1. In 1963 Hobson was appointed to a tribunal established pursuant to a congressional act. The tribunal’s duties were to review claims made by veterans and to make recommendations to the Veterans Administration on their merits. Congress later abolished the tribunal and established a different format for review of such claims. Hobson was offered a federal administrative position in the same bureau at a lesser salary. He thereupon sued the government on the ground that Congress may not remove a federal judge from office during good behavior nor diminish his compensation during continuance in office. Government attorneys filed a motion to dismiss the action.

The court should:

(A) Deny the motion because of the independence of the federal judiciary constitutionally guaranteed by Article III.

(B) Deny the motion, because Hobson has established a property right to his federal employment on the tribunal.

(C) Grant the motion, because Hobson lacked standing to raise the question.

(D) Grant the motion, because Hobson was not a judge under Article III and is not entitled to life tenure.

This question tests your understanding of who qualifies as an Article III judge. By claiming that he cannot be removed from office during good behavior and cannot have his compensation diminished while continuing in office, Hobson is invoking the special protections that are afforded federal judges by Article III, section 1. But serving on a tribunal that makes "recommendations" to the Veterans Administration falls far short of qualifying as an Article III judge. This is clear from his advisory role and the limited nature of his jurisdiction. Since Hobson's claim has no substantive merit, you can quickly conclude that answers (A) and (B) are wrong -- because both counsel against dismissing his suit. (A) wrongly suggests that Hobson qualifies as an Article III judge. (B) wrongly suggests that Hobson holds a property right in his seat on the tribunal, but that argument would only make sense in the context of a discrimination suit. Thus, we are left with a choice between (C) and (D). (C) wrongly suggests that Hobson lacks standing to bring this suit. Though his substantive claim is meritless, Hobson certainly does have standing. He is alleging that he has personally sustained a specific, concrete injury, inflicted by the government, resulting in the violation of his constitutional rights. That leaves (D), which correctly asserts that Hobson is not an Article III judge and therefore not entitled to life tenure.

2. Zall, a resident of the state of Paxico, brought suit in federal district court against Motors, Inc., a Paxico corporation. Zall seeks recovery of $12,000 actual and $12,000 punitive damages arising from Mootor’s sale to him of a defective automobile. Zall’s suit is based only on a common law contract theory.

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

(A) Yes, because Article III vests federal courts with jurisdiction over cases involving the obligation of contracts.

(B) Yes, because it is an action affecting interstate commerce.

(C) No, because this suit is not within the jurisdiction of an Article III court.

(D) No, because there is no case or controversy within the meaning of Article III.
This question tests your understanding of federal jurisdiction under Article III. Federal courts are empowered to hear two different kinds of cases: "federal question" cases (i.e., those arising under the U.S. Constitution or federal law) and "diversity" cases (i.e., those arising between citizens of different states). Here, no diversity exists because the plaintiff is a resident of the state of Paxico and the defendant is a Paxico corporation. Likewise, there is no federal question because the suit is grounded upon a common law contract theory -- a claim that implicates state law, not federal law. Thus, Question #2 -- which asks whether a federal district court should hear this case on the merits -- should be answered, "No." Because they answer "Yes," (A) and (B) may be safely rejected, and your choice may be narrowed to (C) and (D). (D) wrongly suggests that there is no "case or controversy." But Article III's case or controversy requirement is certainly satisfied here; we have a live dispute between the buyer and seller of an allegedly defective automobile. This suit has none of the flaws that offend the case or controversy requirement: It is not moot; it is not unripe; and it does not call for an advisory opinion. That leaves (C), which correctly concludes that Article III jurisdiction is lacking. A closer look at (A) and (B) reveals even deeper flaws in those answers -- flaws that should have prompted you to reject them even if you were unsure about the correct answer on jurisdiction. (A) wrongly invokes the Contracts Clause (Article I, section 10), which restricts state legislation "impairing the Obligation of Contracts." This is a private civil suit, not a constitutional challenge to the exercise of state legislative power. Likewise, (B) wrongly invokes the Commerce Clause (Article I, section 8), which serves as a source of federal legislative power and is thus equally inapplicable here.

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

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

(A) Dismissed, because there is no diversity of citizenship.

(B) Dismissed because of the abstention doctrine.

(C) Decided on the merits, because federal jurisdiction extends to controversies between two states.

(D) Decided on the merits, because a federal question is involved.

This is another question that tests your understanding of federal jurisdiction. Since the facts involve governmental discrimination against barbers with out-of-state licenses, two different provisions of the U.S. Constitution are implicated: the dormant Commerce Clause (which bars states from unduly burdening interstate commerce) and the Privileges or Immunities Clause of the 14th Amendment (which, since 1999, has served as the constitutional home for the "right to travel"). Since this lawsuit is grounded upon rights guaranteed by the U.S. Constitution, it presents a federal question that confers Article III jurisdiction. Accordingly, (D) is the correct answer. (A) wrongly suggests that jurisdiction hinges on diversity of citizenship. No diversity is needed when a federal question is presented. (B) wrongly invokes the abstention doctrine. Under these facts, there is no reason for a federal court to abstain: We already have state action (the license denial), state law is anything but unclear, and there are no state court proceedings with which to interfere. (C) wrongly suggests that this is a controversy between two states -- but this is a dispute between the state of Aurora and one of its citizens.
4. Congress enacted a statute providing that persons may challenge a state energy law on the grounds that it is in conflict with the federal Constitution in either federal or state court. According to this federal statute, any decision by a lower state court upholding a state energy law against a challenge based on the federal Constitution may be appealed directly to the United States Supreme Court. The provisions of this statute that authorize direct United States Supreme Court review of specified decisions rendered by lower state courts are:

- (A) Constitutional, because congressional control over questions of energy use is plenary.
- (B) Constitutional, because Congress may establish the manner by which the appellate jurisdiction of the United States Supreme Court is exercised.
- (C) Unconstitutional, because they infringe the sovereign right of states to have their supreme courts review decisions of their lower state courts.
- (D) Unconstitutional, because under Article III of the Constitution, the United States Supreme Court does not have authority to review directly decisions of the lower state courts.

