

TORTS
Question Outline

1. Battery And Intentional Infliction Of Emotional Distress
2. Battery
3. Pure Comparative Negligence
4. Modified Comparative Negligence
5. Contribution
6. Private Nuisance
7. Right To Privacy
8. Private Nuisance And Right To Privacy
9. Negligent Infliction Of Emotional Distress
10. Intentional Infliction Of Emotional Distress
11. Theories Of Liability- Distinguished
12. Governmental Immunity
13. Strict Products Liability (Rest. 2d, Section 402A)
14. Strict Products Liability (Rest. 2d, Section 402A)
15. Strict Liability- Abnormally Dangerous Activity
16. Negligence
17. Strict Liability
18. Products Liability
19. Strict Liability
20. Battery
21. Products Liability (Rest. 2d, Section 402A)
22. Assault
23. Tort Distinctions
24. False Imprisonment
25. Battery
26. Battery- Transferred Intent
27. Battery- Consent
28. Battery- Offensive Touching
29. Consent To Crime (Rest. 2d, Section 892C)
30. Consent To Crime (Rest. 2d, Section 892C)
31. Duty
32. Causation
33. Intervening Cause
34. Assault
35. "Pure" Comparative Negligence
36. "Modified" Comparative Negligence
37. Slander Per Se
38. Slander
39. Absolute Immunity- Judicial Proceedings
40. Defamation- Punitive Damages
41. Negligent Infliction Of Emotional Distress
42. Mental Disturbance- Bystander Recovery
43. Acts And Omissions
44. Duty

45. Public Invitee
46. Invitee
47. Licensee
48. Trespassing Children
49. Tort And Contract
50. Tort And Contract
51. Tort Vs. Contract
52. Defamation- Public Official
53. Defamation
54. Defense Of Property
55. Strict Liability- Animals
56. Trespass To Chattels
57. Privilege Of Necessity
58. Nuisance Distinguished From Trespass
59. Defense Of Property
60. Defense Of Property
61. Contributing Tortfeasors
62. Products Liability- State Of The Art Design
63. Products Liability- Inherent Part
64. Products Liability- Inherent Part
65. Slander- Criminal Conduct
66. Slander- Loathsome Disease
67. Slander- Imputation Of Sexual Misconduct
68. Abnormally Dangerous Activity- Strict Liability
69. Abnormally Dangerous Activity- Factors To Consider
70. Harm Caused By Animal
71. Slander
72. Liability Of Possessor Of Wild Animal
73. Cause In Fact
74. Proximate Cause
75. Intentional Torts
76. Substantial Factor Test
77. Duty
78. Damages
79. Causation
80. Negligent Misrepresentation
81. Negligent Misrepresentation
82. Trespass
83. Conversion
84. Emotional Distress
85. Negligence
86. Trespass On Land
87. Defense Of Property
88. Privilege To Enter Land
89. False Imprisonment
90. Liability Of Possessor Of Land To Licensees
91. Liability Of Possessor Of Land To Invitees
92. Negligence
93. Standard Of Care
94. Intentional Tort

- 95. Rescue Doctrine
- 96. Comparative Negligence
- 97. Contributory Negligence
- 98. Governmental Immunity
- 99. Trespass To Chattels
- 100. Bailment

TORTS

Question 1 is based on the following fact situation.

John Calvoni, a candidate for a city council position in the City of North Park, was present in town square on September 21. The City of North Park had a tradition of allowing candidates for the office of city council the privilege to present a short speech on this date for the purpose of informing interested members of the public on the points of view which each candidate holds. Several candidates delivered their speeches. John Calvoni then presented his five minute speech. After John Calvoni had delivered his speech he went back to resume his seat which was on the stage about ten feet behind the podium. Jack Bland, an opposing candidate who was sitting in the seat next to John Calvoni's assigned seat, decided that it would be entertaining to pull Calvoni's chair out from under him. As Calvoni began to sit down, Bland pulled the chair out causing Calvoni to fall to the stage floor. Calvoni suffered no injuries but he was deeply humiliated over the incident.

1. If Calvoni brings a tort action against Bland, Calvoni will probably recover on which of the following theories?
- (A) Intentional infliction of emotional distress
 - (B) Assault
 - (C) Battery
 - (D) No recovery

Question 2 is based on the following fact situation.

The eleventh grade class of Santa Clarita High School went to Jefferson Avionics on a class field trip. During lunch the school administrator provided the students some time to eat at the cafeteria located on the premises. Margarita, the class clown, decided to pull another prank. As Helen was attempting to sit down with a tray of food, Margarita pulled Helen's chair from beneath her. Helen fell to the floor.

2. Which tort is most applicable under these facts?
- (A) Assault
 - (B) Battery
 - (C) Negligent infliction of emotional distress
 - (D) Intentional infliction of emotional distress

Questions 3 - 5 are based on the following fact situation.

Exec and Associate were both white collar workers who were employed by firms located in downtown Centerville. Both Exec and Associate were late for work on Tuesday morning. As such, they each were traveling at an excessive rate of speed toward their respective places of business. Exec was traveling down Second Street, only seven blocks from his office, at a speed of forty-five miles per hour. The posted speed was thirty miles per hour. As Exec approached the intersection of Second Street and Gilbert Avenue, Associate also approached the same intersection. Associate was traveling north on Gilbert Avenue to get to work that morning. Associate was also speeding and witnesses estimated his speed to be somewhere between forty and fifty miles per hour. The posted speed on Gilbert Avenue was thirty miles per hour.

