

PRACTICE EXAM 11 — MBE SIMULATION (200 QUESTIONS)

1. A plaintiff sues a defendant corporation in a State Y federal court. The corporation is incorporated and has its principal place of business in State Z, but maintains a small sales office in State Y employing four people. The lawsuit arises from a contract dispute negotiated and performed entirely in State Z, with no connection to the State Y office. The defendant moves to dismiss for lack of personal jurisdiction. How should the court rule?

- A. Deny the motion because the State Y sales office establishes general jurisdiction over the corporation
- B. Grant the motion because the corporation is not "at home" in State Y and the claim does not arise from State Y activities
- C. Deny the motion because any business presence in a state subjects a corporation to suit there
- D. Grant the motion only if the defendant lacks any property or assets within State Y at filing

2. A plaintiff from State A files suit in federal court against two defendants — one from State B and one from State C — alleging state law tort claims totaling \$80,000. After discovery, the plaintiff amends to add a third defendant from State A. The defendants move to dismiss for lack of subject-matter jurisdiction. How should the court rule?

- A. Deny the motion because diversity existed at the time of original filing
- B. Deny the motion because supplemental jurisdiction extends to the new defendant
- C. Grant the motion only as to the new defendant, retaining jurisdiction over the original parties
- D. Grant the motion because adding the State A defendant destroys complete diversity

3. A plaintiff sues a defendant in federal court in State X under diversity jurisdiction for negligence. State X law requires a plaintiff to file a "certificate of merit" from a medical expert before bringing a malpractice claim; failure to do so results in dismissal. The Federal Rules contain no such requirement. How should the federal court rule?

- A. Apply the state certificate of merit requirement as substantive state law under Erie
- B. Apply the Federal Rules exclusively because the federal court is the forum
- C. Apply both requirements concurrently to ensure fairness to all parties
- D. Apply the state rule only if both parties stipulate to its application

4. A plaintiff files a state-court suit in State X alleging only state-law claims against two defendants: one from State X and one from State Y. The amount in controversy is \$200,000. The State Y defendant removes the case to federal court. The plaintiff moves to remand. How should the court rule?

- A. Deny the motion because the amount in controversy and diversity requirements are both satisfied
- B. Deny the motion because the State Y defendant unilaterally has the right to remove
- C. Grant the motion because the forum-defendant rule bars removal when a defendant is a citizen of the forum state
- D. Grant the motion only if the State X defendant joins the State Y defendant's opposition

5. A plaintiff residing in the Eastern District of Texas sues a defendant residing in the Northern District of Illinois. The plaintiff alleges breach of a contract that was negotiated and executed in the Southern District of New York and performed entirely in the Western District of Pennsylvania. Where is venue proper?

- A. Eastern District of Texas, where the plaintiff resides
- B. Western District of Pennsylvania, where a substantial part of events occurred
- C. Southern District of New York only, because the contract was executed there
- D. Any district in the United States, because the plaintiff may choose freely

6. A defendant served with a federal complaint files an answer admitting jurisdiction and denying liability, without raising any pre-answer defenses. Two months later, the defendant moves to dismiss for improper venue. How should the court rule?

- A. Grant the motion because venue may be challenged at any time during litigation
- B. Grant the motion because the defendant has demonstrated that the chosen venue is improper

- C. Deny the motion because the defendant must instead seek transfer under section 1404
- D. Deny the motion because improper venue is waived if not raised in the first responsive pleading

7. A plaintiff files a federal civil rights complaint alleging that defendants "conspired to violate plaintiff's constitutional rights." No specific facts about the alleged conspiracy are pleaded. The defendants move to dismiss under Rule 12(b)(6). How should the court rule?

- A. Deny the motion because conspiracy allegations always survive a motion to dismiss
- B. Deny the motion because notice pleading requires only a short and plain statement
- C. Grant the motion because conclusory allegations of conspiracy without supporting facts fail under Twombly and Iqbal
- D. Grant the motion only after permitting the plaintiff limited discovery to develop conspiracy facts

8. A plaintiff sues defendant A for breach of a contract that was jointly signed by defendants A and B. Defendant B is not joined. Defendant A moves to dismiss for failure to join a necessary party. Joining defendant B would not destroy subject-matter jurisdiction. How should the court rule?

- A. Order joinder of defendant B because complete relief cannot be accorded without that party
- B. Deny the motion because the plaintiff has discretion to sue only one of the joint contractors
- C. Grant the motion and dismiss the entire action because joint obligors must be sued together
- D. Deny the motion and allow the case to proceed with the possibility of inconsistent obligations

9. A plaintiff seeks class certification under Rule 23(b)(3) for a securities fraud claim against a publicly traded company. The class includes thousands of investors who purchased stock during a specified period. Some investors relied on the company's statements, while others did not. How should the court analyze the motion?

- A. Grant certification automatically because securities fraud claims are inherently suitable for class treatment
- B. Deny certification because individual reliance issues always defeat predominance in securities cases
- C. Grant certification if numerosity is satisfied, regardless of individualized issues among class members

D. Determine whether common questions predominate over individual questions and a class action is superior

10. During discovery in a contract dispute, the plaintiff serves a request for production of "all emails ever sent by any employee of defendant company concerning anything related to plaintiff." The defendant objects on grounds of relevance and proportionality. How should the court rule on a motion to compel?

- A. Grant the motion because broad discovery is favored in federal court
- B. Deny the motion because the request is overbroad and lacks proportionality to the case
- C. Grant the motion in part, requiring production of emails from the past ten years
- D. Deny the motion only if the defendant produces a sworn affidavit listing all employees

11. A corporation's in-house attorney emails the CEO outlining legal advice on a pending regulatory matter. The CEO forwards the email to a non-attorney consultant retained to advise on the company's business strategy. Opposing counsel later seeks production of the email. Which statement is most accurate?

- A. The attorney-client privilege protects the email even after disclosure to the consultant
- B. The privilege never applied because in-house counsel's emails are categorically discoverable
- C. The privilege was likely waived by forwarding the email to a non-attorney third party
- D. The privilege is restored if the consultant later signs a confidentiality agreement

12. A defense attorney prepares a memorandum analyzing witness statements and outlining trial strategy. Plaintiff's counsel demands production in discovery. How should the court rule?

- A. Protect the memorandum as opinion work product, which is virtually undiscoverable
- B. Order production because all attorney memoranda are discoverable in federal court
- C. Order production only if plaintiff agrees to share its own attorney work product reciprocally
- D. Protect the memorandum only if plaintiff lacks any other source for the underlying facts

13. After discovery in a negligence case, the defendant moves for summary judgment, supporting the motion with affidavits showing no breach of duty. The plaintiff responds with no affidavits or admissible evidence but argues the case should go to a jury. How should the court rule?

- A. Deny the motion because all negligence cases must be tried to a jury
- B. Deny the motion because the plaintiff's complaint allegations create a genuine dispute
- C. Grant the motion only after permitting the plaintiff additional time to conduct discovery
- D. Grant the motion because the plaintiff must come forward with specific facts showing a genuine dispute

14. At the close of the plaintiff's case in a federal jury trial, the defendant moves for judgment as a matter of law. The court denies the motion. The defendant presents its case but fails to renew the Rule 50(a) motion at the close of all evidence. The jury returns a verdict for the plaintiff. The defendant then moves for renewed JMOL under Rule 50(b). How should the court rule?

- A. Grant the motion because the defendant preserved the issue with the initial Rule 50(a) motion
- B. Deny the motion because the defendant failed to renew the Rule 50(a) motion at the close of all evidence
- C. Grant the motion because juries cannot resolve issues of law in federal court
- D. Deny the motion only if the defendant did not specifically object to jury instructions

15. A jury returns a \$5 million verdict for the plaintiff in a personal injury case. The trial judge believes the verdict is excessive based on the evidence presented. The judge wants to reduce the award but the plaintiff refuses to accept any reduction. What is the appropriate procedural mechanism?

- A. Order a remittitur — a new trial unless the plaintiff agrees to accept a reduced amount
- B. Sua sponte reduce the verdict to an amount the court considers appropriate
- C. Refer the case to a magistrate judge for damages reassessment under Rule 53
- D. Order the parties to mediate the damages issue before any new trial

16. A federal district court grants summary judgment in favor of one of three defendants in a single action. The action against the remaining two defendants is still pending. The plaintiff wishes to appeal the summary judgment ruling immediately. What is required?

- A. Nothing — partial summary judgments are immediately appealable as of right
- B. A motion to certify the question as a controlling issue of law under section 1292(b)
- C. A Rule 54(b) certification by the district court that there is no just reason for delay
- D. A petition for writ of mandamus filed with the court of appeals

17. A plaintiff sues a defendant for breach of contract arising from a 2020 transaction. The case proceeds to final judgment on the merits in favor of the defendant. The plaintiff then files a second action against the same defendant alleging fraud arising from the same transaction. How should the second court rule?

- A. Allow the second action because fraud is a separate cause of action from breach of contract
- B. Allow the second action because issue preclusion does not apply to claims not actually litigated
- C. Dismiss the second action only if the defendant raises the prior judgment as an affirmative defense
- D. Dismiss the second action under claim preclusion because the claim could have been raised in the first suit

18. A driver sues an employer for negligent hiring after the employer's truck driver caused an accident. The court finds for the plaintiff, with the jury specifically finding that the truck driver had a history of reckless driving known to the employer. The truck driver was not a party. The same plaintiff then sues the truck driver for negligence. Can the plaintiff use issue preclusion against the truck driver?

- A. Yes, because the issues are sufficiently similar to bar relitigation
- B. No, because the truck driver was not a party to the prior action and had no opportunity to litigate
- C. Yes, but only if the truck driver was represented by the employer's attorney in the first action
- D. No, because non-mutual issue preclusion is never permitted in federal court

19. A federal complaint is filed on January 15. The plaintiff serves the defendant on May 20 of the same year. The defendant moves to dismiss for insufficient service. How should the court rule?