This question tests your understanding of congressional power over the appellate jurisdiction of the U.S. Supreme Court. Article III, section 2 gives Congress the power to regulate and limit the Court's appellate jurisdiction. Thus, (B) is the correct answer, because the instant statute was enacted by Congress and it identifies a specific type of lower court decision, authorizing its direct appeal to the Supreme Court. (A) is wrong for two different reasons: It incorrectly suggests that Congress has "plenary" control over energy use, and it completely fails to address the jurisdictional question at hand. (C) wrongly suggests that states enjoy a "sovereign right" to have their supreme courts review the decisions of their lower courts. To the contrary, federal review of state action -- executive, legislative, and judicial -- is well established. (D) wrongly suggests that Article III limits Supreme Court review of lower state court decisions. To the contrary, Article III vests Congress with the authority to define the Court's appellate jurisdiction.

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

Pine, aged 25, contemplates marrying Ross, aged 25. Both are residents of the state of Champlain. Pine has not yet proposed to Ross because he is offended by the counseling requirement.

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

- (A) Pine and Ross are residents of the same state.
- (B) No substantial federal question is presented.
- (C) The suit presents a nonjusticiable political question.
- (D) The suit is unripe.
This question tests your understanding of the ripeness doctrine. A case is unripe when a live controversy does not yet exist between the parties. It is not enough that the plaintiff can point to a potential dispute; the dispute must be ongoing when the suit is filed. Here, the suit is unripe -- making (D) the correct answer -- because plaintiff is challenging the Marriage Counseling Act at a point in time when he isn't even engaged. We would not have a ripeness problem if, prior to filing suit, the plaintiff had proposed to Ross, she had accepted, they had refused to undergo the state-mandated counseling, and their application for a marriage license had been rejected by the state. (A) wrongly suggests that this suit should be dismissed for lack of diversity, while (B) wrongly asserts that no federal question is presented. To the contrary, there is a substantial federal question -- the challenged statute interferes with the right to marry, a fundamental privacy right protected by substantive due process. And since a federal question is presented, the lack of diversity is irrelevant. Finally, (C) is untenable; there is no basis here for invoking the political question doctrine. These facts do not present an issue whose resolution was committed to the political branches of government by the text of the Constitution; nor do we have an issue that is inherently unsuitable for resolution by the judicial branch.

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

In an appropriate federal court, Dunn brings a suit against the President and Secretary of State to set aside this action on the ground that it is inconsistent with the principles of our constitutional form of government. Dunn has a lucrative contract with the United States Department of Commerce to provide commercial information about Ruritania. The contract expressly terminates, however, “when the President recognizes the country of Ruritania and undertakes diplomatic relations with its government.”

Which of the following is the most proper disposition of the Dunn suit by the federal court?

(A) Suit dismissed, because Dunn does not have standing to bring this action.

(B) Suit dismissed, because there is no adversity between Dunn and the defendants.

(C) Suit dismissed, because it presents a nonjusticiable political question.

(D) Suit decided on the merits.

This question tests your understanding of the political question doctrine. A suit will be dismissed for posing a nonjusticiable political question if it presents an issue that is inherently unsuitable for disposition by the judicial branch or whose resolution was committed to the political branches of government by the text of the Constitution. The conduct of foreign relations is a prime example of a political question. Thus, the instant lawsuit, which challenges a decision by the President to undertake diplomatic relations with a foreign government, runs afoul of the political question doctrine -- making (C) the correct answer. (D) wrongly suggests that the district court should reach the merits of this case. (A) and (B) wrongly assert, respectively, that plaintiff lacks standing and that plaintiff lacks adversity with the defendants (the President and Secretary of State). These answers are meritless in light of plaintiff's contract with the Commerce Department -- which expressly terminates when the President undertakes diplomatic relations with the foreign government in question. (A) and (B) are wrong because plaintiff faces concrete economic injury that is directly attributable to the actions of these defendants.
7. The state of Yuma provides by statute, “No person may be awarded any state construction contract without agreeing to employ only citizens of the state and of the United States in performance of the contract.”

Suppose the state supreme court declares the statute to be unconstitutional on the ground that it violates the Privileges and Immunities Clause of the Fourteenth Amendment to the federal Constitution and the Equal Protection Clause of the state constitution. If the state seeks review in the United States Supreme Court, which of the following statements is most accurate?

(A) The United States Supreme Court may properly review decisions by certiorari only.

(B) The United States Supreme Court may properly review that decision by appeal only.

(C) The United States Supreme Court may properly review that decision by appeal or certiorari.

(D) The United States Supreme Court may not properly review that decision.