The two cars collided at the intersection of Second and Gilbert. Associate's Buick Skylark hit Exec's Ford Escort causing Exec to swerve out of control into Jose's produce cart parked at the side of the road. Both Jose and his merchandise suffered extensive injuries. The jury found that the accident was caused due to the inattentiveness of both drivers with Exec 40% negligent and Associate 60% negligent.

3. If the jurisdiction follows the doctrine of "pure" comparative negligence, and Associate suffered \$10,000 in damages, what will Associate recover in a suit against Exec?
- (A) \$10,000
 - (B) \$6,000
 - (C) \$4,000
 - (D) Nothing
4. If this jurisdiction follows the doctrine of "modified" comparative negligence, and Associate suffered \$10,000 in damages, what will Associate recover in a suit against Exec?
- (A) \$10,000
 - (B) \$6,000
 - (C) \$4,000

- (D) Nothing
5. Assume for the purposes of this question that Jose has a claim for damages against both Exec and Associate and that he obtains a judgment for the full amount of his damages from Associate. Which theory will now allow Associate to pursue Exec in order to have Exec pay for part of the damages?
- (A) Subrogation
 (B) Collateral sources rule
 (C) Contribution
 (D) Indemnity

TORTS ANSWERS AND EXPLANATIONS

1. (A) Intentional infliction of emotional distress, answer choice (A) is the best answer. Although it is correct that Bland has committed both a battery and the tort of intentional infliction of emotional distress we must look to the degree or severity of the conduct. First of all, choice (D) is incorrect because (A) is correct. Answer choice (B) is not correct because Calvoni did not suffer from an imminent apprehension of a harmful or offensive contact. Answer choice (C) is correct to the extent that a harmful or offensive contact occurred, but answer (A) is the better answer as Bland's conduct was extreme and outrageous. Bland's conduct constitutes the intentional infliction of emotional distress because it occurred in front of interested voters who attended the candidate speeches and because it was extreme and outrageous.
2. (B) Battery is the most probable tort for which Helen may be able to assert in a suit for recovery against Margarita. Battery consists of the harmful and offensive touching of plaintiff's person. "Plaintiff's person" includes anything connected with plaintiff's body. The freedom from intentional and unpermitted contact extends not only to any part of the body but also to anything which is attached to the body or identified with the body. Thus, the pulling of Helen's chair, causing her to fall to the floor, constitutes a battery. Note that this fact pattern must be distinguished from the fact pattern which describes conduct which may be characterized as "extreme" and "outrageous." In these questions, the degree or severity of defendant's tortious conduct will determine whether plaintiff will most likely prevail under a theory of battery or under a theory of intentional infliction of emotional distress.
3. (C) Under the theory of "pure" comparative negligence a negligent plaintiff can still recover even where his negligence exceeds that of the defendant. "Pure" comparative negligence allows recovery no matter how great plaintiff's negligence. On the multistate examination an important area is the calculation of damages and the ability to do so under the appropriate system which the bar examiners give you. Under the facts presented in this

question, you are told that the jurisdiction follows a system of "pure" comparative negligence. Thus, if Associate brings suit against Exec for \$10,000 and the jury determines that Associate is 60% negligent, Associate would still be able to recover \$10,000 minus the percentage of his negligence (60% of \$10,000), or \$4,000. Therefore, answer (C) is correct.

4. (D) Associate may recover nothing under these facts if the jurisdiction follows a "modified" comparative negligence system. Under a theory of "modified" comparative negligence the negligent plaintiff may recover so long as his negligence is not equal to or greater than that of the defendant. No recovery will be allowed if the plaintiff's negligence is equal to or greater than defendant's negligence. Under these facts, the jury found that Exec was 40% negligent and Associate was 60% negligent. Since Associate (the plaintiff here) was 60% negligent and Exec (the defendant here) was only 40% negligent, Associate may recover nothing. Answer (D) is correct.
5. (C) Contribution allows a defendant to claim recovery of damages against other jointly liable parties for excess damages when that defendant is required to pay more than his share of damages. Answer (C) is correct. Contribution apportions responsibility among those at fault. In a comparative negligence system, apportionment is in proportion to the relative fault of the defendants. Answer choice (A) is incorrect because one defendant is not being substituted for another and responsibility for the entire loss and all damages may not be placed upon Exec. Answer choice (B) is incorrect because this rule will not act to shift responsibility for damages from Associate to Exec. The collateral sources rule provides that a defendant tortfeasor may not benefit from the fact that plaintiff has received money from other sources. This rule does not help Associate. Finally, choice (D) is incorrect because indemnity involves shifting of the entire loss from one tortfeasor to another. Indemnity is not available under these facts where both Exec and Associate were negligent.