- A. Dismiss the action without prejudice unless the plaintiff shows good cause for the delay
- B. Deny the motion because service was completed before any responsive pleading was due
- C. Dismiss the action with prejudice because the 90-day period is a jurisdictional bar

D. Deny the motion automatically because all delays in service are excused under Rule 6

20. A plaintiff files a complaint on the last day of the statute of limitations naming "John Doe" as the defendant. After the statute has run, the plaintiff identifies the correct defendant and amends to name that party. The newly named defendant received no notice of the action within the Rule 4(m) period. Does the amendment relate back?

A. Yes, because Rule 15(c) permits amendments to identify previously unknown parties

B. Yes, because John Doe pleading is universally permitted as a placeholder

C. No, because the new defendant did not receive notice within the Rule 4(m) period

D. No, because amendments after the statute of limitations expires are never permitted

21. A plaintiff obtains a default against a defendant who failed to answer. The damages sought are unliquidated (pain and suffering for personal injury). The plaintiff requests the clerk to enter default judgment. How should the clerk proceed?

A. Enter default judgment in the amount stated in the complaint

B. Enter default judgment but limit it to nominal damages of one dollar

C. Refer the matter to a magistrate judge for ex parte assessment of damages

D. Refuse to enter default judgment because unliquidated damages require court determination

22. A plaintiff from State X sues a U.S. company in federal district court in State Y for injuries sustained in Country Z. All witnesses, evidence, and applicable law are in Country Z. The defendant moves to dismiss on forum non conveniens grounds, demonstrating Country Z courts would provide an adequate forum. How should the court rule?

A. Deny the motion because federal courts must always hear cases within their jurisdiction

B. Grant the motion if private and public interest factors strongly favor litigation in Country Z

C. Grant the motion only if the plaintiff consents in writing to the foreign forum

D. Deny the motion automatically when the plaintiff is a U.S. citizen of any state

23. A plaintiff sues in federal court alleging state-law breach of contract. The defendant pleads as a defense that the contract is preempted by federal law. The plaintiff argues federal question jurisdiction exists because of the federal preemption defense. How should the court rule on subject-matter jurisdiction?

- A. Federal question jurisdiction exists because the preemption defense raises a federal issue
- B. Federal question jurisdiction exists because the federal law is "substantial" under Grable
- C. Federal question jurisdiction does not exist because federal questions must arise from the well-pleaded complaint
- D. Federal question jurisdiction exists if the federal law clearly governs the contract dispute

24. A corporation is incorporated under Delaware law, with its headquarters and senior executive offices in California. Most of its manufacturing facilities and employees are in Texas. For diversity jurisdiction purposes, the corporation is a citizen of which states?

- A. Delaware and California, because of incorporation and nerve-center location
- B. Delaware and Texas, because of incorporation and primary operational location
- C. Delaware only, because Texas operations do not affect citizenship
- D. Delaware, California, and Texas, because citizenship reflects all material operations

25. An insurance company holds a \$500,000 policy and faces conflicting claims by three potential beneficiaries, none of whom share state citizenship. The insurer wants to deposit the funds with the court and have the beneficiaries litigate their claims. Under which mechanism is this most efficiently accomplished?

- A. Rule interpleader, which has no minimum amount in controversy requirement
- B. A declaratory judgment action against each beneficiary in their respective state of citizenship
- C. A diversity-based interpleader action requiring complete diversity among all parties
- D. Statutory interpleader, which requires only minimal diversity and at least \$500 in controversy

26. A plaintiff sues a state government over a regulatory decision. A private industry group claims its interests will be impaired by any ruling because it depends on the regulation. The state agency adequately

represents some but not all of the industry's specific concerns. The industry group seeks to intervene. How should the court rule?

- A. Deny intervention because the state government always adequately represents private interests
- B. Grant permissive intervention only, without intervention as of right
- C. Grant intervention as of right under Rule 24(a) given the impaired interest and inadequate representation
- D. Deny intervention because private entities cannot intervene in suits against state governments

27. A plaintiff brings a federal claim under federal employment discrimination law and a state-law breach of contract claim against the same employer. The court grants summary judgment dismissing the federal claim. The defendant moves to dismiss the state law claim for lack of subject-matter jurisdiction. How should the court rule?

- A. Retain jurisdiction over the state claim because supplemental jurisdiction never lapses
- B. Decline supplemental jurisdiction in its discretion after dismissal of the federal claim
- C. Dismiss the state claim because supplemental jurisdiction is automatically extinguished
- D. Retain jurisdiction because the claims share factual issues that should be tried together

28. A plaintiff repeatedly fails to comply with discovery orders, ignoring two prior orders compelling production of documents central to the case. The defendant moves for sanctions including dismissal. How should the court rule?

- A. Dismiss the case immediately without further consideration of the circumstances
- B. Impose monetary sanctions only because dismissal is reserved for extreme misconduct
- C. Decline sanctions because the plaintiff was not represented by counsel at the time
- D. Consider dismissal under Rule 37(b) along with other sanctions appropriate to the misconduct

29. A federal jury returns a verdict that finds the defendant 30% at fault and the plaintiff 70% at fault, then awards the plaintiff \$100,000 in damages. The state applies a 50% modified comparative negligence rule that bars recovery when the plaintiff is more than 50% at fault. How should the court enter judgment?

- A. Enter judgment for the defendant because plaintiff's fault exceeds the 50% threshold
- B. Enter judgment for plaintiff in the amount of \$30,000, reducing for plaintiff's fault
- C. Enter judgment for plaintiff in the full amount because juries make findings of fact, not law
- D. Order a new trial because the verdict is internally inconsistent

30. An environmental group sues a federal agency for failing to enforce a clean air regulation. The group's members live and work near the affected area and breathe the polluted air. The group seeks injunctive relief requiring enforcement. Does the group have standing?

- A. No, because organizations cannot sue on behalf of their members in federal court
- B. No, because environmental harms are insufficiently concrete for Article III standing
- C. Yes, because the members suffer concrete injury, traceable to the agency's failure, redressable by enforcement
- D. Yes, because all citizens have standing to enforce federal environmental regulations

31. Congress passes a law regulating the production and sale of marijuana under federal law, including marijuana grown and consumed entirely within a single state for personal medical use authorized by state law. A challenger argues this exceeds Congress's commerce power. How should the Supreme Court rule under existing precedent?

- A. Strike down the law because purely intrastate, non-economic activity falls outside the Commerce Clause
- B. Uphold the law because intrastate cultivation has substantial cumulative effects on interstate commerce
- C. Strike down the law unless Congress also enacted parallel taxing-power provisions
- D. Uphold the law only if the state where the activity occurs has consented to federal regulation

32. A state enacts a law prohibiting the importation of out-of-state firewood to prevent the spread of invasive insects. The state allows in-state firewood to be sold freely. An out-of-state firewood seller sues, alleging the law violates the Dormant Commerce Clause. How should the court rule?

- A. Apply strict scrutiny because the law facially discriminates against interstate commerce

- B. Apply Pike balancing because the law has a legitimate environmental purpose
- C. Uphold the law because states have plenary authority over invasive species regulation
- D. Strike down the law only if the state cannot prove invasive insects came from out-of-state sources

33. A state law requires all teachers in public schools to retire at age 70. A 69-year-old teacher with excellent performance reviews challenges the law on equal protection grounds. Under what standard does the court analyze the classification?

- A. Strict scrutiny, because age discrimination implicates a fundamental right to employment
- B. Intermediate scrutiny, because age is a quasi-suspect classification akin to gender
- C. Rational basis with bite, because the elderly historically face workplace discrimination
- D. Rational basis review, because age is not a suspect or quasi-suspect classification

34. A city enacts an ordinance banning all signs criticizing the local mayor while permitting all other political signs. A homeowner who places a sign criticizing the mayor is fined. The homeowner challenges the ordinance under the First Amendment. How should the court rule?

- A. Uphold the ordinance because municipalities have plenary authority over signage
- B. Uphold the ordinance because criticism of public officials is unprotected as defamation
- C. Strike down the ordinance because it is a content-based restriction subject to strict scrutiny
- D. Uphold the ordinance only if the mayor can prove the criticism is false

35. A public high school holds a graduation ceremony at which a local clergyman, invited by the principal, delivers a prayer. A graduating student objects. How should the court rule on an Establishment Clause challenge?

- A. The prayer is unconstitutional under *Lee v. Weisman* as government-sponsored religious coercion in a school setting
- B. The prayer is constitutional because graduation attendance is voluntary
- C. The prayer is constitutional as a recognition of America's religious heritage
- D. The prayer is unconstitutional only if it endorses a specific religious denomination

36. A state passes a generally applicable law prohibiting the consumption of peyote, a hallucinogenic drug. Members of a Native American religious group use peyote in their ceremonies. They challenge the law as a violation of the Free Exercise Clause. How should the court rule under existing federal precedent?

- A. Strike down the law because it substantially burdens religious practice
- B. Uphold the law because it is neutral and generally applicable under *Employment Division v. Smith*
- C. Apply strict scrutiny because the law affects centuries-old religious traditions
- D. Uphold the law only if a religious exception cannot be reasonably accommodated

37. A state university suspends a student for one year without a hearing after the student is accused of academic misconduct. The student challenges the suspension as a violation of procedural due process. How should the court analyze the claim?

- A. Find no due process violation because students have no protected interest in continued enrollment
- B. Find a due process violation only if the student can prove actual innocence
- C. Require a full trial-type hearing in all academic misconduct cases
- D. Apply the *Mathews v. Eldridge* balancing test to determine what process was due

38. A state passes a regulation requiring all coastal landowners to maintain a 50-foot buffer of native vegetation, prohibiting building within that zone. A landowner whose entire lot falls within the buffer can no longer build on the property. The owner sues, alleging a taking. How should the court analyze the claim?

- A. Find no taking because environmental regulations are within the state's police power
- B. Find a taking only if the state physically occupies the property
- C. Find a categorical taking under *Lucas* because the regulation denies all economically viable use
- D. Apply *Penn Central* balancing to determine if the regulation goes "too far"

39. Congress passes a statute authorizing one house of Congress to invalidate an executive branch action by a majority vote of that house. The Supreme Court has addressed similar provisions. How should the court rule on the constitutionality of the legislative veto?

