

# PRACTICE EXAM 11: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

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1. A former Deputy Attorney General who personally and substantially participated in the State's fraud investigation of ABC Corporation has joined a private law firm. ABC now seeks to retain the former DAG's new firm in pending criminal proceedings on the same matter. Which argument most strongly supports the State Bar's position that the firm must be screened?

A. The State Bar should argue that all former government attorneys are categorically barred from any private representation relating to their prior agency work.

B. The State Bar should argue that the firm may proceed only after obtaining written waiver from the personally affected client of the former government office.

C. The State Bar should argue that rule 1.11 imposes a personal disqualification only and the firm has no derivative obligation under any circumstances.

D. The State Bar should argue that CRPC 1.11 personally disqualifies the former government attorney, and the firm must implement timely written screening with notice to the appropriate government office.

2. Husband's father wished to gift the marital family \$300,000 toward purchase of a home during the marriage. The father wrote checks payable jointly to "Husband and Wife" totaling that amount. The couple deposited the checks and used the funds toward purchase of a home titled in both spouses' names. At dissolution, Husband asserts the gift was intended solely for his benefit. How should the court characterize the gifted funds?

A. As Husband's separate property based solely on the father's stated subjective intent to benefit his son above all other family members.

B. As community property, because gifts made to spouses jointly during marriage are presumed community property absent evidence of contrary donative intent.

C. As Wife's separate property because she contributed equally to the household economic unit during the marriage to the family.

D. As property held in equitable trust for Husband's father pending evidence of his actual intent at the time of delivery to the couple.

3. Seller demonstrated a piece of industrial equipment to Buyer prior to sale, stating "this machine processes 500 units per hour at peak efficiency." Seller's statement was a material factor in Buyer's decision to purchase. After delivery, the equipment processed approximately 300 units per hour at peak efficiency. Buyer sued for breach of express warranty. Under UCC section 2-313, what is the most likely result?

A. Seller breached an express warranty, which arises from any affirmation of fact or promise that becomes part of the basis of the bargain regardless of whether the word "warranty" is used.

B. Seller's statement was sales puffery and creates no warranty obligation under California or general commercial law.

C. Express warranties under UCC 2-313 arise only when the seller delivers a written warranty document at the time of sale closing.

D. Buyer must prove Seller knew the representation was false at the time of the demonstration to recover on a warranty theory.

4. Under California real property law, a prescriptive easement is acquired by use of another's land that is \_\_\_\_\_ for the statutory period of five years.

A. permissive, open, continuous, and exclusive to the claimant alone for the full period

B. open, exclusive, payment of real property taxes, and continuous for the full period

C. open and notorious, hostile, continuous and uninterrupted, and under claim of right

D. open, friendly, intermittent, and acknowledged by the servient owner

5. An attorney's website included testimonials describing the attorney as "the best personal injury lawyer in California" and "guaranteed to win your case." A potential client filed a complaint with the State Bar after retaining the attorney based on the website and losing his case. Which argument most strongly supports the State Bar?

A. The State Bar should argue that attorney website testimonials are categorically prohibited regardless of content or accuracy in California legal practice.

B. The State Bar should argue that CRPC 7.1 prohibits any communication containing material misrepresentation, including statements likely to create unjustified expectations about results.

C. The State Bar should argue that all comparative attorney claims are prohibited regardless of whether the comparison can be factually substantiated by evidence.

D. The State Bar should argue that attorneys are presumed to have committed false advertising whenever a client loses a case after retaining counsel based on website content.

6. Husband operated a successful law practice he started before marriage. During the 20-year marriage, the practice grew significantly, and Husband devoted his full-time labor to it. At dissolution, the practice was valued at \$2 million, including \$800,000 attributable to professional goodwill. Wife seeks a community interest in the practice's goodwill component. How should the court treat the goodwill?

A. Goodwill of a professional practice attributable to community labor during marriage is community property subject to valuation and division at dissolution.

B. Goodwill of a professional practice is categorically separate property because it represents the personal reputation of the practicing spouse alone.

C. Goodwill cannot be valued or divided at dissolution because it has no objective market value separable from the licensee professional.

D. Goodwill passes by gift to the practicing spouse at dissolution and is excluded from community property division as a matter of policy.

7. Defendant rented a car from a rental agency by presenting a valid driver's license and credit card, and signing a rental agreement. He intended at the time of rental to keep the car permanently and never returned it. The prosecution charged Defendant. Which of the following best describes the appropriate offense?

A. Embezzlement, because Defendant was lawfully entrusted with the vehicle as a temporary bailee under the rental contract.

B. Receiving stolen property, because Defendant's continued possession after the rental term made the property "stolen" by operation of law.

C. Robbery, because the misrepresentation at the time of rental constituted constructive force or fear against the rental agency clerk.

D. Larceny by trick, because Defendant obtained possession only (not title) through misrepresentation with intent to permanently deprive at the time of taking.

8. Promoter signed a contract with Supplier in the name of "Newco, Inc., a corporation to be formed" for purchase of \$50,000 in equipment. The contract contained no release of Promoter upon incorporation. After Newco's incorporation, the corporation accepted the equipment and used it in operations but did not formally adopt the contract. Newco failed financially. Supplier sued Newco and Promoter. Under California law, what is the most likely outcome?

A. Promoter remains personally liable on the pre-incorporation contract because, absent a novation or express release by Supplier, the promoter's signing liability survives even after the corporation accepts the contract benefits.

B. Promoter is automatically released from liability once Newco accepts the equipment regardless of any novation requirement under California or general agency law.

C. Promoter is liable only if she signed the contract before completing articles of incorporation with the California Secretary of State office.

D. Supplier may proceed only against Newco because California adopts strict entity-based contractual liability rules in the corporate formation context.

9. Husband conveyed community real property to his sister for \$10,000, well below market value, without Wife's knowledge or written consent. The sister had no reason to know of Wife's interest. One year later, Wife discovered the conveyance and challenged it. Under Family Code section 1102, what is the most likely outcome?

A. The conveyance is void in its entirety, including against the bona fide purchaser sister, regardless of her status as a good-faith taker.

B. The conveyance is valid in its entirety because the sister was a bona fide purchaser for value without notice of the marital community interest.

C. The conveyance is voidable by Wife as to her one-half community interest, allowing her to recover her share, while the sister retains Husband's one-half interest.

D. The conveyance is valid because community property held in either spouse's name may be conveyed by that spouse alone without joinder of the other spouse.

10. Plaintiff entered a contract with Defendant to perform construction services for \$500,000. After Plaintiff completed 60% of the work, Defendant materially breached and refused to pay. The reasonable market value of services performed was \$400,000. Plaintiff sued in quasi-contract for restitution. Under California law, what is the proper measure of recovery?