CRIMINAL LAW AND PROCEDURE
Question Outline

1. Larceny
2. Arson
3. Federal Jurisdiction
4. Depraved-Heart Murder
5. Voluntary Manslaughter
6. Involuntary Manslaughter
7. Voluntary Manslaughter
8. Assault As Attempted Battery
9. False Pretenses
10. False Pretenses
11. False Pretenses
12. Felony Murder
13. Parties To A Crime
14. Duress Defense
15. Murder
16. Custodial Interrogation
17. Probable Cause
18. Confessions
19. Self Incrimination
20. Miranda
21. Plain Error
22. Harmless Error
23. Harmless Error
24. Harmless Error
25. Duty To Correct False Testimony
26. Burden Of Production
27. Miranda Questioning
28. Self Incrimination
29. Right Of Confrontation
30. Standing
31. Right To Counsel
32. Right To Counsel
33. Accomplice Liability

34. Accomplice Liability
35. Felony Murder
36. Felony Murder
37. Self Defense
38. Intoxication
39. Inchoate Crimes
40. Conspiracy
41. Criminal Jurisdiction
42. Burglary
43. Burglary- Intent To Commit A Felony
44. Presumption Of Innocence
45. Beyond A Reasonable Doubt
46. Bad Check Statutes
47. Murder
48. Felony Murder
49. Insanity Defense
50. Bifurcated Trial
51. Capital Punishment
52. Larceny
53. Larceny
54. Larceny
55. Larceny- Personal Property Of Another
56. Larceny- Asportation
57. Larceny- Personal Property Of Another
58. False Pretenses
59. Receiving Stolen Property
60. Accomplice Liability
61. Confessions As Fruits Of Illegal Arrests And Searches
62. Double Jeopardy
63. Waiver Of The Right To Counsel
64. Pretrial Discovery- Duty To Disclose
65. Miranda- Required Warnings
66. Automobile Stop
67. Automobile Search
68. "Target" Standing
69. Right To A Speedy Trial
70. Acquittal Or Dismissal
71. Double Jeopardy- Conviction
72. Double Jeopardy- Evidence Insufficiency
73. Suppression Hearing- Burden Of Proof
74. Indigency Standards
75. Conflicts Of Interest
76. Habeas Procedures
77. Principal In The Second Degree
78. Parties To A Crime
79. Conspiracy And Accomplice Liability
80. Conspiracy- Mental State
81. Involuntary Manslaughter
82. Felony Murder Rule
83. Voluntary Manslaughter

84. "Depraved-Heart" Murder
85. "Depraved-Heart" Murder
86. Defense Of Insanity
87. Defense Of Insanity
88. Murder
89. Theft Crimes
90. Degrees Of Homicide
91. "Depraved-Heart" Murder
92. Solicitation
93. Solicitation
94. Motive
95. Robbery- Common Law
96. Robbery- Statutory
97. Robbery- Homicide Victim
98. Bigamy
99. Criminal and Civil Contempt
100. Retribution

CRIMINAL LAW AND PROCEDURE

Question 1 is based on the following fact situation.

1. In which of the following fact situations is defendant Smith most likely to be found guilty of the crime of larceny?
 - (A) Smith, with the intent to steal Bob's Chinese vase, travels to Bob's house and, finding the front door unlocked, enters Bob's living room where Smith knows Bob keeps the Chinese vase. Unbeknownst to Smith, Bob had taken the vase to Martha's gallery for a ten day Rare Chinese Art Exhibit. Smith sits down in Bob's living room and watches a 30 minute television program and then quietly leaves Bob's house.
 - (B) Smith a grocery clerk at checkstand five of Carl's Supermarket was on duty on Saturday, May 15. Smith had been experiencing hard times lately because his wife had divorced him and he was trying to make payments on his house and car and also keep up with his child support obligations. Gertrude, a customer at Carl's Supermarket, purchased various items amounting to the total of seventeen dollars and sixty-five cents. Gertrude gave Smith a twenty-dollar bill for the groceries. Smith placed the twenty-dollar bill on top of the register and then returned two dollars and thirty-five cents to Gertrude. Before Smith turned to put the twenty-dollar bill into the cash register he decided that he needed the cash for himself. Smith

surreptitiously pocketed the twenty in his pants pocket. Smith took the twenty home with him that day.

- (C) Smith, with the intent to steal Barbara's new mink coat, travels to Barbara's house and enters through a side window after breaking it. Unfortunately, Barbara had decided to wear her mink coat to the ball that evening. After Smith saw that the mink coat was not there he remembered that Barbara said something about going out that evening. Smith decided to wait until Barbara returned home so he could then overpower her and take the coat from her. Smith went to the kitchen, prepared a sandwich, ate it, played cards, and awaited Barbara's return. By 11:30 p.m.

Smith, tired of waiting for Barbara, decided to leave. He left through the open broken window.

- (D) Smith, with the intent to steal, always had his eye on Herb's 1990 Pontiac Grand Prix. Several weeks went by and then one day Herb decided that maybe before he actually stole Herb's car it might be better if he knew exactly what the car was like. Smith believed that it would be a waste of time to steal a car that could not handle nicely around curves in the road, or that could not go at least 70 m.p.h. on the highway. With that, Smith asked Herb if he could borrow Herb's Pontiac. Herb, without hesitation, agreed, but added, "Please have it back by 12:00 midnight because I worry about my new car." Smith said, "No problem." Smith took the car but kept it out all night and did not return it until 9:30 a.m. the next morning.

Question 2 is based on the following fact situation.

Dan and Garp were competitors in the car rental business. Dan's business was fairly large and he operated it out of a commercial lot located at the airport of City. Garp, on the other hand, was just starting out. Garp had only six cars which he rented out. Garp's business was done out of his house with up to three cars parked in the garage to his house and the remaining cars parked outside of his house alongside the garage.