This question tests your understanding of the U.S. Supreme Court's power to review state court decisions. The Supreme Court may only review a state court decision if that decision turned on federal grounds. The Supreme Court will refuse jurisdiction if it finds "adequate and independent" state law grounds to support the state court's decision. "Adequate" means that the state law grounds are fully dispositive of the case. "Independent" means that the state law grounds are not tied to federal precedent; they cannot merely echo federal case law interpreting an analogous federal statutory or constitutional provision. Here, the state supreme court struck down the challenged statute on two separate grounds -- as a violation of the federal Privileges or Immunities Clause, and as a violation of the state Equal Protection Clause. Thus, the state supreme court invoked a provision of the state constitution as wholly sufficient, by itself, to invalidate the challenged statute. That means that "adequate and independent" state law grounds support its decision, foreclosing U.S. Supreme Court review -- and making (D) the correct answer. (A), (B), and (C) all wrongly suggest that the Supreme Court may properly review the state supreme court's decision.

8. Congressional legislation regulating the conditions for marriages and divorces would be most likely upheld if it:

(A) Applied only to marriages and divorces by members of the armed services.

(B) Applied only to marriages performed by federal judges and to divorces granted by federal courts.

(C) Implemented an executive agreement seeking to define basic human rights.

(D) Applied only to marriages and divorces in the District of Columbia.

This question tests your understanding of federal legislative power. It inquires into the circumstances where a court would most likely uphold Congressional legislation regulating the conditions for marriages and divorces -- a branch of family law traditionally governed by the states. (D) is the best answer because Congress has the same legislative authority over the District of Columbia as does a state legislature over matters internal to its state.
9. Congress passes an act requiring that all owners of bicycles in the United States register them with a federal bicycle registry. The purpose of the law is to provide reliable evidence of ownership to reduce bicycle theft. No fee is charged for the registration. Although most stolen bicycles are kept or resold by the thieves in the same cities in which the bicycles were stolen, an increasing number of bicycles are being taken to cities in other states for resale.

Is this act of Congress constitutional?

(A) Yes, because Congress has the power to regulate property for the general welfare.

(B) Yes, because Congress could determine that, in inseverable aggregates, bicycle thefts affect interstate commerce.

(C) No, because the registration of vehicles is a matter reserved to the states by the Tenth Amendment.

(D) No, because the Act exceeds Congress’ Commerce Clause powers.

This question tests your understanding of the Commerce Clause (Article I, section 8) as a source of federal legislative power. The Commerce Clause gives Congress the power to regulate commerce "among the several states." The question here is the constitutionality of a Congressional enactment that combats bicycle thefts by setting up a federal bicycle registry and mandating the registration of every bicycle in the United States.

(A) wrongly invokes the property power (Article IV, section 3), which governs the acquisition and disposition of federal property -- a clause that has nothing to do with our facts. Likewise, through its reference to the "general welfare," (A) wrongly invokes the spending power (Article I, section 8) -- a clause that is equally inapplicable to this scenario.

(C) invokes the Tenth Amendment, which reserves to the states those powers that the Constitution neither delegates to the federal government nor withholds from the states. The Tenth Amendment does have some applicability to this fact pattern, but NOT for the reason (C) cites. (C) is wrong because the power to regulate commerce is delegated to the federal government; this is not a regulatory matter reserved to the states. But the Tenth Amendment does restrain Congress from enacting laws that require state or local officials to play a substantial role in administering a federal program. Printz v. United States, 521 U.S. 898 (1997). If (C) had suggested that state or local officials were required to maintain this federal bicycle registry, the answer would have had considerable merit. But this was NOT the thrust of (C)'s reliance on the Tenth Amendment.

Thus, we are left with (B) and (D). Prior to 1995, the correct answer would have been (B) because (B) invokes the commerce power and correctly recognizes that the aggregate effect of purely local activity -- here, a multitude of bicycle thefts -- can suffice to affect interstate commerce. But in the years since 1995, the Supreme Court has made clear that federal legislative power under the Commerce Clause does not reach criminal conduct that is purely local and non-economic. United States v. Morrison, 529 U.S. 598 (2000) (striking down -- as an illegitimate exercise of Congressional power under the Commerce Clause -- the civil damages provision of the Violence Against Women Act, which authorized suits in federal court by victims of crimes "motivated by gender"); id. at 617-18 (invoking United States v. Lopez, 514 U.S. 549 (1995), where the Court struck down, as exceeding the commerce power, a federal statute barring gun possession near schools, to stress that "the Constitution requires a distinction between what is truly national and what is truly local," holding that Congress is bereft of power to "regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce"). Since bicycle theft is a local and relatively trivial crime, Congress is likely bereft of Commerce Clause power to regulate it -- making (D) the best answer at this point in time.
10. Congress decides that the application of the Uniform Consumer Credit Code should be the same throughout the United States. To that end, it enacts the U.C.C.C. as a federal law directly applicable to all consumer credit, small loans, and retail installment sales. The law is intended to protect borrowers and buyers against unfair practices by suppliers of consumer credit.

Which of the following constitutional provisions may be most easily used to justify federal enactment of this statute?

(A) The Obligation of Contracts Clause.

(B) The Privileges and Immunities Clause of the Fourteenth Amendment.

(C) The Commerce Clause.

(D) The Equal Protection Clause of the Fourteenth Amendment.

This question likewise tests your understanding of the Commerce Clause. But note how the question is structured; it is asking you to identify a source of federal legislative power in support of the instant statute. If you get a question like this on the Bar Exam -- and you will -- the key is to eliminate every answer that does not feature a source of federal legislative power. By doing so here, you will quickly eliminate (A), (B), and (D) -- leaving you with (C) as the only remaining choice. (A) wrongly invokes the Obligation of Contracts Clause (Article I, section 10), which serves as a restraint upon state power, not a grant of federal power. (B) wrongly invokes the Privileges or Immunities Clause of the 14th Amendment, which serves as a restraint upon state power, not a grant of federal power. (D) wrongly invokes the Equal Protection Clause of the 14th Amendment, which serves as a restraint upon state power, not a grant of federal power. The only remaining choice is (C) -- which, by invoking the Commerce Clause, certainly does feature a source of federal legislative power. Moreover, the instant statute regulates consumer credit transactions -- an activity that readily qualifies as having a substantial effect on interstate commerce.