- A. The contract price for the services performed, calculated as 60% of \$500,000, regardless of market value of the services rendered.
- B. Plaintiff's actual out-of-pocket costs incurred without any allowance for profit or labor value above direct expenditure.
- C. The reasonable expectation damages plaintiff would have received under the original contract performed to completion as agreed.
- D. The reasonable value of benefits conferred on Defendant — the market value of services rendered, here \$400,000 — uncapped by the contract price when defendant is the breaching party.

11. A law firm employed two paralegals who, with the firm's authorization, regularly conducted initial client intake interviews, drafted form complaints with firm boilerplate, and corresponded with opposing counsel on routine scheduling matters. One paralegal failed to file an answer within the required deadline, resulting in entry of default. Which argument most strongly supports State Bar discipline against the supervising partner?

- A. The State Bar should argue that CRPC 5.3 requires lawyers to make reasonable efforts to ensure nonlawyer conduct is compatible with the lawyer's professional obligations, and that unsupervised delegation of filing deadlines violates the duty.
- B. The State Bar should argue that all delegation of legal tasks to paralegals constitutes the unauthorized practice of law by the supervising attorney as a matter of California rule.
- C. The State Bar should argue that paralegals are personally subject to State Bar discipline and the supervising attorney bears no responsibility for the paralegal's procedural failures.
- D. The State Bar should argue that legal malpractice and disciplinary obligations are entirely separate and a missed deadline gives rise only to a civil malpractice claim.

12. Testator executed a will five years before the birth of her child. The will leaves the entire estate to Testator's surviving brother. Testator survived the birth by ten years and never amended the will. At Testator's death, the child files a petition for omitted-child share. Under California Probate Code section 21620, what is the most likely result?

- A. The child takes nothing because Testator's failure to amend the will reflects a clear testamentary intent to exclude the child from any provision.
- B. The child is entitled to her statutory intestate share unless the omission was intentional and that intention appears from the will, the testator provided for the child outside the will, or substantially all of the estate went to the other parent.

C. The child takes the entire estate because California public policy automatically revokes any prior will upon the birth of any child to the testator after the will's execution.

D. The child takes only if she petitions within 60 days of the probate court's appointment of the personal representative of the testator's estate.

13. Depositor opened a savings account at a California bank titled "Depositor, in trust for Niece." Depositor retained complete control over the account during her lifetime, including the right to withdraw, transfer, or close the account without Niece's involvement. At Depositor's death, the account balance was \$75,000. Niece claimed the funds. Depositor's residuary devisee challenged the claim. Under California law, what is the most likely result?

A. The account passes to the residuary devisee because Niece never possessed a present or vested interest before Depositor's death under California trust law.

B. The account constitutes a valid Totten trust (revocable savings deposit trust), and the balance passes to the named beneficiary at the depositor's death by operation of the deposit-trust statute.

C. The account is invalid because the depositor's complete retained control prevents formation of any trust under California's substantive trust law.

D. The account passes to the residuary devisee because California's pour-over statute prohibits informal beneficiary designations on bank deposit accounts at death.

14. A landowner brought an action seeking removal of an encroaching structure built by an adjoining owner that protruded six inches onto plaintiff's land. Removal would require demolition of a wall of defendant's home valued at \$100,000 in repair costs. Plaintiff's actual loss was nominal. Defendant acted in good faith based on a surveyor's error. Plaintiff seeks mandatory injunction requiring removal. What is the most likely result?

A. The court must grant the injunction because trespass to real property is a categorical right of the landowner enforceable as a matter of course in all cases.

B. The court must deny the injunction because monetary damages are always adequate at law for any trespass claim involving real property under California law.

C. The court balances hardships — the magnitude of plaintiff's harm, the cost of compliance, and defendant's good faith — and may deny the mandatory injunction while awarding damages where defendant's hardship grossly disproportions plaintiff's benefit.

D. The court must grant the injunction conditional only on plaintiff's payment of defendant's relocation expenses incurred to comply.

15. Agent contracted with Third Party for purchase of \$100,000 in raw materials. Agent disclosed only that she was acting on behalf of a corporate principal but did not disclose the name or identity of the principal. The principal failed to pay. Third Party sued both Agent and the principal upon learning of the principal's identity. Under California agency law, who is liable on the contract?

A. Both Agent and the principal are liable; Agent's failure to disclose the principal's identity makes the principal "partially disclosed," and both Agent and principal remain on the contract unless the parties otherwise agree.

B. Only the principal is liable because all corporate contracts bind only the corporate entity regardless of the principal's degree of disclosure at contracting.

C. Only Agent is liable because Third Party failed to investigate the principal's identity at the time of contracting with the corporate principal's agent.

D. Neither Agent nor principal is liable because partially disclosed principal contracts are categorically unenforceable under California's Statute of Frauds rules.

16. At a criminal trial for child sexual abuse, the prosecution seeks to admit testimony from a pediatrician who examined the child victim shortly after the alleged assault. The pediatrician would testify that the child told her, during the examination, that "my uncle touched my private parts." Defense objected on hearsay grounds. The child is available but reluctant to testify. Under FRE 803(4), what is the most likely result?

A. The statement is inadmissible because medical statements made by minors are categorically excluded under federal evidence rules absent direct prior corroboration.

B. The statement is inadmissible unless the pediatrician was first qualified as an expert in forensic interviewing techniques and child sexual abuse evaluation.

C. The statement is admissible under FRE 803(4) as a statement made for medical diagnosis or treatment that reasonably pertains to diagnosis or treatment, including identification of the perpetrator in sexual abuse cases where identity is medically relevant.

D. The statement is admissible only if the child has been certified by the court as legally incompetent to testify directly at the criminal trial proceedings.

17. Each of the following statements is defamation per se under California law EXCEPT which is LEAST likely to qualify as a per se category:

- A. A statement falsely accusing plaintiff of committing a serious crime involving moral turpitude.
- B. A statement falsely imputing a current loathsome disease to plaintiff at the time of publication.
- C. A statement falsely impugning plaintiff's professional competence in her trade, business, or profession.
- D. A statement falsely describing plaintiff as having attended a particular university that plaintiff did not in fact attend.

18. All of the following are accurate statements about non-marital cohabitants' property rights under Marvin v. Marvin EXCEPT:

- A. Non-marital cohabitants enjoy automatic community property rights identical to those of legally married spouses upon separation under the California Family Code.
- B. Marvin v. Marvin permits non-marital cohabitants to enforce express or implied contracts regarding property and earnings, subject to the contract not being founded on meretricious sexual consideration.
- C. Quantum meruit claims for the reasonable value of services rendered may also be available to non-marital cohabitants in appropriate circumstances.
- D. Marvin claims are governed by contract and equitable principles, not by the Family Code's community property regime applicable to marriage.

19. Buyer contracted to purchase a custom-built sailboat from Seller, a one-of-a-kind racing vessel designed for Buyer's specifications. Seller backed out before delivery. Buyer sued for specific performance. Plaintiff's strongest claim is \_\_\_\_\_; Defendant's strongest defense is \_\_\_\_\_.