Of course, there were occasions when all of Garp's cars were rented and he had none on his property at all. Dan knew that Garp's business was increasing and that this was putting a dent in the rental market. Dan vowed to put Garp out of business or at least cripple his efforts to rent cars.

At 10 p.m. on last Tuesday evening, Dan went to Garp's house with the specific intent to commit felony crimes, including the common law crimes of larceny, robbery, or arson, and also competitive advantage, a statutory felony in this jurisdiction. Dan jumped the side fence to Garp's house and proceeded straight to the back door of Garp's attached garage. Finding the door open, Dan didn't hesitate to enter. Once inside, Dan thought about stealing the automobiles which were in Garp's garage. There were two autos parked inside the garage and the keys were on a key board located on the wall. Just before Dan picked up the keys, he spotted a five gallon gas can sitting on the floor. A light bulb flashed in Dan's head. He thought for a moment and then concluded that he could only drive one car away. On the other hand, if he was to burn Garp's car, garage, and house, he might be able to force Garp out of business. With that, Dan quickly poured gasoline out of the can.

But just after Dan began pouring the gasoline he heard a noise from inside the living room. It sounded like footsteps. Dan panicked. He quickly took a match out of his pocket, lit the match, and threw it at the small puddle of gasoline on the ground. The gasoline did catch fire, but it only created a flame that was large enough to scorch the wall and burn a section of Garp's work bench. Dan ran out the back door and headed for

home. Immediately after Dan got out the back door, Garp went into the garage, saw the small fire, and quickly put it out with the fire extinguisher which he kept nearby.

2. If Dan is charged with common law arson only, how should the court rule?
- (A) Guilty, but only if the fire had burned Garp's dwelling house.
 - (B) Guilty, because the fire Dan set was sufficient to constitute common law arson.
 - (C) Not guilty, but only if the fire did not burn Garp's dwelling house.
 - (D) Not guilty, because Garp put the fire out.

Question 3 is based on the following fact situation.

Mary booked a flight on a US AIR airplane which was scheduled to fly from Los Angeles to San Francisco on Friday, February 16. Mary was a businesswoman who infrequently took airplane trips within California to attend business meetings and other work-related events. On this particular day Mary arrived at the airport in Los Angeles with plenty of time to catch the plane. Mary, being very nervous about her meeting in San Francisco, was smoking fervently the entire morning.

At 12:50 p.m. the plane, loaded with passengers, raced down the runway bound for San Francisco. The stewardess informed all passengers about some safety precautions and also stated that the flight would only be 52 minutes in duration. Mary, feeling nervous and apprehensive about the meeting, made her way to the lavatory located in the rear of the plane. Since the lavatory was unoccupied, Mary went right in. While using the lavatory facilities, Mary noticed a sign which stated, "Smoking Is Prohibited On This Flight." Mary also noticed another sign which read, "Tampering With Lavatory Smoke Alarms Is A Crime. Violators Will Be Punished."

Believing that a cigarette might calm her nerves, Mary immediately produced a cigarette from her purse and lit it. As Mary was enjoying the renewed and momentary relaxation which the nicotine gave her, the lavatory smoke alarm sounded.

A chill went down Mary's spine. Immediately thereafter, a stewardess was banging on the outside of the lavatory door demanding that Mary open it. Mary complied and was immediately arrested by the airline employee. When Mary arrived in San Francisco the stewardess led Mary to the US AIR boarding counter where two Federal Agents, working out of the San Francisco International Airport Office, handcuffed Mary and informed her that she was being charged with the violation of a federal statute which read, "It shall be a federal crime for any person to smoke any material on an airline flight when such airline has informed said person that 'Smoking Is Prohibited On This Flight.'"

As a result of the charge against her, Mary has been summoned into Federal Court, located in San Francisco, California. All of Mary's appearances have been made in San Francisco even though Mary resides in Los Angeles, California. At Mary's initial court appearance she argued that she could not be charged with the violation of the federal statute and be summoned into Federal Court because she did not know that what she was charged with was a violation of federal law.

3. If the judge properly holds Mary to answer the charges against her it will be because
- (A) Lack of knowledge regarding federal territorial jurisdiction will not relieve one of being held to answer for a charged violation of federal statute.
 - (B) Lack of knowledge regarding federal territorial jurisdiction is only a defense to a specific intent crime.
 - (C) Mary may be properly held to answer for the charged violation in the territorial jurisdiction in which she is alleged to have committed the crime.
 - (D) Mary has no right to object to the territorial jurisdiction in which she is summoned to answer for the charged offense.
4. Which legal theory of criminal liability would be most applicable under the circumstances?
- (A) Murder
 - (B) Depraved-heart murder
 - (C) Involuntary manslaughter
 - (D) Battery

Question 4 is based on the following fact situation.

Johnny just finished drinking four Gin Martinis at Bob's Bar. It was twelve noon. Bob didn't know that Johnny had already consumed two shots of whisky before he arrived at Bob's Bar at 11:40 a.m. that Monday morning. When Johnny had finished his drinks he thanked Bob and headed for the door.