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

(A) Police power.

(B) War and defense power.

(C) Power to tax and spend for the general welfare.

(D) Power to enforce the Privileges and Immunities Clause of the Fourteenth Amendment.

This question tests your understanding of the federal spending power (Article I, section 8) -- the power to tax and spend "for the general [w]elfare of the United States." Once again, you are faced with a question that asks you to identify a source of federal legislative power in support of a specific statute -- one that requires colleges receiving federal funds to offer student aid solely on the basis of need. When you see a fact pattern that features federal funding -- and, in particular, where Congress attaches strings to that funding -- you should think instantly of the spending power. Thus, (C) is the correct answer. Though (B) and (D) both feature a source of federal legislative power, they are far inferior to (C). It is difficult to imagine how the war and defense power (B) could have any applicability to student aid legislation. And the enforcement powers conferred by the 14th Amendment (D) are likewise incompatible with this legislation. Finally, (A) is wrong because there is no general federal police power.
12. Congress enacted a law prohibiting the killing, capture, or removal of any form of wildlife upon or from any federally owned land.

Which of the following is the most easily justifiable source of national authority for this federal law?

(A) The Commerce Clause of Article I, Section 8.

(B) The Privileges and Immunities Clause of Article IV.

(C) The Enforcement Clause of the Fourteenth Amendment.

(D) The Property Clause of Article IV, Section 3.

This question tests your understanding of the Property Clause (Article IV, section 3), which vests Congress with broad power to regulate federally-owned property. If you see a fact pattern that involves federally-owned land, think immediately of the Property Clause. Courts have construed the Property Clause to empower Congress to protect wildlife wandering onto federally-owned land. Thus, (D) is far and away the best answer here: The Property Clause is the most easily justifiable source of legislative authority for the instant statute, which protects wildlife on federally-owned land. Though the Commerce Clause (A) is a handy source of legislative power, it would be difficult to equate interstate commerce with the protection of wildlife. (B) which features a provision that restrains state governments is even less applicable to this scenario. (C) which refers to federal enforcement of the Fourteenth Amendment, is inapplicable because Equal Protection and Due Process concerns are far afield from protecting wildlife.

13. A federal criminal law makes it a crime for any citizen of the United States not specifically authorized by the President to negotiate with a foreign government for the purpose of influencing the foreign government in relation to a dispute with the United States.

The strongest constitutional ground for the validity of this law is that:

(A) Under several of its enumerated powers, Congress may legislate to preserve the monopoly of the national government over the conduct of United States foreign affairs.

(B) The President’s inherent power to negotiate for the United States with foreign countries authorizes the President, even in the absence of statutory authorization, to punish citizens who engage in such negotiations without permission.

(C) The law deals with foreign relations and therefore is not governed by the First Amendment.

(D) Federal criminal law dealing with international affairs need not be as specific as those dealing with domestic affairs.

This question tests your understanding of federal legislative power vis-a-vis foreign affairs. Congress has the power to declare war; to raise and support the armed forces; to spend in furtherance of the common defense and general welfare; to regulate citizenship and the naturalization of new citizens; to enforce treaties entered into by the executive branch; and to make all laws necessary and proper for carrying into execution the foregoing powers or any other federal power. Pursuant to these powers, Congress can take preventive measures against activities that may cause international misunderstandings, which may in turn lead to war, and Congress can seek to prevent efforts by our citizens to undermine the conduct of U.S. foreign affairs. The instant statute reflects a congressional intent to ensure that only properly authorized persons negotiate with foreign governments; as such, it is a legitimate exercise of the foregoing legislative powers. Thus, the correct answer is (A), because it focuses on federal legislative authority in the realm of foreign affairs. (B) is wrong because it focuses
on executive branch authority, and thereby fails to answer the question -- which inquires about the constitutionality of a statute. (C) and (D) are unresponsive at best, and border on incoherence.

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

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

(A) Constitutional, because it creates a limited administrative power to implement the statute.

(B) Constitutional, because inherent executive powers permit such action even without statutory authorization.

(C) Unconstitutional as an undue delegation of legislative power to the executive.

(D) Unconstitutional, because it violates the Due Process Clause of the Fifth Amendment.

This question tests your understanding of Congress's power to delegate legislative authority to the executive branch. Such delegations are constitutional so long as Congress provides intelligible standards to be followed by the person or body receiving the authority. This requirement is satisfied by the instant statute, which contains specific standards and procedures that the President must follow in exercising the delegated powers. Thus, (A) is the correct answer and (C) is flatly wrong. (B) wrongly suggests that the President's inherent executive powers can somehow make this statute constitutional. By invoking the Due Process Clause of the Fifth Amendment, (D) wrongly suggests that this statute constitutes either a taking or an arbitrary governmental act -- but our facts support neither contention.

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

Minicar, Inc., a minor United States car manufacturer, seeks to enjoin enforcement of the Commission’s rules.

The best argument that Minicar can make is that:

(A) Legislative power may not be delegated by Congress to an agency in the absence of clear guidelines.

(B) The commerce power does not extend to the manufacture of automobiles not used in interstate commerce.