- A. Uphold the provision as a permissible exercise of congressional oversight
- B. Strike down the provision because legislative action requires bicameralism and presentment
- C. Uphold the provision only if it requires both houses to act
- D. Strike down the provision unless the executive agency consents to the procedure

40. The President issues an executive order directing federal agencies to seize private steel mills during a labor dispute, citing wartime necessity. Congress has not authorized such seizure and has previously declined to enact similar legislation. A steel mill owner challenges the order. How should the court rule?

- A. Uphold the order because the President has inherent emergency powers
- B. Uphold the order because national security justifies executive action
- C. Strike down the order only if Congress passes legislation prohibiting it
- D. Strike down the order under *Youngstown's* lowest-ebb category for action contrary to Congress's will

41. A state enacts a law requiring all law-firm partners practicing in the state to be state residents. A nonresident attorney challenges the law under the Privileges and Immunities Clause of Article IV. How should the court rule?

- A. Strike down the law because practicing one's profession is a fundamental right protected by the clause
- B. Uphold the law because states have plenary authority over law practice within their borders
- C. Strike down the law only if the attorney has practiced in the state for at least seven years
- D. Uphold the law because corporations and attorneys are not "citizens" under the clause

42. A city denies an applicant a permit to hold a parade on the city's main street, citing concerns about disruption to traffic and businesses. The applicant has organized peaceful parades before. The city denies the permit based on the unpopularity of the applicant's political message. How should the court rule?

- A. Uphold the denial because parade permits are not constitutionally required
- B. Uphold the denial because traffic regulation falls within the state's police power
- C. Strike down the denial because viewpoint-based restrictions are unconstitutional in a public forum

D. Strike down the denial only if the applicant proves the city's stated reasons are pretextual

43. A state law prohibits any person from cohabiting with an unmarried partner who is not a blood relative. A challenger argues the law violates substantive due process. How should the court rule?

A. Uphold the law because the state has a legitimate interest in promoting marriage

B. Strike down the law because the right to intimate association is a fundamental liberty under substantive due process

C. Uphold the law because cohabitation is not a fundamental right under federal precedent

D. Strike down the law only if the prosecution disproportionately targets a particular group

44. A state adopts a public university admissions policy that grants explicit racial preferences to certain minority applicants to remedy past societal discrimination. A rejected applicant challenges the policy. Under what standard does the court analyze the policy?

A. Strict scrutiny, because all racial classifications receive the highest level of review

B. Intermediate scrutiny, because benign racial classifications are reviewed less stringently

C. Rational basis, because the policy is remedial rather than invidious

D. Strict scrutiny only if the applicant can prove discriminatory intent by the university

45. A private shopping mall arrests a protester for distributing leaflets on mall property. The protester sues under the First Amendment, arguing the mall is essentially a public forum. How should the court rule?

A. Find state action because shopping malls serve a community function

B. Find state action because the mall security cooperates with local police

C. Find state action because the First Amendment applies to private property open to the public

D. Find no state action because private property does not become public merely by being open to customers

46. A private citizen sues a state government in federal court for monetary damages alleging violations of federal law. The state has not consented to suit. Congress has not abrogated state immunity for the federal statute at issue. How should the court rule?

- A. Allow the suit because federal courts have jurisdiction over all federal law claims
- B. Dismiss the suit because the Eleventh Amendment bars suits against states for damages
- C. Allow the suit if the federal statute clearly creates a private right of action
- D. Dismiss the suit only if the state moves for dismissal in a timely manner

47. Congress passes a law requiring state legislatures to enact specific gun control measures or face loss of federal highway funds. A state challenges the conditional spending. How should the court analyze the constitutionality?

- A. Uphold the law because conditional spending is always within Congress's authority
- B. Uphold the law only if the highway funds are unrelated to the gun control measures
- C. Apply the Dole factors including relatedness, clarity, and coercion in evaluating the conditions
- D. Strike down the law because conditional spending always violates state sovereignty

48. A state law prohibits all advertising of prescription drug prices by pharmacies, ostensibly to protect consumer health. A pharmacy challenges the law under the First Amendment. How should the court analyze the regulation under existing precedent?

- A. Apply the Central Hudson test for commercial speech requiring substantial state interest and direct advancement
- B. Apply strict scrutiny because all speech restrictions receive maximum protection
- C. Uphold the law because commercial speech receives no First Amendment protection
- D. Apply rational basis review because economic regulations are generally permissible

49. A criminal defendant in state court challenges the state's failure to provide a grand jury indictment, arguing the Fifth Amendment grand jury requirement applies to the states through the Fourteenth Amendment. How should the court rule?

- A. Apply the grand jury requirement because all Bill of Rights provisions are fully incorporated
- B. Apply the grand jury requirement because the Fourteenth Amendment guarantees fundamental procedures
- C. Reject the argument because grand juries are required only when the defendant requests one
- D. Reject the argument because the Fifth Amendment grand jury clause has not been incorporated against the states

50. Congress conditions a state's receipt of federal Medicaid funds on the state's agreement to expand Medicaid coverage substantially. States that decline to expand will lose all Medicaid funding, including existing programs. Several states challenge the condition. How should the court rule?

- A. Uphold the condition as a permissible exercise of the spending power
- B. Strike down the condition because the magnitude of funding loss is coercive under *NFIB v. Sebelius*
- C. Strike down the condition because Congress lacks any authority over state Medicaid programs
- D. Uphold the condition only if the states consent to it through state legislative action

51. A state employee with civil service tenure is terminated without a hearing. The employee challenges the termination on procedural due process grounds. The employer argues the employee has no protected property interest. How should the court rule?

- A. Find no due process violation because government employees serve at will
- B. Find a due process violation only if the employee can prove actual prejudice from the lack of a hearing
- C. Find a due process violation because tenure under state law creates a constitutionally protected property interest
- D. Find no due process violation because government employment is a privilege, not a right

52. A taxpayer sues federal officials alleging that a federal program is unconstitutional because it allocates funds in ways the taxpayer disapproves. The taxpayer suffers no specific injury beyond paying federal taxes. How should the court rule on standing?

- A. Find standing because taxpayers have a direct interest in federal expenditures

- B. Find standing because constitutional claims always justify federal court intervention
- C. Find standing only if the program directly affects the taxpayer's livelihood
- D. Deny standing because generalized taxpayer grievances do not satisfy Article III injury requirements

53. A state law requires parents to send their children to public schools and prohibits private school attendance. A parent challenges the law under substantive due process. How should the court rule under existing precedent?

- A. Strike down the law because the right to direct children's education is a fundamental liberty interest
- B. Uphold the law because states have plenary authority over education within their borders
- C. Strike down the law only if the parent shows the public schools are inadequate
- D. Uphold the law because private school attendance is not a constitutional right

54. A state law gives preference to in-state residents for hiring on state-funded construction projects. A nonresident worker challenges the law under the Article IV Privileges and Immunities Clause. How should the court rule?

- A. Uphold the law because state-funded projects are not subject to constitutional restrictions
- B. Strike down the law unless the state shows a substantial reason for discrimination tied to a peculiar source of evil
- C. Strike down the law only if the worker has previously worked in the state
- D. Uphold the law because residency requirements are permissible for state spending

55. A state convicts a man for wearing a jacket displaying a profanity directed at the military draft, walking through a courthouse. The conviction is challenged under the First Amendment. How should the court rule?

- A. Uphold the conviction because the courthouse setting justifies restrictions on speech
- B. Uphold the conviction because profanity is unprotected as "fighting words"
- C. Reverse the conviction because offensive speech alone is protected unless it falls into an unprotected category

D. Reverse the conviction only if the speaker can show political motivation for the message

56. A state law provides that only women may receive alimony in divorce proceedings. A man required to pay alimony challenges the law on equal protection grounds. How should the court rule?

A. Strike down the law under intermediate scrutiny because it relies on overbroad gender stereotypes

B. Uphold the law because women historically faced economic disadvantages in divorce

C. Apply strict scrutiny because the law involves a suspect classification

D. Uphold the law if any rational basis supports the gender distinction

57. Congress passes a law requiring state law enforcement officers to conduct background checks before private parties may purchase firearms. The state argues the law commandeers state officials in violation of the Tenth Amendment. How should the court rule?

A. Uphold the law because firearms regulation is a legitimate federal interest under the Commerce Clause

B. Uphold the law because the Necessary and Proper Clause permits use of state officials

C. Strike down the law only if Congress fails to provide funding for the required activities

D. Strike down the law under *Printz v. United States* as commandeering of state executive officials

58. Congress passes a tax on a particular activity that the tax bill explicitly declares to be intended to discourage the activity. The tax raises modest revenue. A challenger argues the tax is unconstitutional as a regulation disguised as a tax. How should the court rule?

A. Strike down the tax because Congress cannot use taxing power to regulate

B. Uphold the tax only if Congress also has independent authority to regulate the activity

C. Uphold the tax because the taxing power permits Congress to influence behavior through taxation

D. Strike down the tax unless the activity falls within the Commerce Clause

59. A department store places a newspaper advertisement stating: "One Coat — Mink, Black, Size 8 — Worth \$400. First Come, First Served — \$1.00." A customer arrives first, presents a dollar, and demands the coat. The store refuses. How should the court rule?

- A. The advertisement is mere puffery and creates no contractual obligation
- B. The advertisement is an offer because the terms are sufficiently clear, definite, and explicit
- C. The advertisement is an invitation to deal that creates no binding obligation
- D. The advertisement constitutes an offer only if the customer has previously shopped at the store

60. A merchant emails a signed writing to a buyer offering to sell 100 widgets at \$10 each, stating the offer will remain open for 60 days. Twenty days later, the merchant attempts to revoke. Five days after the attempted revocation, the buyer accepts. Is there a contract?