- A. that all goods contracts are enforceable through specific performance; that monetary damages are always adequate in goods cases
- B. that personal services contracts are specifically enforceable; that personal services contracts cannot be specifically enforced regardless of the parties
- C. that the boat is unique under UCC section 2-716 and damages are inadequate; that mutual mistake voids the contract or that performance has become commercially impracticable
- D. that all custom-built goods are categorically unique; that all custom-built goods can be readily replaced through cover at market

20. A retired California Superior Court judge joined a private law firm. While on the bench, the judge had personally presided over preliminary motions in a case in which the firm now represents one party. The judge takes no role in the firm's continued representation but works in a neighboring practice area. The opposing party moved to disqualify the firm. Which argument most strongly supports the disqualification motion?

A. Counsel should argue that all former judicial officers are categorically barred from joining private firms for ten years after retirement from the bench in California.

B. Counsel should argue that the firm may proceed because the judge's role is in a separate practice area without any connection to the disputed case at all.

C. Counsel should argue that the judge personally retains all matters previously adjudicated and the firm has no derivative obligation absent direct involvement now.

D. Counsel should argue that under CRPC 1.12 the judge is personally disqualified, and the firm must screen the judge with timely written notice or obtain informed written consent.

21. A French corporation incorporated in Paris with principal place of business in Paris operates a single sales office in Los Angeles and conducts approximately 5% of its global sales there. Plaintiff, a Texas resident, sued the French corporation in California federal district court for an injury that occurred in France. The French corporation moved to dismiss for lack of personal jurisdiction. Under *Daimler AG v. Bauman*, what is the most likely outcome?

A. The court should dismiss for lack of personal jurisdiction because general jurisdiction requires the defendant to be "at home" in the forum — typically the state of incorporation or principal place of business — and a single sales office is insufficient.

B. The court should retain jurisdiction because any continuous and systematic business operations in California establish general jurisdiction over foreign corporations under *Daimler*.

C. The court should retain jurisdiction because plaintiff's Texas residence is irrelevant to the California court's jurisdictional reach over the French corporation defendant.

D. The court should retain jurisdiction because foreign corporations operating any office in California consent to general jurisdiction by their California presence under California law.

22. Settlor created a testamentary trust directing income to her daughter for life, then income to her grandchildren for the duration of their lives, and at the death of the last grandchild, principal to "such issue of the grandchildren as may then be living, per stirpes." The trust included no savings clause. Under California Probate Code section 21205, what is the most likely result?

- A. The trust is wholly invalid because creating multiple generational interests in a testamentary trust violates the perpetuities rule per se under California law.
- B. The trust remainder is invalid only as to those grandchildren not yet born at the settlor's death at the time the trust took effect.
- C. The trust is valid in its entirety because the rule against perpetuities does not apply to testamentary trusts in California under modern statutory law.
- D. The trust remainder is valid because USRAP validates an interest if it actually vests or terminates within 90 years of its creation, providing a wait-and-see backup to the common-law rule.

23. A corporate vice president of a California corporation signed a \$5 million purchase agreement with an unrelated supplier. The vice president was authorized to bind the corporation for ordinary purchases up to \$1 million; she lacked actual authority for purchases above that threshold. The supplier had no actual knowledge of the limitation. The corporation refused to honor the contract. The supplier sued. What is the most likely outcome?

- A. The contract is void because corporate vice presidents lack any inherent authority to bind their corporations to substantial commercial agreements without express board ratification.
- B. The contract is void only if the supplier knew or should have known that VP authority is typically limited to small purchases under California corporate law and practice.
- C. The contract is enforceable against the corporation under apparent authority, because the corporation's conferral of the VP title and the position's reasonable scope created the appearance of authority on which the supplier reasonably relied.
- D. The contract is enforceable but only against the vice president personally because she exceeded her actual authority in entering the supplier agreement.

24. Buyer contracted to purchase 1,000 widgets from Seller, with delivery on June 1. On June 1, Seller delivered 1,000 widgets, but 50 were defective. Buyer immediately rejected the entire shipment. The contract delivery time had not expired. Buyer's strongest argument is \_\_\_\_\_; Seller's strongest counterargument is \_\_\_\_\_.

- A. that the UCC requires substantial performance only; that the goods conform to industry custom regardless of conformity to contract
- B. that UCC section 2-601 permits rejection of any non-conforming goods under the perfect tender rule; that UCC section 2-508 permits Seller to cure by tendering conforming goods within the contract time

C. that all goods contracts require strict performance; that the parol evidence rule excludes inquiry into the conforming quantity issue

D. that defective goods void the entire contract immediately; that the doctrine of substantial performance applies to all sale-of-goods contracts

25. An insurer paid \$200,000 to its insured to settle a claim arising from a fire allegedly caused by a third-party manufacturer's defective electrical component. The insurer then sought to recover the \$200,000 from the manufacturer. Under California law, what is the proper basis for the insurer's recovery action?

A. Equitable subrogation, which substitutes the insurer to the rights of the insured against the third-party tortfeasor to the extent of the insurer's payment to the insured.

B. Conversion, because the manufacturer's defective product converted the insured's property to the manufacturer's benefit by destruction of the insured property.

C. Express contract, because the insurance policy created a direct contractual relationship between the insurer and any third-party tortfeasor involved in the underlying loss.

D. Quantum meruit, because the insurer performed a service for which the manufacturer was the natural beneficiary in the underlying loss event under California law.

26. Consider the following statements about trespass to real property under California law:

I. Trespass to real property requires proof of actual physical damages to the land before the plaintiff may recover any award against the defendant.

II. Trespass to real property requires the defendant's intentional entry onto the land of another; mistake about ownership or right to enter is generally not a defense.

Which statement(s) accurately describe California law?

A. Both I and II

B. I only

C. II only

D. Neither I nor II

27. A prosecutor obtained possession of a witness statement that contradicted the testimony of the prosecution's lead trial witness in a murder prosecution. The prosecutor did not disclose the contradicting statement to defense counsel before trial. The defendant was convicted. Defense counsel later learned of the statement and filed a motion. Which argument most strongly supports the State Bar's case against the prosecutor?

A. The State Bar should argue that prosecutors are categorically prohibited from communicating with witnesses outside the presence of defense counsel in criminal cases.

B. The State Bar should argue that CRPC 3.8(d) imposes an affirmative duty on prosecutors to disclose evidence and information that tends to negate the guilt of the accused or mitigate the offense.

C. The State Bar should argue that prosecutors are bound by attorney-client privilege with witnesses and may not disclose witness statements absent express witness waiver of privilege.

D. The State Bar should argue that defense counsel had a duty to discover the contradicting statement independently through pre-trial investigation in any event.

28. Officers executed a valid search warrant for narcotics in Defendant's home. While searching the kitchen for drugs, an officer noticed an unmounted, custom-engraved firearm on a counter. The officer recognized the firearm from a recent bulletin describing a weapon used in an unrelated armed robbery. The officer seized the firearm without obtaining a separate warrant. Defendant moved to suppress. Under the plain view doctrine, what is the most likely result?