(C) Minicar is denied due process of law because it is not represented on the Commission.

(D) The Commission lacks authority to enforce its standards because not all of its members were appointed by the President.
This question tests your understanding of the power to appoint executive branch officials. Congress cannot itself appoint executive branch officials, but it does play a role in the appointments process -- a role that varies depending on whether the post is that of a **principal** or an **inferior** official. The President has sole power to appoint **principal** executive officials, though such appointments must be approved by a Senate majority. In contrast, Congress may decide who appoints **inferior** executive officials. Such power may be vested in the President, the judicial branch, or the heads of executive branch departments. It may not be vested in the legislative branch. Thus, the instant statute is unconstitutional (D), because it allows four of the five commissioners to be appointed by legislators. 

(A) wrongly suggests that this statute involves the delegation of **legislative** power; to the contrary, this statute governs the **appointment** of **executive** branch officials. (B) wrongly invokes the Commerce Clause. That clause would apply if this statute were regulating the manufacture or sale of automobiles -- but, instead, it governs the appointment of executive branch officials. Finally, (C) wrongly suggests that a regulated industry has a constitutional right to representation on the commission that regulates it.

16. A state statute requires that all buses which operate as common carriers on the highways of the state shall be equipped with seat belts for passengers. Transport Lines, an interstate carrier, challenges the validity of the statute and the right of the state to make the requirement.

What is the best basis for a constitutional challenge by Transport Lines?

(A) Violation of the Due Process Clause of the Fourteenth Amendment.

(B) Violation of the Equal Protection Clause of the Fourteenth Amendment.

(C) **Unreasonable burden on interstate commerce.**

(D) Difficulty of enforcement.

This question tests your understanding of the "dormant" Commerce Clause, which prohibits the states from enacting regulations that discriminate against interstate commerce or place undue burdens upon it. The question asks you to identify the "**best**" basis for challenging a state statute that requires all buses operating as common carriers on the highways of that state to be equipped with passenger seat belts. These facts are reminiscent of famous dormant Commerce Clause cases where local regulations placed burdens on interstate transportation. *See, e.g., Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959) (striking down an Illinois law requiring that trucks in the state use curved mud flaps -- at a point in time when straight mud flaps were legal in 45 states, curved mud flaps were affirmatively banned in Arkansas, and curved mud flaps were required in no state other than Illinois). Though the seat belt law at issue here is not nearly as burdensome as the mud flap law struck down in *Bibb*, a dormant Commerce Clause challenge would subject it to a balancing test far more rigorous than rational basis review. That makes (C) the best answer -- because the due process and equal protection challenges suggested, respectively, in (A) and (B) would subject the statute only to rational basis review. Under due process analysis (A), there is no fundamental right at stake, so the governing standard is the "**mere rationality**" test: The law will be upheld if it is rationally related to any conceivable and legitimate governmental aim. The seat belt law easily satisfies this standard. Under equal protection analysis (B), a rational basis test will govern once again -- because no fundamental right is at stake, and the legislation features neither a suspect nor a semi-suspect classification. Hence, (A) and (B) are clearly inferior to the dormant Commerce Clause challenge suggested by (C). Finally, (D) is untenable because it does not even identify a constitutional provision to support the challenge.
17. In an effort to relieve serious and persistent unemployment in the industrialized state of Onondaga, its legislature enacted a statute requiring every business with annual sales in Onondaga of over $1 million to purchase goods and/or services in Onondaga equal in value to at least half of the annual sales in Onondaga of the business.

Which of the following constitutional provisions is the strongest basis on which to attack this statute?

(A) The Due Process Clause of the Fourteenth Amendment.

(B) The Equal Protection Clause.

(C) The Commerce Clause.

(D) The Privileges and Immunities Clause of the Fourteenth Amendment.

This question likewise pertains to the dormant Commerce Clause. Here, we have a state statute that imposes serious burdens on interstate commerce by compelling local businesses to purchase a substantial portion of their goods and services inside the state. This statute is clearly vulnerable to a dormant Commerce Clause challenge, making (C) the best answer. For the same reasons set forth in the answer to Question #16, a due process or equal protection challenge will be doomed here to rational basis review. Thus, (A) and (B) are untenable. Finally, (D) wrongly invokes the Privileges or Immunities Clause of the 14th Amendment -- which, from the time of The Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1873) until 1999, was treated by the Supreme Court as affording individuals no protection from state governmental actions and furnishing federal courts with no basis to invalidate state laws. Though the Court has recently breathed some life into the clause -- see Saenz v. Roe, 526 U.S. 489, 502-03 (1999) (finding in it the textual home for the "right to travel") -- it remains a questionable tool for attacking state burdens on interstate commerce.

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

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

(A) The general unemployment rate in the nation.

(B) The treaties and immigration laws of the United States.

(C) The need of the state for this particular statute.

(D) The number of aliens currently residing in Yuma.

This question tests your understanding of the Supremacy Clause (Article VI) and federal preemption of state law. The Supremacy Clause declares federal law and U.S. treaties to be "the supreme Law of the Land." Thus, state and local laws that conflict with federal authority are deemed void as preempted. This question identifies a state statute that bars the award of a state construction contract to anyone who will not pledge to employ only citizens of that state and the United States. Note how the question is structured: It asks you to evaluate the statute's constitutionality "under the Supremacy Clause." Thus, you should be looking for some federal statute or treaty that may pose a conflict with, and thus preempt, the state law. With this purpose in mind, you can quickly eliminate (A), (C), and (D), because each of them merely cites a justification for the law, rather than identifying a federal statute or treaty. That leaves (B) -- which, by invoking the treaties and immigration laws of the United States, identifies a source of federal authority that might preempt the statute.
19. The state of Aurora requires licenses of persons “who are engaged in the trade of barbering.” It will grant such licenses only to those who are graduates of barber schools located in Aurora, who have resided in the state for two years, and who are citizens of the United States.

