1. A If the county is an instrumentality of the state, then Marston cannot be sued under § 1983 in her official capacity for retrospective damages. See Hafer v. Melo (1991). B is wrong because, if the county is a subdivision of the state, it can be sued under § 1983 for retrospective damages, and therefore Marston could be sued in her official capacity for such relief. C is wrong because the “stripping doctrine” of Ex parte Young applies to actions for prospective injunctive and declaratory relief to compel officers to conform their behavior in the future to federal law. Aspinwall is seeking back pay in this question. D is wrong because § 1983 does not apply to “all acts performed under color of state law,” and can “turn on the identity of the defendant” or “the capacity in which the defendant is sued.” A state may not be sued under § 1983 because it is not a “person” for purposes of the statute. Nor may an instrumentality of a state. See Will v. Michigan Dep’t of State Police (1989). But a municipality is considered a person under the statute. See Monell v. Department of Social Servs. (1978).

2. D This answer reflects the level of immunity to which Marston would be entitled. A is wrong because § 1983 very definitely does not confer absolute immunity from liability for damages on all public officials sued in their personal capacity. (If it did, it would not do much good.) B is wrong because executive officials do not in general enjoy absolute immunity from liability for damages when sued in their personal capacity. The only exception (and this does not relate directly to § 1983) is the President of the United States. See Nixon v. Fitzgerald (1982). C is wrong because a sheriff is not performing a quasi-judicial function when she fires a worker because of his political affiliation. Instead, the sheriff is performing an administrative or executive function.

3. B This answer reflects the thinking behind Pullman abstention. A state law permits municipalities to charge a “nominal” fee for the use of public facilities. $250 is a lot of money, but perhaps it would still qualify as “nominal.” Or perhaps not. In any case, if a state court were to decide that $250 is more than a nominal amount, and were to strike down the city’s requirement on that ground, then the federal court would not have to decide whether the requirement violates the federal Constitution. This is the essence of Pullman abstention. (Note that Pullman “abstention” is really a doctrine about stays.) A is wrong because, although state courts are available to vindicate federal rights, so are federal courts, and in general plaintiffs may select whichever court they prefer. Indeed, Justice Brennan thought of the federal courts as the “primary guarantors” of federal rights. C is wrong because there is no requirement under § 1983 that defendants be given an opportunity to revise their policy. D is wrong because the attorney general of the state would not be the proper party to sue in this situation. The requirement arises from a local ordinance that the chief of police appears to administer.
4. C This answer reflects the kind of prudential considerations that go into the exercise of Pullman “abstention.” A is wrong because the language about federal courts’ “unflagging obligation” to exercise their statutory subject-matter jurisdiction is very much honored in the breach — otherwise we would not have abstention doctrines. B is wrong because the ability of a federal court to resolve an unclear issue of state law cannot preclude Pullman abstention all by itself. Without doubt, the federal courts were capable of deciding whether the Texas Railroad Commission had authority to under Texas law to issue the regulation at issue in that case. D is wrong because the exception for “patently and flagrantly unconstitutional” laws is really an exception to Younger abstention, not Pullman abstention. Moreover, Cineplex City’s requirement does not come across as being obviously unconstitutional.

5. C One of the few remaining forms of constructive waiver under the Eleventh Amendment and related doctrines arises from conditions Congress attaches to its appropriations. If the condition of waiver is stated without ambiguity in the statute making federal money available, the courts will almost certainly conclude that valid waiver has occurred. A is wrong because the courts look beyond formal parties in many respects. In this situation, they would see the Department as an instrumentality of the state, capable of asserting sovereign immunity just as the state might. B is wrong because it relies on the wrong doctrinal principle. Congress does not have power to abrogate in this context, but it does have power to require the states to waive. D is wrong because of cases like Hans.

6. D All the concerns set forth in this question drove the Madisonian Compromise. Concerns I and IV explain why some framers feared a federal judiciary at the trial level, and concerns II and III explain why some framers wanted such a judiciary.

7. A If true, this fact would best support the city’s motion, because it would demonstrate that, as a matter of state law, the final policy-maker for this area of policy (demotion of personnel within the library) is the board of trustees, not Wallace. Wallace would be incapable of making policy on behalf of the city, unless the board adopted Wallace’s criteria for demoting Xavier as policy. B is wrong because it does not foreclose the possibility that Wallace is the final policy-maker for the Eastern Branch. C is wrong because it is irrelevant. The issue in this question is whether Xavier can hold the city liable. The fact that Xavier also sued Wallace is not material to that issue. D is wrong because municipalities cannot raise a defense of qualified immunity to an action under § 1983.