While making his way for the car, Johnny thought about how much he hated his job, his home, and his life. Johnny repeated to himself the words, "Life sucks!" All of his depression was attributed to his girlfriend leaving him three days earlier. Johnny knew it. He didn't want to admit it. He tried to blame his depression on other things but he knew deep down inside that it was Julie that was getting him down. He was having a hard time resigning himself to the fact that she was gone.

Just then it dawned on Johnny that he had to be at work. He quickly jumped into his car and sped off. Johnny was intoxicated but he didn't realize that he was driving at excessive speeds and in an erratic manner. Johnny worked in Houston, Texas. As he was traveling through town on his way to work he decided to run a few stop signs and red lights "to save a little time." As Johnny was traveling at a speed of approximately sixty-five miles per hour he saw a Mazda RX-7 automobile appear in the intersection before him. Johnny had no time to stop. He hit the Mazda automobile. The Mazda, in turn, went careening into a few people who were crossing the street. Mary Gilbert, a thirty-six-year old woman, was one person who was crossing the street. Mary died immediately. Several other people were severely injured and required hospitalization. Johnny walked away with only minor bruises, and a pair of handcuffs. The Houston City Police Department arrested Johnny and has taken him into custody.

Questions 5 - 7 are based on the following fact situations. Read each fact situation and then choose the most serious offense for which the defendant may properly be convicted. Your choices are

- (A) Murder
 - (B) Felony murder
 - (C) Voluntary manslaughter
 - (D) Involuntary manslaughter
5. Defendant and Neighbor are neighbors in an apartment building. Neither has liked the other very much. Defendant especially dislikes Neighbor because Defendant believes that Neighbor, a single woman, is trying to steal the love and affection of Defendant's husband away from her. One day the two of them get into a mutual disagreement and fight.

During the fight Defendant forms the intent to kill Neighbor. Defendant quickly grabs a crescent wrench which was lying nearby and strikes three quick blows to Neighbor's head. Neighbor dies before the ambulance arrives.

6. Defendant was an epileptic. Defendant loved to drive his automobile and, indeed, Defendant thought an automobile to be an essential mode of transportation in modern day society. Although Defendant was told by several physicians that he was subject to, and would have, epileptic seizures he nevertheless continued to drive his automobile. Sure enough, two weeks ago Defendant left the shopping mall and was on his way home when he suffered an epileptic seizure. Defendant's car careened into a hamburger stand and killed six people. Eight others were wounded.
7. Defendant was a shopkeeper in a medium-sized city. Defendant had been in business about six years when he was first contacted by Deputy. Deputy was a Sheriff's Officer who had been on the force for two

years. Deputy was corrupt. She began demanding that Defendant pay to her "trust fund" the sum of fifty dollars per week as "protection money." Defendant refused to do so. One day Defendant was driving his automobile toward home. Deputy pulled Defendant over for no apparent reason. When Defendant asked Deputy what was up she said, "You're under arrest. I'm taking you in." Defendant became extremely upset. Defendant knew that he had committed no crime. When Deputy approached Defendant to put the handcuffs on, Defendant threw three quick punches. Two to the abdomen and one to the head. Defendant got in his car and fled the scene. Deputy bled to death.

CRIMINAL LAW AND PROCEDURE ANSWERS AND EXPLANATIONS

1. (C) Smith is guilty of larceny only in hypothetical fact pattern (C) above. Thus, answer choice (C) is the correct answer. In fact pattern (C), Smith committed larceny when he ate a sandwich which belonged to Barbara. Under the common law, larceny consisted of (1) the trespassory taking, (2) and carrying away (3) of the personal property (4) of another (5) with the specific intent to steal the same. Answer choice (A) is incorrect because Smith never obtained any personal property of another, nor did he carry any property away. Answer choice (B) is incorrect because Smith would be guilty of the crime of embezzlement, rather than larceny, when he took his employer's property. Answer choice (D) is incorrect because Smith merely borrowed the car and had no intent to steal it, or permanently deprive the owner of the property.
2. (B) The correct answer under these facts is answer choice (B) which states that Dan should be found guilty of common law arson. Under the common law, arson consisted of the (1) malicious (2) burning (3) of the dwelling house (4) of another. Students should also remember the rule that the slightest charring is sufficient to satisfy the "burning" element. Furthermore, Garp's garage is attached to the house. This "structure," including Garp's house and garage, is considered Garp's "dwelling house." Once the flame scorched the wall, the crime of arson was completed. Students should also note that the crime of burglary was not present under these facts as there was no "breaking"

present. Because the fire here burned Garp's dwelling house, answer choices (A), (C), and (D) are incorrect.