A. The firearm must be suppressed because warrants for narcotics do not authorize seizure of any other items regardless of how observed in the warrant search.

B. The firearm must be suppressed because plain view requires direct visual access without any need for officer interpretation of incriminating character at the scene.

C. The firearm must be suppressed because plain view permits seizure only of items expressly described in the underlying search warrant authorizing the entry.

D. The firearm is admissible because the officer was lawfully present pursuant to a valid warrant, the firearm was in plain view, and its incriminating character was immediately apparent based on the bulletin.

29. A private security firm hired by a shopping mall ejected a group of pamphleteers from the mall's privately owned plaza, citing the firm's prohibition on outside solicitation. The pamphleteers sued under the First Amendment, arguing the security firm's action constituted state action. Under federal state action doctrine, what is the most likely result?

- A. The security firm's action constitutes state action because shopping malls function as modern public forums under federal constitutional law and Supreme Court precedent.
- B. The security firm's action is not state action because private entities, including their security agents, are not subject to the First Amendment absent the entity performing a traditional and exclusive public function or acting in concert with the state.
- C. The security firm's action constitutes state action because all licensed private security firms exercise delegated state authority under California licensing law and federal civil rights doctrine.
- D. The security firm's action is not state action only if the firm operates exclusively on private property without using public sidewalks for any access by patrons.

30. Three businesspeople intended to form a corporation but executed defective articles of incorporation that were rejected by the Secretary of State. Believing the corporation had been formed, the parties operated as if it had been duly organized. A creditor who dealt with the "corporation" without knowledge of the defect sued the individual organizers personally on a \$200,000 unpaid invoice. Under California law, what is the most likely outcome?

- A. Both de facto corporation and corporation by estoppel defenses are categorically unavailable in California; failure to perfect incorporation always results in personal liability of the organizers.
- B. Only the de facto corporation defense is available, and it shields the organizers regardless of the creditor's knowledge or position with respect to the corporate intention.
- C. Either de facto corporation (good-faith attempt to incorporate, colorable compliance with statute, and good-faith operation) or corporation by estoppel (creditor treated the entity as a corporation) may shield the organizers on the particular facts.
- D. Only the corporation-by-estoppel defense is available, and only if the creditor was a sophisticated party with actual notice of the corporate formation intention.

31. Under California Family Code section 4320, in determining the amount and duration of spousal support, the court must consider \_\_\_\_\_.

- A. only the supported spouse's reasonable monthly needs measured against the supporting spouse's gross monthly income at the time of dissolution
- B. only the duration of the marriage and the age of the supported spouse at the time the dissolution judgment is entered

C. only the supported spouse's earning capacity as established at the time of the dissolution judgment hearing

D. multiple factors including each party's earning capacity, marketable skills, duration of marriage, obligations and assets of each party, and the marital standard of living

32. Under California Evidence Code section 1230, a statement made by a declarant who is unavailable as a witness may be admissible if, at the time it was made, the statement was so far against the declarant's pecuniary, proprietary, or penal interest that a reasonable person would not have made it unless the person believed it true. Which best describes the application of this exception?

A. The statement is admissible if the declarant is unavailable, the statement was clearly against the declarant's interest when made, and a reasonable person in the declarant's position would not have made it absent truth.

B. The statement is admissible only if the declarant is dead at the time of trial regardless of other unavailability grounds recognized under California law.

C. The statement is admissible only when offered by the prosecution in criminal cases and not in civil cases of any kind in California courts.

D. The statement is admissible only against the party who introduced the witness's prior unavailability into evidence at the trial proceeding.

33. Testator's signed will was found at her death in two pieces with a clear tear running through the center of the signature page. There was no evidence regarding when or how the will became torn. Under California Probate Code section 6120, what is the most likely result?

A. The will is presumed valid in its torn state because California recognizes partial revocation but not total revocation by physical act under modern probate law.

B. The will is automatically valid because California Probate Code requires affirmative evidence of intent to revoke before any will can be deemed revoked.

C. The will is presumed revoked, raising a rebuttable presumption that the testator revoked the will by tearing it; the proponents must rebut with evidence of contrary intent or inadvertent damage.

D. The will is automatically revoked because any physical damage to a signed will constitutes irrebuttable revocation under California's Probate Code provisions.

34. Plaintiffs filed a federal class action seeking only injunctive relief against a public school district's policy that allegedly discriminated against students with disabilities. They sought no monetary damages. The school district opposed certification. Under Federal Rule of Civil Procedure 23(b)(2), what is the most likely outcome?

A. Certification must be denied because all class actions require monetary damages claims to be properly maintained under the federal civil rules of class action procedure.

B. Certification is appropriate where the defendant has acted or refused to act on grounds generally applicable to the class, making final injunctive or declaratory relief appropriate for the class as a whole.

C. Certification requires the same predominance and superiority showings as a Rule 23(b)(3) damages class regardless of the relief sought by the plaintiffs in the litigation.

D. Certification is unavailable because school district administrative decisions cannot be challenged in federal class proceedings under Younger abstention doctrine.

35. Three drivers each negligently contributed to a collision that injured Plaintiff. The jury found Driver A 60% liable, Driver B 30% liable, and Driver C 10% liable, with total damages of \$1,000,000. Plaintiff collected the entire \$1,000,000 from Driver A. Driver A sought contribution from Drivers B and C. Under California law and Proposition 51, what is the most likely outcome?

A. Driver A cannot seek contribution under California law because the doctrine of joint and several liability was wholly abolished by Proposition 51 and the AmericanMotorcycle case.

B. Driver A may seek 100% contribution from each of Drivers B and C because each contributed to the indivisible injury under California tort law principles.

C. Driver A may seek contribution only from Driver B (the second most culpable defendant) and not from Driver C under California's comparative-fault contribution rules.

D. Driver A may seek contribution proportional to comparative fault — \$300,000 from B and \$100,000 from C — under Proposition 51 for non-economic damages and traditional contribution principles for economic damages.

36. An employee of Corporation, while driving the company van to make scheduled customer deliveries, stopped at a coffee shop two blocks off her normal route to buy a personal coffee. While at the coffee shop, she negligently struck a pedestrian in the parking lot. Pedestrian sued Corporation under respondeat superior. Under California law, what is the most likely outcome?

A. Corporation is likely vicariously liable because a brief, minor deviation from the route — a "detour" rather than a "frolic" — generally remains within the scope of employment.

B. Corporation is not liable because all personal errands during work hours constitute frolics that fall outside the scope of employment as a matter of California law.

C. Corporation is liable only if the employee had express written permission from a supervisor to make the coffee stop during work delivery hours.

D. Corporation is liable only if the employee had been engaged in identical personal stops on prior occasions without supervisor objection in writing.

37. Defendant, fleeing what he reasonably believed was an imminent physical attack by an aggressive stalker, broke into a stranger's unoccupied cabin to take shelter. He used the cabin's telephone to call police. The stalker had been arrested elsewhere by the time police arrived. Defendant was charged with first-degree burglary. Defense counsel raised the necessity defense. Under California law, what is the most likely result?