- A. No, because the merchant successfully revoked the offer before acceptance
- B. No, because firm offers under the UCC are unenforceable without consideration
- C. Yes, because all offers under the UCC are automatically irrevocable for a reasonable time
- D. Yes, because UCC firm offers are irrevocable for the stated time, up to three months

61. A homeowner contracts with a roofer for \$10,000 to install a new roof. Halfway through, the roofer demands an additional \$2,000, claiming the job is harder than expected. The homeowner reluctantly agrees in writing. After completion, the homeowner refuses to pay the additional \$2,000. Is the additional payment enforceable?

- A. No, because the modification lacks new consideration under the preexisting duty rule
- B. Yes, because the homeowner's written agreement constitutes a binding modification
- C. Yes, because modifications for unanticipated difficulties are always enforceable
- D. No, because the homeowner did not benefit from the additional payment

62. A wealthy uncle promises his niece \$50,000 if she will quit her job and start her own business. Relying on the promise, the niece quits her job and begins setting up the business. The uncle then refuses to pay. Can the niece enforce the promise?

- A. No, because gratuitous promises lack consideration and are never enforceable
- B. Yes, because promissory estoppel may enforce the promise to prevent injustice
- C. Yes, but only to the extent of the niece's out-of-pocket expenses to that point

D. No, because future business profits are too speculative to enforce a promise

63. A homeowner orally agrees to sell her house to a buyer for \$300,000. The buyer pays a \$5,000 deposit but no writing is signed. The homeowner refuses to convey. The buyer sues for specific performance. How should the court rule?

A. Grant specific performance because partial payment satisfies the statute of frauds

B. Grant specific performance because oral land contracts are enforceable when payment is made

C. Deny specific performance because contracts for the sale of land must be in writing under the statute of frauds

D. Grant specific performance only if the buyer's deposit exceeds 10% of the purchase price

64. A written contract for the sale of a car states the purchase price is \$20,000 and contains a merger clause. The buyer claims the seller orally promised free maintenance for two years as part of the deal. The seller denies the promise. The buyer offers evidence of the oral promise. How should the court rule on admissibility?

A. Admit the evidence because oral promises always supplement written contracts

B. Admit the evidence because maintenance promises are not within the statute of frauds

C. Exclude the evidence only if the buyer signed the written contract knowingly

D. Exclude the evidence because the merger clause indicates a fully integrated agreement

65. An offeror sends a written offer by mail. The offeree mails a properly addressed and stamped letter of acceptance. Before the acceptance arrives, the offeror calls the offeree and revokes the offer. Is there a contract?

A. No, because revocation by telephone is effective when communicated

B. Yes, because acceptance is effective upon dispatch under the mailbox rule

C. No, because acceptance must be received to be effective

D. Yes, only if the offeree had no notice of the attempted revocation

66. A buyer sends a purchase order for 1,000 widgets at \$5 each. The seller responds with an acknowledgment confirming the sale but adding a clause specifying a 2% prompt-payment discount for invoices paid within 10 days. Both parties are merchants. Neither form expressly limits acceptance to its terms. Does the discount clause become part of the contract?

- A. Yes, because between merchants, additional terms become part of the contract unless they materially alter it
- B. No, because additional terms in an acceptance are always rejected as counteroffers
- C. Yes, because the seller's acknowledgment constitutes acceptance of the buyer's terms
- D. No, because payment terms are presumptively material alterations to any contract

67. A contractor agrees to build a custom shed for \$20,000. The contractor uses paint that is one shade off from the specified color (the shade difference is barely noticeable). The homeowner refuses to pay any portion of the \$20,000. Is the homeowner justified?

- A. Yes, because any deviation from contract specifications justifies refusal to pay
- B. Yes, because the homeowner is entitled to exactly what was bargained for
- C. No, because the minor deviation does not constitute a material breach justifying non-payment
- D. No, because the homeowner waived any breach by accepting the shed

68. A contractor agrees to remodel a kitchen, with work to begin June 1 and conclude July 31. On May 1, the contractor unequivocally notifies the homeowner that he will not perform. The homeowner immediately sues for breach. How should the court rule?

- A. Dismiss the suit because no breach has occurred until the performance date
- B. Allow the suit because anticipatory repudiation gives an immediate right to sue
- C. Dismiss the suit because the homeowner must first demand assurance of performance
- D. Allow the suit only after the homeowner finds a substitute contractor and incurs costs

69. A singer is contracted to perform at a concert on a specific date. Two weeks before the concert, the singer is diagnosed with a serious medical condition rendering her unable to sing for at least six months. The concert promoter sues for breach. How should the court rule?

- A. Find breach because contracts must be performed regardless of personal circumstances
- B. Find breach unless the singer paid for an insurance policy covering the cancellation
- C. Find no breach only if the singer offers to perform after recovery at her own expense
- D. Find no breach because impossibility excuses performance in personal service contracts

70. A buyer contracts to purchase a unique antique sculpture from a seller for \$50,000. The seller refuses to deliver. The buyer sues for specific performance. How should the court rule?

- A. Grant specific performance because the unique nature of the item makes damages inadequate
- B. Deny specific performance and order damages equal to the contract price
- C. Grant specific performance only if the buyer has paid the purchase price in full
- D. Deny specific performance because contracts for personal property are not specifically enforceable

71. A buyer contracts to purchase land believed by both parties to contain valuable timber. Unknown to either party at the time of contracting, a fire had destroyed all the timber the previous week. The buyer learns of the destruction and seeks to rescind. How should the court rule?

- A. Deny rescission because mistakes about external events do not affect contract validity
- B. Grant rescission only if the buyer was unaware of the possibility of fires in the area
- C. Grant rescission because mutual mistake about a basic assumption makes the contract voidable
- D. Deny rescission because the buyer assumed the risk of all land conditions in the contract

72. A father contracts with a tutor to provide tutoring services for his son. The father pays the tutor in advance. The tutor fails to provide the agreed services. The son sues the tutor for breach. How should the court rule?

- A. Dismiss the suit because the son lacks privity of contract with the tutor
- B. Dismiss the suit because only the father, as the contracting party, may sue
- C. Allow the suit only if the son was a minor at the time of the contract
- D. Allow the suit because the son is an intended third-party beneficiary with enforcement rights

73. A consumer purchases a refrigerator from an appliance store. Three days later, the refrigerator stops working. The store had no actual knowledge of any defect. The consumer demands repair or refund. Under which warranty does the consumer have the strongest claim?

- A. Implied warranty of merchantability, because the appliance store is a merchant of refrigerators
- B. Implied warranty of fitness for a particular purpose, regardless of the consumer's purpose
- C. Express warranty, because the store displayed the refrigerator as functional
- D. No warranty applies because the store had no knowledge of any defect

74. A landlord leases an apartment to a tenant for one year at \$2,000/month. After three months, the tenant abandons the apartment with nine months remaining. The landlord makes no effort to re-rent the unit. The landlord sues for the remaining nine months' rent. How should the court rule?

- A. Award the landlord the full nine months' rent because the tenant breached
- B. Award damages only if the landlord can show good-faith efforts to find a new tenant
- C. Reduce damages by the amount the landlord could have mitigated through reasonable re-rental efforts
- D. Deny damages entirely because abandonment terminates the lease

75. An offeror in State X mails an offer to an offeree in State Y. The offer states: "Reply only by certified letter." The offeree responds by email, which arrives first. The offeree then sends a certified letter, which arrives second. Is there a contract?

- A. Yes, because email is a reasonable means of acceptance in modern commerce
- B. No, because the offeror specified the exclusive method of acceptance, which the offeree did not use first
- C. Yes, because the certified letter eventually arrived and confirmed the email
- D. No, because an offer requiring a specific method of acceptance is unenforceable

76. A construction contract provides that the contractor will pay \$1,000 per day for any delay beyond the completion date. Actual damages from delay would be difficult to estimate at the time of contracting. The contractor is two days late and the owner suffers no actual damages. Is the liquidated damages clause enforceable?

- A. No, because liquidated damages are never enforceable when no actual damages occur
- B. No, because the daily amount is excessive in light of zero actual damages
- C. Yes, but only up to the amount of actual damages, which is zero
- D. Yes, because liquidated damages are enforceable if reasonable at the time of contracting

77. A consumer with limited education signs a complex installment contract for a washing machine. The contract contains, in fine print, a clause allowing the seller to repossess all goods previously purchased on installment if any single payment is missed. The consumer misses a payment after years of payments. The seller attempts to repossess all goods. The consumer challenges the clause. How should the court rule?

- A. Strike down the clause as unconscionable due to procedural and substantive unfairness
- B. Uphold the clause because installment contracts customarily include such provisions
- C. Strike down the clause only if the seller charged an unreasonably high interest rate
- D. Uphold the clause because the consumer signed the contract voluntarily

78. A homeowner contracts with a painter to paint her house for \$5,000. After the work begins, the painter assigns his right to receive payment to a creditor. The homeowner pays the painter directly. The creditor sues the homeowner for the \$5,000. The homeowner had been notified of the assignment before paying. How should the court rule?

- A. Find for the homeowner because payment to the assignor discharges the obligation
- B. Find for the creditor because notice of assignment binds the obligor to pay the assignee
- C. Find for the homeowner because contractual obligations cannot be assigned without consent
- D. Find for the creditor only if the homeowner explicitly consented to the assignment

79. A contractor builds a house substantially according to specifications but uses a different brand of pipe than specified — equivalent in quality and value. The homeowner refuses to pay the final installment. The contractor sues for the unpaid amount. How should the court rule?

- A. Find for the homeowner because any deviation from specifications justifies non-payment
- B. Find for the contractor only if the homeowner consented to the pipe substitution

- C. Find for the contractor with damages adjusted by the diminution in value, if any
- D. Find for the homeowner because builders must strictly comply with all specifications

80. A buyer orders 1,000 widgets to be delivered by April 1. The seller delivers 999 widgets on time. The buyer rejects the entire shipment. Under the UCC, may the buyer reject?

