offense.

d. Because Fred is being compelled, under threat of possible firing, to answer the questions, any answers he gives would be obtained in violation of his 5th Amendment privilege and could not be used to either fire or prosecute him.

Incorrect: See a. and b. above.

17. Fred has been indicted for larceny and is not in custody. He has not asserted his right to counsel. Federal Agent Jones wants to talk to Fred about the larceny, plus another crime, arson. As to the arson, Fred has not been indicted, has not made an initial appearance, and the AUSA has not filed an information. Which of the following is a true statement?

- a. Jones must get a waiver of Miranda rights before he can question Fred about *either* offense.
 - b. Jones must get a waiver of 6th Amendment rights before he talks to Fred about the arson.
 - c. Jones must get a waiver of 6th Amendment rights before he talks to Fred about the larceny.
 - d. Jones must get a waiver of 6th Amendment rights before he talks to Fred about *either* the larceny or the arson.
-

a. Jones must get a waiver of Miranda rights before he can question Fred about *either* offense.
Incorrect: Fred is not in custody so Miranda is not triggered for either offense.

b. Jones must get a waiver of 6th Amendment rights before he talks to Fred about the arson.
Incorrect: Because Fred has not been indicted or made an initial appearance for the arson, and the AUSA has not filed an information, Fred's 6th Amendment right to counsel has not been triggered.

c. Jones must get a waiver of 6th Amendment rights before he talks to Fred about the larceny.
Correct: Fred's 6th Amendment right has been triggered because he has been indicted. Furthermore, law enforcement questioning (as well as being physically placed into a line-up or being in court for the charged offense) are critical stages. Since the 6th Amendment has been triggered and the questioning is a critical stage, Jones must first obtain a waiver of Fred's 6th Amendment right to counsel. This would be accomplished by using the same form and waiver as is used in a Miranda situation.

d. Jones must get a waiver of 6th Amendment rights before he talks to Fred about *either* the larceny or the arson.

Incorrect: See the justification to answers b and c. Remember that 6th Amendment rights (unlike Miranda rights) are offense specific, that is, are triggered only for the offense for which the subject has been indicated, made an initial appearance, or an information filed.

18. Fred has been indicted for larceny and is in jail awaiting his initial appearance. He has not asserted his right to counsel. Agents decide they want to have an undercover officer pretend to be a fellow prisoner, get close to Fred, and report back any relevant information. Which of the following is correct?

- a. Because Fred is in custody, he must first waive his Miranda rights before being questioned.
 - b. The undercover officer can attempt to question Fred about larceny without first obtaining a waiver of Miranda or the 6th Amendment right to counsel.
 - c. The undercover officer may listen to whatever Fred says but may not attempt to question Fred about the larceny.
 - d. It is unlawful for agents to ask other inmates what they might have heard Fred say about the larceny.
-

a. Because Fred is in custody, he must first waive his Miranda rights before being questioned.
Incorrect: Because the questioning would be done by one whom Fred did not know was a law enforcement officer, Miranda warnings are not required.

b. The undercover officer can attempt to question Fred about larceny without first obtaining a waiver of Miranda or the 6th Amendment right to counsel.
Incorrect: See the justifications to answers a and c.

c. The undercover officer may listen to whatever Fred says but may not attempt to question Fred about the larceny.
Correct: Because Fred has been indicted, his 6th Amendment right to counsel has attached. Because the questioning will be done by (or at the behest of) law enforcement, it is a critical stage. Accordingly, a 6th Amendment waiver is required before questioning Fred.

If Fred had not been indicted, made an initial appearance, or there was no information filed, agents could lawfully use an undercover agent or confidential informant to question Fred without getting a waiver of any rights. Fred's 6th Amendment rights had not attached. Though Fred is in custody, he would not have Miranda rights because he would not be questioned by one he knew was a law enforcement officer. An undercover agent or a confidential informant working for law enforcement, however, may act as a "listening post" to passively gather information.

d. It is unlawful for agents to ask other inmates what they might have heard Fred say about the larceny.
Incorrect: Though Fred's 6th Amendment rights have attached, he is not being questioned by, or at the behest, of law enforcement. Agents may use inmates, undercover agents, or confidential informants just listen to, but not question, Fred.

Courtroom Evidence Practice Exam

Courtroom Evidence [1121] EPO 1: Identify the procedural stages of a criminal trial.

Question Root: At what stage of a criminal trial is the defense required to present evidence to the court?

ANSWERS

- a. During a pretrial motion to suppress filed by the government.
- b. During the defense case.
- c. The defense is never required to present evidence at any stage of the criminal trial.
- d. During sentencing.

KEY AND FEEDBACK

- a. **INCORRECT:** Although the defense has an opportunity to present evidence in response to a pretrial motion to suppress filed by the government, the defense is never **REQUIRED** to present evidence at any stage of the criminal trial. It is the prosecution's job to present evidence sufficient to establish defendant's guilt beyond a reasonable doubt.
- b. **INCORRECT:** Although the defense will generally present evidence at this stage of the criminal trial, the defense is never **REQUIRED** to present evidence at any stage of the criminal trial. It is the prosecution's job to present evidence sufficient to establish defendant's guilt beyond a reasonable doubt.
- c. **CORRECT:** The defense is never **REQUIRED** to present evidence at any stage of the criminal trial. Instead, it is the prosecution's job to present evidence sufficient to establish defendant's guilt beyond a reasonable doubt. The defense can certainly choose to present evidence to establish the defendant's innocence, but it cannot be **REQUIRED** to do so.
- d. **INCORRECT:** Although the defense will almost always present evidence at this stage of the criminal trial to try to convince the judge to give a light sentence, the defense is never **REQUIRED** to present evidence at any stage of the criminal trial. It is the prosecution's job to present evidence sufficient to establish defendant's guilt beyond a reasonable doubt.

Courtroom Evidence [1121] EPO 1: Identify the procedural stages of a criminal trial.

Question Root: In any felony case in which the government is NOT seeking the death penalty, who will decide the guilty defendant's sentence?

ANSWERS

- a. The presiding judge.
- b. The presiding jury.
- c. The district sentencing commission.
- d. The assigned prosecutor.

KEY AND FEEDBACK

- a. **CORRECT:** If a defendant is found guilty of a noncapital felony, the presiding judge conducts a sentencing hearing and sets the sentence. The jury is not involved UNLESS the defendant has been found guilty of a capital offense.
- b. **INCORRECT:** If a defendant is found guilty of a noncapital felony, the presiding judge conducts a sentencing hearing and sets the sentence. The jury is not involved UNLESS the defendant has been found guilty of a capital offense.
- c. **INCORRECT:** There is no body involved in sentencing individual defendants known as the district sentencing commission.
- d. **INCORRECT:** The assigned prosecutor, already ethically committed to the guild of the defendant, would be too biased to impartially set sentence.

Courtroom Evidence [1121] EPO 1: Identify the procedural stages of a criminal trial.

Question Root: The defense has filed a pretrial motion to suppress a key piece of the prosecution's evidence. A suppression hearing has been conducted, and both sides have presented evidence on the motion. How will the matter be resolved?

ANSWERS

- a. The judge will determine the motion to suppress. If she decides to grant the motion, the evidence can be presented to the jury later to help it reach its verdict. But if she decides to deny the motion, the evidence cannot be presented to the jury later to help it reach its verdict.
- b. The jury will determine the motion to suppress. If they decide to grant the motion, the evidence can be considered by the jury in reaching its verdict. But if they decide to deny the motion, the evidence cannot be considered by the jury in reaching its verdict.
- c. The judge will determine the motion to suppress. If she decides to grant the motion, the evidence cannot be presented to the jury later to help it reach its verdict. But if she decides to deny the motion, the evidence can be presented to the jury later to help it reach its verdict.
- d. The jury will determine the motion to suppress. If they decide to grant the motion, the evidence cannot be considered by the jury in reaching its verdict. But if they decide to deny the motion, the evidence can be considered by the jury in reaching its verdict.

KEY AND FEEDBACK

- a. **INCORRECT:** The judge does determine the motion to suppress. But if she decides to grant the motion, the evidence CANNOT be presented to the jury later to help it reach its verdict. And if she decides to deny the motion, the evidence CAN be presented to the jury later.
- b. **INCORRECT:** In a pretrial suppression hearing, the jury is not even present and seldom has even been selected. The judge determines whether the evidence will be admitted or suppressed.
- c. **CORRECT:** The judge does determine the motion to suppress. By filing its motion, the defense is trying to suppress the evidence. So if the judge grants that motion, the evidence IS suppressed and CANNOT be presented to the jury later to help it reach its verdict. And if she decides to deny the motion, the evidence IS NOT suppressed and CAN be presented to the jury later.
- d. **INCORRECT:** In a pretrial suppression hearing, the jury is not even present and seldom has even been selected. The judge determines whether the evidence will be admitted or suppressed.

Courtroom Evidence [1121] EPO 2: Describe relevant, direct and circumstantial evidence.

Question Root: Which of the following statements best describes when evidence is relevant in a criminal trial?

ANSWERS

- a. Evidence will only be relevant when it assists the prosecution in meeting its burden of proving the defendant guilty beyond a reasonable doubt.
- b. Evidence will only be relevant if it tends to prove or disprove a fact in issue in the case.
- c. Evidence will only be relevant when it is able, by itself, to conclusively establish a key fact in issue in the case.
- d. Evidence will only be relevant when it tends to prove a fact directly and without needing to draw an inference or conclusion about what the evidence implies.

KEY AND FEEDBACK

- a. **INCORRECT:** Evidence is relevant whenever it tends to prove or disprove ANY fact-in-issue in the case. It does not have to assist the prosecutor. So, for example, if evidence helped the defendant establish an alibi, the evidence would be relevant.
- b. **CORRECT:** This answer is one way of stating the definition of relevant evidence.
- c. **INCORRECT:** So long as the evidence has SOME logical tendency to prove or disprove a fact-in-issue in the case, it will be relevant. The evidence does not need to be strong proof or disproof in order to be relevant. Nor must the fact-in-issue be a KEY fact.
- d. **INCORRECT:** This defines direct evidence. Circumstantial evidence can also be relevant.

Courtroom Evidence [1121] EPO 2: Describe relevant, direct and circumstantial evidence.

Question Root: Lawson is being tried for robbing a bank in 2015. Video shows that the robber wore an orange ski mask and a leather coat and carried a sawed-off pump shotgun. Investigators have established that Lawson was convicted of robbing a bank in 2010 while wearing an orange ski mask and a leather coat and carrying a sawed-off pump shotgun. Lawson completed his first-offender sentence and was released from prison in late 2014. The prosecutor wants to admit evidence relating to the 2010 bank robbery. Which of the following purposes would NOT support admitting evidence concerning the 2010 bank robbery?

ANSWERS

- a. The evidence of similar methods used in 2010 and 2015 establishes a common modus operandi circumstantially demonstrating that the same person committed both robberies.
- b. The evidence of similar methods used in 2010 and 2015 helps establish identity by circumstantially demonstrating that the same person committed both robberies.
- c. The evidence of similar methods used in 2010 and 2015 establishes a common plan, circumstantially demonstrating that the same person planned and committed both robberies.
- d. The conviction in 2010 demonstrates the defendant's general propensity to commit crimes and specific propensity to commit robberies.

KEY AND FEEDBACK

- a. **INCORRECT:** The similarities between the disguises and guns used in committing both offenses show that Lawson had a particular way ["modus operandi"] in robbing banks in 2010 and circumstantially tend to show that he was the bank robber in 2015.
- b. **INCORRECT:** The similarities between the disguises and guns used in committing both offenses show that Lawson has a "signature-like" way of robbing banks and circumstantially tend to show that he was the bank robber in 2015.
- c. **INCORRECT:** The similarities between the disguises and guns used in committing both offenses show that Lawson has a fixed plan for robbing banks and circumstantially tend to show that he was the bank robber in 2015.
- d. **CORRECT:** Evidence of Lawson's earlier crimes, wrongs and misconduct cannot be used solely to show that he has the general propensity to commit crimes or the specific propensity to commit robberies. Evidence showing an earlier theft by Lawson combined with the argument that Lawson must have also committed a recent theft because, "Once a thief, always a thief," will not be allowed.

Note the close similarities between a, b, and c. In all three answers, the key is that similarities between the 2010 and 2015 bank robberies, combined with Lawson's 2010 conviction for the 2010 bank robbery, tend to show that he robbed the bank in 2015.

Courtroom Evidence [1121] EPO 2: Describe relevant, direct and circumstantial evidence.

Question Root: Lawson is still being tried for robbing a bank in 2015. Lawson lives in Buchanan. The robbery occurred in Fillmore. The prosecutor wants to introduce evidence that Lawson's car was spotted parked at a convenience store in Fillmore shortly before the robbery to show that Lawson was in Fillmore that day and, hence, had the opportunity to rob the bank. What kind of evidence is testimony about the parked car?

ANSWERS

- a. This is direct evidence.
- b. This is parallel evidence.
- c. This is circumstantial evidence.
- d. This is irrelevant evidence.

KEY AND FEEDBACK

- a. **INCORRECT:** The fact that Lawson's car was parked at the convenience store is direct evidence only of the fact that Lawson's car was in Fillmore. It is circumstantial evidence that Lawson was also in Fillmore, but to reach that conclusion the jury must infer that Lawson drove or rode in his car to Fillmore that day. There could be other explanations for why Lawson's car was there.
- b. **INCORRECT:** This term was made up. It was never used in the Courtroom Evidence text or lecture.
- c. **CORRECT:** It is circumstantial evidence that Lawson was also in Fillmore, but to reach that conclusion the jury must draw an inference that Lawson drove or rode in his car to Fillmore that day. There could be other explanations for why Lawson's car was there. Careful investigators will try to find other evidence supporting that inference. For example, Lawson's credit card could have been used to buy gas at the store and to pay tolls at a toll booth on the way in and the way out of Fillmore.
- d. **INCORRECT:** Lawson's presence in Fillmore, as suggested by the circumstantial evidence that his car was in Fillmore, would be relevant to showing that Lawson robbed a bank in Fillmore.

Courtroom Evidence [1121] EPO 3: Identify factors that can affect witness credibility and the need to collect information regarding a witness' credibility.

Question Root: Lawson is still being tried for robbing a bank in 2015. Lawson's defense counsel has just finished presenting the direct examination of Calliope Calhoun. Calhoun testified that she was with Lawson all day in Buchanan the day the bank was robbed in Fillmore. This alibi is relevant because it shows that Lawson could not have been in Fillmore to rob the bank. The prosecutor has learned that Calhoun has a prior felony conviction. Which of the following **MUST also be true in order to guarantee that the prosecutor can use the prior felony conviction to impeach Calliope Calhoun?**

ANSWERS

- a. The felony conviction must be a conviction for perjury or false statements.
- b. The felony conviction must be less than 10 years old, as measured from the later of: [1] the date Calhoun was convicted; or [2] the date Calhoun was released from prison.
- c. The felony conviction was NOT Calhoun's first conviction.
- d. This is a trick question because this kind of propensity evidence cannot be used to impeach Calhoun.

KEY AND FEEDBACK

- a. **INCORRECT:** ANY felony conviction less than 10 years old can be used to impeach a witness. If the felony conviction happened to be for perjury or false statements that would certainly have more impact as impeachment. But **REQUIRING** that the conviction be for perjury or false statements applies only if the conviction was for a misdemeanor.
- b. **CORRECT:** The conviction (whether for felony or misdemeanor) must be less than 10 years old, as measured from the later of: [1] the date Calhoun was convicted; or [2] the date Calhoun was released from prison. Older convictions can be used **ONLY** at the discretion of the trial judge.
- c. **INCORRECT:** Showing that a witness has more than one felony conviction certainly has more impact as impeachment, but a single felony conviction can be used to impeach a witness.
- d. **INCORRECT:** Although prior convictions cannot be introduced as propensity evidence against a **DEFENDANT**. Calhoun is merely an ordinary witness.

Courtroom Evidence [1121] EPO 3: Identify factors that can affect witness credibility and the need to collect information regarding a witness' credibility.

Question Root: Lawson is still being tried for robbing a bank in 2015. Lawson's defense counsel has just finished presenting the direct examination of Annabelle Attaway. Attaway testified that she was with Lawson all day in Buchanan the day the bank was robbed in Fillmore. This alibi is relevant because it shows that Lawson could not have been in Fillmore to rob the bank. The prosecutor has learned that Attaway is Lawson's daughter. The prosecutor wants to ask Attaway whether she is Lawson's daughter in order to impeach her. The fact that Attaway is Lawson's daughter is:

ANSWERS

- a. Admissible to rehabilitate Attaway as evidence of her bias.
- b. Admissible to impeach Attaway as evidence of her bias.
- c. Inadmissible to impeach Attaway because of the collateral relationship rule.
- d. Inadmissible to rehabilitate Attaway because it implies that Attaway has a motive to fabricate her testimony.

KEY AND FEEDBACK

- a. **INCORRECT:** Attaway was called by the defense counsel to establish the defense of alibi. Rehabilitating a witness refers to the process of trying to restore the witness's credibility. First, the prosecutor is unlikely to try to rehabilitate this adverse defense witness. Second, bias is usually used to impeach or attack credibility rather than to rehabilitate or restore credibility.
- b. **CORRECT:** "Blood is thicker than water." Witnesses may lie to defend their kin. Kinship between the defendant and his alibi witness impeaches the witness's credibility.
- c. **INCORRECT:** This term was made up. It was never used in the Courtroom Evidence text or lecture.
- d. **INCORRECT:** Attaway was called by the defense counsel to establish the defense of alibi. Rehabilitating a witness refers to the process of trying to restore the witness's credibility. First, the prosecutor is unlikely to try to rehabilitate this adverse defense witness. Second, bias is usually used to impeach or attack credibility rather than to rehabilitate or restore credibility.

Courtroom Evidence [1121] EPO 3: Identify factors that can affect witness credibility and the need to collect information regarding a witness' credibility.

Question Root: Lawson is still being tried for robbing a bank in 2015. Based on the Courtroom Evidence test and lecture, which of the following CANNOT be used to impeach witnesses?

ANSWERS

- a. Evidence of the witness's prior statement if inconsistent with her current testimony.
- b. Evidence of the witness's inability to observe or accurately remember matters to which she testified.
- c. Evidence that the testimony of the current witness is contradicted by physical evidence presented by an earlier witness.
- d. Evidence of the witness's arrest for murder 8 years ago.

KEY AND FEEDBACK

- a. **INCORRECT:** A witness's prior inconsistent statement (for example, "The victim had no weapons, and his hands were empty.") can be used to impeach current testimony (for example, "The victim pulled a knife and tried to stab the defendant with it.>").
- b. **INCORRECT:** If the witness has vision or memory problems, this can be used to impeach her testimony. Impeachment is not confined to demonstrating that the victim is lying. Impeachment can also be used to show that the victim is mistaken because of her problems perceiving or remembering events accurately.
- c. **INCORRECT:** Contradiction between a witness's testimony and other evidence presented in a case is an acceptable form of impeachment.
- d. **CORRECT:** Although a prior felony CONVICTION 8 years ago could be used to impeach a witness, his mere ARREST, at least without more facts, could NOT be used to impeach the witness.

Courtroom Evidence [1121] EPO 4: Describe how evidence should be collected so a foundation can be laid in court.

Question Root: Lawson is still being tried for robbing a bank in 2015. A ski mask was found discarded in an outdoor trash can near the bank. There is a match between the DNA found in some spit in the ski mask and Lawson's DNA. Who MUST be available to testify in order for the prosecutor to authenticate the ski mask and admit it into evidence?

ANSWERS

- a. A law enforcement officer who can testify that Lawson was NOT wearing a ski mask when he was arrested.
- b. Any bank officer with direct knowledge of the sequence of events inside the bank.
- c. A person who found the ski mask (or saw it found) in the trash can.
- d. The attesting supervisor of the person who found the ski mask (or saw it found) in the trash can in order to establish that witness's honesty and credibility.

KEY AND FEEDBACK

- a. **INCORRECT:** Although this evidence would be of some small use in establishing that Lawson discarded the ski mask, authenticating the ski mask and admitting into evidence requires the prosecutor to lay a foundation by showing the chain of custody between the ski mask found in the trash can and the ski mask offered into evidence. Doing so requires the testimony of a person who found the ski mask (or saw it found) in the trash can.
- b. **INCORRECT:** Testimony about what happened inside the bank is not necessary to authenticate and admit evidence found outside the bank. The testimony would be relevant, of course, to show that the mask in the trash can looked like the mask the robber wore.
- c. **CORRECT:** Authenticating the ski mask and admitting into evidence requires the prosecutor to lay a foundation by showing the chain of custody between the ski mask found in the trash can and the ski mask offered into evidence. Doing so requires the testimony of a person who found the ski mask (or saw it found) in the trash can.
- d. **INCORRECT:** Testimony from a supervisor would not be necessary to lay a foundation by showing chain of custody in order to authenticate and admit the ski mask. Of course, if the defense attacked the credibility of the person who found the ski mask (or saw it found) in the trash can, the supervisor's testimony might be relevant in rehabilitating that person's credibility.

Courtroom Evidence [1121] EPO 4: Describe how evidence should be collected so a foundation can be laid in court.

Question Root: A prosecutor and an investigator are planning how to lay a foundation in order to authenticate and admit a bloody knife discovered at a murder scene. As they begin deciding which witnesses to call, which two issues must they resolve to the judge’s satisfaction before the judge will admit the physical evidence?

ANSWERS

- a. [1] Is the offered item the same evidence that was found; and [2] Is the evidence in the same condition as it was when it was found or, if changed, can the changes be explained?
- b. [1] Is the offered item a reasonable facsimile of the evidence that was found; and [2] Is the evidence in the same condition as it was when it was found or, if changed, can the changes be explained?
- c. [1] Is the offered item the same evidence that was found; and [2] Is the evidence manifestly linked to the defendant?
- d. [1] Is the offered item a plausible facsimile of the same evidence that was found; and [2] Is the evidence plausibly linked to the defendant?

KEY AND FEEDBACK

- a. **CORRECT:** This is the two-part standard. Meeting it generally starts with the testimony of the person who found the piece of evidence at the crime scene. That person should be able to testify that: [1] it is the same item she found and how she knows that it is—e.g., that the knife’s serial number matches the one on the knife she found or that the knife is in a sealed evidence bag that she sealed and marked; and [2] that it is in the same condition as when she found it or, if not, how and why it has changed—e.g., that blood on the knife has dried and that a portion of the blood was scraped off for laboratory analysis.
- b. **INCORRECT:** See the feedback at “a” above.
- c. **INCORRECT:** See the feedback at “a” above.
- d. **INCORRECT:** See the feedback at “a” above.

Courtroom Evidence [1121] EPO 4: Describe how evidence should be collected so a foundation can be laid in court.

Question Root: Which of the following mistakes in the handling of physical evidence would NOT be likely to ruin the chances of the government being able to authenticate and admit the evidence at trial?

ANSWERS

- a. Reusing evidence bags.
- b. Forensically examining the original hard drive of a computer rather than first making a mirror image of its contents and examining only the mirror image.
- c. Omitting a person in the chain of custody document who handled and had possession of the evidence.
- d. Failing to ascertain the manufacturer and seller of the evidence.