A. The necessity defense is categorically unavailable in California for any property crime regardless of the surrounding circumstances of the defendant at the time of entry.

B. The necessity defense may apply if the defendant reasonably believed the criminal act was necessary to prevent significant imminent harm, no reasonable legal alternative existed, the harm caused was less than the harm avoided, and the defendant did not substantially contribute to the emergency.

C. The necessity defense is available only when the defendant proves he sought authorization from law enforcement before committing the criminal act giving rise to the property crime charge.

D. The necessity defense applies only to charges involving violent crimes against persons and is unavailable for any property-based criminal offense in California state criminal proceedings.

38. Husband, a wealthy professional baseball player, presented Wife with a premarital agreement two days before their wedding. Wife had no independent counsel, did not request additional time, and signed the agreement after a brief discussion at Husband's office. The agreement waived Wife's spousal support rights and limited her community property interests. After eight years of marriage, Husband sought to enforce the agreement. Under *In re Marriage of Bonds* and subsequent statutory changes, what is the most likely outcome?

A. The agreement is enforceable in full because Wife voluntarily signed it without coercion regardless of the absence of independent counsel at the time of execution.

B. The agreement is unenforceable because California categorically prohibits all premarital agreements waiving spousal support absent court approval at the time of execution.

C. The agreement is enforceable only as to property classification and unenforceable as to all spousal support waivers regardless of the circumstances at execution of the agreement.

D. The agreement may be unenforceable because, after Bonds, Family Code section 1615 requires a seven-day review period and procedural protections for spousal support waivers, and a two-day window without counsel suggests involuntary execution.

39. A revocable trust became irrevocable at the settlor's death. The trust provides for distributions to multiple adult beneficiaries over a 30-year period. All adult beneficiaries have agreed to modify the trust to accelerate distributions. They petitioned the court for modification. Under California Probate Code section 15403, what is the most likely result?

A. The court may modify the trust if all beneficiaries consent and the modification will not frustrate a material purpose of the trust as determined by the court on the petition.

B. The court may not modify the trust because beneficiary consent alone is never sufficient to override settlor intent under California law on irrevocable trusts.

C. The court must modify the trust upon any showing of unanimous beneficiary consent without further inquiry into the underlying trust purposes or settlor's expressed intent.

D. The court may modify the trust only with notice to and consent by the deceased settlor's executor or estate representative under California law on irrevocable trusts.

40. Testator's will included a \$50,000 bequest "to my best friend, Sam." Sam predeceased Testator, leaving two adult children. Testator never amended the will. Sam was not related by blood or marriage to Testator or Testator's spouse. The will contained no contrary intent regarding lapse. Under California Probate Code section 21110, what is the most likely result?

A. The bequest passes to Sam's two surviving children in equal shares under California's anti-lapse statute regardless of any relationship between Sam and the testator at the time of death.

B. The bequest lapses entirely and passes to the residuary estate because California's anti-lapse statute applies only when the deceased beneficiary was kindred of the testator or kindred of the testator's spouse.

C. The bequest passes to Sam's estate to be distributed under Sam's own will to Sam's testamentary beneficiaries pursuant to the terms of Sam's last will.

D. The bequest is held in constructive trust for an unascertained class of "friends" of the testator pending determination of disposition under probate law.

41. In preparation for trial, a defense attorney advised a key fact witness — the defendant's longtime business partner — that "you should consider whether you really need to remember every detail clearly when you testify." The prosecution learned of the conversation and filed a State Bar complaint. Which argument most strongly supports the State Bar's case?

A. The State Bar should argue that all communications between defense counsel and prosecution witnesses are categorically prohibited regardless of substance under California ethical rules.

B. The State Bar should argue that ex parte witness preparation by defense counsel is per se a violation of fairness obligations to opposing counsel under California professional conduct law.

C. The State Bar should argue that CRPC 3.4 prohibits a lawyer from counseling or assisting a witness to testify falsely or to evade truthful testimony, and the attorney's hint about not "remember[ing] every detail clearly" facilitates evasive testimony.

D. The State Bar should argue that defense attorneys may communicate with witnesses only after submitting written witness-preparation outlines to the prosecution for advance review at trial.

42. Buyer entered a five-year requirements contract with Seller for "all of Buyer's needs for industrial gypsum." For four years, Buyer's annual purchases averaged 1,000 tons. In year five, Buyer suddenly demanded 10,000 tons, citing increased production capacity. Seller refused to supply the increased quantity. Under UCC section 2-306, what is the most likely result?

A. UCC section 2-306(1) restricts the quantity demanded under a requirements contract to amounts not unreasonably disproportionate to any stated estimate or, absent estimates, to normal or prior requirements, in good faith.

B. UCC section 2-306 requires the seller to supply any quantity the buyer demands in good faith regardless of historical purchase patterns under the contract terms.

C. UCC section 2-306 invalidates requirements contracts entirely as failing the consideration and definiteness requirements under California common-law contract principles.

D. UCC section 2-306 applies only to output contracts and provides no limitation on requirements contracts under California's commercial code in general.

43. Consider the following statements about intentional infliction of emotional distress under California law:

I. IIED requires the defendant's extreme and outrageous conduct intentionally or recklessly causing severe emotional distress, and the plaintiff's actual severe emotional distress as a result.

II. IIED requires proof of physical manifestation of the emotional distress in the form of medically diagnosable physical injury to support recovery.

Which statement(s) accurately describe California law?

A. Both I and II

B. I only

C. II only

D. Neither I nor II

44. At a federal civil trial, plaintiff testified that defendant's product caused his injury. On cross-examination, defense counsel suggested plaintiff fabricated his testimony recently for purposes of litigation, after retaining counsel and starting a damages claim. On redirect, plaintiff's counsel sought to introduce plaintiff's recorded statement to a workplace supervisor — made years earlier, well before any litigation — describing the same incident. Under FRE 801(d)(1)(B), what is the most likely result?

A. The prior statement is inadmissible hearsay because plaintiff already testified to the same facts at the federal civil trial during direct examination by his counsel.

B. The prior statement is admissible only to impeach plaintiff's credibility, not as substantive evidence of its contents to prove the underlying facts of injury causation.

C. The prior statement is inadmissible because plaintiff is available and testifying at trial and prior statements by available declarants are categorically excluded under federal rules.

D. The prior statement is admissible under FRE 801(d)(1)(B) as a prior consistent statement rebutting an implied charge of recent fabrication, provided it was made before the alleged motive to fabricate arose.

45. Under California Civil Code section 1941 and *Green v. Superior Court*, a residential landlord has an implied warranty of habitability that \_\_\_\_\_.