- A. No, because substantial performance is required only for service contracts
- B. No, because one missing widget does not justify rejecting the entire shipment
- C. Yes, only if the seller fails to cure within a reasonable time after notice
- D. Yes, because the UCC's perfect tender rule allows rejection for any nonconformity

81. A contract for the purchase of a house states that the buyer's obligation is "subject to the buyer obtaining financing at an interest rate not exceeding 6%." The buyer makes no effort to obtain financing and refuses to close. The seller sues for breach. How should the court rule?

- A. Find for the seller because the buyer must make a good-faith effort to satisfy the condition
- B. Find for the buyer because the financing condition was not satisfied
- C. Find for the seller only if the buyer had access to financing at the specified rate
- D. Find for the buyer because conditions precedent excuse performance when unmet

82. A businessman rents a hotel room with a view of a royal coronation procession scheduled for that day. The procession is cancelled due to the monarch's illness. The room is still usable for sleeping. The renter refuses to pay. Is he excused?

- A. No, because the room remains usable for its general purpose
- B. Yes, because the cancellation frustrates the principal purpose of the rental
- C. No, because parties must perform contracts regardless of motive
- D. Yes, but only if the rental price was excessive due to the procession view

83. A merchant buyer and merchant seller modify their contract for the sale of widgets by reducing the quantity from 1,000 to 800, without any new consideration. The seller later refuses to honor the modification. Is it enforceable?

- A. No, because modifications require new consideration under common law
- B. No, because UCC modifications must be in writing regardless of original contract
- C. Yes, because UCC modifications need no consideration if made in good faith
- D. Yes, only if the seller signed a separate document acknowledging the modification

84. A patient repeatedly receives medical services from a doctor without explicitly discussing payment. The doctor sends bills, which the patient pays for several years. The patient then refuses to pay for the most recent services, claiming no contract exists. How should the court rule?

- A. Find an implied-in-fact contract based on the parties' course of dealing
- B. Find no contract because medical services require express written agreements
- C. Find a quasi-contract only, limiting recovery to reasonable value of services
- D. Find no obligation because the patient never signed any agreement to pay

85. A seller in New York agrees to ship goods to a buyer in California "FOB seller's plant." The seller delivers the goods to a carrier. The goods are destroyed in transit through no fault of either party. Who bears the loss?

- A. The seller, because the goods never reached the buyer
- B. The seller and buyer equally, as the loss occurred during shared transit
- C. The carrier exclusively, because it was responsible for the goods in transit
- D. The buyer, because risk of loss passed when the goods were delivered to the carrier

86. An employee saves her employer's life at significant personal injury to the employee. After recovering, the employer promises to pay the employee \$5,000 annually for life in recognition of the act. The employer makes payments for several years then stops. The employee sues for the unpaid amounts. How should the court rule under the majority modern view?

- A. Find the promise unenforceable because past acts cannot serve as consideration
- B. Find the promise enforceable as a moral obligation supported by material benefit received
- C. Find the promise enforceable only if it was reduced to writing within a reasonable time
- D. Find the promise unenforceable because future payments without consideration are gifts

87. A defendant fires a gun at his neighbor intending to kill her. The bullet misses the neighbor but kills the neighbor's child who was nearby. The defendant did not know the child was there. What is the defendant's most likely liability for the child's death?

- A. Manslaughter, because the killing of the child was unintentional
- B. No homicide, because the defendant lacked intent toward the child
- C. Murder, but only of the second degree without premeditation
- D. Murder, under the doctrine of transferred intent

88. A husband returns home to find his wife in bed with another man. In a rage, he immediately grabs a baseball bat and beats the man to death. He is charged with murder. What is the most likely outcome?

- A. Murder, because the killing was intentional and unjustified
- B. No homicide, because the husband was provoked
- C. Voluntary manslaughter, because adequate provocation reduced malice to heat of passion
- D. Involuntary manslaughter, because the husband acted impulsively without premeditation

89. Three defendants commit an armed bank robbery. During the escape, a police officer fires at the fleeing robbers, killing a bystander. Two robbers are caught and charged with felony murder for the bystander's death. Under the majority "agency" theory, how should the court rule?

- A. Acquit the robbers because the killing was committed by a non-felon outside the felonious agency
- B. Convict the robbers because the death occurred during the felony
- C. Acquit the robbers only if the killing was unintentional on the officer's part
- D. Convict the robbers because they initiated the dangerous situation leading to death

90. A defendant picks up a wallet on the street that he believes was abandoned. After examining the wallet, he discovers the owner's identification and decides to keep the money rather than return it. Has he committed larceny?

- A. No, because finding an abandoned wallet is not a trespassory taking
- B. Yes, under the continuing trespass doctrine, his intent to steal converted the initial finding into larceny
- C. Yes, but only if the original taking was made with intent to permanently deprive
- D. No, because there is no larceny without a clearly identified victim at the time of taking

91. A defendant enters his ex-girlfriend's apartment at 2 AM through an unlocked window. He intends to take back gifts he had given her. He is charged with common-law burglary. Is he guilty?

- A. No, because he had a colorable claim of right to the gifts
- B. Yes, because all unauthorized entries at night constitute burglary
- C. No, because taking back one's own property does not constitute the requisite felonious intent
- D. Yes, if intent to commit a felony (larceny of items he no longer owned) existed at entry

92. A defendant snatches a purse from a victim's shoulder. The victim feels the strap pulling but does not resist or struggle. The purse is taken in seconds. Is this robbery or larceny?

- A. Robbery, because any taking from the person constitutes robbery
- B. Larceny, because no force was used
- C. Larceny, because mere snatching without struggle is typically insufficient force for robbery
- D. Robbery, because force on the strap constitutes force on the victim

93. A bank teller takes \$5,000 from her drawer at the end of her shift, intending to use it to pay her rent and replace it the following payday. She loses the money before she can repay. Is she guilty of embezzlement?

- A. Yes, because she fraudulently converted entrusted property to her own use

- B. No, because she intended to return the money
- C. Yes, but only if she fails to ultimately repay the bank
- D. No, because temporary borrowing is not embezzlement

94. Two defendants agree to rob a bank and discuss detailed plans. Before either takes any action toward the robbery, one defendant withdraws and contacts police to prevent the robbery. Has the withdrawing defendant committed conspiracy?

- A. No, because he withdrew before any overt act
- B. No, because withdrawal is always a complete defense to conspiracy
- C. Yes, but the withdrawal mitigates punishment
- D. Yes, because conspiracy was complete upon the agreement, even without an overt act in some jurisdictions

95. A defendant intends to murder his enemy. He buys poison, drives to the enemy's house, and is reaching for the doorbell when police arrest him on an unrelated warrant. Is he guilty of attempted murder?

- A. No, because he had not yet entered the house or confronted the victim
- B. Yes, because his actions constituted a substantial step toward commission of the crime
- C. No, because he had not done any act that came dangerously close to murder
- D. Yes, because purchasing poison alone constitutes attempt

96. A defendant is attacked by an unarmed assailant in a bar. The defendant draws a gun and shoots the assailant dead. The defendant could have safely escaped through a nearby door. Is the killing justified?

- A. Yes, because self-defense permits any force against any attack
- B. Yes, but only because the assailant was the initial aggressor
- C. No, because the defendant could not use deadly force against an unarmed attacker with a safe avenue of retreat
- D. No, because self-defense never permits deadly force outside the home

97. A defendant suffering from severe schizophrenia kills a stranger, believing the stranger to be a demon attempting to harm him. The defendant clearly believed his action was both necessary and morally right. Under the M'Naghten test, is he insane?

- A. Yes, because he did not know the nature and quality of his act, or did not know it was wrong
- B. No, because he knew he was killing a person
- C. Yes, but only if his delusion would have justified the killing if true
- D. No, because schizophrenia alone does not satisfy the insanity test

98. A defendant takes a coat from a coat check, honestly believing it is his own. The coat actually belongs to another patron with a similar coat. Has he committed larceny?

- A. Yes, because larceny is a general intent crime not affected by mistake
- B. Yes, because the coat was in fact another's property
- C. No, but he is guilty of conversion at common law
- D. No, because mistake of fact negates the specific intent to permanently deprive another of property

99. A police officer approaches a person on the street and asks for identification. The person stops voluntarily and shows the ID. The officer makes no statement about whether the person must comply. Has a Fourth Amendment seizure occurred?

- A. Yes, because any police-initiated contact is a seizure
- B. No, because a reasonable person would feel free to leave during a voluntary encounter
- C. Yes, because the request for identification is inherently coercive
- D. No, because police questioning never constitutes a seizure

100. Police visit a home and ask the wife for permission to search the house. The wife consents. The husband, present at the door, expressly objects. Police search anyway and find contraband belonging to the husband. Is the evidence admissible against the husband?

- A. Yes, because either co-occupant may consent to a search of common areas

- B. Yes, because consent eliminates the need to consider Fourth Amendment concerns
- C. No, because the present, objecting co-occupant overrides the other's consent under *Georgia v. Randolph*
- D. No, because police never have authority to search without a warrant

101. A suspect is arrested for armed robbery and given Miranda warnings. He invokes his right to counsel. The police cease questioning. Two days later, the suspect is still in custody and a different officer, unaware of the invocation, begins questioning the suspect again. The suspect makes incriminating statements. Are the statements admissible?

- A. No, because under *Edwards v. Arizona*, once counsel is invoked, all custodial interrogation must cease until counsel is present
- B. Yes, because the suspect's statements were voluntary
- C. Yes, because the second officer was unaware of the prior invocation
- D. No, because the suspect should have been released after invoking his rights

102. A defendant is indicted for federal drug trafficking. After indictment but before retaining counsel, a government informant approaches the defendant and engages him in conversation that elicits incriminating statements. Are the statements admissible against the defendant at trial?

- A. Yes, because the defendant was not in custody when the statements were made
- B. No, because the Sixth Amendment right to counsel had attached and was deliberately circumvented
- C. Yes, because the informant was a private citizen acting voluntarily
- D. No, because all informant-elicited statements are inadmissible

103. A defendant is lawfully arrested for a traffic violation. Police search the passenger compartment of his car incident to arrest, finding drugs in a closed container. The defendant was handcuffed and seated in the patrol car at the time of the search. Was the search lawful?