3. (A) Knowledge of federal territorial jurisdictional boundaries is not a defense to this federal criminal statute. The fact that Mary did not know that it was a federal crime to smoke on the plane as she did will not relieve her of liability for violation of this federal criminal statute. Unless the statute clearly states that the mental state must include knowledge of federal territorial boundaries, or that the act is a federal crime, this knowledge, or lack thereof, is not relevant and does not need to be proved by the prosecution, nor does it constitute a defense which the defendant may use. Very rarely, if ever, will a federal criminal statute specify that the defendant must have this specific intent or knowledge. Commonly the federal statute merely states what act is made criminal and the possible punishment. In these situations, lack of knowledge regarding federal territorial jurisdiction will not relieve one from being held to answer for a charged violation of federal law. Thus, answer (A) is correct. Answer choices (B), (C), and (D) are all incorrect answer picks as they are either incorrect statements of law, or are false statements under these facts.
4. (B) Under these circumstances the most applicable legal theory would be depraved-heart murder. Answer choice (B) is correct. LaFave and Scott state that "Extremely negligent conduct, which creates what a reasonable man would realize to be not only an unjustifiable but also a very high degree of risk of death or serious bodily injury to another or to others - though unaccompanied by any intent to kill or do serious bodily injury - and which actually causes the death of another, may constitute murder." LaFave and Scott, **Criminal Law**, at p. 617. Furthermore, in the case of **State vs. Snyder** (1984) 311 N.C. 391, 317 S.E.2d 394, it was held that the defendant's driving of an automobile at the speed of sixty to seventy miles per hour involved a type of danger which could be classified as sufficient to constitute "depraved-heart murder." Answer (B) is the most correct answer according to the above discussion. Answer choice (A) could be argued as correct because Johnny's actions constituted a type of murder, but answer choice (B) is more specific; for that reason, it is preferred. Answer choice (C) is incorrect because Johnny's actions have "gone beyond" the unreasonable risk of injury or the grossly negligent conduct which is required for manslaughter liability. Answer choice (D) is incorrect because Johnny's actions have gone beyond a mere battery for the reasons just mentioned.

5. (C) Defendant will be guilty of voluntary manslaughter under these facts. Voluntary manslaughter is an intentional killing but it is mitigated down from murder, usually because it is committed while in the "heat of passion." Answer choice (C) is correct. In a situation in which two persons engage in a fight and where the intent to kill is formed during the fight, the correct charge is that of voluntary manslaughter. It is important to note that this homicide would be considered murder, but for the fact that the intent to kill was formed during the fight or struggle and the defendant performed the death-producing blow while in the heat of passion. Answer choice (A) is incorrect because Defendant's act is not murder. Murder is defined as the unlawful killing of another human being with malice aforethought. Most jurisdictions today recognize various types of murder but they all have the common thread of the mental element of "malice" and they all require that this mental element be formulated, or planned, some time in advance of, and prior to, the killing. Answer choice (B) is incorrect because there is no felony murder under these facts. Under the common law there were certain enumerated felonies, such as burglary, larceny, arson, rape, and robbery, which were required to be either attempted or committed by the defendant for felony murder to apply. Finally, answer choice (D) is incorrect because Defendant's conduct, under the facts of this problem, was intentional. Defendant's conduct did not merely constitute the commission of an unlawful act, or the commission of an unlawful act constituting a high probability of death or serious bodily injury. Defendant's conduct here was intentional. The facts state that "During the fight Defendant forms the intent to kill Neighbor." This is an intentional killing. Involuntary manslaughter is not applicable under these facts.

CONSTITUTIONAL LAW
Question Outline

1. Federal Commerce Power
2. Powers Of Congress
3. Equal Protection Clause- Suspect Classification
4. Equal Protection- Right To Marry
5. Powers Of Congress
6. State Police Powers
7. State Police Powers
8. Commerce Clause
9. Powers Of Congress
10. Federal Jurisdiction
11. Privileges And Immunities Clause
12. Due Process Clause
13. Fifth Amendment
14. Standing
15. Ripeness
16. Impeachment
17. Commercial Speech Doctrine
18. Commercial Speech Doctrine

19. Commercial Speech Doctrine
20. Political Affiliation
21. Use Immunity
22. Article IV, Section 2
23. Fourteenth Amendment
24. Commerce Clause
25. Vagueness
26. Defamation- Right Of Reply
27. State And Local Taxation
28. Stream Of Commerce
29. Commerce Clause
30. State Police Powers
31. Freedom Of Religion
32. Freedom Of Religion
33. Due Process Clause
34. Free Exercise Clause- Factors
35. Freedom Of Religion- Free Exercise Clause
36. Freedom Of Religion- Free Exercise Clause
37. Ex Post Facto Law
38. Bill Of Attainder
39. The Thirteenth Amendment
40. State Action
41. Eleventh Amendment
42. Suit Between States
43. Freedom Of Association
44. Equal Protection
45. Contract Clause
46. Federal Commerce Power
47. Treaty
48. Book Banning
49. Censorial Laws
50. Redrup Approach

51. Freedom Of Association
52. Freedom Of Association
53. Right Not To Associate
54. Mandatory Fees
55. Equal Protection- Drug Testing
56. Right To Privacy- Drug Testing
57. Separation Of Powers
58. Right To Vote
59. Voting- Strict Scrutiny
60. Freedom Of Association
61. Freedom Of Religion
62. Constitutional Arguments- Anti-Sleeping Ordinances
63. Right To Privacy- Drug Testing
64. Equal Protection
65. Right To Privacy- Factors To Weigh
66. Vagueness
67. Comparison Of Preemption With Commerce Clause

68. Commerce Clause- Least Restrictive Alternative
69. President's Attempt To Regulate Interstate Commerce
70. Equal Protection- Race Classifications
71. Equal Protection- Gender Classifications
72. Equal Protection Classifications
73. Tenth Amendment
74. Voting Amendments
75. Voting- Fundamental Right
76. Legitimate State Interest
77. Commerce Clause- Burden On Interstate Commerce
78. Standing
79. Free Exercise Clause
80. Free Exercise Clause
81. Privileges And Immunities Clause
82. Privileges And Immunities Clause
83. Right To Travel
84. State Action
85. Privileges And Immunities Clause
86. Aliens- Equal Protection
87. Aliens- Important Government Interest
88. Aliens- Practice Of A Profession
89. Speech Or Debate Clause
90. Necessary Or Proper Clause
91. Power To Declare War
92. Full Faith And Credit Clause
93. Interstate Rendition Clause
94. Supremacy Clause
95. Military Courts
96. Federal Property
97. Equal Protection- Illegitimacy
98. Contract Clause
99. State Police Power
100. Commerce Clause

CONSTITUTIONAL LAW

Question 1 is based on the following fact situation.

