

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. With this observation, they attempt to secure a warrant. Their request for a search warrant should be -
- a. Denied, because the officers intruded on a location where Thompson had a reasonable expectation of privacy without either a warrant or an exception to the 4th Amendment.
 - b. Denied, because the use of a flashlight violated Thompson's reasonable expectation of privacy.
 - c. Granted, because the garage does not have curtilage, in that it is not a dwelling.
 - d. Granted, because the garage itself was not within the curtilage of Thompson's dwelling.
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- a. Denied, because the officers intruded on a location where Thompson had a reasonable expectation of privacy 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. The information they obtained in violation of Thompson's REP cannot be lawfully used to obtain a warrant.
- b. Denied, 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. Granted, because the garage does not have curtilage, in that it is not a dwelling.
INCORRECT: Curtilage is not limited to dwellings and includes areas surrounding a dwelling. (Review your student text.)
- d. Granted, 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.

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. The application for a search warrant will be -

- a. Granted, because Johnson's statements amount to probable cause and the officers can meet the Aguilar standard.
 - b. Granted, because Johnson has never provided false information to the officers in the past.
 - c. Denied, because the officers did not corroborate Johnson's statements.
 - d. Denied, because there is no probable cause..
-

a. Granted, because Johnson's statements amount to probable cause and the officers can meet the Aguilar standard.

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. Because he is a co-criminal, the information he provided is presumed reliable.

b. Granted, 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.

c. Denied, because the officers did not corroborate Johnson's statements.

INCORRECT: Because the Aguilar test was satisfied (reliability and basis of knowledge,) there was no requirement to corroborate the information.

d. Denied, because there is no probable cause..

INCORRECT: See answer a. The Aguilar test was met.

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 - and a private citizen - from looking through the window while standing in a public place. What the officer saw did amount to 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. Officer Jones is a highway patrolman. Based on reasonable suspicion that Smith shoplifted some cigarettes and is driving away from the convenience store he stole from, 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, when the manager, a personal friend of his, approaches him. The manager states that two young men have just left the restaurant without paying for their dinners (a federal misdemeanor for which the agent has arrest authority), and asks his friend 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 arrest two suspects approximately two blocks from the restaurant. During the search incident to arrest, narcotics are found on one of the suspects, a man named Brown. Brown is charged with narcotics possessions. At his trial, he makes a motion to suppress the narcotics, claiming they were discovered during an illegal search of his person. According to the law, this evidence should be:

- a. Suppressed, because the agent did not have the legal authority to make the arrest for this crime.
 - b. Suppressed, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.
 - c. Admitted, because, based on the statements from the manager of the restaurant, probable cause to make the arrest existed under Aguilar.
 - d. Admitted, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.
-

- a. Suppressed, because the agent did not have the legal authority to make the arrest for this crime.
CORRECT: 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. Suppressed, because a misdemeanor arrest may never be made in a public place without first obtaining an arrest warrant.
INCORRECT: 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. Admitted, because, based on the statements from the manager of the restaurant, probable cause to make the arrest existed under Aguilar.
INCORRECT: With a warrantless misdemeanor arrest in a public place, in addition to statutory authority and probable cause requirements, it is also necessary that the offense occur in the law enforcement officer's presence (i.e., within sight or other senses).
- d. Admitted, because a misdemeanor arrest may always be made in a public place without first obtaining an arrest warrant.
INCORRECT: Warrantless misdemeanor arrests may be made in a public place if the crime was committed in the presence of the arresting officer. Additionally, statutory authority must exist for the arrest. While the agent in this case may have peace officer status, it is unclear from the question.

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 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 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, including 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, 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: 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).

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

INCORRECT: 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).

c. All of the evidence will be admitted.

INCORRECT: All of the evidence would be suppressed. The pistol was the fruit of an unlawful search (frisk), while the false identifications documents were also discovered during an unlawful search (an invalid search incident to arrest).

d. None of the evidence will be admitted.

CORRECT: All of the evidence would be suppressed. The pistol was the fruit of an unlawful search (frisk), while the false identifications documents were also discovered during an unlawful search (an invalid search incident to arrest).

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. King was pulled over by a law enforcement officer who has a valid warrant for King's arrest. 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 finds more evidence, including marijuana residue and rolling paper. 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 marijuana possession, King makes a motion to suppress all of the evidence found in his vehicle. According to the law:

- a. The cocaine, marijuana residue, and rolling paper will be admitted, while the 6 bricks of marijuana will be suppressed.
 - b. The cocaine, marijuana residue, and rolling paper 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, marijuana residue, and rolling paper will be admitted, while the 6 bricks of marijuana will be suppressed.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of 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, marijuana residue, and rolling paper will be suppressed, while the 6 bricks of marijuana will be admitted.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully discovered during a valid search incident to arrest of the vehicle.

c. All of the evidence is admissible.

CORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of 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.

d. None of the evidence is admissible.

INCORRECT: The cocaine, marijuana residue, and rolling paper are admissible because they were lawfully found during a valid search incident to arrest of 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.

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, a 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 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, a 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 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 was arrested pursuant to a warrant on the street as he pulled up to his residence in his vehicle. Federal agents had staked out his residence, where they planned to arrest him for participating in an earlier methamphetamine transaction. After Howard was removed from the vehicle and handcuffed, the agents immediately searched the interior of the vehicle for weapons or evidence. During this search, the agents seized from the front passenger seat a green backpack, which they opened, revealing a gun and another closed container with methamphetamine inside. At his trial, Howard makes a motion to suppress the gun and methamphetamine found in his vehicle. According to the law, this motion will be:

- a. Granted, because the search of the green backpack exceeded the scope of a valid search incident to arrest.
 - b. Granted, because the search was invalid in that there was no “real danger” to the officers since Howard was already removed from the vehicle and handcuffed at the time of the search.
 - c. Denied, because the backpack was searched during a valid inventory search of the vehicle.
 - d. Denied, because the search of the backpack was within the scope of a valid search incident to arrest.
-

a. Granted, because the search of the green backpack exceeded the scope of a valid search incident to arrest. **INCORRECT:** The Supreme Court held in *New York v. Belton* that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile . . . [and] any containers found within the passenger compartment . . .” For this reason, the search of the backpack was within the scope of a valid search incident to an arrest in a vehicle.

b. Granted, because the search was invalid in that there was no “real danger” to the officers since Howard was already removed from the vehicle and handcuffed at the time of the search. **INCORRECT:** To be valid, a search incident to arrest must involve a valid arrest and a contemporaneous search. *Belton*’s bright line rule, while based on a safety rationale, does not require a case-by-case examination of whether safety was actually an issue. Since *Belton* usually applies to searches made after the suspect has been arrested, the suspect normally will have been handcuffed and removed from the vehicle. In *Belton* itself, the four suspects had been removed from the vehicle, patted down and separated from one another. Further, the search of the passenger compartment of Howard’s car was essentially contemporaneous with his arrest. The seizure of the backpack from the front seat and the examination of its contents were therefore permissible under *Belton*.

c. Denied, because the backpack was searched during a valid inventory search of the vehicle. **INCORRECT:** Inventory searches are permissible where a vehicle has been lawfully impounded and the search is conducted pursuant to a standardized inventory policy. However, in *Florida v. Wells*, the Supreme Court noted that an inventory search “... must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory.” In this case, the search was specifically made to discover weapons or evidence, not to produce an inventory. Additionally, there is no evidence that an inventory search was being conducted pursuant to a standardized policy.

d. Denied, because the search of the backpack was within the scope of a valid search incident to arrest. **CORRECT:** The Supreme Court held in *New York v. Belton* that “when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile . . . [and] any containers found within the passenger compartment . . .” For this reason, the search of the backpack was within the scope of a valid search incident to an arrest in a vehicle.

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 on the bed for all to see. 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 reason to suspect anyone was at home, the sweep into the second floor was impermissible. 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.

Officer Liability Practice Exam

1. Nelson was arrested for drunk driving and taken to the police station. While there, he got into a verbal dispute with Franks, a police officer on duty. When Nelson referred to Franks as a “Nazi,” Officer Franks, suddenly punched Nelson one time and broke Nelson’s nose. Nelson was handcuffed during this entire encounter. A second officer, Connelly, was present when this happened but failed to stop Officer Franks from punching Nelson. Nelson sued Connelly, alleging that Connelly had failed to intervene to protect him from Franks’ attack. According to the law, should Connelly be held liable for his failure to take action in this instance?

- a. Yes, because a law enforcement officer always has a duty to intervene when he sees another officer violating a person’s constitutional rights.
- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.
- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.
- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

Answer to question 1:

- a. Yes, because a law enforcement officer has a duty to intervene when he sees another officer violating a person’s constitutional rights.

INCORRECT: A law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers. This includes situations in which excessive force is being alleged. However, in order to hold a law enforcement officer liable under this theory, the officer must have had a realistic opportunity to intervene in the encounter. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene. In other words, this was not an episode of sufficient duration to support a conclusion that Connelly, who stood by without trying to assist Nelson, was a tacit collaborator with Franks.

- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.

INCORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, there was no such opportunity. Connelly cannot be held liable merely because of his presence and knowledge.

- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.

INCORRECT: It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force can be held liable for his nonfeasance. An officer given a badge of authority may not ignore the duty imposed by his office and fail to stop other officers who mistreat a third person in his presence or otherwise within his knowledge.

- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

CORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene.