8. C This answer best comports with precedent. A is wrong because a uniform rule of federal common law will not control in all cases involving the proprietary relations of the United States. B is wrong because nothing in the local law appears to be aberrant. D is wrong because sometimes a uniform rule of federal law will control.
9. **B** An action for breach of an agreement of surety is a creature of state law. Thus, *Agamemnon Trucking, Inc. v. Calchas Ins. Co., Inc.* fails the test of *American Well Works Co. v. Layne & Bowler Co.* (1916). The *American Well Works* test is a fairly reliable test of inclusion, and it supports Calchas’ argument here better than the other choices. A is wrong because it overstates the case — surely the United States has *some* interest in seeing that Agamemnon is paid; otherwise it would not have enacted the statute referred to in the question. C is wrong because it ignores all forms of federal subject-matter jurisdiction other than diversity jurisdiction. D is wrong because Agamemnon almost certainly does have reason to refer to the statute in the complaint, because it helps demonstrate why the court should treat Agamemnon as a third-party beneficiary with enforceable rights under the contract of surety.

10. **D** Congress has expressed an interest in ensuring that contracts for the shipment of goods across state lines are appropriately executed. This would include a concern that obligations arising from contracts of surety are performed, and that courts interpret the regulations underlying Form XYZ in a uniform manner. This argument may not win the day, of course, but it nevertheless stands as Agamemnon’s best argument. A is wrong because it simply restates the question — whether the federal has subject-matter jurisdiction over this case. B is wrong because Agamemnon’s cause of action does not arise directly from federal law, at least not under the facts as given. C is wrong because it overstates the case. A federal court does not invariably have subject-matter jurisdiction over a case if the plaintiff’s complaint satisfies the well-pleaded complaint rule (which is analogous to the test of *Smith v. Kansas City Title Co.* (1921)). Sometimes a complaint will satisfy the rule, yet the court will not have subject-matter jurisdiction. *See, e.g.* *Moore v. Chesapeake & Ohio Ry. Co.* (1924).

11. **D** According to the facts, “authority to make final policy for all matters pertaining to the county lies with its Board of Commissioners.” Thus, we are looking for some indication that the board “owned” the termination of Ashgate. Under D, the board acknowledges that terminating Ashgate is its ultimate responsibility and resolves (on the record) to do so. This may not be a perfect answer, of course, because the board doesn’t actually adopt Ramirez’ rationale, but the other answers are not as good. A is deficient because it leaves the county’s final policy-maker outside the loop on Ashgate’s dismissal. B is deficient because Ramirez’ motivation is irrelevant to the county’s motion for summary judgment. C is deficient because it too is irrelevant to the county’s motion. Even if there was nothing Ashgate could have done about the outbreak, the county cannot be held liable under § 1983 unless its final policy-maker acted.
12. A Federal common law will control this case. B may sound good, but it is not the law. C is not accurate. Federal courts often exercise jurisdiction in the absence of a legislative rule of decision. Consider admiralty. D is not accurate either. Although the Eleventh Amendment and related doctrines often protect states, they do not protect them in all instances, and this is one of them.

13. B Notwithstanding the unlimited nature of the text of 28 U.S.C. § 1332, federal courts sitting in diversity will not hear cases that sound in probate or domestic relations, and this is such a case. A is irrelevant because the parties are Haz-lite and Trudy, and they are diverse. C is incorrect precisely because federal courts will not exercise jurisdiction in cases like this, notwithstanding their “unflagging obligation” to exercise the jurisdiction that Congress has given them. D is irrelevant, because no one has asserted immunity.

14. D The federal court will proceed with its case, and it will allow the state court to do the same. Hugo’s estate is not being attacked in rem in either court. The two proceedings are in personam, even though Hugo has passed away. The state court may award so much of Hugo’s money to Maurice that Victor may not be able to recover fully, but that is a possibility that the Anti-Injunction Act does not forbid. Enjoining the state court is not “necessary in aid of” the federal court’s jurisdiction.

15. D The Court has held that Congress may allocate adjudicative authority for the military to courts-martial without violating the principles of Article III. See Dynes v. Hoover (1857). A is incorrect precisely because military criminal proceedings do not have to be before a jury. B is also incorrect. Although the location of an infraction can make a difference in some contexts, military jurisdiction is not limited to infractions that take place overseas. C is incorrect because the Constitution is not as explicit as this answer indicates. Dynes v. Hoover is not driven by explicit text. It is driven by inferences from text.

16. D If this question did not involve a foreign government, A would probably be the answer, because the contract has close ties to Cineplex. It was executed there, and financial performance was to occur there. (B would not be the answer, by similar analysis.) Because a foreign relations are implicated, however, a rule of federal common law would apply. The question, then, is whether a uniform rule would be appropriate, or whether federal common law should vary from state to state. Because foreign relations probably cannot abide such unevenness, a uniform rule is appropriate. See Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964).
17. A  This is a question about “constitutional common law.” B, C, and D are all examples of constitutional interpretations that Congress could — in theory — defeat by legislation. Tarble’s Case (1872), for example, only makes sense if federal courts may grant writs of habeas corpus to people in federal custody. The rule of that case would be undermined if Congress were to eliminate this aspect of federal jurisdiction. Thus, B is an example of constitutional common law. D is also a clear example of such law, because every decision under the Dormant Commerce Clause can be overridden by Congress. C is a closer call, because the exclusionary rule may be a pure rule of constitutional law, indefeasible by Congress. But A is undoubtedly such a rule.