KEY AND FEEDBACK

- a. **INCORRECT:** Reusing evidence bags can compromise the admissibility of evidence, particularly when trace evidence is involved. How can the government demonstrate that the microscopic residue on the evidence didn't end up there from another item of evidence that was bagged in the re-used evidence bag?
- b. **INCORRECT:** Forensically examining the original hard drive of a computer can modify its contents.
- c. **INCORRECT:** Omitting a person in the chain of custody document who handled and had possession of the evidence can make it difficult to show that the item is unchanged.
- d. **CORRECT:** Failing to ascertain the manufacturer and seller of the evidence could be useful in linking the evidence to the defendant, but doing so is not necessary to authenticate and admit the evidence.

Courtroom Evidence [1121] EPO 5: Describe how statements and reports are used to aid witnesses in courtroom testimony and in preparation for testimony.

Question Root: Which witnesses are generally permitted to testify from their notes and reports?

ANSWERS

- a. Law enforcement officers.
- b. Expert witnesses.
- c. Supervisory law enforcement officers.
- d. Rebuttal witnesses.

KEY AND FEEDBACK

- a. **INCORRECT:** Law enforcement officers, like other lay witnesses, are not permitted to read their testimony from the witness stand. There are some limited exceptions. First, an officer might be permitted to state opinions as an expert witness qualified by the judge. Then the officer might be able to read from his expert report. This is rare. Second, even if the officer is testifying as an ordinary, non-expert witness and forgets a fact, the judge may permit the officer to refresh his recollection by referring to his report. This is more common.
- b. **CORRECT:** An expert witness, when so qualified as an expert by the judge, may state his opinion about the facts of the case if his opinion will assist the jury or judge in understanding key facts that fall in the witness's area of expertise. Because such testimony generally involves lots of details, experts may use their reports and analyses while testifying.
- c. **INCORRECT:** See "a" above. There are no special rules for supervisors in this context.
- d. **INCORRECT:** See "a" above. Being a rebuttal witness merely means that the witness has been called by the prosecution in rebuttal following the defense case. There are no special rules for rebuttal witnesses in this context.

Courtroom Evidence [1121] EPO 5: Describe how statements and reports are used to aid witnesses in courtroom testimony and in preparation for testimony.

Question Root: Which of the following statements, reports and references can be used to refresh a law enforcement witness's recollection or memory?

ANSWERS

- a. Only the witness's notes.
- b. A book, but only if it is from the witness's library.
- c. The witness's partner's notes, but only if the witness was present when the partner made the notes.
- d. Any of the above.

KEY AND FEEDBACK

- a. **INCORRECT:** Anything can be used to refresh a witness's recollection or memory.
- b. **INCORRECT:** Anything can be used to refresh a witness's recollection or memory.
- c. **INCORRECT:** Anything can be used to refresh a witness's recollection or memory.
- d. **CORRECT:** Anything can be used to refresh a witness's recollection or memory.

Courtroom Evidence [1121] EPO 5: Describe how statements and reports are used to aid witnesses in courtroom testimony and in preparation for testimony.

Question Root: Which of the following statements concerning a law enforcement officer's notes and reports is NOT true?

ANSWERS

- a. Officer's notes concerning interviews of witnesses should include copies of written materials the witness needed to refresh the witness's memory when she was interviewed.
- b. The prosecutor can give the officer his notes while the officer is testifying in order to refresh the witness's memory under certain circumstances.
- c. A law enforcement officer's notes cannot be used to impeach the officer's testimony.
- d. A law enforcement officer is allowed to use his notes and reports while meeting with the prosecutor to prepare for court.

KEY AND FEEDBACK

- a. **INCORRECT:** This is true. If the witness needed to refer to documents when she was being interviewed, those documents should be copied and added to the investigator's report so that they're available to the prosecutor if the prosecutor has to refresh the witness's memory during the witness's testimony.
- b. **INCORRECT:** This is true. Although anything can be used to refresh a witness's recollection or memory, the witness's own notes are probably the most common document used for this purpose.
- c. **CORRECT:** This is false. The defense counsel will generally be provided the officer's notes and reports as part of discovery. If an officer's testimony differs from his notes and reports, the inconsistency CAN be used to impeach the officer.
- d. **INCORRECT:** This is true. Not only is a law enforcement officer allowed to use his notes and reports while meeting with the prosecutor to prepare for court, professional preparation for trial demands that the officer has his notes and reports when he meets with the prosecutor.

Courtroom Evidence [1121] EPO 6: Describe how to establish a foundation for business records and public documents so that the contents will be admissible in court.

Question Root: Which of the following best defines the Best Evidence Rule?

ANSWERS

- a. A duplicate of an original document can never be used at trial to prove the contents of the original document.
- b. If the original document is available, it generally must be used to prove the contents of the document.
- c. When proving the contents of a document, sworn testimony by the drafter of that document is preferred to admitting the original of the document.
- d. Eyewitness testimony is generally preferred to the testimony of witnesses who merely heard about the event in question.

KEY AND FEEDBACK

- a. **INCORRECT:** A duplicate of an original document can be admitted at trial to prove the contents of the original document if, for example, the original document has been lost and there is no genuine question as to the authenticity of the duplicate.
- b. **CORRECT:** This is the simplest formulation of the basic Best Evidence Rule.
- c. **INCORRECT:** There is a preference for admitting the original document itself when proving its contents. In some cases, a duplicate of the original document can also be used to prove its contents. A witness's testimony is never preferred when proving the contents of the document even if the witness drafted the document.
- d. **INCORRECT:** While this is generally true, the statement is a simple formulation of the rule against hearsay rather than the Best Evidence Rule.

Courtroom Evidence [1121] EPO 6: Describe how to establish a foundation for business records and public documents so that the contents will be admissible in court.

Question Root: Which of the following best describes the impact of the rule against hearsay when admitting public records/documents and business records?

ANSWERS

- a. If the document is properly authenticated or self-authenticated, the rule against hearsay generally does not bar its being admitted to prove the truth of its contents.
- b. A law enforcement officer's report, if properly self-authenticated, can be admitted to prove the truth of its contents if the officer does not appear to testify in court.
- c. ONLY IF: (1) the document is a record of a for-profit business and (2) the document is properly authenticated or self-authenticated, will the rule against hearsay not bar its being admitted to prove the truth of its contents.
- d. ONLY IF: (1) the document is a federal public record/document and (2) the document is properly authenticated or self-authenticated, will the rule against hearsay not bar its being admitted to prove the truth of its contents.

KEY AND FEEDBACK

- a. **CORRECT:** The rule against hearsay has many exceptions which permit the admission of hearsay at trial. Notably, properly authenticated or self-authenticated [via seal or certificate] public records/documents and business records are admissible to prove the truth of the document's contents despite the rule against hearsay. However, this does not apply to law enforcement records.
- b. **INCORRECT:** Even though a law enforcement officer's report might be considered a public record, the rule against hearsay bars its admission to prove the truth of its contents. The officer must testify.
- c. **INCORRECT:** First, the exception to the rule against hearsay that permits admitting documents to prove the truth of its contents applies to BOTH business records and public records/documents. Second, the business record exceptions are not confined to for-profit businesses.
- d. **INCORRECT.** First, the exception to the rule against hearsay that permits admitting documents to prove the truth of its contents applies to BOTH business records and public records/documents. Second, the public records/documents exception is not confined to federal records.

Courtroom Evidence [1121] EPO 6: Describe how to establish a foundation for business records and public documents so that the contents will be admissible in court.

Question Root: Which of the following documents are NOT generally self-authenticating?

ANSWERS

- e. A business record.
- f. A federal public document.
- g. A crime-scene photograph.
- h. A state public document.

KEY AND FEEDBACK

- e. **INCORRECT:** Business records are generally self-authenticating. This means that to admit a public record, the custodian of a business record is not required to appear and testify in order to authenticate that record. Instead, the custodian can submit a written certificate stating that: [1] the record made at or near the time to which it pertains by “person” with knowledge of the matter; [2] the record was made in the regular course of business [NOT made specifically for trial] AND [3] the record was maintained in the regular course of business.
- f. **INCORRECT:** Public records are self-authenticating if they are under seal or are accompanied by the custodian’s certificate. This is true for federal, state, and local public records.
- g. **INCORRECT:** Photographs are not self-authenticating even if taken by a law-enforcement officer.
- h. **INCORRECT:** Public records are self-authenticating if they are under seal or are accompanied by the custodian’s certificate. This is true for federal, state, and local public records.

Electronic Law and Evidence Practice Exam

1. Assuming no one gives consent, which of the following would require a Title III court order?
 - a. Intercepting tone only pager signals using a device.
 - b. Using GPS and other mobile tracking devices.
 - c. Real time interceptions of wire communications using a device.
 - d. Real time interceptions of oral communications, in which there is no reasonable expectation of privacy (REP), using a device.
-

a. Intercepting tone only pager signals using a device.

Incorrect. These are explicitly excluded from the requirements of Title III.

b. Using GPS and other mobile tracking devices.

Incorrect. These are explicitly excluded from the requirements of Title III.

c. Real time interceptions of wire communications using a device.

Correct. Using a device to perform a non-consensual, real time interception of a wire communication, whether there is REP in the communication or not, requires a Title III court order.

d. Real time interceptions of oral communications, in which there is no reasonable expectation of privacy (REP), using a device.

Incorrect. Only those real-time, non-consensual interceptions, using a device, of oral communications in which there is REP require a Title III court order.

2. In which of the following situations would law enforcement officers need a Title III court order?

a. Listen in to a phone conversation among five people with the consent of only one party to the conversation.

b. Place a covert listening and recording device on a confidential informant (with his permission) to record conversations he has with the target of an investigation.

c. Conceal a microphone and transmitter in a vehicle to listen to the conversations that two targets have while in the vehicle.

d. Obtain the telephone numbers that a target is calling without the consent of the caller or the person receiving the call.

a. Listen in to a phone conversation among five people with the consent of only one party to the conversation.

Incorrect. If there is consent from one or more parties to the conversation and the conversation is being intercepted for law enforcement purposes, a TIII is not required.

b. Place a covert listening and recording device on a confidential informant (with his permission) to record conversations he has with the target of an investigation.

Incorrect. This is a face-to-face consensual intercept. This activity, however, would require advising the AUSA that such an intercept is being conducted.

c. Conceal a microphone and transmitter in a vehicle to listen to the conversations that two targets have while in the vehicle.

Correct. Title III is triggered here because there is a real time interception of an REP, oral communication, using a device, and without the consent of any of the parties to the conversation.

d. Obtain the telephone numbers that a target is calling without the consent of the caller or the person receiving the call.

Incorrect. This describes a pen register, and this information can be obtained with a Pen Register court order. If agents want to intercept the *contents* of the phone call, they would need a TIII court order or consent of at least one party to the conversation.

3. Agents know that Jack and Fred are members of a criminal conspiracy. To avoid their communications being intercepted by law enforcement, they only talk together when walking along trails in a local city park being careful to speak softly and avoid those that might be around who could overhear what they are saying. Agents decide to use a handheld parabolic microphone that can pick up human conversations at 250 feet without being detected. To lawfully use this device under these circumstances, what arrangements must the agents first make to comply with the law?

a. There are no special legal requirements.

b. Obtain a search warrant.

c. Request a Title III court order through the US Attorney for approval by a US Magistrate Judge.

d. Request a Title III court order through the US Attorney for approval by a US District Court judge.

a. There are no special legal requirements.

Incorrect. Real-time non-consensual interceptions, using a device, of oral communications in which there is REP require a Title III court order. The conversation is one in which the parties would have both a subjective and objectively reasonable expectation of privacy.

b. Obtain a search warrant.

Incorrect. See the correct answer below.

c. Request a Title III court order through the US Attorney for approval by a US Magistrate Judge.

Incorrect. See the correct answer below.

d. Request a Title III court order through the US Attorney for approval by a US District Court judge.

Correct. The application would be submitted through the AUSA and US Attorney to the Department of Justice. If the application is approved, it would then be given to a District Court judge for approval. A US Magistrate Judge cannot act on the application.

4. Fred's criminal enterprise involves sending and receiving faxes. Assume that agents have probable cause. Which is correct concerning how agents could obtain the faxes?

a. If the fax is in the process of being transmitted, agents could use a search warrant issued by a Magistrate Judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

b. If the fax is in the process of being transmitted, agents could use a search warrant issued by a District Court judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

c. If the fax is in the process of being transmitted, and there is also REP, agents could use a search warrant issued by a District Court judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

d. If the agents have probable cause paper copies of the faxes are located in Fred's house, they could use a search warrant issued by a Magistrate Judge.

a. If the fax is in the process of being transmitted, agents could use a search warrant issued by a Magistrate Judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

Incorrect. This requires a Title III order because it is a real-time interception of an electronic communication using a device without consent.

b. If the fax is in the process of being transmitted, agents could use a search warrant issued by a District Court judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

Incorrect. See the justification for answer a above.

c. If the fax is in the process of being transmitted, and there is also REP, agents could use a search warrant issued by a District Court judge to connect a fax machine to Fred's phone line and receive a copy of the fax as Fred gets his copy.

Incorrect. The only difference between this answer and answer b is that there is REP. Title III applies, however, to the real time interception of wire and electronic communications whether or not there is REP. Title III applies, however, only to oral communications in which there is REP.

d. If the agents have probable cause paper copies of the faxes are located in Fred's house, they could use a search warrant issued by a Magistrate Judge.

Correct. This does not involve Title III because there is no real-time interception.

5. Investigation reveals that a gang is operating a mobile meth lab and distributing large quantities of meth to various dealers. These dealers also move from location to location. Agents decide to use GPS and other tracking devices to try and determine where the current meth lab and dealers are. Which of the following activities would require the agents to obtain a warrant? (Assume that the gang members do not know of the agents' activities.)

- a. Tracking a GPS enabled cell phone in the pocket of a confidential informant with the informant's consent while riding in the car with the gang members.
- b. Concealing a GPS tracking device inside a box of meth production products (glassware, tubing, and the like), sending it to the target, and monitoring where the box moves along local highways and streets.
- c. Concealing a GPS or radio frequency tracking device inside a small package of meth precursor chemicals, sending it to the target, and monitoring where the package goes to include inside homes and factory buildings.
- d. None of the above, because the Stored Electronic Communications Act, and not 4th Amendment warrants, must be used for the installation or use of mobile tracking devices.

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- a. Tracking a GPS enabled cell phone in the pocket of a confidential informant with the informant's consent while riding in the car with the gang members.
Incorrect. The confidential informant consented to the GPS tracking and it is immaterial that the gang members do not know they are being tracked.
 - b. Concealing a GPS tracking device inside a box of meth production products (glassware, tubing, and the like), sending it to the target, and monitoring where the box moves along local highways and streets.
Incorrect. There is no intrusion into REP to install the device, so a warrant is not required to install. Since the box is being monitored in public places, a warrant is not required to monitor the device.
 - c. Concealing a GPS or radio frequency tracking device inside a small package of meth precursor chemicals, sending it to the target, and monitoring where the package goes to include inside homes and factory buildings.
Correct. A warrant is not required to install the device because there is no intrusion into REP. A warrant is required to monitor the device because the item will be tracked as it moves in REP areas.
 - d. None of the above, because the Stored Electronic Communications Act, and not 4th Amendment warrants, must be used for the installation or use of mobile tracking devices.
Incorrect. Mobile tracking devices are explicitly excluded from the requirements of Title III. The Stored Communications Act is not applicable to this situation.

6. Agents have reasonable suspicion that Fred uses email and the telephone in support of his criminal activity. The investigation is not at the point where agents have probable cause to get a warrant, but knowing who Fred corresponds with by way of email or speaks with on the phone would be relevant to this ongoing criminal investigation. Agents are interested in obtaining any or all of the following: the email addresses and phone numbers of those who email Fred and those that Fred calls or emails. Which of the following is correct concerning what “paper” agents must use to obtain this information?

- a. No paper can get this information because agents do not have probable cause.
- b. No paper is necessary to get this information because Fred has no REP in this information.
- c. A Pen Register court order for the incoming phone numbers and email addresses.
- d. A Trap and Trace court order for the incoming phone numbers and email addresses.

a. No paper can get this information because agents do not have probable cause.

Incorrect: To get a Pen register Court order or a Trap and Trace court order, the information only has to be relevant to an ongoing criminal investigation.

b. No paper is necessary to get this information because Fred has no REP in this information.

Incorrect: While the courts have ruled there is no REP in at least the phone number information, the Pen-Trap statute requires a court order.

c. A Pen Register court order for the incoming phone numbers and email addresses.

Incorrect: A Pen Register court order is used to capture the **outgoing** phone numbers or email addresses.

d. A Trap and Trace court order for the **incoming** phone numbers and email addresses.

Correct.

7. Agents need to obtain a Pen Register or Trap and Trace court order. Which of the following is correct about who makes the request to the judge, what judge can approve it, and how long the court order is good for?

- a. Agent requests, Magistrate Judge can issue, good for 60 days.
- b. AUSA requests, Magistrate Judge can issue, good for 60 days.
- c. AUSA requests, requires at least District Court approval, good for 45 days.
- d. Agent requests, Magistrate Judge can issue, good for 45 days.

a. Agent requests, Magistrate Judge can issue, good for 60 days.

Incorrect.

b. AUSA requests, Magistrate Judge can issue, good for 60 days.

Correct.

c. AUSA requests, requires at least District Court approval, good for 45 days.

Incorrect.

d. Agent requests, Magistrate Judge can issue, good for 45 days.

Incorrect.

8. Agents want to use video only surveillance (no audio) to determine who has been pilfering items from a commercial facility. Agents have consent from the facility owner to install the camera. Which of the below is a correct statement of the legal authority agents will need when deciding what images to capture and where they can point the camera?

- a. A TIII court order is necessary if the camera captures images from an area where people have REP.
- b. Neither a search warrant nor a TIII is necessary no matter where the camera is pointed.
- c. Because of the intrusiveness of capturing video of private activity, a warrant is required no matter where the camera is pointed.
- d. If the camera is pointed at an REP area, a warrant is required.

a. A TIII court order is necessary if the camera captures images from an area where people have REP.

Incorrect. TIII does not apply to the capture of video, just oral, wire, and electronic communications.

b. Neither a search warrant nor a TIII is necessary no matter where the camera is pointed.

Incorrect. See the justification to question d.

c. Because of the intrusiveness of capturing video of private activity, a warrant is required no matter where the camera is pointed.

Incorrect. See the justification to question d.

d. If the camera is pointed at an REP area, a warrant is required.

Correct. The 4th Amendment applies to the placement of video only surveillance as well as the images that will be captured. If access to REP is required to install the camera, a warrant or 4th Amendment exception is required. A warrant or a 4th Amendment exception is also required if the camera captures images in a place in which one has REP from being observed.

9. Agents have probable cause that Jack runs a stolen credit card ring from his home computer in District A, and that others who are part of the ring buy and sell stolen credit cards in Districts B, and C. Agents develop probable cause that there is evidence that Jack has data stored on a web server located in District D. In addition, there is probable cause that Jack's Internet Service provider in District D has unopened emails to Jack that have been in electronic storage for less than 90 days. Agents want all the evidence (emails and data), and they decide to use search warrants. Which statement is correct concerning which District the agents may lawfully obtain a warrant?

- a. For all the information (data and emails), they can obtain a warrant only in District A.
- b. For the data, they can obtain a warrant in Districts A, B, C or D.
- c. For the emails, they can obtain a warrant in Districts A, B, C or D.
- d. For the emails, they can obtain a warrant only in the District D.

a. For all the information (data and emails), they can obtain a warrant only in District A.
Incorrect. See the explanation at the bottom of this page.

b. For the data, they can obtain a warrant in Districts A, B, C or D.
Incorrect. See the explanation at the bottom of this page.

c. For the emails, they can obtain a warrant in Districts A, B, C or D.
Correct. See the explanation at the bottom of this page.

d. For the emails, they can obtain a warrant only in the District D.
Incorrect. See the explanation at the bottom of this page.

Explanation.

For data, they can obtain a warrant ONLY in the District in which the data is located.

To obtain the stored electronic communications (emails), they can obtain a warrant from any federal judge with jurisdiction over the offense under investigation; this warrant is valid in any jurisdiction where the stored emails may be. Since aspects of this criminal ring operates in Districts A, B, C and D, agents may obtain a search warrant for the stored emails in any of those districts; this warrant will be valid in any other district.

10. Fred is lawfully arrested. He has a pager on his person. Can agents search this pager without a warrant?

- a. Yes, because having a pager on one's person when being arrested is consent to have it searched.
 - b. Yes, because searching the pager is within the scope of an SIA.
 - c. No, because the pager may contain wire or electronic communications and that requires a Title III court order.
 - d. No, because it is unreasonable to search without a warrant or Title III court order.
-

a. Yes, because having a pager on one's person when being arrested is consent to have it searched.

Incorrect. Consent must be knowingly and voluntarily given to be valid.

b. Yes, because searching the pager is within the scope of an SIA.

Correct. Pager data is perishable and can be searched SIA (unlike cell phones which cannot be searched SIA.)

c. No, because the pager may contain wire or electronic communications and that requires a Title III court order.

Incorrect. While the pager might contain such communications, searching them would not involve intercepting a *real-time* interception.

d. No, because it is unreasonable to search without a warrant or Title III court order.

Incorrect. Searches incident to arrest are considered reasonable, and pagers carried by an arrestee are within the scope of an SIA.

11. Fred is at a restaurant and is using his computer. An agent can see the screen from an adjoining table and sees the screen contains an email that clearly constitutes wire fraud. As the agent walks up, Fred furiously starts deleting files. The agent seizes the computer and then immediately searches it finding evidence of wire fraud. Was the seizure and search of Fred's computer lawful?

- a. Both the seizure and the search were lawful.
- b. Neither the seizure nor the search were lawful.
- c. The seizure was lawful; the search was not.
- d. The seizure was unlawful; the search was lawful.

a. Both the seizure and the search were lawful.
Incorrect. See the justification to the correct answer.

b. Neither the seizure nor the search were lawful.
Incorrect. See the justification to the correct answer.

c. The seizure was lawful; the search was not.
Correct. The seizure was lawful because of the exigency that if the computer was not immediately seized, evidence of crime would be destroyed before a warrant could be obtained. Once this exigency ended with the computer's seizure, the ability to lawfully use this 4th Amendment exception ended.

d. The seizure was unlawful; the search was lawful.
Incorrect. See the justification to the correct answer.

12. Agent Jones has a valid search warrant to search Fred’s computer hard drive for evidence of wire fraud. During and within the scope of the types of data the warrant authorizes a search for, Fred sees what is clearly evidence of larceny of government property (unrelated to the wire fraud crimes). Fred continues the search for wire fraud and sees more evidence of larceny. He seizes this evidence of the larceny. Was the evidence of the larceny lawfully seized?

- a. ALL the evidence of the larceny was lawfully seized.
- b. NONE of the evidence of the larceny was lawfully seized.
- c. The first evidence of the larceny Fred saw was lawfully seized; the second and subsequent seizures were not.
- d. The second and subsequent seizures of the larceny evidence were lawfully seized only if Fred first got another warrant before continuing his search after he first saw the evidence of the larceny.

a. ALL the evidence of the larceny was lawfully seized.

Correct. Fred stayed within the scope of the warrant, and so the larceny evidence he saw was lawfully seized under the plain view doctrine.

b. NONE of the evidence of the larceny was lawfully seized.