- A. Yes, because vehicle searches incident to arrest are always permitted
- B. No, because closed containers in vehicles always require a warrant

C. No, because under *Arizona v. Gant*, vehicle searches incident to arrest require the arrestee to be within reaching distance or evidence relevant to the arrest

D. Yes, because traffic violations always generate probable cause for vehicle searches

104. A defendant is acquitted by a jury of murder charges. The prosecution discovers new evidence and attempts to retry the defendant for the same murder. May the second prosecution proceed?

A. Yes, if the new evidence was unavailable at the first trial

B. Yes, if the prosecution proceeds in a different court

C. No, but only because of the time elapsed

D. No, because double jeopardy bars retrial after acquittal regardless of new evidence

105. Police obtain a search warrant based on information they reasonably believed was accurate. The warrant is later found defective because the issuing magistrate's probable cause finding was unsupported. The officers acted in objectively reasonable reliance on the warrant. The defendant moves to suppress evidence found. How should the court rule?

A. Admit the evidence under the good-faith exception to the exclusionary rule

B. Suppress the evidence because all defective warrants require suppression

C. Admit the evidence because warrant requirements are formal, not substantive

D. Suppress the evidence unless the officers can prove independent probable cause

106. A defendant is interrogated by police for 12 hours without food, water, or sleep. He eventually confesses. He had been given Miranda warnings at the start of the interrogation. Are the confessions admissible?

A. Yes, because the Miranda warnings satisfy all constitutional requirements

B. No, because the totality of circumstances renders the confession involuntary

C. Yes, because the defendant had multiple opportunities to invoke his rights

D. No, but only if the defendant has a history of mental illness

107. A defendant pleads guilty pursuant to a plea agreement. The trial court accepts the plea and sentences the defendant. The defendant later discovers that his attorney failed to inform him of a mandatory immigration consequence of the plea. The defendant seeks to withdraw the plea. How should the court analyze the claim?

- A. Deny relief because immigration consequences are collateral, not direct
- B. Deny relief because plea agreements are final once accepted
- C. Grant relief only if the defendant can prove actual innocence
- D. Apply *Padilla v. Kentucky*: failure to advise of clear immigration consequences is deficient performance

108. The prosecution at a murder trial seeks to introduce a written statement by a witness who has died. The statement was made during formal police questioning before the witness's death. The defendant had no prior opportunity to cross-examine the witness. Is the statement admissible?

- A. No, because under *Crawford* the testimonial statement requires prior opportunity for cross-examination
- B. Yes, under the dying declaration exception to hearsay
- C. Yes, because the witness's death establishes unavailability
- D. No, because all out-of-court statements are inadmissible at criminal trials

109. A defendant intends to slap his friend on the back as a greeting. He misjudges his force and strikes harder than intended, causing the friend to lose balance and fall, breaking his arm. Is the defendant guilty of criminal battery?

- A. No, because he intended only a friendly contact
- B. Yes, because all physical contact causing injury is battery
- C. Yes, because intent to touch combined with offensive or harmful result satisfies battery's mens rea
- D. No, because the friend implicitly consented to all physical greetings

110. A defendant agrees to drive a friend to a bank, knowing the friend plans to rob it. The driver waits outside during the robbery. The friend, during the robbery, unexpectedly kills a bank teller. Is the driver liable for the murder?

- A. No, because he was not present at the killing and did not participate
- B. Yes, because the killing was a foreseeable consequence of the robbery
- C. No, because his only intent was to assist with the robbery, not murder
- D. Yes, because all accomplices are liable for all crimes of their principals

111. A defendant approaches an undercover police officer and offers to pay \$5,000 if the officer will kill the defendant's business partner. The officer, of course, does not commit murder. Is the defendant guilty of anything?

- A. No, because no crime was committed
- B. No, because the officer never intended to perform the killing
- C. Yes, conspiracy, because the officer agreed to discuss the matter
- D. Yes, solicitation, because the offense is complete upon the solicitation regardless of agreement

112. A statute makes it a crime to sell alcohol to a minor, with no scienter requirement. A bartender, exercising reasonable care, checks a fake ID and sells alcohol to someone who is in fact a minor. Is the bartender guilty?

- A. No, because his good-faith mistake of fact is a defense
- B. No, because all crimes require some level of mens rea
- C. Yes, because strict liability offenses require no mens rea, and mistake of fact is not a defense
- D. Yes, but only if he had reason to suspect the ID was fake

113. Police illegally search defendant A's home and find contraband belonging to defendant B, who was a temporary overnight guest. Defendant B moves to suppress the evidence. Does B have standing to challenge the search?

- A. Yes, because as an overnight guest, defendant B has a reasonable expectation of privacy in the home
- B. No, because only the homeowner has standing to challenge a residential search
- C. Yes, because all defendants have standing to challenge any unlawful search

D. No, because temporary guests have no privacy interest in another's home

114. A defendant shoots a victim, intending to kill. The victim is rushed to a hospital where, during surgery, a doctor's gross negligence causes the victim's death. Is the defendant guilty of murder for the death?

- A. No, because the doctor's gross negligence broke the causal chain
- B. Yes, because medical malpractice is generally a foreseeable intervening cause
- C. No, because the immediate cause of death was the doctor's actions
- D. Yes, but only manslaughter due to the intervening negligence

115. Police stop a person based on reasonable suspicion of criminal activity. During the stop, the officer feels a hard object in the suspect's pocket that the officer is certain is not a weapon, but believes it may be drug contraband. The officer removes the object. Was the seizure lawful?

- A. Yes, because Terry stops permit seizure of any contraband detected
- B. Yes, because plain feel of contraband justifies seizure
- C. No, because only weapons may be seized during a Terry stop
- D. No, because *Minnesota v. Dickerson* requires immediate identification of the object as contraband through plain feel

116. At a personal injury trial, the plaintiff offers testimony that immediately after a car accident, a witness shouted, "Oh my god, the red car ran the light!" The defense objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because the statement is offered for its truth
- B. Sustain the objection because hearsay exceptions require formal foundation
- C. Overrule the objection because the statement qualifies as an excited utterance
- D. Overrule the objection only if the witness is unavailable to testify

117. A defendant is on trial for assault. In his case-in-chief, the defendant calls a witness to testify that the defendant has a reputation in the community for being peaceful and non-violent. The prosecution objects. How should the court rule?

- A. Sustain the objection because character evidence is inadmissible
- B. Overrule the objection because a criminal defendant may offer pertinent character evidence
- C. Sustain the objection because reputation evidence requires extensive foundation
- D. Overrule the objection only if the prosecution opened the door

118. At trial, a party wishes to prove the contents of a contract. The original contract has been destroyed in a flood through no fault of the party. The party offers a photocopy of the contract. How should the court rule on admissibility under the best evidence rule?

- A. Admit the photocopy because secondary evidence is permitted when the original is lost or destroyed without fault
- B. Exclude the photocopy because the original must be produced
- C. Admit the photocopy only if both parties stipulate to its accuracy
- D. Exclude the photocopy unless an attorney certifies its authenticity

119. In a civil case, the plaintiff offers a statement made by the defendant's employee within the scope of her employment that allegedly admits the defendant's liability. The defense objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because employee statements are not party admissions
- B. Sustain the objection because the employee is unavailable to testify
- C. Overrule the objection only if the employee made the statement under oath
- D. Overrule the objection because the statement is a party-opponent admission through an agent

120. A witness testifies for the prosecution in a criminal trial. On cross-examination, the defense seeks to introduce evidence that the witness was convicted of perjury 12 years ago. The witness was released from prison 11 years ago. How should the court rule?

- A. Exclude the evidence because the conviction is too remote in time
- B. Admit the evidence because perjury convictions are always admissible for impeachment
- C. Admit the evidence only if its probative value substantially outweighs prejudicial effect, with reasonable notice
- D. Exclude the evidence because crimes of dishonesty cannot be used against witnesses

121. After a customer slips and falls in a store, the store places non-slip mats throughout the affected area. At trial, the plaintiff offers evidence of the new mats to prove negligence. The defendant objects. How should the court rule?

- A. Admit the evidence because mats demonstrate the store's awareness of the hazard
- B. Exclude the evidence because subsequent remedial measures are inadmissible to prove negligence
- C. Admit the evidence for the limited purpose of proving ownership
- D. Exclude the evidence only if the defendant offers to stipulate to negligence

122. A witness testifies that he believes the defendant was "drunk" at the time of an incident. The witness based the opinion on personal observation of the defendant's slurred speech, unsteady walking, and the smell of alcohol. The defense objects on the ground that the witness is offering opinion testimony without expert qualifications. How should the court rule?

- A. Overrule the objection because lay opinions on common observations like intoxication are permissible
- B. Sustain the objection because intoxication requires expert testimony
- C. Overrule the objection only if the witness has medical training
- D. Sustain the objection because opinion testimony is limited to experts under FRE 702

123. In a criminal trial, the prosecution offers a forensic lab report identifying a substance as cocaine. The analyst who performed the testing is not called to testify. The defense objects under the Confrontation Clause. How should the court rule?

- A. Admit the report because lab reports are exempted from the Confrontation Clause
- B. Admit the report because business records are not testimonial

- C. Admit the report only if the defendant fails to demand the analyst's appearance
- D. Exclude the report because lab reports are testimonial and require the analyst's live testimony

124. In a will contest, the proponent offers a statement by the now-deceased testator made shortly before signing the will: "I want to leave everything to my church." The contestant objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because statements offered to prove intent are hearsay
- B. Sustain the objection because the testator is unavailable
- C. Overrule the objection because the statement reflects the testator's then-existing state of mind
- D. Overrule the objection only if the statement was made in the presence of the will witnesses

125. At trial, a party seeks to introduce a signed document. To authenticate the signature, the party calls a witness who has seen the alleged signer write his name on numerous occasions and is familiar with the handwriting. The witness testifies that the signature appears to be that of the alleged signer. Is this sufficient authentication?