2. While on patrol, Officer Morris saw a female screaming for help near an alleyway. When he approached her, he noticed her face was red, and that she had blood on her cheek. When asked what had happened, she told Morris she had been beaten by her boyfriend, Hearn. She also stated the assault had just occurred, and gave Morris a full description of Hearn and a bar where Hearn liked to hang out. Officer Morris went to the bar, found Hearn, and arrested him for assault. Ultimately, charges were dropped when the girlfriend failed to show up to testify at the preliminary hearing. Hearn then sued Officer Morris for false arrest, claiming that (a) there was no probable cause for his arrest; and (b) the fact that charges were dropped was proof that the arrest should not have been made. According to the law, can Morris be held liable for false arrest?

- a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.
- b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.
- c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.
- d. No, because Hearn did not object to the arrest at the time it occurred.

Answer to question 2:

a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.

INCORRECT: Probable cause may be established in a variety of ways, including information provided by victims of the crime. As a general rule, when police officers obtain information from a victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible. Here, the information from the girlfriend, combined with Morris' own direct observations of her injuries, was sufficient to establish probable cause for Hearn's arrest.

b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.

INCORRECT: Because the standard for arrest is probable cause, not proof beyond a reasonable doubt, evidence that may prove insufficient to establish guilt at trial may still be sufficient to support an arrest. Thus, whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Neither does the fact that charges in a case are not ultimately pursued.

c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.

CORRECT: Probable cause existed to arrest Hearn, based upon the victim's statements and Officer Morris' observations of her physical injuries. When the facts known to the officer at the time of arrest are sufficient to convince a reasonable officer that he had probable cause to arrest, the arrest is valid. This is true whether or not the arrested individual is ultimately convicted.

d. No, because Hearn did not object to the arrest at the time it occurred.

INCORRECT: Hearn's failure to object or resist the arrest is irrelevant for determining whether probable cause existed.

3. Which of the following statements regarding a failure to intervene is **TRUE**?
- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.
 - b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.
 - c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.
 - d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.

Answer to question 3:

- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.
INCORRECT: A law enforcement officer generally has no affirmative duty to intervene and protect citizens from crimes committed by third parties. As one court has noted: This rule recognizes the simple reality that law enforcement officers cannot prevent every criminal act that is committed. Imposing liability on a municipality for failing to accomplish this impossible task would overload an already stretched legal system.
- b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.
INCORRECT: It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene, and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.
- c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.
CORRECT: While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person's constitutional rights in his presence, there must be a realistic opportunity to intervene and prevent the harm.
- d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.
INCORRECT: The rule regarding an officer's failure to intervene applies to all officers, regardless of rank, and includes those situations where the excessive force is actually being employed by a superior.

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 person acting under color of federal law. Not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded. As a general rule, a law enforcement officer is acting under color of law when his conduct occurs in the course of performing an actual or apparent duty of his office, or in a situation where the officer's conduct is such that he could not have behaved in that way but for the authority of his office.

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, (2) by a person acting under color of federal law. Where no Constitutional violation has occurred, and/or the officer being sued was not acting under color of federal law, a *Bivens* action is not possible. In limited situations, a private citizen acting in concert with law enforcement officers can be considering acting under "color of 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 in a *Bivens* action for violating a person's Constitutional or federal legal rights, but may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. Further, not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded.

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 in a *Bivens* action for violating a person's Constitutional or federal legal rights. However, the officer may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. A *Bivens* action would not be available to a plaintiff in the above situation.

5. During a search of Carson's home pursuant to a warrant to look for stolen credit cards, Thompson, a police officer, found five small, white rocks that resembled crack cocaine. He seized the items and took them back to the station. A preliminary field test indicated the items were not, in fact, cocaine. Nevertheless, Thompson sent the items for testing at the laboratory. Convinced that Carson was a drug dealer, and that the laboratory would confirm his suspicions about the rocks, Thompson decided to go ahead and obtain an arrest warrant. In the affidavit he submitted to the judge, Thompson stated: "A field test of the rocks in question indicated they each had properties consistent with cocaine. Based on Carson's possession of a controlled substance, I request an arrest warrant be issued." There was no other information presented to justify issuing the arrest warrant. Based on this, the judge issued the warrant and Carson was arrested. When the laboratory report confirmed the substance was a vitamin supplement, not cocaine, all charges were dropped and Carson was released. Carson sued Thompson, alleging that he had intentionally lied to the judge to obtain the arrest warrant. According to the law, can Thompson be held liable for his actions?

- a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.
- b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.
- c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.
- d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

Answer to question 5:

a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.