Incorrect. See the justification above.

c. The first evidence of the larceny Fred saw was lawfully seized; the second and subsequent seizures were not.

Incorrect. See the justification to answer a.

d. The second and subsequent seizures of the larceny evidence were lawfully seized only if Fred first got another warrant before continuing his search after he first saw the evidence of the larceny.

Incorrect. See the justification to answer a.

More information to consider.

1. If a court found that Fred abandoned his search for evidence of the wire fraud and began to look for evidence of the larceny – or just began to look specifically for evidence of the larceny – a court could likely find that only the first evidence of the larceny would be admissible. This is so because Fred would be outside the scope of the warrant (evidence of wire fraud) and was therefore not “lawfully present” when he saw the evidence of the larceny. “Lawfully present” is a prerequisite to make a lawful seizure under plain view.

2. Whenever evidence of a crime outside the scope of the warrant is seen, the best practice is to stop the search, and request a warrant (sometimes called a ‘secondary’ or ‘piggy-back’ warrant) to search for the newly discovered evidence.

14. What is the most significant difference in preparing a search warrant to search computers for data and a search warrant for physical items?

A data warrant:

- a. Does not have to particularly describe what is to be searched for.
- b. Does not have to particularly describe the place or thing to be searched.
- c. Does not require probable cause.
- d. Must include a justification if agents want to conduct an off-site search.

A data warrant:

a. Does not have to particularly describe what is to be searched for.
Incorrect. This is required by the 4th Amendment.

b. Does not have to particularly describe the place or thing to be searched.
Incorrect. This is required by the 4th Amendment.

c. Does not require probable cause.
Incorrect. This is required by the 4th Amendment.

d. Must include a justification if agents want to conduct an off-site search.
Correct.

15. Agents ask consent to search Fred’s computer. Fred gives consent. When agents go to search the computer, they see a CD labeled, “Child Porn collection 1” sitting by the keyboard. The CD is seized and is immediately searched. Was Fred’s consent legally sufficient to search the CD?

- a. Yes, because a CD is something that can be read only with a computer.
 - b. Yes, because a CD is a computer component.
 - c. No, because the scope of consent did not include media not in the computer.
 - d. No, because consent is not a valid basis to search for data.
-

a. Yes, because a CD is something that can be read only with a computer.

Incorrect. See the justification for the correct answer.

b. Yes, because a CD is a computer component.

Incorrect. A CD is not a computer component. See also the justification for the correct answer.

c. No, because the scope of consent did not include media not in the computer.

Correct. A CD is not a computer, and that is all that Fred gave consent to search. If agents had asked to search for “evidence of crime” or to search “the computer and media,” the consent would have extended to the CD. The seizure of the CD was valid because agents had probable cause it contained evidence of a crime, and it is reasonable to preserve the evidence from immediate destruction. But once the CD was seized, the exigency to search the CD can no longer be supported by the exigent circumstances exception.

d. No, because consent is not a valid basis to search for data.

Incorrect. Consent can be a valid basis to search.

16. What is the applicability of the knock and announce statute (18 U.S.C. Section 3109) to the execution of search warrants of computers or for data?

- a. The statute is not applicable.
- b. The statute is applicable, but the exceptions are not.
- c. The statute and its exceptions are both applicable.
- d. While the statute and its exceptions may be applicable, exceptions do not arise in searches of computers or for data.

a. The statute is not applicable.

Incorrect.

b. The statute is applicable, but the exceptions are not.

Incorrect. Both the statute and its exceptions are applicable.

c. The statute and its exceptions are both applicable.

Correct.

d. While the statute and its exceptions may be applicable, exceptions do not arise in searches of computers or for data.

Incorrect. Both the statute and its exceptions are applicable. Data is easily destructible which can be the basis of an exception. Those who have computers or data that is evidence of a crime can present a danger to officers which can also be the basis of a knock and announce exception.

17. Which is a correct statement with respect to authenticating (laying a foundation for) computer or electronic data that is admitted into court?

- a. Laying a foundation and authentication are not required.
 - b. While preventing data from being altered once it has been seized is important, once data is seized there is no need to prove who authored, possessed, and had the data in order to secure a conviction.
 - c. Circumstantial evidence, such as access to computers or data, fingerprints, and passwords, is valuable to prove who may have generated or had access to data.
 - d. The rules of evidence do not apply to trials that involve criminal possession of data.
-

a. Laying a foundation and authentication are not required.

Incorrect: These requirements must be met.

b. While preventing data from being altered once it has been seized is important, once data is seized there is no need to prove who authored, possessed, and had the data in order to secure a conviction.

Incorrect: Even if data is admitted, it must still be connected to a particular person in order to be relevant.

c. Circumstantial evidence, such as access to computers or data, fingerprints, and passwords, is valuable to prove who may have generated or had access to data.

Correct: For example, in cases where data is found on a public computer or one to which many had access, circumstantial evidence is invaluable to connect the data to a particular person.

d. The rules of evidence do not apply to trials that involve criminal possession of data.

Incorrect: The rules of evidence apply in all criminal trials regardless of the offense being prosecuted.

Federal Court Procedures Practice Exam

1. Al is convicted of drug trafficking in U.S. District Court. Where would he appeal this conviction?

- A. Supreme Court
- B. Circuit Court
- C. State Court
- D. He has no right to appeal.

Answer: B. The Circuit Court of Appeals hears all appeals from convictions in District Court. If the Supreme Court did consider this case, it would not do so until *after* the Circuit Court made a decision. The state court systems do not consider appeals of federal cases.

2. Dan Defendant has been arrested for felony drug trafficking. Where will his trial be held?

A. Magistrate Court

B. District Court

C. Circuit Court

D. Supreme Court

Answer: B. The District Court presides over felony trials. The Magistrate Court judge can conduct many non-trial proceedings in a felony trial, but he cannot preside over a felony trial itself. The Circuit Court and Supreme Court could only consider appeals from this case.

3. Smith is charged with a serious misdemeanor for which he could be sentenced to up to one year in prison if found guilty. Where will his trial be held?

A. It must be held in the District Court.

B. It must be held in the Magistrate Court.

C. It must be held in the Circuit Court.

D. It can be held in either the District Court or the Magistrate Court, depending on Smith.

Answer: D. The Magistrate Court can preside over any misdemeanor trial. However, for a Class A misdemeanor, (anything beyond a “petty offense,” meaning any offense for which the defendant could be sentenced to imprisonment for more than 6 months but up to one year), the defendant has the right to insist on trial in the District Court. If the defendant waives his right to be tried in District Court, the trial will be held in Magistrate’s Court.

4. Special Agent Smith has probable cause that Joe Criminal purchased a small amount of marijuana. Rather than arrest Criminal, Agent Smith would like Joe Criminal ordered to come into court on his own to answer to the charges. Agent Smith would have Joe Criminal served with:

- A. an arrest warrant
- B. a subpoena ad testificandum
- C. a subpoena duces tecum
- D. a summons

Answer: D. A summons directs a person to appear in court at a specific time and place regarding the crime charged in the summons. An arrest warrant commands an officer to make an arrest. A subpoena requires the appearance of a witness.

5. Special Agent Smith has concluded his investigation of Joe Criminal for drug trafficking. Agent Smith explains his case to the AUSA. The AUSA accepts the case and obtains an indictment from the Grand Jury. Agent Smith obtains an arrest warrant and arrests Joe Criminal. When must Agent Smith prepare the criminal complaint?

- A. never
- B. prior to indictment
- C. prior to arrest
- D. after arrest

Answer: A. A criminal complaint can be used to establish probable cause in support of a warrantless arrest. A criminal complaint can also be used to obtain an arrest warrant. However, when an indictment is used to obtain an arrest warrant, there is no need for a criminal complaint.

6. Special Agent Smith made a warrantless arrest of Joe Criminal for drug trafficking. When must Agent Smith prepare the criminal complaint?

- A. never
- B. after arrest, but before the Initial Appearance
- C. prior to arrest, but after receiving approval by the AUSA
- D. after Indictment, but before the Preliminary Hearing

Answer: B. The criminal complaint is used to establish probable cause in support of the warrantless arrest at the Initial Appearance.

7. Joe Criminal is arrested and taken to his Initial Appearance. What will happen there?
- A. The Magistrate Judge will explain to the defendant the criminal charges and his rights.
 - B. The Grand Jury will determine if there is probable cause Joe Criminal committed the crime charged.
 - C. The defense attorney will present evidence of defendant's innocence.
 - D. The AUSA will explain to the defendant the criminal charges and his rights.

Answer: A. The Magistrate Judge will explain the charges to the defendant and advise the defendant of his rights. Evidence is not presented at an initial appearance.

8. Smith is arrested following indictment for drug trafficking. Pending his trial, will he be held in custody by the government?

A. No, the government has no Constitutional right to incarcerate someone who has not been found guilty.

B. Yes, following a felony arrest the defendant must remain in custody until found not guilty.

C. Smith may be released pre-trial, if Smith can demonstrate that an electronic monitoring device is sufficient to guarantee he will not leave his home.

D. Smith must be released pre-trial, unless the government establishes he is a danger to the community or a flight risk.

Answer: D. Defendants must be released pending trial unless the government demonstrates they are a flight risk or a danger to the community. Many facts can be considered in this determination, including: the seriousness of the charged offense, the defendant's ties to the local community, and the defendant's past criminal record.

9. Federal Agent Johnson just arrested Carl Criminal based on a warrant for drug trafficking. Procedurally, should he:

A. Complete booking procedures, then take Criminal to his Initial Appearance when directed by the Magistrate.

B. Take Criminal to his Initial Appearance when directed by the Magistrate, then complete booking procedures.

C. Complete booking procedures, but the Initial Appearance is not required since Criminal was arrested on a warrant.

D. Take Criminal to the Initial Appearance when directed by the Magistrate, but booking procedures are unnecessary since Criminal was arrested on a warrant.

Answer: A. Whenever someone is arrested, they will be processed by the officer through the routine booking process. This would include fingerprinting, photographing, and taking basic biographical information from the suspect. The defendant would then go to the Magistrate Judge for his Initial Appearance without unnecessary delay, whether or not he was arrested pursuant to a warrant.

10. Joe Citizen goes to visit Congressman Johnson at Johnson's office on Capitol Hill. Citizen criticizes Congressman Johnson so much that Johnson loses his temper and starts beating Joe Citizen. Federal law enforcement officers are called to the scene. These officers:

A. could not arrest Congressman Johnson because Members of Congress are immune from arrest

B. could not arrest Congressman Johnson because he is in his office on Capitol Hill

C. could arrest Congressman Johnson because he has committed a crime other than a non-violent misdemeanor

D. could not arrest Congressman Johnson, but they could detain him until impeachment proceedings begin

Answer: C. Congressmen are not immune from prosecution. They are subject to felony arrest like any other person. However, they cannot be arrested for a non-violent misdemeanor while working as a Congressman or traveling to or from work as a Congressman. They could be issued a citation.

11. Congressman Johnson is walking from his Capitol Hill office to the Capitol Building to attend a session of Congress. He intentionally throws some trash down on the street, committing the misdemeanor offense of littering. Federal law enforcement Officer Smith observes this misdemeanor being committed. Officer Smith:

A. could not arrest Congressman Johnson because Members of Congress can never be arrested

B. could not arrest Congressman Johnson because Congress is in session

C. could arrest Congressman Johnson because Members of Congress have no special privilege from being arrested

D. could not arrest Congressman Johnson, but could detain him until impeachment proceedings begin

Answer: B. Congressmen are not immune from prosecution. They are subject to felony arrest like any other person. However, they cannot be arrested for a non-violent misdemeanor while working as a Congressman or traveling to or from work as a Congressman. They could be issued a citation.

12. Joe Criminal robbed a bank in Brunswick, Georgia. Brunswick is in the Southern District of Georgia. Special Agent Smith arrested Joe Criminal in Macon, Georgia. Macon is in the Middle District of Georgia, adjacent to the Southern District of Georgia.

Where could Special Agent Smith take Joe Criminal for his initial appearance?

- A. the Middle District of Georgia
- B. the Southern District of Georgia if the Initial Appearance could be held on the day of arrest
- C. either A or B
- D. any Federal court with jurisdiction over Joe Criminal's offense

Answer: C. The initial appearance may always be held in the District of arrest. However, if the arrest is made in a District adjacent to the one in which the crime occurred, the defendant may be taken to that District for his Initial Appearance if the Initial Appearance can be held on the day of arrest.

13. After being indicted, Joe Criminal was arrested for drug trafficking. When will his Preliminary Hearing be held?

- A. as soon as possible following the arrest
- B. after the Initial Appearance, but before the Arraignment
- C. after Arraignment, but prior to trial
- D. never

Answer: D. If an individual has been indicted or charged by information, they will not have a Preliminary Hearing.

14. What happens at the Preliminary Hearing?

- A. The Grand Jury decides if there is probable cause for the case to continue.
- B. The Magistrate Judge decides if there is probable cause for the case to continue.
- C. The Defendant must prove there is no probable cause for the case to continue.
- D. The Defendant must enter a plea.

Answer: B. The Preliminary Hearing is an adversarial proceeding before the Magistrate Judge. At the Preliminary Hearing, the government has the burden of proving that there is probable cause the case should continue.

15. What happens at the Arraignment?

- A. The Grand Jury decides if there is probable cause for the case to continue.
- B. The Magistrate Judge decides if there is probable cause for the case to continue.
- C. The Defendant must prove there is no probable cause for the case to continue.
- D. The Defendant enters a plea.

Answer: D. The primary purpose of the Arraignment is for the Defendant to enter a plea.

16. The Grand Jury decides:
- A. if probable cause exists to issue an Indictment
 - B. if probable cause exists to issue an Information
 - C. if Defendant is guilty or not guilty
 - D. if a Preliminary Hearing is necessary

Answer: A. If the Grand Jury determines there is probable cause the Defendant committed the charged offense, it will issue an Indictment. This is called a “true bill.” If the Grand Jury did not find probable cause, it would be a “no bill.”

17. Special Agent Johnson is investigating Joe Criminal for illegal drug activity. As part of this investigation, Agent Johnson attempted to interview Willy Witness. Willy Witness appears to have information regarding Joe Criminal's illegal activity, but is unwilling to voluntarily answer Agent Johnson's questions. Regarding Willy Witness, Agent Johnson should:

- A. make no further effort since no one can make Willy Witness talk
- B. offer Willy Witness money or other things of value to encourage him to cooperate
- C. arrest Willy Witness for obstruction of justice
- D. arrange with the AUSA to have Willy Witness subpoenaed to testify before the Grand Jury

Answer: D. Requiring an individual to appear before the Grand Jury is how the government can make uncooperative witnesses provide information. The government should not simply give up on this witness, nor should it offer him a bribe for his testimony. The mere refusal of this witness to answer questions when approached by a law enforcement officer does not constitute obstruction of justice.

18. You are a Federal law enforcement officer and want Willy Witness to appear before the Grand Jury and testify. Who do you see about getting a Grand Jury subpoena?

- A. the Judge
- B. the Grand Jury foreperson
- C. the Court Reporter
- D. the Assistant U.S. Attorney

Answer: D. The Assistant U.S. Attorney is the person who will issue subpoenas to appear before the Grand Jury.

19. You want Willy Witness to appear before the Grand Jury and testify. Willy Witness should be served with a:

- A. summons testificandum
- B. testimonial warrant
- C. subpoena duces tecum
- D. subpoena ad testificandum

Answer: D. The subpoena ad testificandum orders a person to appear and testify.

20. You are a Federal law enforcement agent investigating Carl Criminal. During your investigation, you witness Carl Criminal sell drugs on the street corner to a 12 year old girl. You then testify before the Grand Jury about this observation. Which of the following information could you tell your friends who are not involved in the investigation of Carl Criminal?

- A. You could only tell them about witnessing the drug transaction.
- B. You could tell them about witnessing the drug transaction, and that you testified before the Grand Jury. However, you could not tell them what you told the Grand Jury.
- C. You could tell them about witnessing the drug transaction, and testifying before the Grand Jury, including the substance of your testimony before the Grand Jury.
- D. You couldn't tell them anything about this case.

Answer: A. The witnessing of the drug transaction is not a “grand jury matter” and therefore, not secret under the grand jury secrecy rules. Accordingly, this information could be shared with others. However, the Grand Jury secrecy rules forbid the law enforcement officer from discussing the substance of his testimony before the Grand Jury. They also prevent him from stating he testified as a witness before the Grand Jury investigating Carl Criminal.

21. The AUSA learned much information from Willy Witness when Witness testified before the Grand Jury. The AUSA has shared this information with you, the Federal LEO. Who may you discuss this information with?

- A. no one
- B. only Federal law enforcement officers on the 6(e) list
- C. any government personnel on the 6(e) list
- D. anyone

Answer: C. Rule 6(e) of the Rules of Criminal Procedure authorizes disclosure of Grand Jury information to any government personnel the government attorney deems necessary to assist with the criminal investigation. These personnel should be listed on the 6(e) list maintained by the government attorney.

22. Who is present when the Grand Jury is voting on whether there is probable cause to issue an Indictment?

- A. only the Grand Jurors
- B. only the AUSA and the Grand Jurors
- C. only the court reporter and the Grand Jurors
- D. only the AUSA, the Grand Jurors and the court reporter

Answer: A. Only the Grand Jurors may be present when the Grand Jury is deliberating and voting.

23. Who is present when the Grand Jury is listening to witness testimony?

A. only the Grand Jurors and the witness

B. only the AUSA, the Grand Jurors and the witness

C. only the court reporter, the Grand Jurors, and the witness

D. only the AUSA, the Grand Jurors, the court reporter, and the witness

Answer: D. These are the people present when a witness is testifying before a Grand Jury.

24. What document is usually used to charge a felony?

A. indictment

B. information

C. subpoena

D. bill of particulars

Answer: A. An indictment is the usual charging document in a felony case. An information, which is signed by the U.S. Attorney, may be used to charge a felony if it is a non-capital case and the defendant waives his right to indictment.

25. What charging document is issued by the Grand Jury?

A. indictment

B. information

C. subpoena

D. bill of particulars

Answer: A. An indictment is the charging document issued by the Grand Jury when they find probable cause the defendant has committed the alleged offense.

26. What charging document is issued by the U.S. Attorney?

- A. indictment
- B. information
- C. subpoena
- D. bill of particulars

Answer: B. An information is the charging document issued by the U.S. Attorney. It is commonly used in misdemeanor cases, and can be used in non-capital felony cases when the defendant waives his right to indictment.

27. Agent Smith is scheduled to be the star witness in the case against Carl Criminal. Other Agents discovered that Smith had been disciplined in the past for lying during an administrative investigation into the alleged misuse of a government vehicle. The AUSA must tell the defense attorney about this under which of the following:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: D. Giglio [Giglio v. United States, 405 U.S. 150 (1974)] requires that the government give the defendant any information about government witnesses that might reasonably be used to impeach them. This includes information about prior false statements. It also includes disclosing promises made to witnesses in exchange for their testimony, such a plea bargains made in exchange for testimony.

28. The defense attorney has requested the AUSA provide him with a copy of defendant's criminal record. The AUSA should give him this information according to:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: A. Rule 16 requires the government to provide the defendant with a copy of his criminal record if he requests it.

29. The defense attorney has requested the AUSA provide him with a copy of defendant's prior statements. The AUSA should give him these statements according to:

- A. Rule 16
- B. the Brady doctrine
- C. the Jencks Act
- D. Giglio

Answer: A. Rule 16 requires the government to provide the defendant with a copy of his prior statements (except those oral statements made to agents who the defendant did not know were agents - such as undercover agents) if he requests it.

30. Special Agent Jones is investigating Joe Criminal for bank robbery. One witness interviewed by Agent Jones says that Joe Criminal could not have robbed the bank, because Joe Criminal was not in town on the day of the bank robbery. Must the government inform the defense about this witness?

- A. yes, under Rule 17
- B. yes, under the Brady doctrine
- C. no, according to the Jencks Act
- D. no, according to the 3rd Amendment

Answer: B. The Brady doctrine requires the government to inform the defense of any exculpatory information, whether or not requested by the defense.

31. Willy Doe is a witness for the government at trial. Willy Doe signed a statement to Special Agent Smith prior to testifying stating he saw the defendant commit the crime. Is the AUSA required to give the defense a copy of this statement?

- A. yes, according to the Jencks Act
- B. yes, according to *Brady*
- C. no, because providing the statement violates the *Giglio* doctrine
- D. no, because the defense is never able to obtain prior statements of government witnesses

Answer: A. The Jencks Act requires that the written, recorded, signed, or adopted statement of a government trial witness be given to the defense attorney no later than after the witness testifies on direct-examination for the government, but prior to cross-examination. The government could give the statement to the defense attorney at an earlier time if it wished. The judge could also order the statement be provided earlier. Because the statement does not appear to contain any exculpatory information, *Brady* doesn't apply. *Giglio* requires the government to give the defense possible impeachment evidence about witnesses the government may call. Answer D is simply not true - as we see by the correct answer, answer A.

32. Johnson lived in Little Rock, Arkansas his whole life. Johnson and some friends in Arkansas developed a hatred of the Federal government, and decided to blow up the Federal Building in Dallas, Texas. Johnson, with the help of his friends, actually went to Dallas and blew up the Federal Building. Following extensive investigation, Johnson is eventually arrested by Federal Agents in New York and charged with blowing up the Federal Building. Where must Johnson's trial for blowing up the Federal Building take place?

- A. Johnson's trial must be held in New York.
- B. Johnson's trial must be held in Dallas.
- C. Johnson's trial must be held in Arkansas.
- D. Johnson's trial could be held in any federal court.

Answer: D. The rules of venue state that the trial should be held in the District where the crime occurred. However, for good reason, the trial can be moved to another Federal Court in another District (change of venue). This is particularly true where the defendant is charged with a very horrible crime, creating a prejudice which prevents a fair trial in the District where the crime occurred.

33. In 1995, Joe stole 2 computers which were the property of the Federal government. The statute of limitations for this Federal crime is 5 years. Joe was indicted for this offense in 2001. Which of the following statements is correct?

- A. Since it has been more than 5 years, Joe can't be prosecuted for this crime under any circumstances.
- B. Since Joe stole 2 computers, the statute of limitations is 10 years, Joe can be prosecuted for the crime.
- C. If Joe was indicted after 5 years, but prosecuted within 100 days of arrest, the Speedy Trial Act would permit his prosecution.
- D. Joe could still be prosecuted if the 5 year statute of limitations was tolled by his concealing his identity or fleeing the jurisdiction to avoid prosecution.

Answer: D. If Joe fled or concealed his identity to avoid prosecution, the 5 year statute of limitations "clock" does not run during this time. Applicability of the statute of limitations is very case-specific. Therefore, Federal law enforcement officers should not drop a case based on the statute of limitations without first checking with the U.S. Attorney's office.

34. Who prepares the Pre-Sentencing Report used by the District Judge to determine the proper sentence for the Defendant?

A. the U.S. Probation Office with the help of the Federal law enforcement officer

B. the Clerk of Court with the help of the Federal law enforcement officer

C. the U.S. Probation Office with the help of the defense attorney

D. the Bailiff, with the help of the Clerk of Court

Answer: A. The Pre-Sentencing Report is prepared by the U.S. Probation Office with the help of the Federal law enforcement officer. The LEO should assist in providing such information.