A. arises only at the inception of the lease and terminates upon any tenant acceptance of the premises in their initial condition without further inspection

B. requires the landlord to deliver and maintain residential premises in a condition fit for human habitation throughout the lease term

C. may be waived by tenants in writing through standard form lease provisions in California residential leases with experienced counsel

D. applies only to government-subsidized housing units and not to private market residential rentals in California metropolitan housing markets

46. A state statute prohibits "abusive or insulting words used in a face-to-face confrontation with another person." A challenger argues the statute violates the First Amendment. Under *Chaplinsky v. New Hampshire* and subsequent case law refining the fighting words doctrine, what is the most likely outcome?

A. The statute is constitutional under any rational basis review because state public-safety statutes receive deference from federal courts in First Amendment confrontation cases.

B. The statute is unconstitutional because the First Amendment protects all speech regardless of content or context in face-to-face encounters between private parties on public ways.

C. The statute is potentially unconstitutional on overbreadth grounds because contemporary fighting-words doctrine is narrow — restricted to words likely to provoke immediate violent reaction by the addressee — and "abusive or insulting words" reaches protected speech.

D. The statute is constitutional because *Chaplinsky* was overruled in part by *Brandenburg v. Ohio*, broadening the categories of restrictable confrontational speech under modern First Amendment law.

47. Plaintiff sued Defendant in California federal district court for breach of a partnership agreement. The partnership had three other partners, none of whom plaintiff joined. Two of the unjoined partners were citizens of the same state as Plaintiff, which would destroy diversity jurisdiction if joined. The third was a citizen of Defendant's state. Defendant moved to dismiss for failure to join indispensable parties. Under Federal Rule of Civil Procedure 19, what is the most likely analysis?

A. The court should evaluate whether the unjoined partners are Rule 19(a) required parties and, if joinder destroys diversity, whether they are Rule 19(b) indispensable such that the action should be dismissed.

- B. The court must dismiss because all partners in a partnership dispute are categorically indispensable under federal procedural rules without any further analysis required of the trial judge.
- C. The court must retain jurisdiction because diversity jurisdiction once established cannot be defeated by post-filing joinder considerations under any federal procedural rule.
- D. The court must order joinder of all three unjoined partners regardless of diversity consequences because Rule 19 prefers complete joinder over partial adjudication in all cases.

48. Each of the following is an accurate statement about California deeds of trust EXCEPT:

- A. A deed of trust involves three parties — the trustor (borrower), the beneficiary (lender), and the trustee — whereas a mortgage involves only two parties to the transaction.
- B. A deed of trust permits non-judicial foreclosure by the trustee upon default, generally a faster and less expensive remedy than judicial foreclosure under California law.
- C. A deed of trust does not need to be recorded in California to be valid and enforceable against subsequent bona fide purchasers without notice of the prior interest.
- D. A deed of trust secures repayment of a debt by giving the beneficiary the right to compel sale of the property in the event of borrower default on the secured obligation.

49. Defendant was tried and acquitted of robbery in state court. The state prosecutor then filed a new charge of grand theft based on the same incident. Defense moved to dismiss on double jeopardy grounds. Under the Blockburger test, what is the most likely result?

- A. The new charge proceeds because California courts do not recognize federal double jeopardy protection in state criminal proceedings under California's separate sovereign doctrine.
- B. The new charge proceeds because robbery and grand theft are distinct offenses sharing no element in common under the Blockburger same-elements test as applied in California.
- C. The new charge must be dismissed because all property crimes arising from a single incident are categorically same-offenses under double jeopardy regardless of statutory elements analysis.
- D. The new charge is barred because grand theft is a lesser-included offense of robbery, and the Blockburger same-elements test treats lesser-included offenses as the same offense for double jeopardy purposes.

50. A state statute generally prohibits public employees from consuming peyote, classifying the substance as a controlled substance. A Native American Church member was terminated for ceremonial peyote use in religious worship and sued, arguing free exercise protection. Under *Employment Division v. Smith*, which argument most strongly supports the state?

A. The state should argue that all peyote-related conduct is categorically unprotected by the First Amendment in any context regardless of religious motivation.

B. The state should argue that under *Employment Division v. Smith*, neutral and generally applicable laws that incidentally burden religious exercise need not be supported by a compelling state interest, and rational basis review applies.

C. The state should argue that the federal Religious Freedom Restoration Act preempts any state free exercise claim brought by individual public employees under California state employment law.

D. The state should argue that the Native American Church is not a recognized religious organization for First Amendment purposes under federal constitutional jurisprudence.

## Practice Exam 11: Answer Key and Explanations

**1. D** — CRPC 1.11(a) personally disqualifies a former government lawyer from private representation in a matter in which the lawyer participated personally and substantially while in government service. Rule 1.11(b) permits the firm to proceed if the lawyer is timely screened from the matter and the appropriate government office receives written notice. The framework balances private practice mobility against governmental confidentiality concerns.

**2. B** — A gift made jointly to both spouses during marriage is presumed community property absent evidence of contrary donative intent by the donor. Joint payee status on the checks and joint titling of the resulting home reinforce the community character. The donor's son-favoring subjective intent, without documentation, cannot overcome the joint-payee presumption.

**3. A** — UCC section 2-313 creates an express warranty from any affirmation of fact or promise that becomes part of the basis of the bargain, without need for the word "warranty." Seller's specific representation about peak processing capacity was a factual affirmation material to Buyer's purchase decision. Whether Seller knew the statement was false is irrelevant to warranty liability — strict comparison of performance to representation controls.

**4. C** — California prescriptive easement requires open and notorious use, hostile (without permission), continuous and uninterrupted, and under claim of right for five years. Permissive use defeats the hostility element. Unlike adverse possession of fee title, prescriptive easements do not require payment of taxes or exclusivity of use.

**5. B** — CRPC 7.1 prohibits attorney communications containing material misrepresentations or omissions, including statements that create unjustified expectations about results. Both the "best in California"

comparative claim and the "guaranteed to win" guarantee create unjustified expectations within the prohibition. Disciplinary review focuses on the communication's likely deceptive effect, not whether the client ultimately won.

**6. A** — Goodwill of a professional practice attributable to community labor during marriage is community property subject to valuation and division at dissolution. California courts apply established valuation methods (excess earnings, market data, capitalization of earnings) despite the inseparability of goodwill from the licensee. The community contribution to building the goodwill is the basis for division.

**7. D** — Larceny by trick occurs when the defendant obtains possession (not title) of another's property through misrepresentation, with intent to permanently deprive at the moment of taking. Renting a car while concealing intent to keep it permanently fits the definition precisely. The distinction from false pretenses turns on whether title (false pretenses) or only possession (larceny by trick) passed at the taking.

**8. A** — A promoter who signs a pre-incorporation contract remains personally liable on it, even after the corporation is formed and accepts the contract benefits, absent a novation or express release by the counterparty. Mere acceptance of benefits by the corporation does not discharge the promoter from personal liability. The rule encourages promoters to obtain explicit releases from contracting parties.

**9. C** — Family Code section 1102 requires both spouses to join in any conveyance or encumbrance of community real property. The non-consenting spouse may set aside the unauthorized transfer to the extent of her one-half community interest. The conveyance stands as to the conveying spouse's half-interest; only the non-consenting spouse's share is recoverable.