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

(A) The Privileges and Immunities Clause of the Fourteenth Amendment.

(B) The Due Process Clause of the Fourteenth Amendment.

(C) The Equal Protection Clause of the Fourteenth Amendment.

(D) The Obligation of Contracts Clause.

This question tests your understanding of the so-called "right to travel." From its name, you might imagine that the right to travel is principally concerned with freedom of movement. But that is not the case. The right to travel is the right to be free from discrimination as a non-resident of a state -- and, upon moving to a state and taking up residence there, it's the right to be treated equally vis-a-vis long-time residents of that state. Thus, if you get a Bar Exam question featuring a state law that treats new residents less favorably than long-time residents, think immediately of the right to travel. Though this right used to be conceived as a component of the Equal Protection Clause, the Supreme Court recently found a textual home for it in the long-ignored Privileges or Immunities Clause of the 14th Amendment. Saenz v. Roe, 526 U.S. 489 (1999) (holding that state welfare programs may not restrict new residents to the level of welfare benefits they would have received in the state from which they moved) (striking down a provision in the new federal welfare statute, which had authorized states to establish such two-tiered benefit schemes). This question implicates the right to travel because it features a state law that favors long-time residents at the expense of new residents. The law bars a new resident from obtaining a barber's license until after having satisfied a two-year residency requirement. Residency requirements of this sort have been successfully challenged -- under the Equal Protection Clause -- as violating the right to travel. Thus, prior to 1999, the correct answer to this question would have been (C). But now, in the wake of Saenz v. Roe, the right to travel is protected by the Privileges or Immunities Clause of the 14th Amendment. Accordingly, the correct answer now is (A).

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

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

(A) The requirement violates Article I, Section 2 of the Constitution, which provides that representatives to Congress be chosen “by the people of the several States.”

(B) The requirement violates Article I, Section 4 of the Constitution, which gives Congress the power to “make or alter” state regulations providing for the “times” and “manner” of holding elections for senators and representatives.

(C) The requirement violates the Due Process Clause of the Fourteenth Amendment.

(D) The requirement violates the Equal Protection Clause of the Fourteenth Amendment.
This question tests your understanding of the fundamental rights prong of Equal Protection analysis. The Equal Protection Clause of the 14th Amendment restrains state power in two different ways. First, it restricts the power of states to discriminate among people on the basis of certain characteristics -- e.g., race, gender, national origin. (This is the "suspect classifications" prong of Equal Protection analysis.) Second, it prevents states from discriminating among people in the exercise of a fundamental right. (This is the "fundamental rights" prong of Equal Protection analysis.) For Equal Protection purposes, fundamental rights include the right to vote and the right to privacy. Fundamental rights analysis under the Equal Protection Clause requires the application of strict scrutiny: to survive review, the regulation must be necessary to advance a compelling governmental purpose. Here, the state of Missoula has enacted an election code requiring each voter to be literate in English. This is a state law that discriminates against non-English speakers in the exercise of a fundamental right (the right to vote). As such, it is governed by the Equal Protection Clause and will be upheld only if it survives strict scrutiny. Accordingly, the best answer here is (D). The only other answer that is even remotely acceptable is (C), which invokes the Due Process Clause of the 14th Amendment. But the right to vote is not included among the rights deemed fundamental for purposes of substantive due process. Thus, (D) is vastly preferable to (C). (A) and (B), meanwhile, are not even responsive to the question.

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

   The requirement that candidates for licenses must be citizens is:

   (A) Constitutional as an effort to ensure that barbers speak English adequately.

   (B) Constitutional as an exercise of the state’s police powers.

   (C) Unconstitutional as a bill of attainder.

   (D) Unconstitutional as a denial of equal protection.

   This question tests your understanding of the "suspect classifications" prong of Equal Protection analysis. State laws that discriminate on the basis of race, national origin, or alienage (i.e., against non-citizens) are deemed suspect classifications under the Equal Protection Clause. They are analyzed under strict scrutiny (which requires that the law be "necessary to achieve a compelling governmental purpose"). State laws that discriminate against women or non-marital children are deemed semi-suspect classifications. They are analyzed under intermediate scrutiny (which requires that the law be "substantially related to an important governmental purpose"). All other classifications -- e.g., wealth, age, mental disability -- are subjected only to rational basis review (they must be "rationally related to a legitimate governmental purpose"). Here, the state law bars non-citizens from obtaining a barber's license. Thus, the law discriminates on the basis of alienage -- a "suspect" classification that warrants strict scrutiny under the Equal Protection Clause. This makes (D) the correct answer. (A) wrongly suggests that the law should be upheld as "an effort to ensure that barbers speak English adequately." This justification is both overinclusive and underinclusive. Some non-citizens are fluent in English; some citizens are not. (B) is wrong because the exercise of state police power is always subject to federal constitutional restraint. Finally, this statute is not a bill of attainder, as (C) fatuously asserts, because it does not constitute a legislative determination of guilt.
22. Ben was the illegitimate, unacknowledged child of Fred. Fred died intestate, leaving neither spouse nor any children other than Ben. The state’s law of intestate succession provides that an unacknowledged illegitimate child may not inherit his father’s property. The spouse, all other blood relations, and the state are preferred as heirs over the unacknowledged illegitimate child. Ben filed suit in an appropriate court alleging that the state statute barring an illegitimate child from sharing in a parent’s estate is invalid, and that he should be declared lawful heir to his father’s estate.