35. Joe Smith robbed a bank in New York City. He is indicted and an arrest warrant is issued. Federal Agents arrest Joe Smith when they find him hiding in Cleveland, Ohio. Which of the following is a true statement about Joe Smith's case?

A. Smith's trial must be held in Cleveland, since that was the place of arrest.

B. Smith can choose whether to have his trial in Cleveland or New York.

C. Federal Agents should take Smith to New York without unnecessary delay for his initial appearance.

D. Once Smith is identified as the Joe Smith on the warrant, his case may be transferred to New York for trial.

Answer: D. Once it is established that the Joe Smith who has been arrested is the Joe Smith identified on the arrest warrant, the Court may transfer (remove) Smith's case to New York for further proceedings. This is the most common scenario, and the only correct choice above. It should be noted however, that if Smith wanted to waive his right to trial and plead guilty, his case could be resolved in Cleveland without transfer to New York.

36. Jacques Pierre, a citizen of France, is arrested by a federal agent in Jacksonville, Florida. Pierre is not a U.S. Citizen, but he has applied for citizenship and is expecting to complete the process within the next two to three months. Assume that France is not on the Vienna Convention on Consular Relations (VCCR) “mandatory notification countries” list. Which of the following actions must the arresting agent take?

- A. He must notify the French Consulate of Pierre’s arrest without delay.
- B. He must offer, without delay, to notify Pierre’s consular officials of the arrest.
- C. He must determine the status of Pierre’s citizenship application.
- D. He must release Pierre because foreign nationals have diplomatic immunity.

Answer: B. The VCCR applies to all detentions and arrests of foreign nationals, so long as they are not U.S. citizens. The arrestee’s immigration status is immaterial. In this case, because France is not on the VCCR “mandatory notification countries” list, the arresting officer is not required to immediately notify the French Consulate. Instead, the officer must offer to notify Pierre’s consular officials of the arrest. Whether consular notification will be made depends upon Pierre’s response. (As for answer D, there is nothing in the question to suggest that Pierre is a foreign diplomat. Not all foreign nationals are foreign diplomats or have diplomatic immunity.)

37. Austin Powers, a citizen of the United Kingdom, is arrested by a federal agent in Alexandria, VA, for selling unlicensed coffee mugs bearing the image of “Smokey Bear.” Unlawful use of the “Smokey Bear” character or name is a federal misdemeanor (18 U.S.C. § 711). The United Kingdom is on the Vienna Convention on Consular Relations (VCCR) “mandatory notification countries” list. Is the arresting agent required to notify the British Consulate of Powers’s arrest pursuant to the VCCR?

- A. No, because the VCCR does not apply to misdemeanor offenses.
- B. No, because the United Kingdom is an ally of the United States.
- C. Yes, because the VCCR requires notification without delay to “mandatory notification countries.”
- D. Yes, but only if Powers immediately requests that his consular officials be notified.

Answer: C. The VCCR applies to all detentions and arrests of foreign nationals; the seriousness of the charge is immaterial. The VCCR requires, at a minimum, that the foreign national who is detained or arrested be told of the right to consular notification and access. In this case, because the United Kingdom is on the VCCR “mandatory notification countries” list, U.S. officials are required to notify the British Consulate of the arrest regardless of the arrestee’s wishes.

38. The Vienna Convention on Consular Relations (VCCR) requires that foreign nationals who are detained or arrested in the U.S. be notified of:

- A. the nature of the charges and their right to counsel
- B. the right of consular notification and access
- C. the right to remain silent and to refuse to sign any statements
- D. the right to petition the U.S. Government for redress of grievances

Answer. B. The VCCR requires that in all cases, a foreign national (non-U.S. citizen) arrested or detained within the United States be told of the right of consular notification and access. The rights described in answers A, C, and D, are protected by the Bill of Rights in the U.S. Constitution, not the VCCR.

39. Joe Youngster is a juvenile and has been arrested by federal officers. Which of the following is correct with respect to providing *Miranda* warnings before the officers attempt to question Joe?

A. Joe must be advised of his *Miranda* rights before questioning in words that a juvenile can understand.

B. Joe's parents or guardian, if they can be located through good faith efforts by law enforcement, must be advised of Joe's *Miranda* rights before questioning.

C. There is no requirement to advise Joe of his *Miranda* rights because he is a juvenile.

D. Both A and B.

Answer: D. In addition, law enforcement must also advise the parents or guardian of the alleged offense. If Joe's parents or guardian are located and they want to speak to Joe, that must be allowed. Remember also that law enforcement must not make the identity of the juvenile known publicly without prior approval of the district court.

Officer Liability Practice Exam

1. While on patrol, Sue ran up to Officer Smith. She looked battered and bruised. Sue pointed to a man approximately 20 feet away and said: “Help me officer, that man just attacked me!” Officer Smith then arrested the man, later identified as Johnson. Several weeks later, Sue admitted she had lied about being attacked by Johnson because she wanted attention. As a result, the charges against Johnson were dropped. Can Officer Smith be successfully sued for arresting Johnson?
- a. Yes, because Officer Smith did not have probable cause to arrest Johnson.
 - b. Yes, since Johnson was not convicted.
 - c. No, because the information provided by Sue was probable cause to arrest Johnson.
 - d. No, because law enforcement officers are absolutely immune from being sued for any arrest they make.

Answer to question 1:

- a. Yes, because Officer Smith did not have probable cause to arrest Johnson.
INCORRECT: Sue’s appearance and statements establish probable cause for arrest.
- b. Yes, since Johnson was not convicted.
INCORRECT: The standard for arrest is probable cause. The standard for conviction is proof beyond a reasonable doubt. Even if an individual is not later convicted, it does not mean that their arrest was improper. In this case, Sue’s statements provide probable cause for a valid arrest.
- c. No, because the information provided by Sue was probable cause to arrest Johnson.
CORRECT: Sue’s statements provided probable cause to arrest. Officer Smith did nothing wrong in this case.
- d. No, because law enforcement officers are absolutely immune from being sued for any arrest they make.
INCORRECT: Law enforcement officers are not absolutely immune from being sued. However, law enforcement officers receive qualified immunity from being sued for their actions. This means they are immune from suit for their actions as a law enforcement officer as long as they are acting as a reasonable law enforcement officer.

2. Two state police officers beat a handcuffed prisoner until he identified his drug supplier. The prisoner sued the officers. The lawsuit is legally recognized under:

a. the Federal Tort Claims Act

b. the Good Samaritan Act

c. *Bivens*

d. 42 U.S.C. 1983

Answer to question 2:

a. the Federal Tort Claims Act

INCORRECT: The FTCA is a law which allows the United States to be sued for the actions of federal employees committed within the scope of their employment. It does not apply to state or local police officers.

b. the Good Samaritan Act

INCORRECT: The federal Good Samaritan Act defines additional circumstances under which a federal officer might be determined to be in the scope of their employment. It does not apply to state or local police officers.

c. *Bivens*

INCORRECT: This would be correct if the two officers were federal agents, but *Bivens* does not authorize lawsuits against state or local officers.

d. 42 U.S.C. 1983

CORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights.

3. Two federal agents illegally search Smith's house. The agents know they are conducting an illegal search, but they hope they will not get caught. Smith learns of the illegal search and sues the two federal agents. This lawsuit is legally recognized under:

a. the Federal Tort Claims Act

b. the Good Samaritan Act

c. *Bivens*

d. 42 U.S.C. 1983

Answer to question 3:

a. the Federal Tort Claims Act

INCORRECT: The FTCA is a law which allows the United States to be sued for the actions of federal employees committed within the scope of their employment. Knowingly conducting an illegal search is not an act within the scope of employment.

b. the Good Samaritan Act

INCORRECT: The federal Good Samaritan Act defines additional circumstances under which a federal officer might be determined to be in the scope of their employment. It does not apply to federal agents who are intentionally breaking the law.

c. *Bivens*

CORRECT: This case authorizes lawsuits against federal agents who intentionally violate an individual's 4th, 5th or 8th amendment rights.

d. 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights, not federal agents.

4. In a *Bivens* action, a plaintiff must allege which of the following elements:
- a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.
 - b. A federal law enforcement officer violated a Constitutional right while acting under color of law.
 - c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.
 - d. A state law enforcement officer violated a Constitutional right while acting under color of law.

Answer to question 4:

- a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.
INCORRECT: A *Bivens* action is only appropriate if a Constitutional violation was committed by a federal officer acting under color of federal law. If an off-duty federal officer is simply acting as a private citizen, his actions cannot support a *Bivens* lawsuit.
- b. A federal law enforcement officer violated a Constitutional right while acting under color of law.
CORRECT: In a *Bivens* action, the plaintiff must allege two elements: (1) A violation of a Constitutional right, and, (2) by a person acting under color of federal law.
- c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.
INCORRECT: A state law enforcement officer cannot be sued under *Bivens*. A state law enforcement officer could be sued under 42 U.S.C. Section 1983 for violating someone's rights while acting under color of state law. If an off-duty state officer is simply acting as a private citizen, his actions cannot support a 1983 lawsuit.
- d. A state law enforcement officer violated a Constitutional right while acting under color of law.
INCORRECT: A state law enforcement officer cannot be sued under *Bivens*. A state law enforcement officer could be sued under 42 U.S.C. Section 1983 for violating someone's rights while acting under color of state law.

5. Smith was a federal agent who was authorized to drive a government vehicle 24 hours a day because of his duties. On his day off, he spotted some geese at his house that had been digging up his fancy landscaping. Attempting to scare the geese away from his lawn, he started his government vehicle and flashed his lights and siren. In his excitement, he accidentally put the car in drive and ran over his neighbor's mailbox. The neighbor can bring a successful lawsuit against which of the following:

- a. Smith personally under *Bivens*
- b. the U.S. Government under the FTCA
- c. the U.S. Government under 42 U.S.C. 1983
- d. Smith personally for negligence

Answer to question 5:

- a. Smith personally under *Bivens*

INCORRECT: *Bivens* allows a lawsuit against an individual federal officer for violating someone's 4th, 5th, or 8th amendment rights while acting under color of law. Smith's actions didn't violate anyone's 4th, 5th or 8th amendment rights, and he wasn't acting under color of law.

- b. Against the U.S. Government under the FTCA

INCORRECT: The U.S. Government is liable under the FTCA for actions by federal employees acting in the scope of their employment. Smith's actions were not in the scope of his employment.

- c. Against the U.S. Government under 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. Smith is a federal agent, and cannot be sued under this statute.

- d. Against Smith personally for negligence

CORRECT: Since Smith was negligent, and not acting within the scope of his employment, the neighbor can file suit against Smith personally in state court.

6. Federal Officer Jones was driving his government car on the way to interview a witness to a crime under investigation. Jones became distracted, and ran into the back of Smith's car, causing \$5000 worth of damage. In order to collect for his damages, 1) who should Smith sue, 2) in what court, and 3) who will pay the damages?

a. Smith should sue Jones in Federal court, and if Smith wins, Jones will pay the judgment.

b. Smith should sue Jones in Federal Court, but if the Smith wins, the United States will pay the judgment.

c. Smith should sue the United States in State court, and if Smith wins, the United States will pay the judgment.

d. Smith should sue the United States in Federal court, and if Smith wins, the United States will pay the judgment.

Answer to question 6:

a. Smith should sue Jones in Federal court, and if Smith wins, Jones will pay the judgment.

INCORRECT: See answer D.

b. Smith should sue Jones in Federal Court, but if the Smith wins, the United States will pay the judgment.

INCORRECT: See answer D.

c. Smith should sue the United States in State court, and if Smith wins, the United States will pay the judgment.

INCORRECT: See answer D.

d. Smith should sue the United States in Federal court, and if Smith wins, the United States will pay the judgment.

CORRECT: A federal employee acting in the scope of his employment is protected under the Federal Tort Claims Act. Therefore, if an employee injures someone while acting in the scope of their employment (meaning acting on behalf of the United States), the United States is the proper defendant under the Federal Tort Claims Act. The Federal Tort Claims Act also requires that the case will be tried in Federal District Court without a jury. The judge will decide if the United States is liable, and if so, for what amount. Additionally, there is a two year statute of limitations.

7. Officer Smith is watching Officer Jackson interview a prisoner. Convinced that the prisoner is lying to him, Officer Jackson hit and kicked the prisoner several times. Since this beating lasted several minutes, Officer Smith could have intervened and stopped the beating. However, Officer Smith decided to “mind his own business” and not get involved. The prisoner later sued both Officer Jackson and Officer Smith for the beating. Does Officer Smith have a valid defense to this lawsuit?

- a. yes, the Federal Tort Claims Act
- b. yes, qualified immunity
- c. no, law enforcement officers can be sued whenever they fail to stop a crime
- d. no, because he stood by while another officer violated the rights of an individual

Answer to question 7:

- a. yes, the Federal Tort Claims Act

INCORRECT: The Federal Tort Claims Act protects federal employees from being sued for acts committed while they were acting within the scope of their employment. Officer Smith is not in the scope of his employment when he watches a fellow officer beat a prisoner without attempting to stop it.

- b. yes, qualified immunity

INCORRECT: Qualified immunity is a defense from suit for any law enforcement officer who is acting as a reasonable law enforcement officer. Failing to intervene when a fellow officer is beating a suspect is not the behavior of a reasonable law enforcement officer.

- c. no, law enforcement officers can be sued whenever they fail to stop a crime

INCORRECT: Ordinarily, there is no civil liability for failing to prevent crime or stop an ongoing crime. However, when a fellow officer is violating someone’s civil rights, an officer has a duty to try and intervene.

- d. no, because he stood by while another officer violated the rights of an individual

CORRECT: When a fellow officer is violating someone’s civil rights, an officer has a duty to try and intervene.

8. A tort is a type of lawsuit where
- a. the government prosecutes a citizen for a crime in the name of the government.
 - b. the government sues a citizen for having committed a crime.
 - c. a citizen sues another citizen for damages as a result of a negligent or intentional act.
 - d. a citizen prosecutes another citizen for damages as a result of a negligent or intentional act.

Answer to question 8:

- a. the government prosecutes a citizen for a crime in the name of the government.
INCORRECT: This describes a criminal prosecution.
- b. the government sues a citizen for having committed a crime.
INCORRECT: The word “sue” indicates a civil suit. The government does not sue people for committing a crime; they prosecute criminal offenders.
- c. a citizen sues another citizen for damages as a result of a negligent or intentional act.
CORRECT: This is the definition of a tort action.
- d. a citizen prosecutes another citizen for damages as a result of a negligent or intentional act.
INCORRECT: The word “prosecute” indicates a criminal prosecution. A criminal prosecution is not done in order to recover damages but to punish criminal misconduct.

9. Two federal agents are convinced Johnny is a drug smuggler, but they have no evidence. They agree to beat Johnny until he tells them where he hides his drugs. Johnny is never harmed and never learns of the plan. These agents could be prosecuted under:

- a. 18 U.S.C. 241
- b. 18 U.S.C. 242
- c. *Bivens*
- d. 42 U.S.C. 1983

Answer to question 9:

- a. 18 U.S.C. 241

CORRECT: This is the federal criminal conspiracy against rights statute. When two or more agents conspire to deprive a citizen of constitutional rights, this is the appropriate statute to bring a criminal prosecution.

- b. 18 U.S.C. 242

INCORRECT: This statute makes it a crime to violate someone's rights while acting "under color of law." Had the agents identified themselves and carried out their unlawful beating, they would also be guilty of this offense. However, since they never actually harmed Johnny, they cannot be arrested for this offense.

- c. *Bivens*

INCORRECT: This statute authorizes civil lawsuits against federal officers who violate federally protected rights. It is not a criminal charge.

- d. 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. It is not a criminal charge.

10. Federal agent Adams is on duty when he sees Smith, the man who married his ex-wife. Still holding a grudge, Adams identifies himself as a federal agent and places Smith under arrest. Agent Adams has no legal reason to arrest Smith, so he just hits him a few times and then lets him go. Agent Adams could be prosecuted under:

- a. 18 U.S.C. 241
- b. 18 U.S.C. 242
- c. *Bivens*
- d. 42 U.S.C. 1983

Answer to question 10:

- a. 18 U.S.C. 241

INCORRECT: This is the federal criminal conspiracy against rights statute. When two or more agents conspire to deprive a citizen of constitutional rights, this is the appropriate statute to bring a criminal prosecution. However, since Agent Adams acted alone, it is not appropriate in this case.

- b. 18 U.S.C. 242

CORRECT: This statute makes it a crime to violate someone's rights while acting "under color of law." Since Agent Adams abused his authority and made this unlawful arrest, he is subject to prosecution for this offense.

- c. *Bivens*

INCORRECT: This statute authorizes civil lawsuits against federal officers who violate federally protected rights. It is not a criminal charge.

- d. 42 U.S.C. 1983

INCORRECT: This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. It is not a criminal charge.

FEDERAL CRIMINAL LAW PRACTICE EXAM

1. FCL 1

INTRODUCTION TO CRIMINAL LAW

Question Root

Johnson is charged for failing to file income taxes. Prior to trial, Johnson makes a motion to dismiss the charge on the grounds that the indictment does not accuse him of actually performing an illegal act. Johnson's motion should be:

Answers

- a. Granted, because all crimes require, at the minimum a physical act by a defendant that is illegal.
- b. Granted, because all crimes require specific intent to commit the crime.
- c. Denied, because a crime can be based on a failure to act.
- d. Denied, because a federal indictment can be based on unwritten law.

Key and Feedback

a. Granted, because all crimes require, an illegal act.

INCORRECT: Crimes require an act or an omission to act.

b. Granted, because all crimes require specific intent to commit the crime.

INCORRECT: Not all crimes require specific intent. Some do not require a specific mental state. Others may require recklessness or criminal negligence instead of specific intent.

c. Denied, because a crime can be based on an act or a failure to act.

CORRECT: The law can place an affirmative duty on an individual to perform certain acts, such as the payment of taxes or providing care to a dependent child; failure to comply with the statute is a crime.

d. Denied, because a federal indictment can be based on unwritten law.

INCORRECT: All federal laws are written.

Question Root

A statute says it is a felony to possess 5 or more false identification documents knowing that the false identification documents were produced without lawful authority. The facts elicited at trial reflect that the defendant only possessed 4 false identification documents that the defendant knew were produced without lawful authority. What offense has the defendant committed?

ANSWERS

- a. A misdemeanor, because it takes 5 or more documents to make the offense a felony.
- b. A felony, because the defendant knew the documents were produced without lawful authority.
- c. No offense under this statute.
- d. A misdemeanor, because although he did not possess 5 false documents, he knew the 4 he did possess were obtained without lawful authority.

KEY AND FEEDBACK

- a. A misdemeanor, because it takes 5 or more documents to make the offense a felony.

INCORRECT: When the statute requires a defendant to possess a specified number of documents, the offense requires possessing at least that number of documents; possession of less than the amount of documents required by the statute is not an offense.

- b. A felony, because the defendant knew the documents were produced without lawful authority.

INCORRECT: Although knowing the documents were produced without lawful authority is an element of the offense that has to be proved, the offense requires proof that the defendant possessed 5 or more false identification documents knowing that they were produced without lawful authority.

- c. No offense under this statute.

CORRECT: Unless the government can prove the elements of the offense (i.e., that the defendant possessed 5 or more false identification documents knowing that the false documents were produced without lawful authority), no offense has been committed.

- d. A misdemeanor, because although he did not possess 5 false documents, he knew the 4 he did possess were obtained without lawful authority.

INCORRECT: The government has to meet the 5 false document threshold. Possessing anything less than 5 false documents is not an offense under this statute.

Question Root

Terry is indicted on a charge of murdering his boss. He was tried and convicted of the murder. Terry appeals his conviction, claiming that it should be overturned, because the prosecutor never proved at trial that he had a motive for committing the murder. His appeal should be:

Answers

- a. Granted, because all crimes require the prosecutor to prove a motive.
- b. Granted, because society needs to know why workplace violence is occurring.
- c. Denied, because the motive can always be inferred from the crime.
- d. Denied, because the prosecutor does not have to prove motive.

Key and Feedback

- a. Granted, because all crimes require the prosecutor to prove a motive.

INCORRECT: A prosecutor is not required to prove a motive, except in some “hate crimes” which target minorities or other protected classes of individuals.

- b. Granted, because society needs to know why workplace violence is occurring.

INCORRECT: Bosses are not a protected class under hate crime legislation.

- c. Denied, because the motive can always be inferred from the crime.

INCORRECT: See “A”, above.

- d. Denied, because the prosecutor does not have to prove motive.

CORRECT: Motive may be useful in explaining the prosecutor’s theory of the case to the jury, but proving motive is not a requirement for a conviction.

Question Root

In determining whether or not a crime is a felony versus a misdemeanor, the U.S. District Court Judge will look at the:

Answers

- a. The common law.
- b. The maximum jail time allowed for the offense.
- c. The prosecutor's sentencing recommendation.
- d. The number of crime victims.

Key and Feedback

- a. The common law.

INCORRECT: There are no common law offenses in the U.S..

- b. The maximum possible jail time allowed for the offense.

CORRECT: Correct. The maximum possible jail time determines the classification of the offense as a felony or misdemeanor.

- c. The prosecutor's sentencing recommendation.

INCORRECT: The prosecutor's sentencing recommendation does not determine the classification of an offense as a felony or misdemeanor.

- d. The number of crime victims.

CORRECT: The number of crime victims does not determine the classification of an offense as a felony or misdemeanor.

Question Root

Crook is sentenced to 6 months in jail upon conviction of his crime. Crook got off easy. He could have been sentenced to eighteen months by the U.S. District Court judge. Crook has been convicted of a:

Answers

- a. Felony
- b. Misdemeanor
- c. Infraction
- d. Tort

Key and Feedback

- a. Felony

CORRECT: A felony is defined as a criminal offense for which the maximum penalty allowed is more than one year. The actual sentence is irrelevant in determining whether the offense is a felony or a misdemeanor. The determining factor is the maximum punishment allowed by the statute.

- b. Misdemeanor

INCORRECT: See (a) above.

- c. Infraction

INCORRECT: See (a) above.

- d. Tort.

INCORRECT: A tort is a civil wrong, not a crime.

Question Root

A local deputy sheriff arrests Hector for a state felony that occurred within the boundaries of the Wenatchee National Forest. Hector makes a motion to dismiss the charge, arguing that the deputy sheriff had no authority to make an arrest within the Wenatchee National Forest, because state laws do not apply within the National Forest. The judge finds that the Wenatchee National Forest is an area of concurrent jurisdiction. Based on that finding, Hector's motion will be:

Answers

- a. Granted, because the Assimilative Crimes Act does not apply in areas of concurrent jurisdiction.
- b. Granted, because state law cannot be enforced in areas of concurrent jurisdiction.
- c. Denied, because state law can always be enforced on any federal land or facility within that state.
- d. Denied, because the state may always enforce its law in areas of concurrent jurisdiction.

Key and Feedback

- a. Granted, because the Assimilative Crimes Act does not apply in areas of concurrent jurisdiction.

INCORRECT: The Assimilative Crimes Act allows federal authorities to absorb state law and make it a federal offense when there is no federal statute on point. It does not grant or limit state jurisdiction on federal property.

- b. Granted, because state law cannot be enforced in areas of concurrent jurisdiction.