18. C  Answers A and B make a lot of sense, because they reflect the first and third factors of Cort v. Ash. But the Court has largely superseded Cort with a fairly strict test for private rights of action, under which Congress must create such rights with express language or they will not be held to exist. In 1970, however, the reigning test was not the strict modern test, nor even the more lenient test of Cort. Instead, it was the exceedingly lenient test of J.I. Case v. Borak (1964), under which the Court almost automatically recognized a private right of action. Given that this statute was enacted in 1970, Borak would arguably control, even if it would not control under a statute enacted today. Whereas A and B are near misses, D is a wide miss, because § 1983 requires action “under color of” state law, which is missing from Diderot’s conduct.
Part II

This is a problem about Younger abstention. The issue is whether there have been “proceedings of substance of merits” in Pinstripe’s case in federal court before the state brings its action against Pinstripe in state court for negligence, such that Younger does not apply. The answer is probably no, given that the federal court has not acted on Pinstripe’s motion for a preliminary injunction. One might also argue here that the only reason Pinstripe’s federal action preceded the state’s action at all is because Pinstripe’s lawyer sand-bagged the state’s attorney general. A federal judge could plausibly conclude in this situation that the state’s proceeding would have preceded the federal action had Pinstripe’s lawyer not done this. Another issue that presents itself here is whether Younger abstention should apply at all, given that the state’s action against Pinstripe is a civil one for negligence, not a criminal prosecution. The answer is probably yes, given the nature of the proceeding. The state has been conducting an investigation; it is bringing formal “charges,” in the sense of seeking a judgment of tortious action, and it presumably seeks to impose some kind of penalty. See generally Sprint Communications v. Jacobs (2014). Finally, none of the conventional exceptions to Younger applies: the state court is competent to hear Pinstripe’s federal argument; there is no evidence of bad faith on Minor’s part; and Cineplex’s law of negligence could not possibly be unconstitutional in its every clause and sentence.

Part III

(Falcon v. Magpie — matrix)

Government a Party?

4 IPR involves private rights because it’s between two private parties.

4 IPR involves public rights because the PTO’s decision is being reviewed.

3 One issue is whether the government is a party to IPR.

Right or Privilege

4 Falcon’s patent is property because the PTO gave the patent to it.

4 Falcon’s patent is a privilege because it could not exist in a state of nature (or without an act of Congress).

3 One issue is whether Falcon’s patent is “property” (or a conclusory assertion that the patent is property) (or a simple observation Congress has plenary power in this area).

Nature of the Claim

4 This case arises under the common law because it involves a functional “trespass.”
This case arises under the common law because of the statute of 1624.

IPR involves public rights because the rule of decision is federal.

One issue is whether this case arises under the common law.

Narrow, Integrated, Specialized Regulation?

IPR does not violate Article III because it occupies a narrow field.

IPR cannot achieve coherent regulation because the cases are heterogeneous.

The PTO’s seminars demonstrate Congress’ desire for expertise and coherent regulation.

IPR involves public rights because panelists are experts in their field.

One issue is whether Congress seeks coherent, expert, specialized regulation (or a conclusory argument that Congress seeks coherent regulation).

Public or Private Right

One issue is whether IPR involves “public” or “private” rights (or a conclusory assertion either way).

Sufficiently Independent?

IPR may violate Article III because panelists are appointed by political officers without senatorial confirmation.

IPR may violate Article III because political officers set panelists tenure and salary.

One issue is whether panelists are sufficiently independent of the political system.

Mere Adjunct?

IPR may violate Article III because panelists’ decisions are self-executing.

IPR may violate Article III because the Federal Circuit must defer to panelists on findings of fact, or IPR does not violate Article III because factual review for “substantial evidence in the record” is generally acceptable, or IPR does not violate Article III because the Federal Circuit reviews the panels’ decisions of law de novo.

One issue is whether panels are “mere adjuncts” to Article-III courts (or a conclusory assertion either way).
This case may violate Article III because Falcon did not consent to IPR.

One issue is whether Falcon consented to IPR.

This case explores what Congress may allocate to a non-Article III court.

IPR violates the Seventh Amendment because attacks on a patent’s validity were referred to a jury under the statute of 1624.

IPR does not violate the Seventh Amendment because Congress allocated scire facias to the bench before 1791.

IPR does not violate the Seventh Amendment because Congress allocated certain actions in equity to the bench in 1819, adding precedential value to the argument that attacks on the validity of patents need not go to the jury.

One issue is whether attacks on the validity of a patent were historically put to a jury.

This case explores the scope of the Seventh Amendment.