In challenging the validity of the state statute, Ben’s strongest argument would be that:

(A) There is no rational basis for preferring as heirs collateral relatives and even the state over unacknowledged children, and, therefore, the law violates the Equal Protection Clause.

(B) He has been deprived of property without due process because his fundamental right to inherit has been compromised without a compelling state need.

(C) It violates the Privileges and Immunities Clause of the Fourteenth Amendment.

(D) It is a denial of procedural due process because it does not give the unacknowledged illegitimate child any opportunity to prove paternity.

This is another question that tests your understanding of the "suspect classifications" prong of Equal Protection analysis. As explained above, state laws that discriminate against women or non-marital children are deemed semi-suspect classifications. They are analyzed under intermediate scrutiny (which requires that the law be "substantially related to an important governmental purpose"). This question features a state law that discriminates between legitimate and illegitimate children in terms of their right to inherit. Since the right to inherit is not a fundamental right -- which means that (B) is wrong -- we turn from the "fundamental rights" prong of Equal Protection analysis to the "suspect classifications" prong. Because we are confronted with a semi-suspect classification (discrimination against non-marital children), the Equal Protection Clause governs and intermediate scrutiny should be applied. This makes (A) the correct answer, even though it refers to rational basis review rather than intermediate scrutiny. (One lesson to be learned here is that even the best available answer will sometimes be flawed. Such is the wicked nature of the Multistate exam.) (C) wrongly invokes the Privileges or Immunities Clause of the 14th Amendment -- which, at this point in time, affords no meaningful protection beyond the right to travel. (D) wrongly asserts that the statute is a violation of procedural due process. This argument might have had merit if the statute contained an irrebuttable presumption that a non-marital child is not the child of the intestate. But that is not the case here. What is obvious from the face of the statute is its discrimination against non-marital children -- a fact pattern that strongly evokes the Equal Protection Clause. Thus, the best answer here is (A).

23. Congress enacts a statute punishing “each and every conspiracy entered into by any two or more persons for the purpose of denying black persons housing, employment, or education, solely because of their race.”

Under which of the following constitutional provisions is the authority of Congress to pass such a statute most clearly and easily justifiable?

(A) The Obligation of Contracts Clause.

(B) The General Welfare Clause of Article I, Section 8.

(C) The Thirteenth Amendment.

(D) The Fourteenth Amendment.
This question tests your understanding of congressional enforcement of the 13th Amendment. Section 1 of the 13th Amendment outlaws slavery; section 2 gives Congress the power "to enforce this article by appropriate legislation." As construed by the Supreme Court, this enforcement power is broad. It is not merely confined to legislation that abolishes slavery; instead, 13th Amendment enforcement power extends to measures that abolish the "badges and incidents" of slavery. There is one critical thing to remember about 13th Amendment enforcement power: It extends to private acts of race discrimination -- in sharp contrast to 14th Amendment enforcement power, which may only be used to restrain state action. Thus, the Supreme Court has upheld the exercise of 13th Amendment enforcement power to prohibit race discrimination in the sale or rental of real estate. In this question, you are asked to identify the source of federal legislative power that "most clearly and easily justifi[es]" a federal statute punishing conspiracies to deny black persons housing, employment, or education solely because of their race. (A) may be quickly eliminated because the Obligation of Contracts Clause (Article I, section 10) is not a source of federal legislative power; instead, it serves as a restraint upon state power. (B) is wrong because the General Welfare Clause (Article I, section 8) authorizes federal expenditures, and this is not a funding statute.

[Note: beware the Multistate’s frequent use of this very misleading term (“General Welfare Clause”) when referring to the Congressional SPENDING power. This language derives from Congress' authority under Article I, § 8 to tax and spend for the “General Welfare of the United States.”]

That leaves us with a choice between (C) the 13th Amendment and (D) the 14th Amendment. A quick glance at the nature of this statute -- which criminalizes private acts of race discrimination -- reveals that the best answer is (C): congressional enforcement power under the 13th Amendment.

Questions 24-25 are based on the following fact situation:

John Doe, the owner of a milk container manufacturing firm, sought to focus public attention on the milk packaging law of the state of Clinton in order to have it repealed. On a weekday at 12 noon, he delivered an excited, animated, and loud harangue on the steps of the State Capitol in front of the main entryway. An audience of 200 onlookers, who gathered on the steps, heckled him and laughed as he delivered his tirade. Doe repeatedly stated, gesturing expressively and making faces, that “the g-damned milk packaging law is stupid,” and that “I will strangle every one of those g-damned legislators I can get hold of because this law they created proves they are all too dumb to live.” After about 15 minutes, Doe stopped speaking, and the amused crowd dispersed.

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

24. The “Capitol steps” statute is probably:

(A) Constitutional both on its face and as applied to Doe.

(B) Constitutional on its face but unconstitutional as applied to Doe.

(C) Unconstitutional on its face, because it applies to all working days.