- A. Yes, because lay opinion based on familiarity with handwriting is sufficient under FRE 901
- B. No, because handwriting authentication requires expert testimony
- C. Yes, but only if the witness has also seen the signer's signature on official documents
- D. No, because handwriting must be authenticated by the signer's own testimony

126. A defendant in a civil suit consults his attorney, telling the attorney that he committed the alleged wrongdoing. The attorney advises the defendant on litigation strategy. The plaintiff subpoenas the attorney to testify about the conversation. May the attorney be compelled to testify?

- A. Yes, because attorney-client privilege applies only in criminal cases
- B. No, because the conversation is protected by the attorney-client privilege
- C. Yes, because admissions of wrongdoing are not privileged communications
- D. No, but only if the defendant takes the witness stand in the litigation

127. A plaintiff alleges that he was crossing a street with the green light when struck by the defendant's car. To prove he had the right of way, the plaintiff offers evidence that he has, for the past ten years, always crossed at the same intersection only on green lights, never against the signal. The defendant objects. How should the court rule?

- A. Sustain the objection because character evidence is inadmissible to prove conduct
- B. Sustain the objection because evidence of prior conduct is irrelevant to a specific incident
- C. Admit the evidence as a habit only if corroborated by eyewitnesses
- D. Admit the evidence as habit evidence under FRE 406, regardless of corroboration

128. A witness at trial cannot remember the license plate of a car involved in an accident she witnessed. She wrote down the plate number immediately after the accident on a piece of paper that has been preserved. The proponent seeks to introduce the writing. How should the court rule?

- A. Admit the writing as recorded recollection if the witness once knew but now cannot recall, and the record was made when fresh
- B. Admit the writing as past recollection refreshed, requiring the witness to read aloud
- C. Exclude the writing because the witness must testify from current memory
- D. Admit the writing only if the witness independently verifies its accuracy at trial

129. A party offers a statement made by a now-unavailable declarant: "I was speeding and didn't see the stop sign." The statement is offered against the declarant's estate in a civil suit. The estate objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because hearsay exceptions require declarant availability
- B. Sustain the objection because civil cases do not allow hearsay exceptions
- C. Overrule the objection because the statement is against the declarant's interest under FRE 804(b)(3)
- D. Overrule the objection only if the declarant was a party to the original transaction

130. A party seeks to prove the contents of a contract through the testimony of a witness who personally observed the contract and remembers its key terms. The original contract is still available and could be produced. The opposing party objects. How should the court rule?

- A. Overrule the objection because witness testimony is permitted in all cases
- B. Sustain the objection because the original must be produced when available
- C. Overrule the objection because the original is too cumbersome to introduce
- D. Sustain the objection only if the witness has not read the contract recently

131. In a slip-and-fall case, the plaintiff seeks to introduce graphic photographs of his injuries showing severe leg lacerations. The defendant offers to stipulate to the nature and extent of the injuries. The defendant objects to the photographs under FRE 403. How should the court rule?

- A. Admit the photographs because relevant evidence is always admissible
- B. Exclude the photographs because the stipulation eliminates the need for them
- C. Admit or exclude based on whether probative value is substantially outweighed by unfair prejudice
- D. Exclude the photographs because graphic imagery is inherently prejudicial

132. A witness observed a fight outside a bar. Twenty minutes after the fight ended, the witness, still visibly shaken and breathless, told a police officer who arrived on the scene: "The taller man hit the shorter man with a bottle first." At trial, the officer attempts to testify to this statement. The defense objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because the statement was made too long after the event for present sense impression
- B. Sustain the objection because the statement contains the witness's opinion about who hit first
- C. Admit the statement as a present sense impression only if made within minutes of perception
- D. Admit the statement as an excited utterance if the declarant remained under the stress of the startling event

133. In a criminal fraud trial, the prosecution seeks to introduce evidence that the defendant committed a similar fraud against a different victim three years earlier. The defendant objects under FRE 404(b). How should the court rule?

- A. Admit the evidence if offered for a permitted purpose such as motive, intent, plan, or absence of mistake

- B. Admit the evidence to show the defendant's general propensity to commit fraud
- C. Exclude the evidence because prior bad acts are never admissible
- D. Admit the evidence only if the defendant takes the stand

134. A party seeks to introduce expert testimony based on a methodology that is not generally accepted in the scientific community and has not been subjected to peer review. The opposing party challenges the testimony's admissibility. How should the court analyze the expert's testimony?

- A. Admit the testimony because all qualified expert opinions are admissible
- B. Apply the Daubert factors to determine if the methodology is reliable
- C. Apply the Frye general acceptance test in federal court
- D. Exclude the testimony because novel methodologies are inadmissible

135. In a personal injury case, the plaintiff offers her own statement, made to her treating physician shortly after an accident: "I have severe pain in my lower back where the car hit me." The defense objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because the plaintiff's self-serving statements are inadmissible
- B. Sustain the objection because the statement identifies fault
- C. Overrule the objection because statements for medical diagnosis are admissible under FRE 803(4)
- D. Overrule the objection only if the physician testifies that the statement was true

136. At trial, a party requests that the court take judicial notice of the fact that the sun set at 6:47 PM in the relevant city on the date in question. The fact is verifiable through the U.S. Naval Observatory's published data. The opposing party objects. How should the court rule?

- A. Take judicial notice because the fact is capable of accurate determination from unquestionable sources
- B. Decline to take judicial notice because all facts must be proven at trial
- C. Take judicial notice only if both parties stipulate to the fact
- D. Decline to take judicial notice because astronomical facts require expert testimony

137. A party offers a business invoice prepared in the regular course of business at or near the time of the transaction. The custodian of records testifies to its authenticity and the procedures for creating it. The opposing party objects on hearsay grounds. How should the court rule?

- A. Sustain the objection because invoices contain hearsay statements
- B. Sustain the objection only if the original employee who created the document is unavailable
- C. Overrule the objection only if the invoice's accuracy is independently verified
- D. Overrule the objection because the document satisfies the business records exception

138. A 911 caller, in real-time during an ongoing emergency, describes an assailant currently attacking her. The recording is offered against the defendant at trial. The defense objects on Confrontation Clause grounds. How should the court rule?

- A. Exclude the recording because all out-of-court statements raise Confrontation Clause concerns
- B. Admit the recording because the statement is non-testimonial, having been made during an ongoing emergency
- C. Exclude the recording because 911 calls are typical police questioning
- D. Admit the recording only if the caller testifies at trial

139. In a federal criminal trial, the defendant's spouse is called by the prosecution to testify about events she observed before her marriage to the defendant. The defendant objects on spousal testimony privilege grounds. How should the court rule?

- A. Sustain the objection because all spousal testimony is privileged
- B. Sustain the objection because the spouse is married to the defendant at the time of testimony
- C. Allow the testimony if the spouse chooses to testify, as the privilege belongs to the witness-spouse in federal court
- D. Allow the testimony because pre-marriage events are never privileged

140. In a civil contract dispute, the plaintiff offers a statement made by the defendant during a casual conversation: "I never intended to perform the contract as written." The statement was made outside of any formal settlement discussion. The defense objects on hearsay grounds. How should the court rule?

- A. Overrule the objection because the statement is an opposing party's admission
- B. Sustain the objection because settlement statements are inadmissible
- C. Sustain the objection because admissions require corroboration
- D. Overrule the objection only if the defendant currently denies the statement

141. A witness testifies to a phone conversation she had with the defendant. She identifies the defendant's voice as the speaker based on having spoken with him in person twice before. The defense objects to identification. How should the court rule?

- A. Sustain the objection because voice identification requires expert analysis
- B. Overrule the objection because voice identification by familiarity is sufficient under FRE 901
- C. Sustain the objection because two in-person meetings are insufficient familiarity
- D. Overrule the objection only if voice analysis technology confirms the identification

142. In a homicide case, the prosecution offers a statement by the victim made shortly before death: "John shot me." At the time of the statement, the victim believed her death was imminent. The defense objects on hearsay and Confrontation Clause grounds. How should the court rule?

- A. Sustain the objection because dying declarations require multiple witnesses
- B. Sustain the objection because the statement is testimonial and the declarant cannot be cross-examined
- C. Admit the statement only in civil cases, not criminal cases
- D. Admit the statement under FRE 804(b)(2) dying declaration exception, recognized as an exception under Crawford

143. In a federal civil case, a party seeks to compel a psychotherapist to testify about confidential communications with the opposing party-patient. The psychotherapist invokes privilege. How should the court rule?

- A. Compel the testimony because federal courts recognize no psychotherapist privilege
- B. Compel the testimony only after in-camera review of the communications
- C. Apply the federal psychotherapist-patient privilege recognized in *Jaffee v. Redmond*

D. Compel the testimony unless the patient signs a written waiver

144. A grantor conveys land "to A and his heirs so long as the land is used for residential purposes; if not so used, to revert to grantor." What estate does A have?

- A. A fee simple determinable, with grantor holding a possibility of reverter
- B. A fee simple subject to a condition subsequent, with grantor holding a right of entry
- C. A life estate, with grantor holding a reversion
- D. A fee simple subject to executory limitation, with a third party holding the future interest

145. A grantor conveys "to A for life, then to B and his heirs." A removes valuable timber from the land that exceeds normal wear and tear, generating significant profit for himself. B sues A. How should the court rule?

- A. Find for A because life tenants may use the land freely during their lifetime
- B. Find for B because removal of valuable timber constitutes waste against the remainderman
- C. Find for A only if the lease specifically prohibited timber removal
- D. Find for B only if the grantor's intent specifically prohibited timber removal

146. A grantor conveys "to A and his heirs, but if the land ever ceases to be used for agricultural purposes, to B and his heirs." What is the status of B's interest under the common-law Rule Against Perpetuities?