Florida Airlines flight #1286 was scheduled to fly from Los Angeles, California to Miami, Florida on Tuesday, October 16. Jennie, a resident of California, was scheduled to visit her grandmother in Miami, Florida for a one week vacation. Jennie was also scheduled to fly on Florida Airlines flight #1286. The Florida bound plane departed on time and began its flight toward the southeast. There was one stop in Houston, Texas and another in New Orleans, Louisiana. Once the plane had completed its stop in New Orleans, Jennie felt the strong desire to smoke a cigarette. As such, she went back to the rear of the plane and lit up.

As Jennie was enjoying her cigarette, she noticed a sign on the ceiling overhead which read, "Cigarette Smoking Is

Illegal On This Flight." Unbeknownst to Jennie, Congress had passed a statute, only two months prior to her flight, which banned cigarette smoking on "all passenger and commercial airline flights within the United States." Congress, in enacting the statute, felt that flights would be safer as the potential of starting an unwanted fire would be eliminated, or at least reduced. Congress was presented results from a study which showed that eighty-seven percent of all fires on board aircraft resulted from the butts of cigarettes being disposed of in an improper fashion. Congress also recognized and cited the Surgeon General's studies which indicated that, "Quitting smoking now greatly reduces serious risks to your health." Furthermore, Congress stated, "There is no inherent right to smoke which is granted to citizens by the United States Constitution."

1. Jennie is charged with violating the statute making smoking illegal on the flight. If Jennie challenges this statute on constitutional grounds, the court should find the statute
- (A) Unconstitutional, as it takes away one's right to life, liberty and property in violation of the Fourteenth Amendment to the United States Constitution.
 - (B) Unconstitutional, as it takes away one's right to life, liberty, and property, in violation of the Fifth Amendment to the United States Constitution.
 - (C) Constitutional, because Congress could find that the statute is in the public interest as it acts to protect the health, safety, and welfare of airline passengers.
 - (D) Constitutional, because Congress is exercising its federal commerce power.

also provided for organizing, arming, and disciplining these military troops and governed such part of them as may be employed in the service of the United States. Our government also provided and maintained a navy during this period of time.

2. Which United States Government body and/or official has the power to perform the above-described acts?
- (A) The President, acting alone.
 - (B) The President, acting with the advice and consent of Congress.
 - (C) The Congress.
 - (D) All of the above.

Question 2 is based on the following fact situation.

Sometime in July, 1990 problems arose in the Middle East when Iraq invaded Kuwait. The United States, as well as several other countries around the world, became very upset with this invasion. Acting to protect its own interests, the interests of other Middle Eastern countries, and to show its disapproval of Iraq's actions, the United States surrounded Iraq.

The United States militia, in the form of Army, Navy, Air Force, and Marine troops were sent to the confrontation to maintain peace until this new Middle Eastern crisis could be resolved. As negotiations took place, troops and supplies from other countries, as well as the United States, remained in place.

Although the United States did not declare war, the U.S. Government did raise and support an army and appropriated money to such use. The United States Government

Questions 3 - 4 are based on the following fact situation.

Regarding the nature and requirements of the marriage contract in the State of California, the California Civil Code at section 4100 states the following:

"Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Section 4213."

Jonathon and Joey are two males, 42 and 37 years of age respectively, who have resided in San Francisco, California for the last nine years. Both of these men have been living together in a loving relationship unencumbered by the vestiges of a marriage contract for quite some time now. Jonathon, the older of the two, has wanted to get married for a least the last ten years. Jonathon just recently convinced Joey that, since they have been together for approximately twelve years now, it might be time for them to "get married" to express the permanency of their relationship.

Just two months ago Jonathon and Joey went to the San Francisco County Building and requested the necessary paperwork to get the ball rolling on their marriage license. The clerk immediately informed the men that she could not prepare the paperwork for them as California Civil Code section 4100 allows marriages to be consummated between a "man and a

woman." Both men were furious. They immediately contacted an attorney who filed the necessary papers challenging this law on constitutional grounds.

3. As applied to Jonathon and Joey, the California statute is likely to be held
- (A) Constitutional, because the statute promotes a compelling state interest.
 - (B) Constitutional, because it protects the welfare and morals of the citizens of the state.
 - (C) Constitutional, as a proper exercise of the state's police power.
 - (D) Unconstitutional, as violative of the privileges and immunities clause of the Fourteenth Amendment.

4. Assume for the purposes of this question that Jonathon and Joey win their suit. Assume that the federal court states in its opinion that the right to freedom of choice in marriage relationships is a protected interest which is violated by California Civil Code section 4100. Which of the following is the strongest constitutional basis which may be cited in support of the federal court's decision?