INCORRECT: State law may be enforced in areas of concurrent jurisdiction either by federal officers utilizing the Assimilative Crimes Act, or by state officers utilizing state statutes.

- c. Denied, because state law can always be enforced by state or local officers on any federal land or facility within that state.

INCORRECT: State law may not be enforced by state officers in areas of exclusive jurisdiction.

- d. Denied, because the state may always enforce its law in areas of concurrent jurisdiction.

CORRECT: In areas of concurrent jurisdiction, both state and federal governments may conduct law enforcement activities and may prosecute for criminal violations in their respective court systems.

Question Root

The Assimilative Crimes Act, 18 U.S.C. §13, allows criminal acts to be prosecuted in:

Answers

- a. State courts by absorbing state law which will be used to define the elements of the offense.
- b. State courts using federal law to define the elements of the offense.
- c. Federal courts using federal law to define the elements of the offense.
- d. Federal courts using state law to define the elements of the offense.

Key and Feedback

- a. State courts using state law to define the elements of the offense.

INCORRECT: Prosecutions under the Assimilative Crimes Act occur in federal courts, but employ state law to define the elements of the offense.

- b. State courts using federal law to define the elements of the offense.

INCORRECT: Prosecutions under the Assimilative Crimes Act occur in federal courts and employ state law to define the elements of the offense.

- c. Federal courts using federal law to define the elements of the offense.

INCORRECT: Prosecutions under the Assimilative Crimes Act occur in federal courts and employ state law to define the elements of the offense.

- d. Federal courts using state law to define the elements of the offense.

CORRECT: Prosecutions under the Assimilative Crimes Act occur in federal courts and employ federal law to define elements of the offense. By using the Assimilative Crimes Act, state law is absorbed by the federal government and converted to a federal offense that is charged in federal court.

Question Root

Barney is an off-duty federal law enforcement agent. He is sitting in a bar drinking beer and watching a football game. Fred, another patron in the bar who Barney has never met, is creating a disturbance, making it difficult for Barney to watch the game. Barney asks Fred to “hold it down.” Fred walks up to Barney and hits Barney in the face, breaking two of Barney’s teeth. Fred can be criminally charged with:

Answers

- a. Assault under state law
- b. Violating Barney’s Constitutional Rights under 42 U.S.C. §1983.
- c. Assault of a federal officer under 18 U.S.C. § 111
- d. A tort under either state or federal law.

Key and Feedback

- a. Assault under state law

CORRECT: Fred assaulted and battered Barney, but did not commit any offense under federal law.

- b. Violating Barney’s Constitutional Rights under 42 U.S.C. §1983.

INCORRECT: Fred was not acting under color of law when he assaulted Barney. Criminal charges cannot be brought under 42 USC §1983.

- c. Assault of a federal officer under 18 U.S.C. § 111

INCORRECT: Fred was off-duty and Fred did not know that Barney was a federal officer. Even if he did, Fred’s assault on Barney was not motivated by Barney’s status as a federal law enforcement officer.

- d. A tort under either state or federal law.

CORRECT: Torts are civil in nature. Torts are not “charged” under a criminal statute.

Question Root

Casper, a retired federal law enforcement officer, walks into a restaurant to have dinner. As he is seated a man walks up to him and says, “Remember me? You are the “Fed” that arrested me and sent me to prison for five years.” The man then punches Casper in the face, cutting his lip and knocking out his dentures. The suspect is arrested and charged with assault on a federal officer pursuant to 18 U.S.C. §111. This charge should be:

Answers

- a. Dismissed, because Casper is no longer a federal law enforcement officer.
- b. Dismissed, because Casper did not suffer sufficient injuries that required medical attention.
- c. Prosecuted in federal court, because the suspect assaulted Casper on account of Casper’s performance of official duties during his law enforcement career.
- d. Only prosecuted in state court, because there is no federal criminal law violation.

Key and Feedback

a. Dismissed, because Casper is no longer a federal law enforcement officer.

INCORRECT: The statute does not require Casper to be a federal law enforcement officer at the time of the assault.

b. Dismissed, because Casper did not suffer sufficient injuries requiring medical attention.

INCORRECT: Under 18 U.S.C. §111, an injury is not an element of the offense.

c. Prosecuted in federal court under 18 U.S.C. §111, because the suspect assaulted Casper on account of Casper’s performance of official duties during his law enforcement career.

CORRECT: The statute, 18 U.S.C. §111, authorizes prosecution if the assault occurs against a former federal law enforcement officer, so long as the assault is on account of the performance of official duties during such person’s term of service.

d. Only prosecuted in state court, because there is no federal criminal law violation.

INCORRECT: See (c) above.

Question Root

Billy Bob is an undercover federal investigator working hard to obtain evidence against Harry Doubletree in a sophisticated scheme to defraud a wealthy widow. While working in an undercover capacity, Billy Bob confronts Harry Doubletree with facts indicating the scheme to defraud the widow. This makes Harry Doubletree mad, so he punches Billy Bob in the face. When he hit Billy Bob, Harry Doubletree had absolutely no idea that Billy Bob was a federal investigator. Can Harry Doubletree be successfully prosecuted for Assault on a Federal Officer under 18 U.S.C. § 111?

Answers

- a. No, because the Harry Doubletree had no idea that Billy Bob was working in an undercover capacity.
 - b. No, because Billy Bob did not announce his federal status that he was in fact a federal officer.
 - c. Yes, because every federal officer is protected under the statute anytime they are assaulted.
 - d. Yes, because Billy Bob was working in an undercover capacity.
-

Key and Feedback

a. No, because the Harry Doubletree had no idea that Billy Bob was working in an undercover capacity. **INCORRECT:** When the victim of the assault is working in an undercover capacity, the government, to successfully prosecute, does not have to prove the suspect had knowledge of the victim's federal status; the government simply has to prove the agent (victim) was in the performance of his duties when he was assaulted.

b. No, because Billy Bob did not announce his federal status that he was in fact a federal officer.

INCORRECT: There is no requirement for an undercover to provide his status as a federal undercover officer. Every criminal has a constitutional right to be stupid. A federal officer working in an undercover capacity (in the performance of his duties) when assaulted is the basis for the offense.

c. Yes, because every federal officer is protected under the statute anytime they are assaulted.

INCORRECT: Federal officers are protected under this statute when they are in the performance of their duties or on account of their duties, or they are assaulted simply because they are federal officers.

d. Yes, because Billy Bob was working in an undercover capacity.

CORRECT: Billy Bob was assaulted while in the performance of his duties. The perpetrators knowledge of Billy Bob's status is not an issue when the officer is in the performance of his duties (working in an undercover capacity).

Question Root

Which of the following **is not an offense** under 18 U.S.C. § 111 (Assault on a Federal Officer or Employee)?

ANSWERS

- a. Bob is a federal agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I smack him, because I do not like ATF employees who enforce firearms laws.
- b. red is an ATF investigator working undercover, I try to smack him for being ugly, but I miss.
- c. Bruce is an ATF investigator. He lives next to Billy Bob, a retired police officer. Bruce's wife's dog just wrecked Billy Bob's yard by digging holes in it. Billy Bob knows Bruce is an ATF investigator. Billy Bob does not care that Bruce was a federal employee. Because of what the dog did, Billy Bob walks up to Bruce after Bruce gets home from fishing and cold cocks him (knocks him out).
- d. Ralph is an ATF agent who roams the country side locating moonshine stills. While searching for a still in a forest, the still owner, in an attempt to draw Ralph away from the still, runs by Ralph and pushes him into a grove of bramble bushes so that Ralph will chase him as he runs away from the still. The still owner did not know that Ralph was an ATF agent.

KEY AND FEEDBACK

- a. Bob is a federal agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I smack him, because I do not like ATF employees who enforce firearms laws.

INCORRECT: This is a chargeable offense under the statute because Bob is assaulted for being a federal employee.

- b. Fred is an ATF investigator working undercover, I try to smack him for being ugly, but I miss.

INCORRECT: This is a chargeable offense under the statute, because Bob is assaulted for being a federal employee. An attempted battery is an assault under the statute.

- c. Bruce is an ATF investigator. He lives next to Billy Bob, a retired police officer. Bruce's wife's dog just wrecked Billy Bob's yard by digging holes in it. Billy Bob knows Bruce is an ATF investigator. Billy Bob does not care that Bruce is a federal employee. Because of what the dog did, Billy Bob walks up to Bruce after Bruce gets home from fishing and cold cocks him (knocks him out).

CORRECT: This is not a chargeable offense under the statute, because Bruce was assaulted for something that his dog did. At the time of the assault, Bruce was not in the performance of his duties (he was retired), nor was he assaulted for being a former federal employee or because of something that he did while he was a federal employee.

- d. Ralph is an ATF agent who roams the country side locating moonshine stills. While searching for a still in a forest, the still owner, in an attempt to draw Ralph away from the still, runs by Ralph and pushes him into a grove of bramble bushes so that Ralph will chase him as he runs away from the still. The still owner did not know that Ralph was an ATF agent.

INCORRECT: This is a chargeable offense under the statute, because Ralph was in the performance of his duties when he was pushed. The still owner runs the risk that the person he pushed was a federal employee in the performance of his duties.

Question Root

Roberts wants to smuggle counterfeit currency into Mexico. Through some acquaintances, he is placed in contact with an employee of the U.S. State Department who agrees to smuggle the counterfeit currency into Mexico in a diplomatic pouch, in exchange for a new Cadillac. They agree to meet in two weeks to make the exchange. However, the State Department employee reports this conversation to the FBI. At the subsequent meet, the FBI moves in and arrests Roberts. He is indicted for bribery under 18 U.S.C. § 201. Prior to trial, Roberts moves to dismiss the charge. His motion should be:

Answers

- a. Granted, because at most, this is only attempted bribery.
- b. Granted, because nothing of value changed hands.
- c. Denied, because offering something of value in exchange for an official act by a government employee meets the definition of bribery.
- d. Denied, because the FBI had no reasonable suspicion that Roberts engaged in bribery whatsoever.

Key and Feedback

- a. Granted, because at most, this is only attempted bribery.

INCORRECT: The elements of bribery only require a corrupt offer or acceptance of something of value.

- b. Granted, because nothing of value changed hands.

INCORRECT: See (a.) above.

- c. Denied, because a corrupt offering of something of value in exchange for an official act by a government employee meets the definition of bribery.

CORRECT: It is unnecessary for the government employee in this case to actually receive something of value. The crime is completed when the corrupt offer is made.

- d. Denied, because the FBI had a reasonable suspicion that Roberts engaged in bribery whatsoever.

INCORRECT: The standard for a lawful arrest is probable cause, not reasonable suspicion.

Question Root

Senator Demo casts the deciding vote on a bill that contains a big tax break to companies that import widgets from Mexico. Chuck is the president of a company named “Widgets International, Inc.” His company will benefit financially from the passage of this bill. To show his appreciation for his vote in favor of the bill, Chuck gives \$50, 000 cash to Senator Demo and pays for Senator Demo’s Caribbean vacation. A disgruntled member of Senator Demo’s staff reports this transaction to the FBI. The FBI should:

Answers

- a. close the case, as this is not a criminal offense.
 - b. close the case, as this is part of the normal political process.
 - c. investigate the case, as the facts presented constitute accepting a gratuity.
 - d. investigate the case, as the facts presented constitute bribery.
-

Key and Feedback

a. Close the case, as this is not a criminal offense.

INCORRECT: While the facts do not allege bribery, they do allege the acceptance of a gratuity and the case should be investigated.

b. Close this case, as this is part of the normal political process.

INCORRECT: See (a.) above.

c. Investigate this case, as the facts presented constitute accepting a gratuity.

CORRECT: Accepting a gratuity occurs when something of value was given to a public official for or because of an official act, in this case the senator’s vote on a piece of legislation.

d. Investigate the case, as the facts presented constitute bribery.

INCORRECT: The facts, as presented, do not meet the elements of bribery. The offer was not corrupt and the vote had occurred prior to Chuck approaching the Senator. The Senator did not act to obtain the money.

14. FCL 2

FIREARMS

Question Root

John, a college student, became psychologically depressed. He leaves school to participate in a voluntary in-patient mental health counseling, where he is treated with Thoramaxaphilisophazine, a fairly new addition to the controlled substances act. While being treated, John tried to enlist in the Army, but was rejected because he was using Thoramaxaphilisophazine, prescribed by a doctor. Thoramaxaphilisophazine is a controlled substance used to treat depression. On his way home from one of his counseling sessions, John was stopped for a traffic violation. Officers lawfully obtained his consent and searched his car. They found a firearm properly stored in the trunk pursuant to law. John told the police it was his pistol. Based on these facts is John allowed under federal law to possess the firearm?

ANSWERS

- a. John is not allowed to possess the firearm, because he was in an in-patient mental health counseling program.
- b. John is not allowed to possess the firearm, because he was treated with Thoramaxaphilisophazine, a controlled substance.
- c. John is not allowed to possess the firearm, because he was rejected for enlistment in the Army because of his drug treatment for depression.
- d. John is allowed to possess firearm.

KEY AND FEEDBACK

- a. John is not allowed to possess the firearm, because he was in an in-patient mental health counseling program.
INCORRECT: Commitment by a court to a mental institution, or an adjudication by a court that determined John was mentally defective, would preclude possession of a firearm.
- b. John is not allowed to possess the firearm, because he was treated with Thoramaxaphilisophazine, a controlled substance.
INCORRECT: Thoramaxaphilisophazine that is administered while under a doctor's care equates to use of lawfully administered drugs and thus is not a bar to possession of firearms.
- c. John is not allowed to possess the firearm, because he was rejected for enlistment in the Army because of his drug treatment for depression.
INCORRECT: Being the recipient of a Dishonorable Discharge would meet the requirements of being a military "Undesirable." Being rejected for enlistment because of drug treated depression is not a bar under the statute to possessing a firearm.
- d. John is allowed to possess firearms.
CORRECT: There are no statutory prohibitions identified in these facts what would prohibit John from possessing a firearm. It is the illegal consumption of controlled substances or addiction to controlled substance that is prohibited by statute.

15. FCL 2

FIREARMS

Question Root

Which of the following **cannot**, under any circumstances, be a firearms violation under the Gun Control Act?

ANSWERS

- a. Possession of a firearm by an illegal alien.
 - b. Possession of a firearm by a felon, who has a pardon for his felony conviction.
 - c. Possession of a firearm by someone with a state two year DUI misdemeanor conviction.
 - d. Possession of a firearm by someone who is using cocaine.
-

KEY AND FEEDBACK

- a. Possession of a firearm by an illegal alien.
INCORRECT: Anyone in this country illegally cannot possess firearms under the Gun Control Act.
- b. Possession of a firearm by a felon, who has a pardon for his felony conviction.
INCORRECT: If a pardon's language does not preclude possession of a firearm, then firearms may be possessed under the Gun Control Act. A person can be pardoned and still be precluded from possessing a firearm.
- c. Possession of a firearm by someone with a state 2 year DUI misdemeanor conviction.
CORRECT: A two misdemeanor DUI conviction under state law is a misdemeanor under federal law. This cannot be a firearms violation under the Gun Control Act.
- d. Possession of a firearm by someone who is using cocaine.
INCORRECT: Possessing a firearm while using controlled substances is a violation of the Gun Control Act.

QUESTION READING ISSUE: (in other words – 3 answers are Gun Control Act violations – one cannot be a violation: Which one is not a violation?)

16. FCL 2 FIREARMS

Question Root

A firearm was obtained as evidence from a crime scene. A brand new investigator trained at FLETC submits the correct information in order to trace the firearm. What will the firearms trace provide?

ANSWERS

- a. A trace will provide a list of all previous owners of the firearm.
 - b. A trace will provide a list of all firearms owned by the person who purchased the firearm.
 - c. A trace will provide a list of all related firearms used at the crime scene.
 - d. A trace will provide a list of the commercial participants and the first retail purchaser of the firearm.
-

Key and Feedback

- a. A trace will provide a list of all previous owners of the firearm.
INCORRECT: Generally, a trace will provide the commercial process that entails the manufacturing, exporting, importing, wholesaling and retailing of the firearm to the first retail purchaser. If the firearm is subsequently pawned or placed in the commercial process, those steps can be included in the process.
- b. A trace will provide a list of all firearms owned by the person who purchased the firearm.
INCORRECT: There is no national data base as to who owns what guns in the United States. There is a method for obtaining the original commercial retail process information that includes the retail sale of a firearm via a commercial process.
- c. A trace will provide a list of all related firearms used at the crime scene.
INCORRECT: Generally, a trace will provide the commercial process that entails the manufacturing, exporting, importing, wholesaling and retailing of the firearm to the first retail purchaser. If the firearm is subsequently pawned or placed in the commercial process, those steps can be included in the process.
- d. A trace will provide a list of the commercial participants and the first retail purchaser of the firearm.
CORRECT: A firearms trace will provide the commercial retail process from manufacturing to the subsequent initial retail purchase of the firearm (to include all intermediate retail) steps.

17. FCL 2

FIREARMS

Question Root

What information is required to trace a firearm?

ANSWER

- a. Retailer, model date of purchase and serial number.
- b. Manufacturer, wholesaler, retailer & first retail purchaser.
- c. Serial number, model, caliber / gauge, manufacturer.
- d. Manufacturer, serial number, retailer, date of purchase

Key and Feedback

- a. Retailer, model, date of purchase and serial number.
INCORRECT: A firearms trace requires: manufacturer, model, serial number, caliber/gauge.
- b. Manufacturer, wholesaler, retailer & first retail purchaser.
INCORRECT: A firearms trace requires: manufacturer, model, serial number, caliber/gauge.
- c. Serial number, model, caliber / gauge, manufacturer.
CORRECT: A firearms trace requires: manufacturer, model, serial number, caliber/gauge.
- d. Manufacturer, serial number, retailer, date of purchase
INCORRECT: A firearms trace requires: manufacturer, model, serial number, caliber/gauge.

18. FCL 2

FIREARMS

Question Root

Pursuant to federal statute, what items are illegal to possess in a federal facility?

ANSWER

- a. A knife with a blade under 2 ½ inches long.
- b. A knife that has a blade that is 2 inches long.
- c. A knife that has a blade that is 2 ¼ inches long.
- d. A knife that has a blade that is 2 1/2 inches long.

Key and Feedback

- a. A knife with a blade under 2 ½ inches long.
INCORRECT: A knife blade that is 2 1/2 inches long or longer is in violation of the statute.
- b. A knife that has a blade that is 2 inches long.
INCORRECT: A 2 ½ inch knife or longer is in violation of the statute.
- c. A knife that has a blade that is 2 ¼ inches long.
INCORRECT: A knife blade that is 2 1/2 inches long or longer is in violation of the statute.
- d. A knife that has a blade that is 2 1/2 inches long.
CORRECT: A knife blade that is 2 1/2 inches long or longer is in violation of the statute.

19. FCL 2
Question Root

FIREARMS

Pursuant to a federal firearm statute, which of the following firearms must be registered and a tax paid?

ANSWER

- a. A rifle that has a barrel length of exactly 16 inches.
- b. A shotgun that has a barrel length of 18 ¼ inches.
- c. A rifle that has an overall length of 26 ½ inches.
- d. A machine gun with a barrel length that is exactly 16 inches.

Key and Feedback

- a. A rifle that has a barrel length of 16 ¼ inches.
INCORRECT: A rifle barrel length to be legal must be at least 16 inches.
- b. A shotgun that has a barrel length of 18 ½ inches.
INCORRECT: A shotgun barrel length to be legal must be at least 18 inches.
- c. A rifle that has an overall length of 26 ½ inches.
NCORRECT: A rifle's overall length to be legal must be at least 26 inches.
- d. A machine gun with a barrel length that is exactly 16 inches.
CORRECT: All machine guns regardless of barrel length must be registered and a tax paid.

20. FCL 3 THEFT

Question Root

(FOR THEFT QUESTIONS – THE FACTS OF THE FIRST QUESTION ARE FOUNDATIONAL AND ARE USED TO BUILD THE SUBSEQUENT THREE QUESTIONS) -- Pay attention to the facts.

Frank, the Federal Agent, while TDY, parks his unmarked federal government vehicle outside Denny's Restaurant while he stops for breakfast. He leaves the keys in the ignition. While Frank is inside, Tom steals the vehicle so that he can sell it to a stolen car ring. Tom did not know it was a federal government vehicle when he took it. Based on these facts, should Tom be charged with violating 18 USC §641?

ANSWER

- a. Yes. Tom could be charged with conversion of government property under 18 USC § 641.
- b. No. Tom could not be charged under 18 USC § 641, because he did not know it was a federal government vehicle.
- c. Yes. Tom could be charged with theft of government property under 18 USC § 641.
- d. No. Tom could not be charged with any form of theft, because Frank consented to Tom's taking the vehicle by leaving the keys in the vehicle.

Key and Feedback

- a. Yes. Tom could be charged with conversion of government property under 18 USC § 641.
INCORRECT: The facts identify a theft of government of property (a taking with the intent to permanently deprive the government of the property). Theft by conversion involves a form of lawful possession that involves misuse or denying the government of use of the property.
- b. No. Tom could not be charged under 18 USC § 641, because he did not know it was a federal government vehicle.
INCORRECT: This is theft of government property. Lack of knowledge that it is government property is not a defense; it is not an element of the crime.
- c. Yes. Tom could be charged with theft of government property under 18 USC § 641.
CORRECT: Tom took federal government property with the intent to permanently deprive the government of the property.
- d. No. Tom could not be charged with any form of theft, because Frank consented to Tom's taking the vehicle by leaving the keys in the vehicle.
INCORRECT: This is theft of government property. Leaving keys in the car is not giving consent to take the vehicle.

21. FCL 3 THEFT

Question Root

Tom takes Frank's Fed car to his friend John who operates an illegal chop-shop. John has received cars from Tom in the past and likes dealing with him because Tom always brings him newer model cars. John's garage is raided by the police and Frank's car is discovered on the premises in various stages of "chopping." Under 18 U.S.C. §641 John should be charged with:

ANSWER

- a. Theft of stolen government property.
- b. Embezzlement of government property.
- c. Receiving stolen government property.
- d. Operating an illegal chop-shop

Key and Feedback

- a. Theft of stolen government property.
INCORRECT: John did not steal the property that was stolen. His offense is properly charged as receiving stolen government property, because he knew it was stolen.
- b. Embezzlement of government property.
INCORRECT: Embezzlement is rightful possession – wrongful taking. This offense is receiving stolen government property (John knew the property was stolen).
- c. Receiving stolen government property.
CORRECT: The government does not have to prove John knew it was government property, just that it was stolen property that belonged to the federal government.
- d. Operating an illegal chop-shop.
INCORRECT: There is no offense under 18 U.S.C. §641 for operating an illegal chop-shop.

22. FCL 3 THEFT

Question Root

Instead of taking Frank's car to the chop-shop, Tom takes Frank's car to Bill's garage to get an oil change. Bill runs a reputable oil change business out of his garage. He has no idea who Tom is. However, the police see Frank's car and recognize it as the one stolen from Frank the Federal Agent the previous day. Under 18 U.S.C. §641, John should be charged with:

ANSWER

- a. Possession of stolen government property.
- b. Embezzlement of government property.
- c. Conversion of government property.
- d. Nothing.