(D) Unconstitutional on its face, because it concerns the State Capitol.
This question tests your understanding of time, place, and manner regulations of speech under the First Amendment. You are asked to gauge the constitutionality of a statute restricting all speech-related activities on the steps of the state capitol in front of the main entryway. Under this statute, such expressive activity is allowed except during four 30-minute intervals each business day. Those intervals seem to correspond with the time periods when the largest number of people will be entering or leaving the building. Since the statute regulates speech only in terms of when and where it may be conducted, rather than focusing on content or viewpoint, it will be analyzed under "Track Two" review. To survive judicial scrutiny under this test, the statute (1) must be content-neutral; (2) must be narrowly tailored to serve a significant governmental interest; and (3) must leave open ample alternative channels for communicating the information. This statute satisfies the content neutrality requirement because it regulates expression without regard to the speaker's topic or viewpoint. It satisfies the narrow tailoring requirement because it bars expressive activity only for short intervals of time, at moments during the day when large numbers of people will be passing through the space on their way in or out of the building. It satisfies the ample alternative channels requirement by making the capitol steps freely available to speakers at all other times of the day. In addition to satisfying Track Two review, the statute has none of the characteristics that might make it facially invalid. It is not substantially overbroad and it does not give a licensing official unfettered discretion over who may speak or what may be said. Thus, the statute is constitutional on its face. Likewise, it is constitutional as applied, because it was not enforced against Mr. Doe to hinder his speech in any way. Accordingly, the best answer here is (A).

25. A second state statute punishes “any person who shall intentionally threaten the life or safety of any public official for any act which he performed as part of his public office.” Which of the following statements is correct concerning the possible punishment of Doe under the second statute?

(A) The statute is unconstitutional on its face.

(B) **The statute is constitutional on its face, but Doe could not constitutionally be punished under it for this speech.**

(C) Doe could constitutionally be punished under the statute for his speech.

(D) Doe could constitutionally be punished under the statute for his speech, but only if one or more legislators were actually present when he delivered it.

This question tests your understanding of certain unprotected categories of speech: true threats and the advocacy of imminent lawless action. Governmental restrictions on expressive content are normally struck down under strict scrutiny, unless the regulated utterance falls into a category of "low-level" speech deemed unworthy of full First Amendment protection. The Supreme Court has identified eight categories of "low-level" speech; some are utterly unprotected by the First Amendment, while others are less-than-fully protected. The **unprotected** categories are advocacy of imminent lawless action, obscenity, child pornography, fighting words, and true threats. The **less-than-fully protected** categories are defamatory/tortious statements, commercial speech, and the lewd/profane/indecent. The question here is the constitutionality of a statute that criminalizes intentional threats to the life or safety of a public official based on his/her conduct in office. This is a content-based restriction on speech -- but it seems safely confined to utterances that have no First Amendment protection. The statute identifies eight categories of "low-level" speech; some are utterly unprotected by the First Amendment, while others are less-than-fully protected. The **unprotected** categories are advocacy of imminent lawless action, obscenity, child pornography, fighting words, and true threats. The **less-than-fully protected** categories are defamatory/tortious statements, commercial speech, and the lewd/profane/indecent. The question here is the constitutionality of a statute that criminalizes intentional threats to the life or safety of a public official based on his/her conduct in office. This is a content-based restriction on speech -- but it seems safely confined to utterances that have no First Amendment protection. Thus, this statute is constitutional on its face because it regulates utterances that fall outside the scope of First Amendment protection. A separate question here is whether Mr. Doe can be punished under this statute. His speech, though strident and profane, was so hyperbolic, so "over the top," that it prompted laughter from the audience. He did not seriously threaten the legislators and he did not seriously advocate any violence against them. Thus, his actual utterances do not fall within the statutory prohibition and do not fall within the unprotected categories on which the statute was based. This means that the best answer is (B) -- the statute is constitutional on its face (because the statute only criminalizes utterances that fall within the
unprotected categories of true threats and illegal advocacy); but Mr. Doe cannot be punished under it for this speech (because his comments were insufficiently serious to qualify as true threats or illegal advocacy).

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

In the subsequent prosecution of Smith, the first under this statute, Smith will:

(A) Not prevail.

(B) Prevail, because speech of the sort described here may not be punished by the state because of the First and Fourteenth Amendments.

(C) Prevail, because though his speech may be punished by the state, the state may not do so under this statute.

(D) Prevail, because the average user of a public street would think his speech/action here was amusing and ridiculous rather than “annoying,” etc.

This question tests your understanding of the First Amendment's vagueness doctrine. This doctrine may be invoked to strike down restrictions on speech that are worded in such a way that citizens cannot reasonably discern what is prohibited. A speech restriction is void for vagueness unless it gives "a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). Here, the challenged statute provides, in its entirety, that "[n]o person shall utter to another person in a public place any annoying, disturbing, or unwelcome language." This language violates the vagueness doctrine. It gives prospective speakers no reasonable notice, no guidance whatsoever, as to the type of statements that are prohibited. Thus, the defendant here will prevail in his First Amendment challenge to the statute -- and that means that (A) is wrong. We are left, then, to choose among (B), (C), and (D). (D) wrongly suggests that First Amendment law contains an "average person" test, akin to the reasonable person standard in tort law. (B) flatly asserts that the First Amendment shields this defendant from punishment for what he said here. This is wrong; it is far too sweeping an assertion. The defendant pursued an elderly woman for three blocks, shouting a blistering stream of four-letter invective into her ear. As we saw in the answer to Question #25, supra, profanity is a less-than-fully-protected category of low-level speech -- and is therefore vulnerable to some regulation and punishment under the First Amendment. Accordingly, (B) must be rejected. We are left, then, with (C) -- which correctly states that the defendant's tirade may be punished by the state (which is true because it falls into a low-level category of speech), but that the state may not do so under this statute (which is true because the statute is void for vagueness).