- (A) Due Process Clause of the Fourteenth Amendment
- (B) Equal Protection Clause
- (C) Due Process Clause
- (D) Privileges and Immunities Clause of the Fourteenth Amendment.

Question 5 is based on the following fact situation.

Congress passed legislation which established the United States Patent and Copyright Office. This office is headquartered in Washington, D.C. The purpose of this office is to provide a uniform system of keeping track of, and establishing rights to, inventions and written material.

5. Where did Congress get the power to establish such an office?
- (A) Congress' power to regulate commerce.
 - (B) Congress' power to lay and collect taxes, duties, imposts, and excises.
 - (C) Congress' power to promote science and

- (D) useful arts.
Congress' power to enforce laws by appropriate legislation.

CONSTITUTIONAL LAW ANSWERS AND EXPLANATIONS

1. (D) Congress has the power to regulate smoking on airplanes. Congress, in enacting this federal statute, is exercising its federal commerce power. Congress may enact a commerce-based criminal statute when, as here, the activity is related to interstate transactions. While smoking may be proper in an airport terminal and other places, Congress may enact legislation which makes it illegal to smoke in an airplane. Answer choice (C) is a correct statement but general statements such as this should not be preferred over an answer pick which states a correct rule of law or test which the court will apply. Answer choices (A) and (B) are incorrect because they concern an unconstitutional taking of life, liberty, or property. Under these facts, Congress' actions are proper and constitutional.
2. (C) Article I, Section 8 of the United States Constitution grants to Congress certain powers. All of the powers mentioned in this question are powers granted to Congress by the United States Constitution. Thus, answer (C) is correct. Under Article I, Section 8, Clause 12, Congress has the power "To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years." Under Article I, Section 8, Clause 13, Congress has the power "To provide and maintain a Navy." Under Article I, Section 8, Clause 15, Congress has the power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Finally, under Article I, Section 8, Clause 16, Congress has the power "To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States...." Since Congress alone has all of these powers and The President's main role during wartime is to act as Commander in Chief of the Army and Navy, answer (C) is correct and all other choices are incorrect.
3. (A) Here is a very representative example of the difficulty and breadth of a typical constitutional law multistate question. When you examine these questions and the explanations which follow each one you will begin to not only pick up clues as to how each multistate topic is tested but, more importantly, you will begin to "chip away" at each of the various rules, hornbook distinctions, code sections, and nuances which you are required to know. All of these subjects will be tested to one degree or another. Don't take any chances. Learn and retain as many of these legal rules and testing patterns as possible. A proper

understanding of as many of these hornbook distinctions as you can manage is absolutely critical to your success in passing the MBE. The present question is not that extremely difficult. You just have to see what is being tested and then apply the correct legal rule. Here you have to first know that the right to marry is a fundamental right. Furthermore, the right to freedom of choice in a marriage relationship is a fundamental right. You know that when we are dealing with a fundamental right the court will apply "strict scrutiny." Therefore, if California's law restricts marriage to contracts "between a man and a woman" a fundamental right is involved and strict scrutiny will be applied. Answer choice (A) is correct. This law is constitutional assuming that the court holds that the statute promotes a compelling state interest. Although answer choice (B) may be argued as correct, you should always remember to choose an answer which states a correct rule of law over an answer which merely states correct facts. Answer choice (B) merely states facts which may be the basis for upholding the constitutionality of the statute. Answer choice (C) is incorrect. You should note that the state's "police power" is usually an incorrect response to a multistate question. If you see this answer choice always look for a better, or more specific, response and then choose it. Remember, "the 'police power' is nowhere mentioned in the Constitution but the term has been a frequently cited concept in Constitutional cases, particularly in the commerce area." Nowak, Rotunda & Young, **Constitutional Law**, at pp 263-264. Answer choice (D) is incorrect. The Privileges and Immunities Clause does not make this statute unconstitutional.

4. (B) The Equal Protection Clause of the Fourteenth Amendment requires that "No state shall....deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause applies to governmental actions affecting the receipt of benefits or burdens by individuals. Under the facts of this question we are confronted with a law which restricts the right of a class of persons to marry. Therefore, this law will be invalid under the Equal Protection Clause unless the state can show that it has a compelling state interest. The correct answer is (B). Answer choices (A), (C), and (D) are incorrect. The Due Process Clause choices of (A) and (C) are incorrect because the Due Process Clause does not apply under these facts. Due Process would only apply if the state's statute limited, for all persons, the freedom of choice in marriage.
5. (C) Article I, Section 8, Clause 8 grants to Congress the power "To promote the Progress of Science and useful Arts,

by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Thus, answer (C) is correct. Answer choices (A), (B), and (D) are incorrect because, although these might be powers Congress can exercise, these are not the specific grants of power which give Congress the right to establish the United States Patent and Copyright Office. Note also that answer choice (D) states "Congress' power to enforce laws...." This does not say "enact laws." Thus, it is not a correct answer. This question calls for an answer which grants to Congress the power to "enact" the appropriate legislation which establishes the Patent and Copyright Office. This illustration points out the fact that the Multistate Bar Examination is as much a reading comprehension examination as it is a legal examination. You must always keep alert to key words when you read each fact pattern and answer choice.

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Printed in the United States of America**

ISBN: 1-879563-44-4

**Published by
MICHAEL CANTARUTTI**