Key and Feedback

- a. Possession of stolen government property.
INCORRECT: There is no offense – Bill had no knowledge that the vehicle was stolen.
- b. Embezzlement of government property.
INCORRECT: There is no offense – Bill had no knowledge that the vehicle was stolen.
- c. Conversion of government property.
INCORRECT: There is no offense – Bill had no knowledge that the vehicle was stolen.
- d. Nothing.
CORRECT: There is no offense – Bill had no knowledge that the vehicle was stolen.

23. FCL 3 THEFT

Question Root

Fred the Federal Agent is responsible for his agency's 28 foot boat. The boat is only to be used for official law enforcement business. On the weekend Fred takes his buddies fishing on the boat, where they consume vast quantities of adult beverages. Under 18 U.S.C. §641, Fred should be charged with:

ANSWER

- a. Possession of stolen government property.
- b. Embezzlement of government property.
- c. Conversion of government property.
- d. Nothing.

Key and Feedback

- a. Possession of stolen government property.

INCORRECT: Fred committed the crime of conversion. Conversion is improper use of government property or denying the use of the property by the government.

- b. Embezzlement of government property.

INCORRECT: Embezzlement is rightful possession – wrongful taking with intent to permanently deprive. Fred committed the crime of conversion - improper use of government property or denying the government the use of the property.

- c. Conversion of government property.

CORRECT: Fred committed the crime of conversion - improper use (misuse) of government property or denying the government the use of the property.

- d. Nothing.

INCORRECT: Fred committed the crime of conversion. Conversion is improper use of government property or denying the government the use of the property.

24. FCL 3 THEFT

Question Root

Jill is employed by the U.S. Postal Service. Her daughter is getting married. In order to save money she brings all of the wedding invitations to work where she mails them using stamps allocated for sale to the public. She covers the loss by telling the postal inspector that the stamps were stolen by a customer who leaned across the counter and took them. She could be prosecuted under 18 USC § 641 for:

ANSWER

- a. Theft by making a false statement to the postal inspector.
- b. Theft of government property.
- c. Theft by embezzlement of government property.
- d. Theft by receiving stolen government property.

Key and Feedback

- a. Theft by making a false statement to the postal inspector.
INCORRECT: This would be a correct offense under 18 U.S.C. § 1001 (False Statement), but not under 18 U.S.C. § 641. The correct offense under 18 USC § 641 is embezzlement rightful possession – wrongful taking of government property.
- b. Theft of government property.
INCORRECT: The correct offense under 18 USC § 641 is embezzlement: rightful possession – wrongful taking.
- c. Theft by embezzlement of government property.
CORRECT: The correct offense under 18 USC § 641 is embezzlement: rightful possession – wrongful taking.
- d. Theft by receiving stolen government property.
INCORRECT: The correct offense under 18 USC § 641 is embezzlement: rightful possession – wrongful taking.

25. FCL 3 THEFT

Question Root

Clyde buys some stolen computers from Tim. Tim tells Clyde that they were part of a shipment hijacked from Gateway. Actually, Tim stole the computers from FLETC. Based on these facts, Clyde can be charged under 18 USC §641 with:

ANSWER

- a. Theft of government property.
- b. Receiving stolen government property.
- c. Embezzlement of government property.
- d. Nothing, because Clyde did not know the computers belonged to the government.

Key and Feedback

- a. Theft of government property.
INCORRECT: Clyde knew the computers were stolen. He runs the risk the computers are federal government property. The correct offense is receiving stolen government property.
- b. Receiving stolen government property.
CORRECT: Clyde knew the computers were stolen. He runs the risk the computers are federal government property. The correct offense is receiving stolen government property.
- c. Embezzlement of government property.
INCORRECT: Clyde knew the computers were stolen. He runs the risk the computers are federal government property. The correct offense is receiving stolen government property.
- d. Nothing, since he did not know the computers belonged to the government.
INCORRECT: Clyde knew the computers were stolen. He runs the risk the computers are federal government property. The correct offense is receiving stolen government property. The fact the he did not know the computers were government property is his tough luck. He runs a risk when he deals in stolen property that the property belongs to the federal government.

26. FCL 3

THEFT

Question Root

Joe, a federal investigator, is in need of quick money to tide him over the weekend, so that he can properly wine and dine Suzi Q on Saturday night. On Friday night after work, he pawns his issued weapon, knowing that he can retrieve it Monday morning with his IRS tax refund check that will get deposited to his account on Sunday night /early Monday morning. All of this can be accomplished before he has to go back to work. Based on these facts, can Joe be charged under 18 U.S.C. §641?

ANSWER

- a. Yes, theft of government property.
- b. Yes, conversion of government property.
- c. Yes, embezzlement of government property.
- d. No, nothing, so long as he gets the weapon out of pawn before he goes back to work on Monday morning.

Key and Feedback

- a. Yes, theft of government property.
INCORRECT: Theft requires a taking of government property with the intent to permanently deprive the government of the property. This offense is conversion, denying the government of the use of the property or misuse of government property.
- b. Yes, conversion of government property.
CORRECT: This offense is conversion, denying the government of the use of the property or misuse of government property. While the weapon is “in pawn” he is denying the government the use of the property, as well as misusing the property.
- c. Yes, embezzlement of government property.
INCORRECT: Embezzlement is rightful possession with a wrongful taking to permanently deprive the government of the property. This offense is conversion, denying the government of the use of the property or misuse of government property.
- d. No, nothing, so long as he gets the weapon out of pawn before he goes back to work.
INCORRECT: This offense is conversion, denying the government of the use of the property or misuse of government property.

27. FCL 3

THEFT

Question Root

Slick Willie stops at a truck stop. He sees a Roadway tractor-trailer parked in the lot with no lock on the cargo doors. He opens the doors and helps himself to several thousand pairs of gym shorts and t-shirts embroidered with the “FLETC” logo on the front and “Property of FLETC” on the back. The property was made under contract for FLETC, but has not yet been delivered. Slick Willie has no idea what FLETC is or what FLETC means. Is Slick Willie guilty of anything under 18 U.S.C. §641?

ANSWER

- a. Yes, embezzlement of government property.
- b. Yes, theft of government property.
- c. No, because the clothing was stolen at a truck stop and not at the FLETC facility.
- d. No, because Slick Willie had no idea what FLETC was.

Key and Feedback

- a. Yes, embezzlement of government property. **INCORRECT:**
Theft by embezzlement is rightful possession - wrongful taking; this is theft.
- b. Yes, theft of government property.
CORRECT: Someone who steals runs the risk that the property stolen is government property. Property made under contract for the government is government property. The government does not have to prove the suspect knew the property belonged to the government. All the government has to prove is that the property belongs to, or was made under contract for, the government.
- c. No, because the clothing was stolen from a truck stop and not the FLETC facility.
INCORRECT: Theft of government property is not dependent upon where the theft takes place. The sole issue is someone stole property that belongs to the government.
- d. No, because Slick Willie had no idea what FLETC was.
INCORRECT: Knowing the property belongs to the government is not an issue. The sole issue is the property that was stolen belongs to the federal government.

28. FCL 3 THEFT

Question Root

Joe, a federal investigator, is in need of some quick money to tide him over the weekend, because he has a hot date with Suzi Q on Saturday night. On Friday night after work, he pawns his government issued weapon, knowing that he can retrieve it Monday morning with his IRS tax refund check that will be deposited to his account on Sunday night /early Monday morning. On Saturday night, while Joe is on his hot date with Suzi Q, the pawn shop is burglarized by Al who steals several weapons to include Joe's pawned weapon. While the burglary of the pawnshop is being investigated, Al uses Joe's pawned weapon in an armed robbery of a liquor store. As he flees the liquor store robbery, Al is ultimately arrested with Joe's pawned weapon in his possession. Based on these facts, which of the following is correct?

ANSWER

- a. No one can be charged under 18 U.S.C. §641.
- b. Only Joe can be charged under 18 U.S.C. §641.
- c. Both Joe and Al can be charged under 18 U.S.C. §641.
- d. Only Al can be charged under 18 U.S.C. §641.

Key and Feedback

- a. No one can be charged under 18 U.S.C. §641.
INCORRECT: By pawning the property, Joe committed theft by conversion. Al stole government property. A person who steals assumes the risk that the property stolen belongs to the federal government property.
- b. Only Joe can be charged under 18 U.S.C. §641.
INCORRECT: Joe committed theft by conversion of government property. Al committed theft of government property. A person who steals assumes the risk that the property stolen belongs to the federal government property.
- c. Both Joe and Al can be charged under 18 U.S.C. §641.
CORRECT: By pawning the property, Joe committed theft by conversion. Al stole government property. A person who steals assumes the risk that the property stolen belongs to the federal government property.
- d. Only Al can be charged under 18 U.S.C. §641.
INCORRECT: By pawning the property, Joe committed theft by conversion. Al stole government property. A person who steals assumes the risk that the property stolen belongs to the federal government property.

29. FCL 3

FALSE STATEMENTS

Question Root

Tom sees Bob putting some of their office government computers into the trunk of his personal vehicle. Tom, thinking that Bob is stealing the computers, calls the local FBI office to report the theft. The FBI, as a result of a simple investigation, determines there was no theft, as Bob was simply taking the computers to the disposal office for turn-in prior to the office receiving new computers. Based on these facts, Tom can be charged with:

ANSWER

- a. Making a False Statement.
- b. Perjury.
- c. Filing a False Claim.
- d. Nothing.

Key and Feedback

- a. Making a False Statement.
INCORRECT: A false statement entails making a statement the person knows is not true. Tom honestly thought Bob was stealing office government property and reported what he knew. His statement was truthful. He did not lie.
- b. Perjury.
INCORRECT: Perjury is lying under oath. In this scenario, there is neither a lie nor an oath. Tom honestly thought Bob was stealing office government property. His statement was truthful – it was not a lie.
- c. Filing a False Claim.
INCORRECT: A false claim is a demand for money from the government that is false. No such false demand was made. (False claims are not covered in this course).
- d. Nothing.
CORRECT: Tom’s statement was the truth, as he knew the facts. Tom did not lie – he honestly thought Bob was stealing office government computers.

30. FCL 3

FALSE STATEMENTS

Question Root

Bubba calls the Secret Service and says he knows about a plot to kill the Attorney General of the US. This conversation is oral, and is not recorded, and not sworn. The Secret Service discovers that there is no plot to kill the Attorney General, Bubba made the whole thing up to get attention from his girlfriend. Has Bubba committed a federal offense under 18 U.S.C. §1001.

ANSWER

- a. No, because Bubba's statement that caused the government's investigation was not sworn.
- b. No, because Bubba's statement that caused the government's investigation was not recorded.
- c. Yes, because Bubba knew his motive that caused the government's investigation was to impress his girlfriend.
- d. Yes, because Bubba's statement that caused the government to investigate was known by Bubba not to be true.

Key and Feedback

- a. No, because Bubba's statement that caused the government's investigation was not sworn.
INCORRECT: False statements do not have to be sworn.
- b. No, because Bubba's statement that caused the government's investigation was not recorded.
INCORRECT: False statements do not have to be recorded.
- c. Yes, because Bubba's motive that caused the government's investigation was to impress his girlfriend.
INCORRECT: One's motive to make a false statement is not an element, nor is it relevant to the offense of false statement.
- d. Yes, because Bubba's statement that caused the government to investigate was known by Bubba not to be true.
CORRECT: Bubba made a false material statement, because he knew the statement was not true and that his statement caused the government to investigate the falsehood.

31. FCL 3

FALSE STATEMENTS

Question Root

Bob, being lawfully interviewed while in custody by a federal criminal investigator, was asked if he committed the crime. Bob answered “NO.” However, the investigator found overwhelming evidence, to include a video of the event, that Bob had in fact committed the crime. Has Bob committed an offense under 18 U.S.C. §1001, False Statements.

ANSWER

- a. No, because Bob, as a suspect, has a right to silence and does not have to talk to the police.
- b. No, because providing alibi information is not a false statement.
- c. Yes, because suspects in custody who lie about anything commit false statement offenses.
- d. Yes, because Bob lied to police about something the police need to know regarding the offense commits a false statement.

Key and Feedback

- a. No, because Bob, as a suspect, has a right to silence and does not have to talk to the police.
INCORRECT: Suspects who have a right to silence, commit false statements when they lie to the police about material issues.
- b. No, because providing alibi information is not a false statement.
INCORRECT: Suspects can always provide alibi information to the police, but they cannot lie about material issues if they choose to speak.
- c. Yes, because suspects in custody who lie about anything commit false statement offenses.
INCORRECT: Suspects in custody can waive their rights and provide statements if they choose to do so, however they cannot lie to investigators about material issues when they speak. If the issue is not material to the investigation, it is not a false statement under the statute even if it is not true.
- d. Yes, because Bob lied to police about something the police need to know regarding the offense commits a false statement.
CORRECT: False material statements are offenses under the statute. Lying to police, to include making an exculpatory “No” statement about something the police need to know is a material false statement. If Bob did not want to commit the offense, all he had to do was to remain silent.

**32. FCL 5 (CITP)
FCL 3 (UPTP)**

Entrapment

Question Root

Alex, an undercover agent, offers to provide Tom with the single remaining ingredient Tom needs to manufacture counterfeit US currency for a moderate share of the eventual proceeds. Tom agrees and they go into business together. When Tom is prosecuted for counterfeiting, will Tom have a valid entrapment defense?

ANSWER

- a. Yes, because Alex did not know that Tom was “a known counterfeiter.”
- b. Yes, because the defense requires two or more of the right parties to be part of the agreement and since Alex is an undercover agent, there can be no entrapment as Alex cannot formulate the intent.
- c. No, because there are two or more of the right parties agreed to commit the offense of counterfeiting.
- d. No, because Tom was predisposed.

Key and Feedback

- a. Yes, because Alex did not know that Tom was “a known counterfeiter.”
INCORRECT: Alex’s knowledge is not an issue regarding Tom being entrapped.
- b. Yes, because the defense requires two or more of the right parties to be part of the agreement and since Alex is an undercover agent, there can be no entrapment as Alex cannot formulate the intent.
INCORRECT: There is no entrapment since, Tom was predisposed.
- c. No, because there are two or more of the right parties agreed to commit the offense of counterfeiting.
INCORRECT: Two or more of the right parties applies to conspiracy, not entrapment.
- d. No, because Tom was predisposed.
CORRECT: Predisposition negates entrapment.

33. FCL 5 (CITP)
FCL 3 (UPTP)

Entrapment

Question Root

Alex fences stolen merchandise. An Undercover Agent walks in to make a purchase, but Alex is hesitant to sell to her. After speaking with the Undercover Agent for a while, Alex gets comfortable with her and eventually makes the sale. Does Alex have a valid entrapment defense?

ANSWER

- a. Yes, because the overt act took place before the undercover agent made the purchase.
- b. Yes, because the overt act of making the sale was in furtherance of the agreement.
- c. No, because the overt act of making the sale took place before the agreement.
- d. No, because Alex was in the business of being a fence.

Key and Feedback

- a. Yes, because the overt act took place before the undercover agent made the purchase.
INCORRECT: Alex was predisposed. Conspiracy concepts do not apply to this scenario.
- b. Yes, because the overt act of making the sale was in furtherance of the agreement.
INCORRECT: Alex was predisposed. Conspiracy concepts do not apply to this scenario.
- c. No, because the overt act of making the sale took place before the agreement.
INCORRECT: Alex was predisposed. Conspiracy concepts do not apply to this scenario.
- d. No, because Alex was in the business of being a fence.
CORRECT: Alex was predisposed.

**34. FCL 5 (CITP)
FCL 3 (UPTP)**

PARTIES

Question Root

Johnny shoplifted a candy bar (a misdemeanor.). While making his escape, he asks Bob to let him hide out in Bob's basement. Bob agrees and Johnny hides out in the basement. If these facts can be proven beyond a reasonable doubt, Bob should be found guilty of:

ANSWER

- a. Aiding and abetting the theft
- b. Theft
- c. Accessory after the fact
- d. Misprision of a misdemeanor

Key and Feedback

- a. Aiding and abetting the theft.
INCORRECT: To be charged with aiding and abetting a theft, Bob would have to provide assistance either before or during the offense.
- b. Theft
INCORRECT: Bob did not steal the candy bar, nor did he assist in the theft.
- c. Accessory after the fact
CORRECT: Bob assisted Johnny from being caught, prosecuted and punished after the offense occurred, thus Bob is an accessory after the fact.
- d. Misprision of a misdemeanor
INCORRECT: Misprision of a felony requires knowledge of a felony, concealment of the offense, and failure to report. There is no such thing as misprision of a misdemeanor offense.

**35. FCL 5 (CITP)
FCL 3 (UPTP)**

PARTIES

Question Root

Suzi Q sees her best friend shoplift a tube of lipstick. While her best friend is eyeing some mascara, Suzi Q, knowing that her friend will also shoplift the mascara, notices the store security guard intently scrutinizing her best friend. To save her best friend from facing a mascara shoplifting offense, Suzi Q causes a disturbance by fainting which distracts the security guard. During the distraction, her girlfriend takes the mascara without being caught. At no time did Suzi Q talk to her best friend, nor did her best friend at any time notice that it was Suzi Q who caused the disturbance that allowed her to successfully shoplift the mascara. If the government could prove all of the foregoing facts, which of the following offenses would be the appropriate criminal charge for Suzi Q's actions?

ANSWER

- a. Accessory after the fact
- b. Theft
- c. Aiding and abetting
- d. There is no criminal offense for Suzi Q's actions

Key and Feedback

- a. Accessory after the fact
INCORRECT: An accessory after the fact, assists the perpetrator of the offense from being caught, prosecuted, and punished after the offense has been committed. The assistance provided must occur after the offense is committed.
- b. Procures the commission.
INCORRECT: Suzi Q did not arrange to have her best friend commit the offense.
- c. Aiding and abetting
CORRECT: Suzi Q assisted her best friend during the commission of the shoplifting. Assisting the commission of the offense before the offense takes place or during the offense is the essence of aiding and abetting.
- d. There is no criminal offense for Suzi Q's actions.
INCORRECT: Suzi Q is an aider and abettor, as she assisted her girlfriend commit shoplifting.

36. FCL 4 (CITP)

CONSPIRACY

Question Root

Adam, an undercover FBI agent investigating bank robberies, Bob, an undercover DEA agent investigating how bank robbery money is being used to fuel the drug trade, and Charlie, a local bad guy, agree to rob the Federal Reserve Bank of Mudville, Ga. Have they formed the requisite intent for a federal conspiracy?

ANSWER

- a. Yes, because three people to the agreement formulated the intent to violate federal law.
- b. Yes, because there are at least two people to the agreement who formulated the intent to violate federal law.
- c. No, because only one of the three people involved in the agreement can actually formulate the intent to violate federal law.
- d. No, because it always takes more than 2 people to formulate the intent to violate federal law.

Key and Feedback

- a. Yes, because three people to the agreement formulated the intent to violate federal law.

INCORRECT: Two members to the agreement are federal law enforcement officers and they cannot formulate the intent.

- b. Yes, because there are at least two people to the agreement who formulated the intent to violate federal law.

INCORRECT: Two members to the agreement are federal law enforcement officers and they cannot formulate the intent.

- c. No, because only one of the three people involved in the agreement can actually formulate the intent to violate federal law.

CORRECT: A conspiracy requires two or more of the ‘right’ people to formulate the intent to violate federal law. Two of the three people are undercover agents. Undercover agents are not capable of formulating the intent.

- d. No, because it always takes more than 2 people to formulate the intent to violate federal law.

INCORRECT: It takes two people who are capable of formulating the intent to violate federal law. Here, only one of the three is capable of formulating the intent; agents working undercover are not capable of formulating the intent.

37. FCL 4 (CITP)

CONSPIRACY

Question Root

Adam, an undercover FBI agent investigating bank robberies, Bob, a recently fired Deputy Sheriff, and Charlie, a local bad guy, agree to rob the Federal Reserve Bank of Mudville, Ga. Do we have a federal conspiracy?

ANSWER

- a. Yes, because we have two or more of the right people who formulated the intent to violate federal law.
- b. Yes, because all three formulated the intent to violate federal law.
- c. No, because only two of the three can formulate the intent to violate federal law.
- d. No, because two of the three men have only formulated the intent to violate federal law.

Key and Feedback

- a. Yes, because we have two or more of the right people who formulated the intent to violate federal law.
INCORRECT: A conspiracy requires 2 or more people who can formulate the intent to violate federal law and one of the members to the agreement must commit an overt act after the agreement that is in furtherance of the agreement.
- b. Yes, because all three formulated the intent to violate federal law.
INCORRECT: A conspiracy requires 2 or more people who can formulate the intent to violate federal law and one of the members to the agreement must commit an overt act after the agreement that is in furtherance of the agreement.
- b. No, because only two of the three can formulate the intent to violate federal law.
INCORRECT: A conspiracy requires 2 or more people who can formulate the intent to violate federal law and one of the members to the agreement must commit an overt act after the agreement that is in furtherance of the agreement.
- c. No, because two of the three men have only formulated the intent to violate federal law.
CORRECT: A conspiracy requires 2 or more people who can formulate the intent to violate federal law and one of the members to the agreement must commit an overt act after the agreement which is in furtherance of the agreement. Here there is only an agreement. No overt act has been committed after the agreement by a member of the agreement that is in furtherance of the agreement.

38. FCL 4

CONSPIRACY

Question Root

Adam, an undercover FBI agent investigating bank robberies, along with Bob, a recently fired Deputy Sheriff, and Charlie, a local bad guy, agree to rob the Federal Reserve Bank of Mudville, USA. Once all 3 agree to rob the bank, Charlie, a former bank security specialist, locates the sketch of the bank he made in his spare time two years ago when he was considering robbing the bank. The sketch identifies the entrances and exits, as well as the perfect way to take the money from a specific bank teller without being observed by any of the bank cameras. Do we have a federal conspiracy?

ANSWER

- a. Yes, because at least two or more of the right people formulated the intent to violate federal law and a member to the agreement has committed an overt act in furtherance of the agreement.
- b. Yes, because all three formulated the intent to violate federal law and an overt act has been committed by a coconspirator in furtherance of the agreement.
- c. No, because despite the overt act to commit the crime being accomplished, all three indicated they could formulate the intent to violate federal law, but only two had the capacity to formulate the intent.
- d. No, despite having two or more of the right people who can formulate the intent, no overt act in furtherance of the agreement has been committed by a member of the agreement.

Key and Feedback

- a. Yes, because at least two or more of the right people formulated the intent to violate federal law and a member to the agreement has committed an overt act in furtherance of the agreement. **INCORRECT:** The overt act must be committed after the agreement – not before it.
- b. Yes, because all three formulated the intent to violate federal law and an overt act has been committed by a coconspirator in furtherance of the agreement. **INCORRECT:** The overt act must be committed after the agreement – not before it.
- c. No, because despite the overt act to commit the crime, all three formulated the intent to violate federal law but only two had the capacity to formulate the intent. **INCORRECT:** The overt act must be committed after the agreement – not before it.
- d. No, despite having two or more of the right people who can formulate the intent, no overt act in furtherance of the agreement has been committed by a member of the agreement. **CORRECT:** The overt act must be committed by a member of the agreement **after** the agreement – not before it. Thus no overt act in furtherance of the conspiracy has been committed – therefore there is no conspiracy.