CORRECT: The Fourth Amendment requires a truthful factual showing in an affidavit used to establish probable cause. Thus, a complaint that an officer knowingly filed a false affidavit to secure an arrest warrant can be the basis for a lawsuit. In order to succeed on such a claim, the plaintiff must show (1) a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit; and (2) the false statement was material, or necessary, to the finding of probable cause. Here, the statement regarding the field test was clearly false. Further, this statement was essential to the finding of probable cause, because there was no other information present to the judge. Thus, Thompson can be held liable.

b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.

INCORRECT: The Supreme Court does not require that all statements in an affidavit be completely accurate. Instead, the Court simply requires that the statements be reasonably believed or appropriately accepted by the affiant as true. Misstatements resulting from negligence or good faith mistakes will not open up an officer to liability under Franks v. Delaware. Additionally, in order for a misstatement to result in liability, it must be material to the finding of probable cause. Disputed issues are not material if, after crossing out any allegedly false information, the "corrected affidavit" would establish probable cause.

c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.

INCORRECT: Here, the statement regarding the field test was clearly false. Additionally, this statement was essential to the finding of probable cause, because there was no other information presented to the judge on the issue. Information is essential to a finding of probable cause when, if it were disregarded, the remainder of the affidavit would not support a probable cause determination. That is the case here.

d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

INCORRECT: Thompson's motivation for misleading the judge is irrelevant to the inquiry here. Just as "evil" intentions do not make a Fourth Amendment violation out of a reasonable act, an officer's "good" intentions do not make a Fourth Amendment violation constitutional.

6. Which of the following statements regarding “qualified immunity” is **TRUE**?

- a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.
- b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.
- c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.
- d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

Answer to question 6:

a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.

CORRECT: Law enforcement officers are entitled to qualified immunity where their actions do not violate a clearly established statutory or constitutional right that a reasonable person would have known existed. Stated differently, where law enforcement officers reasonably, albeit mistakenly, violate a person’s constitutional rights, those officials - like other officials who act in ways they reasonably believe to be lawful - should not be held personally liable.

b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.

INCORRECT: Whether a Constitutional right has been violated is only one part of the “qualified immunity” analysis. If, under the plaintiff’s version of the facts, a constitutional violation occurred, the court must then decide whether the right was “clearly established” at the time of the violation. Even in situations where a Constitutional violation has occurred, an officer is entitled to “qualified immunity” if the right violated was not clearly established at the time of the incident.

c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.

INCORRECT: In deciding whether to grant officer qualified immunity, courts use a two-part analysis. The first part of the analysis requires a court to determine whether, under the plaintiff’s version of the facts, a constitutional violation occurred. If no violation has occurred, that ends the inquiry, and the officer is entitled to “qualified immunity.” As noted by the Supreme Court in Saucier v. Katz: “If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.”

d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

INCORRECT: “Qualified immunity” is not a “good faith” defense. Stated differently, the subjective state of mind of the officer involved in the incident is irrelevant. Instead, his or her actions must be assessed objectively, using an objective reasonableness standard.

7. Which of the following statements regarding a false arrest claim is **TRUE**?
- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.
 - b. The existence of probable cause is a complete defense to a claim of false arrest.
 - c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.
 - d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.

Answer to question 7:

- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.
INCORRECT: A plaintiff's claim of false arrest is based upon the Fourth Amendment's right to be free from unreasonable seizures. More specifically, a person has a Fourth Amendment right to be arrested only upon a showing of probable cause. Where this right is violated, a lawsuit for false arrest is possible.
- b. The existence of probable cause is a complete defense to a claim of false arrest.
CORRECT: A law enforcement officer is entitled to qualified immunity on a false arrest claim where probable cause existed for the arrest. Probable cause to arrest constitutes justification and is a complete defense to an action for false arrest. Stated differently, in order for a wrongful arrest claim to succeed under either *Bivens* or Section 1983, a plaintiff must prove the police lacked probable cause for the arrest.
- c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.
INCORRECT: Whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Because a conviction requires a higher standard of proof than an arrest, it is possible that evidence that is insufficient to establish guilt may still meet the lower standard of probable cause for an arrest. Thus, an arrest based upon probable cause is not invalidated if the suspect is later acquitted of the charges, nor is it in cases where charges are not ultimately pursued.
- d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.
INCORRECT: It is not necessary that "actual" probable cause exist in order for an arrest to be objectively reasonable. Instead, the issue for immunity purposes is not probable cause in fact, but "arguable" probable cause. To say that probable cause is "arguable" means that it is possible for officers of reasonable competence to fairly disagree over whether probable cause exists. In other words, where reasonable officers in the same circumstances and possessing the same knowledge as the defendant's could have believed that probable cause existed to arrest, "arguable" probable cause is present.

8. Two City police officers beat a handcuffed prisoner until he identified his drug supplier. After the prisoner was convicted of drug possession, he sued the two officers for injuries suffered during his beating. 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 8:

- 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.