**10. D** — When the defendant is the breaching party, the non-breaching plaintiff may recover the reasonable value of benefits conferred on a quasi-contract or restitution theory, measured by the market value of services rendered and uncapped by the contract price. The breach removes the contract price as a ceiling on plaintiff's recovery. Restitution thus may exceed the proportional contract recovery on the same facts.

**11. A** — CRPC 5.3 requires lawyers to make reasonable efforts to ensure that nonlawyer conduct is compatible with the lawyer's professional obligations. Delegating filing deadline tracking and other deadline-sensitive tasks to paralegals without adequate supervision violates that duty. Paralegals are not themselves subject to State Bar discipline, so supervisory failure flows up to the responsible attorney.

**12. B** — Probate Code section 21620 grants an omitted post-execution child an intestate share of the testator's estate unless one of the statutory exceptions applies: intentional omission appearing on the face of the will, provision for the child outside the will, or substantially all of the estate going to the omitted child's other parent. The default rule protects post-execution children from inadvertent disinheritance.

**13. B** — A Totten trust — a revocable savings deposit "in trust for" account — is a valid California testamentary substitute. The depositor's retained lifetime control does not defeat the arrangement, and at death the account balance passes by operation of the deposit-trust statute to the named beneficiary. The Totten trust functions as a will substitute for the deposit account without probate.

**14. C** — California courts deciding mandatory injunction requests balance the equities, including the magnitude of plaintiff's harm, the cost of compliance to defendant, defendant's good faith, and the proportionality between hardship and benefit. Where the cost of compliance grossly disproportions plaintiff's harm, the court may deny injunctive relief and award damages instead. Good-faith encroachments based on surveyor error are the paradigm case for balancing.

**15. A** — When an agent discloses only that she acts for a principal but does not disclose the principal's identity, the principal is partially disclosed (also called unidentified). Both the agent and the partially disclosed principal are liable on the contract unless the parties otherwise agree. The rule protects third parties who could not assess the principal's creditworthiness at contracting.

**16. C** — FRE 803(4) admits statements made for purposes of medical diagnosis or treatment, reasonably pertaining to diagnosis or treatment. In sexual abuse cases, courts have held that identification of the perpetrator is medically relevant because diagnosis and treatment of psychological injury depend on knowing whether the perpetrator was a family member or stranger. The exception thus reaches the child's statement to the examining pediatrician.

**17. D** — The four traditional defamation per se categories are crime of moral turpitude, loathsome disease, professional incompetence, and historically unchastity (now broadened to imputation of serious sexual misconduct). False statements about educational credentials, while potentially defamatory, do not fall within the per se categories and require proof of special damages. Per se categorization permits presumed damages without proof of pecuniary loss.

**18. A** — Non-marital cohabitants do not enjoy automatic community property rights identical to those of legally married spouses. *Marvin v. Marvin* permits enforcement of express or implied contracts (and equitable claims like quantum meruit) between non-marital cohabitants, subject to the contract not being founded on meretricious sexual consideration. Cohabitants proceed under contract and equity, not the Family Code's community property regime.

**19. C** — UCC section 2-716 permits specific performance for unique goods, and a one-of-a-kind custom-built vessel is the paradigm unique good. Defendant's strongest counterargument addresses formation or excuse — mutual mistake or commercial impracticability — rather than denying uniqueness. The custom design strengthens both the uniqueness ground and the inadequacy-of-damages requirement for specific performance.

**20. D** — CRPC 1.12 personally disqualifies a former judge from representing a party in a matter on which the judge presided personally and substantially. The firm may proceed only with timely written screening of the former judge and notice to all affected parties, or with informed written consent from those affected. The rule preserves judicial integrity while permitting post-bench private practice.

**21. A** — *Daimler AG v. Bauman* limits general personal jurisdiction over corporations to forums where the corporation is "at home" — ordinarily the state of incorporation and the principal place of business. A single sales office and 5% of global sales in California do not render a foreign corporation at home there. The court must dismiss for lack of general jurisdiction over the unrelated French injury.

**22. D** — California Probate Code section 21205 adopts the Uniform Statutory Rule Against Perpetuities, validating an interest if it actually vests or terminates within 90 years of its creation. The 90-year period operates as a wait-and-see backup to the common-law lives-in-being-plus-21-years rule. Multi-generational trust remainders survive if actual vesting occurs within the statutory period.

**23. C** — Apparent authority arises when the principal's conduct, including the conferral of a corporate title and position, creates a reasonable appearance of authority on which the third party reasonably relies. A vice president's title and the position's customary scope create apparent authority for commercial agreements, even where actual authority is more limited. Reasonable third-party reliance binds the corporation despite the internal limitation.

**24. B** — UCC section 2-601 (the perfect tender rule) permits the buyer to reject any non-conforming tender of goods. UCC section 2-508, however, gives the seller a right to cure by tendering conforming goods within the original contract delivery time. Buyer's rejection is permissible under 2-601 but does not foreclose Seller's pre-deadline cure under 2-508.

**25. A** — Equitable subrogation substitutes the insurer to the rights of the insured against the third-party tortfeasor to the extent of the insurer's payment. The doctrine prevents the tortfeasor from escaping liability merely because the insured received insurance proceeds. Subrogation is the standard mechanism by which insurers recoup payments from responsible third parties without separate contract privity.

**26. C** — Trespass to real property requires the defendant's intentional entry onto the land of another; mistake about ownership or right to enter is generally not a defense. Actual physical damages are not required for trespass liability; nominal damages are available upon proof of the unauthorized entry alone. Statement I incorrectly imposes a damages prerequisite that California law does not require.

**27. B** — CRPC 3.8(d) imposes an affirmative duty on prosecutors to disclose evidence and information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. Failure to disclose a witness statement contradicting the lead prosecution witness violates that obligation. The duty parallels but operates independently of *Brady v. Maryland's* constitutional disclosure obligations.

**28. D** — The plain view doctrine permits warrantless seizure of evidence when officers are lawfully present, the item is in plain view, and the incriminating character of the item is immediately apparent. The valid narcotics warrant established lawful presence, the firearm was in open view on the counter, and the officer's recognition of it from a robbery bulletin supplied immediate incriminating character. All three plain-view elements are satisfied.

**29. B** — Private entities are not subject to the First Amendment absent the performance of a traditional and exclusive public function or significant entwinement with state authority. Shopping malls and their security agents do not perform traditional and exclusive public functions and are not state actors for federal constitutional purposes. The *Pruneyard* California-constitutional protection of mall pamphleteering does not federalize the state action analysis.

**30. C** — California courts recognize both *de facto* corporation (requiring a valid statute, a good-faith attempt to comply, and good-faith operation as a corporation) and corporation by estoppel (where the third party treated the entity as a corporation). Either doctrine may shield the organizers from personal liability

depending on the facts. The doctrines protect parties who reasonably believed they were dealing with a corporation.