39. FCL 4 CONSPIRACY

Question Root

Dr. Jones is married to a federal employee. The good doctor hates the federal government and soon grows weary of his “federal” wife as well. Dr. Jones conspires with a hit man to kill his wife simply because she is a federal employee and for no other reason. He pays the hit man the going rate for a contract killing. Thereafter, unbeknownst to the hit man, the doctor’s wife unexpectedly dies of natural causes. Unaware that the wife has already died, the hit man uses the contract killing money to buy a rifle to use in the murder. Do we have a conspiracy?

ANSWER

- a. No, because the overt act of obtaining the rifle committed by a party to the agreement, took place after the wife died.
- b. No, because the object of the agreement cannot be completed – the wife died before she could be killed.
- c. Yes, but only because the object of the agreement could be achieved when the agreement was made prior to the wife’s death.
- d. Yes, but only because there was an agreement and an overt act in furtherance of the agreement took place.

Key and Feedback

- a. No, because the overt act of obtaining the rifle committed by a party to the agreement, took place after the wife died.

INCORRECT: There was an agreement between two people who formulated the intent to kill employee. Impossibility is not a defense.

- b. No, because the object of the agreement cannot be completed – the wife died before she could be killed.

INCORRECT: Impossibility is not a defense.

- c. Yes, but only because the object of the agreement could be achieved when the agreement was made prior to the wife’s death.

INCORRECT: There was an agreement between two people who formulated the intent to kill a federal employee, solely because she was a federal employee. Impossibility is not a defense.

- d. Yes, but only because there was an agreement and overt act in furtherance of the agreement took place.

CORRECT: Two people formulated the intent to violate federal law and one of them committed an overt act (bought the rifle) in furtherance of the agreement. Impossibility is not a defense.

40. FCL 4 CONSPIRACY

Question Root

Adam, Bob and Charlie are college roommates. They agree to rob the 1st Federal Reserve Bank of Mudville, Ga. Bob, unbeknownst to the other two, steals some ski masks to use in the robbery. Just prior to stealing the ski masks, the bank's charter was revoked – the bank no longer exists. Although the bank no longer exists, the beautiful brick bank building is still standing? Are Adam, Bob and Charlie going to be criminally liable for a conspiracy to rob the bank?

ANSWER

- a. No, because the bank's charter has been revoked.
- b. No, because there can be no conspiracy, when the object of the agreement is impossible to obtain because the bank lost its charter prior to Bob stealing the ski masks.
- c. Yes, because the bank building is still standing, thus the agreement is still valid.
- d. Yes, because the overt act followed the agreement to rob the bank.

Key and Feedback

- a. No, because the bank's charter has been revoked.

INCORRECT: There is an agreement and an overt act in furtherance of the agreement occurred. There is a conspiracy to rob the bank. Impossibility, due to the loss of the bank charter, is not a defense.

- b. No, because there can be no conspiracy, when the object of the agreement is impossible to obtain – the bank lost its charter prior to Bob stealing the ski masks.

INCORRECT: Impossibility is not a defense.

- c. Yes, because the bank building is still standing, thus the agreement is still valid.

INCORRECT: Impossibility is not a defense.

- d. Yes, because the overt act followed the agreement to rob the bank.

CORRECT: There is an agreement and an overt act in furtherance of the agreement occurred. There is a conspiracy to rob the bank. Impossibility, due to the loss of the bank charter, is not a defense.

41. FCL 4 CONSPIRACY

Question Root

Adam, Bob and Charlie agree to rob the 2nd Federal Reserve Bank of Mudville, Ga. Bob, without telling the other two, steals guns for the job. Later in the day, Bob secretly enlists Dave to be an extra lookout. Dave does not know the other members, but does agree to be just the lookout and nothing more. Bob, on his way back to a meeting with Adam and Charlie, steals a new van for use in the robbery and kills the van driver in the process of stealing it, so that there would be no witnesses. After this theft but before the robbery, Charlie tells Adam he wants out of this idiotic plan and goes to the movies. When the bank is robbed, Dave never shows up to be the lookout. During the robbery, a bank guard is killed. After the bank is robbed, Dave turns himself into the police and confesses. Which of the following correctly identifies the entire criminal liability of a member to the conspiracy?

ANSWER

- a. Adam's liability: theft of guns, theft of van, murder of the van driver, bank robbery and murder of bank guard.
- b. Bob's liability: theft of guns, murder of the van driver, bank robbery and murder of the bank guard.
- c. Charlie's liability: theft of the guns, theft of the van, and murder of the van driver.
- d. Dave's liability: theft of the van, murder of the van driver, bank robber, murder of the bank guard and conspiracy to rob the bank.

Key and Feedback

- a. Adam's liability: theft of guns, theft of van, murder of the van driver, bank robbery and murder of bank guard.
INCORRECT: Adam is also liable for conspiracy to rob the bank. The offense of conspiracy does not merge with the ultimate offense of bank robbery.
- b. Bob's liability: conspiracy to rob the bank, theft of guns, murder of the van driver, bank robbery and murder of the bank guard.
INCORRECT: Bob is also liable for theft of the van.
- c. Charlie's liability: theft of the guns, theft of the van, and murder of the van driver.
INCORRECT: Charley is also liable for conspiracy to rob the bank.
- d. Dave's liability: theft of the van, murder of the van driver, bank robbery, and murder of the bank guard and conspiracy to rob the bank.
CORRECT: Dave joined an on-going conspiracy and did not effectively withdraw from it, thus he is liable for all the foreseeable events while he is a member, even though he did not participate in them. Theft of the guns took place prior to joining the conspiracy.

THIS QUESTION ENSURES THE STUDENT WILL DIAGRAM THE EVENTS – DO NOT RELY UPON MEMORY!

42. FCL 4 CONSPIRACY

Question Root

Sue, Allie, and Phoebe agree to rob the 1st Federal Reserve Bank of Waycross, Ga. Sue, without telling the other two, steals guns for the job. Later in the day, Allie secretly enlists Billie Bob to be an extra lookout at the bank robbery. Billie Bob does not know the other members, but does agree to be just the lookout and nothing more. Allie on her way to a meeting with Sue and Phoebe, steals a new BMW for use as the getaway car in the robbery. She kills the BMW driver in the process of stealing it. After this theft but before the robbery, Phoebe tells Sue that she is thinking about quitting the conspiracy and goes to a spa to unwind and think about it. When the bank is robbed, Billie Bob never shows up to be the lookout, because he was being chased by police for stealing a diamond ring he planned to give to Allie, because she asked him to join in the bank robbery. While Phoebe is still at the spa, the bank is robbed and a bank guard is killed by Allie. After the bank is robbed, Billie Bob is caught by the police. Which of the following correctly identifies the entire criminal liability of a member to the conspiracy?

ANSWER

- a. Allie by virtue of being a co-conspirator is guilty of all criminal offenses committed by all coconspirators.
- b. Sue is liable for every criminal offense committed by her co-conspirators to include conspiracy to rob the bank, bank robbery and murder of the bank guard.
- c. Billie Bob is liable for all criminal offenses committed by every co-conspirator to include his theft of the ring.
- d. Phoebe is liable for theft of the guns, theft of the BMW, the murder of the BMW driver, conspiracy to rob the bank, bank robbery and murder of the bank guard.

Key and Feedback

a. Allie is guilty of all the criminal offenses committed by co-conspirators.

INCORRECT: Allie is not liable for the theft of the ring as it was not committed in furtherance of the conspiracy; it was an independent act of Billie Bob.

b. Sue is liable for every criminal offense committed by her co-conspirators to include conspiracy to rob the bank.

INCORRECT: Billie Bob's theft of the ring was committed by a co-conspirator, but it was an independent act that was not in furtherance of the conspiracy - she is not liable for theft of the ring.

c. Billie Bob is liable for all criminal offenses committed by every co-conspirator to include his theft of the ring.

INCORRECT: Billie Bob was not a member of the conspiracy when the guns were stolen; he is liable for theft of the ring and all offense committed after he joined the conspiracy.

d. Phoebe is liable for theft of the guns, theft of the BMW, the murder of the BMW driver, conspiracy to rob the bank, bank robbery and murder of the bank guard.

CORRECT: Phoebe did not withdraw from the conspiracy. Thus, she is liable for all criminal acts committed while she was a member of the conspiracy to include theft of the guns, theft of the BMW and murder of its driver, and conspiracy to rob the bank, bank robbery and murder of the guard. She is not liable for theft of the ring as it was not committed in furtherance of the conspiracy.

43. FCL 4 CONSPIRACY

Question Root

Larry, Curly and Moe agree to rob the 3rd Federal Reserve Bank of Mudville., Ga. Curly, unbeknownst to the others, goes to a pawn shop and steals 3 automatic rifles to use in the robbery. Larry then steals a painters van to use in the robbery and has it repainted with water based paint so it can be easily washed to change its color. Thereafter, Moe talks his girlfriend Suzi Q into being a lookout. Just prior to robbing the bank, Larry, realizing they are the 3 Stooges, gets cold feet and calls the cops and confesses to what he did in the scheme. The cops round up Moe and are looking for Curly – they don't know anything about Suzi Q being involved (yet). Larry, readily confess to his part in the proposed bank robbery. Later the same day, Suzi Q, not realizing that some of the others have been arrested, decides that if she is going to be a lookout she will need a gun just in case something happens, so she shoplifts a .45 caliber pistol at busy gun show. Which of the following correctly identifies the criminal liability of one of the co-conspirators?

ANSWER

- a. Curly is only criminally liable for theft of the automatic rifles and shoplifting of the .45 pistol and bank robbery.
- b. Larry is only liable for theft of the van, shoplifting of the .45 pistol and bank robbery.
- c. Moe is only liable for theft of the automatic rifles, theft of the van, shoplifting of the .45 pistol.
- d. Suzi Q is only liable for shoplifting the .45 caliber pistol and conspiracy to rob the bank.

Key and Feedback

- a. Curly is only criminally liable for theft of the automatic rifles, theft of the van, and shoplifting of the .45 pistol and bank robbery.
INCORRECT: Curly is also liable for conspiracy to rob the bank; the bank was never robbed.
- b. Larry is only liable for theft of the van, shoplifting of the .45 pistol and bank robbery.
INCORRECT: He is also liable for conspiracy to rob the bank but not bank robbery, as the bank was never robbed.
- c. Moe is only liable for theft of the automatic rifles, theft of the van, and shoplifting of the .45 pistol.
INCORRECT: Moe is also liable for conspiracy to rob the bank.
- d. Suzi Q is only liable for shoplifting the .45 caliber pistol and conspiracy to rob the bank robbery.
CORRECT: She joined an ongoing conspiracy and committed the last criminal act of for her co-conspirators liability – she shoplifted the .45 caliber pistol.

44. FCL 6 FRAUD

Question Root

Over dinner at a local hog trough restaurant, Billie Bob and Bubba discuss the sad state of affairs of fine dining in local area. Billie Bob, realizing that Bubba is really a great cook and there is an opportunity to make a buck here, informs Bubba that for \$4,500 he can get Bubba, a fully recognized certified educational degree with SUMA CUM LAUDE honors from the famous Blue Ribbon Southern School of Culinary Art. With this degree, Bubba could pursue his lifelong dream of being a chef at a fine restaurant in the local Brunswick, Ga. area, which would assuredly raise the bar regarding local fine dining. Bubba, to obtain \$4,500 pawns the title to his prized, tricked out, brand new, pristine, turbo diesel, 4x4, Ford, F650 truck as collateral. Once the loan is obtained, Bubba mails a \$4,500 certified check to Billie Bob. Bubba, 4 weeks later, received a degree from culinary art school via UPS. Unfortunately for Bubba, there is no culinary art school by that name in existence. Billie Bob, based on these facts, can be correctly charged with:

ANSWER

- a. Mail Fraud
- b. Wire Fraud
- c. Travel Fraud
- d. Food Fraud

Key and Feedback

- a. Mail Fraud
CORRECT: A scheme using the mail or interstate carrier to obtain money or property fraudulently is mail fraud. NOTE: there is no monetary threshold for this offense.
- b. Wire Fraud
INCORRECT: Wire fraud requires electrons to cross state or international lines as part of a scheme to defraud; this is not the case here, as of yet. There are no facts showing the cashing of the check dealt with interstate commerce. When the check is cashed, there is a very strong likelihood that wire fraud will be involved.
- c. Travel Fraud
INCORRECT: Travel fraud requires the victim to travel for the purposes of defrauding him of \$5,000 or more.
- d. Food Fraud
INCORRECT: This could never happen here!

45. FCL 6 FRAUD

Question Root

Bubba, never satisfied with just a local culinary institute degree of dubious value, decides to obtain a “real” degree. To this end, while Bubba is in his Georgia home, he replies to a newspaper ad placed by Billie Bob in a newspaper that is distributed throughout the entire southeast of the United States. Ironically, the newspaper is actually published in New York. The ad in the newspaper, which Bubba receives electronically on his home computer, promises a Culinary Institute of America (CIA) degree bound in leather to anyone who mails in \$2,500 with their biographical data to include social security number to a post office box in Poughkeepsie, NY. Bubba, realizing that the CIA is the real deal, a truly worldwide recognized culinary school, quickly pawned his brand new, turbocharged, air conditioned, 4 x 4, ATV and mailed off the \$2,500 in order to obtain a quality culinary institute degree. His check is quickly cashed, but his leather bound degree is never received. Bubba sent off two separate postcards inquiring as to what has become of his degree, but he never obtains a response. Woe is Bubba! What is the appropriate charge for Billie Bob’s nefarious scheme?

ANSWER

- a. Mail fraud only.
- b. Wire fraud only.
- c. Mail and Wire fraud.
- d. Newspaper fraud only.

Key and Feedback

- a. Mail fraud only.
INCORRECT: The newspaper was sent electronically which involved a scheme to defraud using electrons; this is wire fraud. Since Bubba mailed off two post cards to check on his degree, there is also mail fraud.
- b. Wire fraud only.
INCORRECT: Facts indicate both mail (post cards) and wire fraud (newspaper was delivered electronically).
- c. Mail and Wire fraud.
CORRECT: Post cards mailed (mail fraud) – newspaper delivered electronically (wire fraud).
- d. Newspaper fraud only.
INCORRECT: No such offense is found in federal criminal statutes. In the real world, whether or not there is or is not newspaper fraud, depends on the paper you read!

46. FCL 6 FRAUD

Question Root

Being completely frustrated in his efforts to become a culinary expert, Bubba decides to make some real money. Bubba devises an investment scheme that promises 20% return every month on an investment of an offshore gambling operation. People readily joined his investment operation. At the end of the end of the month, Bubba mailed out the initial investors 20% return and encouraged them to leave their money fully invested and to seek out others who want to make solid returns as well. He enclosed a flyer as a handout for their use. Each month he paid out 20% returns or sent an accounting statement indicating the promised returns were fully invested in their accounts. In reality, there was no offshore gambling operation. Bubba was paying off original investors with money obtained from new investors. Bubba is guilty of:

ANSWER

- a. Mail Fraud
- b. Wire Fraud
- c. Offshore Gambling Fraud
- d. Nothing

Key and Feedback

- a. Mail Fraud
CORRECT: Bubba used the mail in a scheme to defraud.
- b. Wire Fraud
INCORRECT: Bubba did not use electrons that crossed state lines (went interstate)
- c. Offshore Gambling Fraud
INCORRECT: There is no such offense
- d. Nothing
INCORRECT: Bubba committed mail fraud by using the mail as part of scheme to defraud.

47. FCL 6 FRAUD

Question Root

Billy Joe, who lives in Atlanta heard about Bubba's super 20% per month gambling investments from an email his brother Leroy, who sent the gambling flyer to him from Seattle. Since Billy Joe just won a lot of money on a scratch-off lottery ticket, he decided to do some proper investing, so that he could count on receiving income month after month. Billy Joe mails an application form he found in an advertisement that arrived in the mail along with cash to open the account. Billy Joe is surprised to learn that Bubba's office address is just 10 blocks away from where he works in Atlanta. Has Bubba committed an offense under the fraud statutes?

ANSWER

- a. Yes, but only mail fraud.
- b. Yes, but just mail and wire fraud.
- c. No, mail fraud was not committed because Bubba never used the mail.
- d. No, wire fraud was not committed because Bubba did not use wire communications.

Key and Feedback

- a. Yes, but only mail fraud.
INCORRECT: Wire is appropriate as the interstate email was reasonably foreseeable.
- b. Yes, but just mail and wire fraud.
CORRECT: Leroy's email from Seattle to Atlanta is a count of wire fraud, as it is reasonably foreseeable the information would be passed around and that others would join in. Mail fraud is appropriate based on mailing the application form.
- c. No, mail fraud was not committed because Bubba never used the mail.
INCORRECT: Although Bubba may not have used the mail, it is reasonably foreseeable that others would mail in applications, which is what Billy Joe did.
- d. No, wire fraud was not committed because Bubba did not use wire communications that went interstate.
INCORRECT: It is reasonably foreseeable that someone (it does not have to be Bubba) might email the information in the flyer, thus wire fraud is an appropriate charge because we have interstate communication using email regarding a scheme to defraud. In this case, Billy Joe received the email flyer from BUBBA, his brother.

49. FCL 6 ITSP

Question Root

Mr. Chainlink, the local Brunswick, Ga. fence of stolen goods, has a stash of quality stolen goods valued at \$25,000 he obtained for pennies on the dollar in Brunswick, Ga. from a former business associate in the stolen goods business. Hearing that his stash of stolen goods can bring big bucks in Orlando, Fl., he asks his girlfriend and business partner Suzi Q to drive from Miami, Fl. so that she can take his stash of stolen goods from Brunswick to Orlando for a quick sale. Unbeknownst to Chainlink, his source of these stolen goods actually stole the property in Auburn, Al. His source of the stolen goods told a friend how Chainlink obtained the stolen goods. The friend turns out to be a government informant who tells the cops, which results in the Chainlink's arrest. Can Chainlink be prosecuted in Brunswick, Ga for interstate transportation of stolen property if he gets arrested prior to Suzi Q taking the goods to Orlando, Fl.?

ANSWER

- a. No, because Suzi Q had not yet moved the goods to Florida.
- b. No, because he obtained the stash of goods in Georgia and not Alabama.
 - c. Yes, because he obtained the stash of goods in Georgia.
 - d. Yes, because Suzi Q is his girlfriend and business partner came from Miami, Fl. to Brunswick, Ga.

Key and Feedback

- a. No, because Suzi Q had not yet moved the goods to Florida.

INCORRECT: Chainlink possessed stolen goods that were transported in interstate commerce (Alabama to Georgia) valued at \$5,000 or more. He knew they were stolen. The government does not have to prove he knew they were transported in interstate commerce.

- b. No, because he obtained the stash of stolen goods in Georgia and not Alabama.

INCORRECT: Chainlink possessed stolen goods that were transported in interstate commerce valued at \$5,000 or more. He knew they were stolen. The government does not have to prove he knew they were transported in interstate commerce from Auburn to Brunswick in interstate commerce.

- c. Yes, because he obtained the stash of goods in Georgia. **CORRECT:** Chainlink obtained the stolen goods in Georgia. The stolen goods were transported in interstate commerce from Auburn, Al. tp Brunswick, Ga. and were valued at \$5,000 or more. He knew they were stolen. The government does not have to prove he knew they were transported in interstate commerce.

- d. Yes, because Suzi Q is his girlfriend and business partner came from Miami, Fl. to Brunswick, Ga. **INCORRECT:** Chainlink obtained the stolen goods in Georgia. The stolen goods were transported in interstate commerce from Auburn, Al and were valued at \$5,000 or more. He knew they were stolen. The government does not have to prove **he knew** they were transported in interstate commerce. Suzi Q being his girlfriend and business partner is not an issue here even if came to Georgia from Florida.

50. FCL 6 ITSP

Question Root

Charles, a retired federal employee moves to Sea Island, GA. His next door neighbor, Brandy Snifter, is a widow worth several billion dollars. Seeing an opportunity to make some fast fraud money, Charles goes into action. Following some wining and dining, Charles convinces Brandy to visit a subdivision development of multi-million dollar homes he allegedly is building in Ponte Hydro, FL. There is such a subdivision being built in Ponte Hydro, Fl., just not by Charles. Charles, knowing that construction in Ponte Hydro has been halted and no one will be around, invites Brandie to take a guided tour around the development with his girlfriend Suzi Q. Brandie visits the project at Charles' behest. Suzi Q gives Brandie a cook's tour of the development for the express purpose of having Brandie invest 50 million dollars in "Charles' fraudulent development project" which does not really exist. Is Charles guilty of travel fraud?

ANSWER

- a. No, because Suzi Q traveled to Ponte Hydro, Fl. and gave the tour to Brandie.
- b. No, because no money actually changed hands.
- c. Yes, because Suzi Q traveled to Ponte Hydro, Fl.
- d. Yes, because Charles enticed Brandi to travel to Ponte Hydro, Fl. for a cook's tour given by Suzi Q.

Key and Feedback

- a. No, because Suzi Q traveled to Ponte Hydro, Fl. and gave the tour to Brandie.

INCORRECT: Travel fraud requires the victim to travel interstate for the purpose of defrauding the victim of \$5,000 or more.

- b. No, because no money actually changed hands.

INCORRECT: There is no requirement for money to change hands to perpetrate travel fraud. Travel fraud requires the victim to travel interstate for the purpose of defrauding the victim of \$5,000 or more.

- c. Yes, because Suzi Q traveled to Ponte Hydro, Fl.

INCORRECT: Travel fraud requires the victim to travel interstate for the purpose of defrauding the victim of \$5,000 or more.

- d. Yes, because Charles enticed Brandi to travel to Ponte Hydro, Fl. for a cook's tour given by Suzi Q.

CORRECT: Travel fraud requires the victim to travel interstate for the purpose of defrauding the victim of \$5,000 or more. He tried to get her to invest in a development that did not exist

51. FCL 6 ITSP

Question Root

Charles worked for the Ajax liquor store in Brunswick GA. The home office for Ajax is in Jacksonville, FL. While the boss was at lunch, Charles stole a blank company check drawn on the AA Bank in Jacksonville, FL. He wrote it out to himself for \$4,999.00 and forged his boss's signature. He then took it to his Brunswick, GA bank, endorsed it and the bank cashed it. If the check is properly processed, will Charles actions violate the Interstate Transportation of Stolen Property Act (ITSP)?

ANSWER

- a) No, because he did not transport the check interstate.
- b) No, because the amount of the check is less than \$5,000.00.
- c) No, because his endorsing the back of the check does not constitute an ITSP violation.
- d) Yes, because the check will enter interstate commerce as part of the collection process.

Key and Feedback

- a. No, because he did not transport the check interstate.
INCORRECT: There is no requirement that Charles physically transport the check.
- b. No, because the amount of the check is less than \$5,000.00
INCORRECT: There is no monetary amount required for counterfeit securities.
- c. No, because his endorsing the back of the check does not constitute an ITSP violation
INCORRECT: Charles forged his boss's signature on the front of the check.
- d. Yes, because the check will enter interstate commerce as part of the collection process.
CORRECT: A forged security (check) placed in interstate commerce via the banking collection process is counterfeiting securities pursuant to ITSP. The check, drawn on a Florida bank that is cashed in Georgia, will be transported interstate to Florida as part of the banking collection process.

52. DRUGS

Question Root

At

a routine DUI checkpoint stop, John Doe was arrested for drinking one to many alcoholic drinks. His car was searched incident to the arrest and the police found two ounces of cocaine under the passenger seat. What must the government prove to convict John Doe for possession of this controlled substance?