**31. D** — Family Code section 4320 lists multiple factors for setting spousal support, including each party's earning capacity, marketable skills, duration of marriage, obligations and assets of each party, and the marital standard of living. The statute also considers contributions to the supporting spouse's education, age and health of the parties, and tax consequences. The multi-factor analysis precludes any single-factor approach.

**32. A** — California Evidence Code section 1230 admits as a hearsay exception statements made by an unavailable declarant that were so far against the declarant's pecuniary, proprietary, or penal interest at the time of making that a reasonable person would not have made them absent truth. Unavailability is a threshold requirement, and unavailability includes more than just death. The exception applies in both civil and criminal cases.

**33. C** — A signed will found in a damaged condition at the testator's death raises a rebuttable presumption of revocation by physical act under Probate Code section 6120 when the document was last known to be in the testator's possession. The proponents may rebut with evidence of contrary intent or inadvertent damage. The presumption protects against unauthorized post-execution alterations.

**34. B** — Federal Rule of Civil Procedure 23(b)(2) authorizes class certification where the defendant has acted or refused to act on grounds generally applicable to the class, making final injunctive or declaratory relief appropriate for the class as a whole. Predominance and superiority showings under 23(b)(3) are not required for a 23(b)(2) class. The provision is designed for civil rights and similar injunctive cases.

**35. D** — Proposition 51 abolishes joint and several liability only for non-economic damages, leaving economic damages subject to traditional joint and several liability. A defendant who paid more than her comparative share may seek equitable indemnity (contribution) from co-tortfeasors based on the comparative-fault allocation. Driver A recovers proportional shares from B and C, retaining his own 60% comparative liability.

**36. A** — Under California respondeat superior doctrine, a minor deviation from the employer's business — a "detour" — generally remains within the scope of employment, while a substantial departure — a "frolic" — does not. A two-block stop for personal coffee during scheduled deliveries is the textbook detour. The corporation remains liable for negligence occurring during the brief deviation.

**37. B** — California's necessity defense requires the defendant to have reasonably believed the criminal act was necessary to prevent significant imminent harm, no reasonable legal alternative existed, the harm caused was less than the harm avoided, and the defendant did not substantially contribute to the emergency. Breaking into an unoccupied cabin to escape an imminent threat can satisfy these elements. The defense is available for property crimes under appropriate facts.

**38. D** — In re Marriage of Bonds prompted California's amendment of Family Code section 1615, which now requires a seven-day review period and additional procedural protections — including independent counsel or written waiver and language requirements — for premarital agreements with spousal support waivers. A two-day window between presentation and signing, without independent counsel, fails the

seven-day requirement and signals involuntary execution. The agreement is likely unenforceable as to the spousal support waiver.

**39. A** — California Probate Code section 15403 permits a court to modify an irrevocable trust on the consent of all beneficiaries, provided the modification will not frustrate a material purpose of the trust. The court evaluates whether the proposed modification undermines settlor purposes that motivated the trust. Beneficiary consent alone is necessary but not sufficient — court approval based on the material purpose analysis is required.

**40. B** — California Probate Code section 21110 substitutes the deceased beneficiary's issue only when the predeceased beneficiary was kindred of the testator or kindred of the testator's spouse. A non-related "best friend" falls outside the kindred limitation, so the anti-lapse statute does not save the gift. The bequest lapses and falls to the residuary estate.

**41. C** — CRPC 3.4 prohibits a lawyer from counseling or assisting a witness to testify falsely or to evade truthful testimony. Suggesting that a witness should "consider whether you really need to remember every detail clearly" can be construed as facilitating evasive or false testimony, even if framed indirectly. The rule reaches indirect inducements as well as overt falsification instructions.

**42. A** — UCC section 2-306(1) requires the parties to a requirements contract to deal in good faith and restricts quantity demands to amounts not unreasonably disproportionate to any stated estimate or, absent estimates, to normal or prior requirements. A tenfold sudden increase in year five is presumptively disproportionate to the four-year baseline. The good-faith and reasonable-proportion limitations prevent opportunistic exploitation of requirements contracts.

**43. B** — California IIED requires extreme and outrageous conduct, intentionally or recklessly causing severe emotional distress, and the plaintiff's actual severe emotional distress as a result. Statement I correctly states these elements. Statement II incorrectly requires physical manifestation — California has expressly rejected the physical-manifestation requirement for IIED, distinguishing it from certain NIED contexts.

**44. D** — FRE 801(d)(1)(B) admits a prior consistent statement as non-hearsay — substantive evidence — when offered to rebut an express or implied charge of recent fabrication or improper influence, provided the statement was made before the alleged motive to fabricate arose. A statement made years before any litigation easily predates a motive arising on retention of counsel. The pre-motive statement comes in as substantive evidence, not merely impeachment.

**45. B** — Under Civil Code section 1941 and *Green v. Superior Court*, residential landlords have a continuing implied warranty to deliver and maintain the premises in a condition fit for human habitation throughout the lease term. The warranty cannot generally be waived by lease provision under *Knight v. Hallsthammar*. It applies to private market residential rentals and government-subsidized housing alike.

**46. C** — Modern fighting words doctrine under *Chaplinsky* and subsequent cases is narrow — restricted to words likely to provoke an immediate violent reaction by the addressee in a face-to-face encounter. A statute reaching all "abusive or insulting words" sweeps in protected speech and is vulnerable to overbreadth challenge. *Brandenburg* refined incitement doctrine but did not broaden fighting words.

**47. A** — Federal Rule of Civil Procedure 19 requires a two-step analysis: first, whether the absent party is required under Rule 19(a) for complete relief or to protect interests; second, if joinder would destroy diversity, whether the party is indispensable under Rule 19(b) such that the action should not proceed in their absence. The Rule 19(b) factors include prejudice, the adequacy of partial relief, and the availability of alternative forums. Mechanical dismissal without the multi-factor analysis is error.

**48. C** — A deed of trust must be recorded to give constructive notice and to be enforceable against subsequent bona fide purchasers without notice under California's recording statute. The recording statute protects subsequent good-faith takers from undisclosed prior interests. Recording is not a validity requirement between the original parties, but enforceability against third parties depends on it.

**49. D** — Under the Blockburger same-elements test, two offenses are the "same offense" for double jeopardy purposes if each does not require proof of an element the other does not. Grand theft is a lesser-included offense of robbery — robbery being grand theft accomplished by force or fear — and the Blockburger test treats lesser-included offenses as the same offense. Successive prosecution after acquittal on the greater offense is barred under *Brown v. Ohio*.

**50. B** — *Employment Division v. Smith* held that neutral and generally applicable laws that incidentally burden religious exercise need not be supported by a compelling state interest under the federal Free Exercise Clause; rational basis review applies. A peyote prohibition that applies to all public employees regardless of religious affiliation is neutral and generally applicable. The federal RFRA does not apply to state laws after *City of Boerne v. Flores*.