ANSWER

- a. The government only has to prove the substance car was cocaine.
- b. The government only has to prove the substance was in possession of John Doe.
- c. The government only has to prove John Doe knew it was illegal to possess cocaine.
- d. The government only has to prove the substance knowingly or intentionally possessed by John Doe was the controlled substance, cocaine.

Key and Feedback

- a. The government only has to prove the substance was cocaine.
INCORRECT: The government must prove John Doe knowingly or intentionally possessed cocaine, a controlled substance.
- b. The government only has to prove the substance was in possession of John Doe.
INCORRECT: The government must prove John Doe knowingly or intentionally possessed cocaine, a controlled substance.
- c. The government only has to prove John Doe knew it was illegal to possess cocaine.
INCORRECT: The government must prove John Doe knowingly or intentionally possessed cocaine, a controlled substance.
- d. The government only has to prove the substance knowingly or intentionally possessed by John Doe was the controlled substance, cocaine.
CORRECT: The government must prove John Doe knowingly or intentionally possessed cocaine, a controlled substance.

53. DRUGS

Question Root

To determine if a substance the police found in a search incident to arrest is a controlled substance, the government will rely upon:

ANSWER

- a. The schedules set forth in Title 21 United States Code.
- b. The suspect to tell them if the controlled substance is controlled or not.
- c. The international encyclopedia of controlled substances.
- d. The Code of Federal Regulations published by the Federal Government

Key and Feedback

- a. The schedules set forth in Title 21 of the United States Code.

CORRECT: A substance is a controlled substance if it is found in the scheduled of controlled substances found in Title 21 of the United States Code.

- b. The suspect to tell them if the controlled substance is controlled or not.

INCORRECT: A substance is a controlled substance if it is found in the scheduled of controlled substances found in Title 21 of the United States Code.

- c. The **international encyclopedia of controlled substances.**

INCORRECT: A substance is a controlled substance if it is found in the scheduled of controlled substances found in Title 21 of the United States Code.

- d. The Code of Federal Regulations published by the Federal Government.

INCORRECT: A substance is a controlled substance if it is found in the scheduled of controlled substances found in Title 21 of the United States Code.

54. DRUGS

Question Root

Pursuant to a search warrant, the police found in John Doe's apartment 10 kilos of a substance that was later determined to be cocaine. To convict John Doe of possession with intent to distribute cocaine, the government will have to prove

- a. John Doe was in possession of the cocaine.
- b. John Doe intentionally possessed the cocaine.
- c. John Doe knowingly possessed the cocaine.
- d. John Doe knowingly or intentionally possessed with intent to distribute cocaine which is a controlled substance under the schedules listed in Title 21 of the United States Code.

Key and Feedback

- a. John Doe was in possession of the cocaine.

INCORRECT: Knowing or intentional possession of cocaine with intent to distribute are the elements of the offense which must be proven beyond a reasonable doubt.

- b. John Doe intentionally possessed the cocaine.

INCORRECT: Knowing or intentional possession of cocaine with intent to distribute are the elements of the offense which must be proven beyond a reasonable doubt.

- c. John Doe knowingly possessed the cocaine.

INCORRECT: Knowing or intentional possession of cocaine with intent to distribute are the elements of the offense which must be proven beyond a reasonable doubt.

- d. John Doe knowingly or intentionally possessed with intent to distribute cocaine which is a controlled substance under the schedules listed in Title 21 of the United States Code.

CORRECT: This identifies all the elements of the offense which must be proven beyond a reasonable doubt.

COURTROOM TESTIMONY PRACTICE EXAM

1. COURTROOM TESTIMONY

Question Root

While testifying in court regarding an arrest and a search of a suspect, you are asked if your partner saw the same things that you did. How do properly respond?

ANSWER

- a. Guess as to what your partner saw.
- b. Lock your partner in to the events that you think your partner saw.
- c. Lie as to what your partner saw.
- d. State you cannot testify as to what your partner saw.

Key and Feedback

- a. Guess as to what your partner saw.
INCORRECT: Allow your partner to testify as to what your partner saw – do not testify as to what he saw; only your partner can testify as to what your partner saw.
- b. Lock your partner in to the events that you think your partner saw.
INCORRECT: Allow your partner to testify as to what your partner saw – do not testify as to what he saw; only your partner can testify as to what your partner saw.
- c. Lie as to what your partner saw.
INCORRECT: Allow your partner to testify as to what your partner saw – do not testify as to what he saw; only your partner can testify as to what your partner saw.
- d. State you cannot testify as to what your partner saw.
CORRECT: Allow your partner to testify as to what your partner saw – do not testify as to what he saw; only your partner can testify as to what your partner saw.

2. COURTROOM TESTIMONY

Question Root

When asked a question - you answer it, but the defense attorney is still looking at you in expectation that more information will be forthcoming. What should you do?

ANSWER

- a. Ask the judge if you should continue to provide more information.
- b. Ask the defense attorney what he is looking for.
- c. Ask the prosecutor what the defense attorney is looking for
- d. Wait for the next question to be asked.

Key and Feedback

- a. Ask the judge if you should continue to provide more information.
INCORRECT: Simply wait for the next question to be asked.
- b. Ask the defense attorney what he is looking for.
INCORRECT: Simply wait for the next question to be asked.
- c. Ask the prosecutor what the defense attorney is looking for.
INCORRECT: Simply wait for the next question to be asked.
- d. Wait for the next question to be asked.
CORRECT: Simply wait for the next question to be asked.

3. COURTROOM TESTIMONY

Question Root

What is the proper way of addressing a situation where the defense attorney asks a follow-on question that simply rephrases the previously asked question to which you have already provided a thorough response?

- a. Respond in a sarcastic manner.
- b. Respond by asking the defense attorney why he is asking the same question again?
- c. Respond by asking the prosecutor if the defense attorney is allowed to play these types of games in a criminal trial.
- d. Respond by saying: "As I previously stated"

Key and Feedback

- a. Respond in a sarcastic manner.
INCORRECT: Respond by saying: "As I previously stated"
- b. Respond by asking the defense attorney why he is asking the same question again?
INCORRECT: Respond by saying: "As I previously stated"
- c. Respond by asking the prosecutor if the defense attorney is allowed to play these type of games in a criminal trial.
INCORRECT: Respond by saying: "As I previously stated"
- d. Respond by saying: "As I previously stated"
CORRECT: This is how a witness addresses the repetitive question situation.

4. COURTROOM TESTIMONY

Question Root

The judge has suppressed some evidence that you obtained during the execution of a search warrant. While testifying at trial before a jury, you are asked about the evidence you found during the execution of the warrant. What is the proper way to address the evidence that was suppressed?

ANSWER

- a. Testify to what you found to include the suppressed evidence.
- b. Testify to what you found and inform the jury the evidence that was suppressed.
- c. Testify to what you found and tell the jury that the judge suppressed some of the evidence.
- d. Testify to what you found, but do not mention the suppressed evidence, unless specifically asked a question about it.

Key and Feedback

- a. Testify to what you found to include the suppressed evidence.
INCORRECT: Testify to what you found, but do not mention the suppressed evidence, unless specifically asked a question about it.
- b. Testify to what you found and inform the court of the evidence that was suppressed.
INCORRECT: Testify to what you found, but do not mention the suppressed evidence, unless specifically asked a question about it.
- c. Testify to what you found and tell the jury that the judge suppressed some of the evidence.
INCORRECT: Testify to what you found, but do not mention the suppressed evidence, unless specifically asked a question about it.
- d. Testify to what you found, but do not mention the suppressed evidence, unless specifically asked a question about it.
CORRECT: This is the correct way to handle a suppressed evidence issue.

Practice Exam for Use of Force

1. What is the standard for judging police officers accused of using excessive force to seize a free citizen under the Fourth Amendment to the U.S. Constitution?

- a. negligence
- b. recklessness
- c. malicious intent
- d. objective reasonableness

Answers:

- a. Incorrect. See Justification d.
 - b. Incorrect. See Justification d.
 - c. Incorrect. See Justification d.
 - d. Correct. The Supreme Court stated in Graham v. Connor that all claims that law enforcement officers used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard.
-

2. Officer Smith believes force was reasonable to seize Jones. Which of her statements support the *objective* reasonableness test?
- a. Officer Smith’s statement that she feared for her life.
 - b. Officer Smith’s statement that Jones showed pre-assault indicators.
 - c. Officer Smith’s statement that she saw Jones put one foot in front of the other like a boxer and clench his fists.
 - d. Officer Smith’s statement that force was necessary for officer safety.

Answers:

- a. Incorrect. See Justification c.
 - b. Incorrect. See Justification c.
 - c. Correct. Facts support the objective test; mere conclusions do not. Officer Smith should state what she saw (... *heard, smelled, etc.*). Facts paint the picture -- so that a judge can visualize what happened -- and make an objective decision. That “*Jones put one foot in front of the other like a boxer and clenched his fist*” begins to paint the picture that Jones was a threat. Distractors a, b, and d, are just conclusions. They make the judge ask, “*How ... How* did Jones show pre-assault indicators?” or “*Why ... Why* was force necessary for officer safety?”
 - d. Incorrect. See Justification c.
-

3. Jones sued Officer Smith under the Fourth Amendment for using excessive force. Officer Smith believes the force was reasonable, but Jones believes it was not. From whose perspective will the court decide who is right?

- a. from a jury's perspective about what Officer Smith should have done.
- b. from a reasonable person's perspective.
- c. from Jones' and Smith's perspective, after deciding who is more credible.
- d. from a reasonable officer's perspective.

Answers:

- a. Incorrect.
- b. Incorrect.
- c. Incorrect.
- d. Correct. The Court stated in Graham v. Connor that, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene ..."

4. Pick one of the original Graham factors for judging police officers accused of using excessive force.
- a. The severity of the crime at issue.
 - b. Whether the officer used the minimal force.
 - c. Whether the officer followed agency policy.
 - d. The size, height, weight, and condition of the officer compared to the suspect.

Answers

- a. Correct. The Graham factors are (1) the Severity of the crime at issue; (2) whether the suspect was an Immediate threat to the officer or others; and whether he was (3) actively Resisting arrest or (4) attempting to evade arrest by Flight. Remember the acronym *SIRF*.
(Note: You should be able to identify the Graham factors; to distinguish them from other factors used by the lower courts; and, to determine what not a factor.)
- b. Incorrect. This is not a factor. Determining what the minimal amount of force would have been is a subjective determination, not an *objective* one. What might have been the minimal force necessary to seize someone requires a 20/20 hindsight analysis.
- c. Incorrect. A reviewing courts will follow the law; specifically, the Fourth Amendment as well as Supreme Court and federal court decisions interpreting it. Agencies cannot make law. Agency policy may impose certain per se rules like prohibitions on warning shots, shooting at moving vehicles, or high-speed pursuits. Violating policy may result in administrative sanctions; however, if an officer is sued for excessive force, the court will apply the objective reasonableness standard.
- d. Incorrect. This is another factor, not one of the original Graham factors. The question asks for a Graham factor.

5. The Supreme Court stated in Graham v. Connor that “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” What did the Court mean by that?

- a. A reviewing court will consider the facts that were reasonably known to the officer at the time through the lens of a reasonable officer.
- b. A reviewing court will consider the good or bad intentions of the officer.
- c. A reviewing court will consider the totality of the facts and circumstances, to include what the officer learns after the fact.
- d. A reviewing court will decide whether the officer used the best force option.

Answers:

- a. Correct. The reviewing court will only consider the facts that were reasonably known at the time. What is learned after the fact is not relevant. The relevant facts are viewed through the lens of a reasonable officer.
- b. Incorrect. The good or bad intentions of the officer are not relevant under the *objective* test. To consider them would be make the test subjective, not objective.
- c. Incorrect. The “no 20/20 hindsight” rule means that what the officer learns later is not relevant. True: The general rule is to consider the “totality of the facts and circumstances.” But there is a caveat to that statement. A fact that was not reasonably known to the officer at the time force was used is not relevant.
- d. Incorrect. Officers often have to make split second decision in situations that are tense, uncertain, and rapidly evolving. The determinative issue is whether the force fell within the range of reasonableness based on the facts known at the time. Deciding what *would have been* the best answer requires a 20/20 hindsight analysis.

6. Other than one of the original Graham factors, what is another factor used by the lower courts that may be considered in determining whether force was reasonable? (Do not pick a Graham factor.)
- a. Whether the suspect posed an immediate threat to the officer or others.
 - b. The suspect's prior criminal history known to the officer at the time.
 - c. Whether the suspect was actively resisting arrest.
 - d. Whether the suspect was attempting to evade arrest by flight.

Answers:

- a. Incorrect. This is one of the Graham factors. The question asks for one of the *other* factors a court can consider. Other factors include: (1) known criminal history; (2) known psychiatric history; (3) whether the suspect was under the influence of alcohol or narcotics; and (4) whether there was time to consider other, less intrusive force options. Most of the *other* factors are a subset of what is generally considered the most important Graham factor - - immediate threat.
- b. Correct. The suspect's prior criminal history known to the officer at the time. This is one of the other factors.
- c. Incorrect. This is a Graham factor. See Justification a.
- d. Incorrect. This is a Graham factor. See Justification a.

7. Officer Smith stopped Jones car and ordered him out of the vehicle. She then decided to handcuff Jones. According to Graham v. Connor:

- a. these actions do not amount to a Fourth Amendment seizure.
- b. these actions do amount to a Fourth Amendment seizure - - and a reviewing court will determine whether Officer Smith was objectively reasonable.
- c. so long as the traffic stop was lawful, Officer Smith can handcuff Jones because handcuffs are only a minimal intrusion on a suspect's liberty.
- d. handcuffing Jones is not reasonable unless Officer Smith has probable cause to arrest Jones.

Answers:

- a. Incorrect. See Justification b.
- b. Correct. Officer Smith terminated Jones' movement by a means intentionally applied, which triggered the Fourth Amendment's objective reasonableness test. The seizure must be reasonable at its inception (why Officer Smith seized Jones in the first place); the force used to effect the seizure (were the handcuffs reasonable?); and reasonable in its duration (how long she held Jones.)
To decide whether the handcuffs were reasonable, the court will apply the facts to the Graham and other factors for force.
- c. Incorrect. See Justification b.
- d. Incorrect. Handcuffing someone is a seizure and must be *objectively reasonable*. It may be reasonable to handcuff a suspect during a temporary investigative detention (Terry Stop) based on *reasonable suspicion*, a standard less than probable cause. Seizing someone may also be reasonable without facts to believe he committed a crime. For example, officers may control the movements (seize) the passenger in a lawfully stopped car and they can also control the occupants in a house during the execution of a search or arrest warrant. And to control them, handcuffs may be *objectively reasonable*.

8. Officer Smith shot Jones with a firearm in the course of effecting Jones' arrest. Pick the correct statement according to the objective reasonableness test.

- a. Shooting a suspect is the highest level of intrusion on someone's liberty, so it must be justified by a very high governmental interest.
- b. Shooting Jones is unreasonable if Officer Smith was attempting to arrest him for a misdemeanor or a non-violent felony.
- c. Shooting Jones is unreasonable if Jones did not have the actual ability at the time to harm Officer Smith.
- d. Shooting Jones is unreasonable if Jones did not have the actual intent to harm Officer Smith.

Answers:

a: Correct. The heart of the Graham analysis is to weigh the nature of the intrusion (what the officer did) against the countervailing governmental interest (why the officer did it).

b: Incorrect. This implies that Officer Smith cannot defend herself or others when investigating misdemeanors or non-violent felonies.

c: Incorrect. Determining Jones' actual intent or actual ability to harm Smith requires an after-the-fact, 20/20 hindsight analysis - - *which maybe too late for the officer*. As a result, the Graham analysis allows police officers to react to the threat of violence rather than violence itself. True: Mistakes may be made. The pistol pointed at the officer may turn-out to be a toy. However, the objective test decides whether the mistake was reasonable based on the facts known at the time.

d: Incorrect. See Justification c.

9. How will a reviewing court decide whether shooting a suspect was objectively reasonable?

a: After considering the Graham factors, a reasonable officer could believe that the suspect posed a significant threat of serious bodily harm either to the officer or others.

b: Whether the officer warned the suspect prior to the shooting. c: Whether the officer shot the suspect in the back.

d: Whether the suspect had a gun or other weapon and threatened the officer with it.

Answers:

a: Correct. This is most determinative in shooting cases. Significant threat? The threat may be immediate - - like someone who reaches for a gun. The threat may also be imminent - - like a terrorist who is attempting to evade arrest by flight. An escaped terrorists might pose an imminent threat to society if left at large.

b: Incorrect. This not determinative. A warning may not be feasible. See Justification a.

c: Incorrect. This is not determinative. A suspect may show his back when he reaches for a gun, but still pose a significant threat. See Justification a.

d: Incorrect. Whether Jones actually had a gun or other weapon is not determinative. See Justification a.

10. How will a reviewing court decide whether an intermediate weapon was objectively reasonable?

a: After considering the seriousness of the offense at issue, the court will decide whether a reasonable *officer* could believe that the intermediate weapon was necessary to deter an immediate threat, overcome the suspect's active resistance, or stop his flight.

b: After considering the seriousness of the offense at issue, the court will decide whether a reasonable *person* could believe that the intermediate weapon was necessary to deter an immediate threat, overcome the suspect's active resistance, or stop his flight.

c: After considering the Graham factors, the court will decide whether the officer using the weapon honestly believed it was the only option.

d: After considering the Graham factors, the court must find that the intermediate weapon was the only option.

Answers:

a: Correct. The court will apply the facts to the Graham and other factors for using force and decide whether the intermediate weapon falls within the range of reasonableness.

b: Incorrect. The Graham test is reasonable officer, not a reasonable *person* standard.

c: Incorrect. The officer's honest beliefs are not relevant.

d: Incorrect. The court will decide whether the force fell within the *range of reasonableness* using a reasonable officer standard - - not whether the force used was the only option available. This answer would be using a minimal force standard rather than an objectively reasonable one.

11. Officer Smith had an arrest warrant for Jones, but Jones refused to obey her arrest commands. Pick the correct statement about intermediate weapons.
- a: An electronic control device in the stun-drive mode can be used anytime a suspect refuses to obey an officer's lawful arrest commands because the pain it causes is only temporary.
 - b: An officer who uses oleoresin capsicum (OC) spray does not have to decontaminate a suspect so long as the initial use was reasonable.
 - c: Intermediate weapons are objectively reasonable anytime the suspect refuses to obey an officer's arrest commands and the suspect is bigger than the officer.
 - d: Time is a factor in determining whether intermediate weapons are objectively reasonable.

Answers:

- a: Incorrect. See Justification d.
- b: Incorrect. The officer should decontaminate the suspect to stop further pain after the suspect is under control.
- c: Incorrect. See Justification d.
- d: Correct. The Supreme Court stated that police officers are often forced to make split-second decisions about the amount of force that may be necessary. Therefore, the less time an officer has, the more deference she should receive. But not every use of force requires split-second decision making. The more time the officer has, other (less intrusive) options may be available. What if Jones sits down in a chair and refuses to get up? Using an intermediate weapon may not be objectively reasonable in every case. Objective reasonableness requires an application the facts to the Graham and other factors for using force.

12. Officer Smith went to arrest Jones. Jones bladed his body by putting one foot in the other, clenched his fists, and shouted at Smith, "I'm not going to let you arrest me!" Officer Smith used an intermediate weapon to effect the arrest. Other than one of the original Graham factors, what is another factor a reviewing court could consider to decide whether the force was reasonable? (Don't pick a Graham factor.)

- a: The size, height, weight, and condition of Jones compared to Officer Smith.
- b: Whether Jones was an immediate threat to Officer Smith or others.
- c: Whether Jones was actively resisting arrest.
- d: The severity of the crime at issue.

Answers:

a: Correct. This is another factor and very relevant in deciding whether Jones posed a *credible* threat, which is the most important Graham factor. In other words, was Jones 80-years old and frail - - or a young man, 6'2" and 200 pounds?

b: Incorrect. This a Graham factor. The question asks for another factor.

c: Incorrect. This is a Graham factor. It is a factor to consider, but the question asks for another factor other than one of the Graham factors.

d: Incorrect. This is a Graham factor. It is certainly a factor to consider, but the question asks for another factor.

13. Officer Smith used force to seize Jones. Jones sued for excessive force under the Fourth Amendment. Pick the correct statement about qualified immunity.

- a: There are two ways Officer Smith can get qualified immunity.
- b: Officer Smith's employing agency can get qualified immunity.
- c. Denying Officer Smith qualified immunity means he is liable for a constitutional tort.
- d. Qualified immunity is raised after the trial.

a: Correct. Qualified immunity is the officer's defense to standing trial in a civil case for a constitutional tort. It is the officer's defense -- and not her employing agency's. It is an affirmative defense -- meaning that the officer must raise it. And the judge must grant it, unless the officer violated a clearly established constitutional right. As a result, an officer can get qualified immunity in *two ways*. First, the force may be constitutional. But even if the force is not (constitutional) the officer may still receive qualified immunity if the judge finds that the law was not clearly established at the time. What's more, the judge is not required to go in any particular order, either. The judge may simply find that the law is not clear, and save the harder question for another day. If the judge finds that the officer violated a clearly established right based on Jones' (the plaintiff's) version of what happened, the judge must deny the officer qualified immunity. Denying the officer qualified immunity does not mean the officer is liable for a constitutional violation. It means that there may be a triable issue (or dispute between Jones and Smith) about what actually occurred for the court to decide. At trial, the burden of proof switches to Jones and credibility (who's telling the truth) would be very relevant.

- b: Incorrect. See Justification a.
- c: Incorrect. See Justification a.
- d: Incorrect. See Justification a.

14. Officer Smith used force to seize Jones. Jones sued for excessive force under the Fourth Amendment. Pick the correct statement about qualified immunity.

- a: Officer Smith may get qualified immunity even if the judge finds that the force was unconstitutional.
- b: Officer Smith cannot receive qualified immunity unless the force was constitutional.
- c. Officer Smith can also get qualified immunity in a criminal case.
- d. Officer Smith cannot receive qualified immunity unless the law was clearly established.

a: Correct. Qualified immunity is the officer's defense to standing trial in a civil case for a constitutional tort. It is the officer's defense - - and not the employing agency's. It is an affirmative defense - - meaning that the officer must raise it. And the judge must grant it, unless the officer violated a clearly established constitutional right. As a result, an officer can get qualified immunity in *two ways*. First, the force may be constitutional. But even if the force is not (constitutional) the officer may still receive qualified immunity if the judge finds that the law was not clearly established at the time. What's more, the judge is not required to go in any particular order, either. The judge may simply find that the law is not clear, and save the harder question for another day. If the judge finds that the officer violated a clearly established right based on Jones' (the plaintiff's) version of what happened, the judge must deny the officer qualified immunity. Denying the officer qualified immunity does not mean the officer is liable for a constitutional violation. It means that there may be a triable issue (or dispute between Jones and Smith) about what actually occurred for the court to decide. At trial, the burden of proof would switch to Jones and credibility (who's telling the truth) would be very relevant.

b: Incorrect. See Justification a.

c: Incorrect. See Justification a.

d: Incorrect. It is just the opposite. Smith will get qualified immunity, if the law is not clear. See Justification a.