- A. Valid because B's interest is fully alienable
- B. Valid because the grantor's intent was clear
- C. Valid because the condition relates to land use, not personal characteristics
- D. Void because B's executory interest may not vest within lives in being plus 21 years

147. A and B own land as joint tenants with right of survivorship. A conveys his interest to C without B's knowledge or consent. What is the status of the title?

- A. C and B hold as tenants in common; the joint tenancy was severed by A's conveyance
- B. C holds A's joint tenant interest with all rights of survivorship
- C. The conveyance is void because joint tenants cannot convey without consent
- D. C and B remain joint tenants with right of survivorship

148. A grantor conveys land to A on January 1. A does not record. On February 1, the same grantor conveys the same land to B, who has no notice of A's prior conveyance and pays full value. B records on February 1. A records on March 1. The jurisdiction has a notice statute. Who has superior title?

- A. A, because the prior conveyance is generally controlling
- B. A, because B's deed was not the first executed
- C. B, because B is a bona fide purchaser without notice
- D. B, but only if she has actually moved onto the property

149. A trespasser enters another's land openly and continuously farms it for 19 years. The statute of limitations is 20 years. The original owner then visits the land and orders the trespasser to leave. The trespasser refuses. The owner sues for ejectment. How should the court rule?

- A. Find for the trespasser because his use has been longer than 10 years
- B. Find for the owner only if he can show prior efforts to remove the trespasser
- C. Find for the trespasser based on the doctrine of laches
- D. Find for the owner because the trespasser has not satisfied the statutory period

150. A subdivision developer sells two adjacent lots. The deed for Lot 1 grants the owner of Lot 1 the right to use a driveway crossing Lot 2 to reach a public road. Lot 2's owner later tries to block the driveway. What kind of easement exists?

- A. An easement by necessity that may be terminated when alternative access is available
- B. An express easement appurtenant created by the deed, benefiting Lot 1
- C. An easement by prescription that requires further use to perfect

D. An easement in gross that does not run with the land

151. A residential tenant complains to her landlord about a severe rodent infestation. The landlord refuses to address it. After living with rodents for two months and giving notice, the tenant vacates and stops paying rent. The landlord sues for unpaid rent. How should the court rule?

- A. Find for the tenant because the conditions amounted to constructive eviction
- B. Find for the landlord because the tenant remained for two months
- C. Find for the tenant only if the rodent infestation violated specific housing codes
- D. Find for the landlord because the tenant was the proper party to address the issue

152. A buyer and seller enter into a binding contract for the sale of a house. Before closing, the house is destroyed by lightning through no fault of either party. The jurisdiction follows the traditional equitable conversion doctrine. Who bears the loss?

- A. The seller, because the seller still holds legal title
- B. Both parties equally, because the loss was not foreseeable
- C. The buyer, because under equitable conversion the buyer is the equitable owner
- D. The insurance carrier exclusively, regardless of policy details

153. A homeowner mortgages her property to a bank. She defaults on payments. The bank initiates foreclosure proceedings, but a junior lienholder also has an interest in the property. Following a proper foreclosure sale, what is the status of the junior lien?

- A. The junior lien remains attached to the property
- B. The junior lien is extinguished by the foreclosure of the senior mortgage
- C. The junior lien moves up in priority after foreclosure
- D. The junior lien must be separately foreclosed against the new owner

154. A grantor conveys property by general warranty deed. After the conveyance, a third party claims a paramount title under a recorded deed from before the grantor's ownership. The grantee sues the grantor under the deed covenants. Which covenant is breached?

- A. The covenant against encumbrances, because of the prior recorded deed
- B. The covenant of further assurances, because the grantor should have warranted prior to conveyance
- C. The covenant of seisin only, because the grantor was not actually seized
- D. The covenants of quiet enjoyment and warranty (future covenants), as the grantee was disturbed by paramount title

155. A and B own land as tenants in common. A rents the property to a third party for a year and collects all the rent. B sues A for B's share. How should the court rule?

- A. Find for B because each cotenant is entitled to a proportionate share of rents from third parties
- B. Find for A because cotenants may unilaterally manage the property
- C. Find for B only if B can show A acted in bad faith
- D. Find for A because the cotenant in possession has all rental rights

156. A holds an express easement to use a driveway across B's land. A purchases B's land, becoming sole owner of both parcels. A later sells the dominant parcel without mentioning the easement. The new owner tries to use the driveway. How should the court rule?

- A. Allow the easement to continue because express easements bind successors
- B. Allow the easement because A's silent sale did not affect easement rights
- C. Find no easement because the easement was extinguished by merger when A owned both parcels
- D. Allow the easement only if it was reasonably necessary for property use

157. A buyer contracts to purchase land. Before closing, a title search reveals an old, unreleased mortgage from 50 years ago. There is no evidence the mortgage was ever paid. The buyer refuses to close. How should the court rule on the seller's suit for specific performance?

- A. Compel the buyer to close because old mortgages are presumed satisfied
- B. Permit the buyer to refuse because the unreleased mortgage renders title unmarketable
- C. Compel the buyer to close subject to escrow funds covering the mortgage
- D. Permit the buyer to refuse only if the buyer paid for a title search

158. A landowner owns two parcels. He uses a path on Parcel 1 to reach a road from Parcel 2. He sells Parcel 2 to a buyer, without express easement language. The buyer continues using the path. The owner of Parcel 1 sues to bar use. How should the court rule?

- A. Find an implied easement by prior existing use, because the use was apparent, continuous, and reasonably necessary
- B. Find no easement because no express grant was made
- C. Find an easement only if the path was the only means of access
- D. Find no easement because implied easements require strict necessity

159. A subdivision is created with restrictive covenants binding all lots to residential use only. A and B own adjacent lots. A starts running a commercial business on his lot. B sues to enforce the residential restriction. The deeds expressly bind successors. How should the court rule?

- A. Permit A's commercial use because covenants do not bind successive owners
- B. Permit A's commercial use because B has no standing to enforce
- C. Enjoin A only if B can prove specific monetary damages
- D. Enjoin A's commercial use because the covenant runs with the land and binds successors

160. A grantor signs a deed conveying property to her son but keeps the deed in her safe deposit box. The grantor never tells her son about the deed during her lifetime. The son discovers the deed after the grantor's death. Has title passed to the son?

- A. Yes, because the deed was properly executed
- B. Yes, because the son had no opportunity to refuse
- C. No, because there was no delivery during the grantor's lifetime

D. Yes, if the son accepts the deed within a reasonable time of discovery

161. A trespasser holds a defective deed (color of title) to a 100-acre parcel. He actually possesses only 30 acres of it openly, continuously, hostilely, and exclusively for the statutory period. Under constructive adverse possession with color of title, what does he gain?

- A. Title only to the 30 acres he actually possessed
- B. Title to the entire 100 acres described in the color of title document
- C. No title because color of title is invalid
- D. Title to the 30 acres plus a possessory interest in the rest

162. A married couple owns property as tenants by the entirety in a jurisdiction recognizing this estate. The husband incurs a substantial individual debt. Can his creditor reach the marital property to satisfy the judgment?

- A. Yes, because all debts attach to all property of the debtor spouse
- B. Yes, but only the husband's one-half share
- C. Yes, if the husband's debt was incurred for family purposes
- D. No, because tenancy by the entirety protects against individual creditors of one spouse

163. A and B orally agree that A will sell B a parcel of land for \$200,000. B pays a deposit of \$20,000, takes possession with A's consent, and makes substantial improvements to the property. A then refuses to convey and demands B leave. How should the court rule?

- A. Order specific performance because the part performance doctrine takes the agreement out of the statute of frauds
- B. Enforce A's right to possession because oral land contracts are unenforceable
- C. Order specific performance only if B can prove additional witnesses to the oral agreement
- D. Refund B's deposit and improvements but not enforce the conveyance

164. A landowner conveys part of her land to a buyer, leaving the buyer's parcel landlocked with no access to a public road. The deed contains no express easement. What is the buyer's right of access?

- A. No right because no express easement was created
- B. A prescriptive easement requiring further use to perfect
- C. An easement by necessity arising automatically from the conveyance
- D. A license terminable at the grantor's will

165. A tenant attaches a custom-built bookshelf to the wall of a rented apartment using screws and brackets. The lease is silent on improvements. At the end of the tenancy, the tenant wants to remove the bookshelf. The landlord objects. How should the court rule?

- A. Find for the landlord because anything attached to the property becomes a fixture
- B. Find for the tenant because tenant trade or domestic fixtures may generally be removed if removal does not cause material damage
- C. Find for the landlord because all bookshelves are real property
- D. Find for the tenant only if she paid for the bookshelf herself

166. A grantor conveys "all my land in Smith County" without further description. The grantor in fact owns three separate parcels in Smith County totaling 50 acres. Is the description adequate?

- A. Yes, because parol evidence may identify the grantor's land in Smith County
- B. No, because the description must identify specific parcels by metes and bounds
- C. Yes, but only if the grantee has a survey done
- D. No, because deeds require precise legal descriptions

167. A homeowner takes out a mortgage. After defaulting, the home is sold at foreclosure for less than the mortgage debt. The bank seeks to recover the deficiency from the homeowner personally. The jurisdiction permits deficiency judgments. How should the court rule?

- A. Bar the deficiency judgment because foreclosure satisfies the mortgage

- B. Bar the deficiency judgment because the bank chose to foreclose
- C. Permit the deficiency only if the homeowner's default was intentional
- D. Permit the deficiency judgment to recover the shortfall on the personal obligation

168. A grantor conveys land to A, who does not record. The grantor later conveys the same land to B, who has actual knowledge of the prior conveyance to A. B promptly records. The jurisdiction has a race-notice statute. Who prevails?

- A. B, because B recorded first
- B. B, because she paid value
- C. A, because B had actual notice of the prior conveyance
- D. Both A and B share title as tenants in common

169. A residential tenant lives in an apartment with a broken heating system that the landlord refuses to repair. Temperatures inside reach below 40 degrees in winter. The tenant withholds rent. The landlord sues for the rent. How should the court rule?

- A. Find for the landlord because tenants must continue paying rent regardless of conditions
- B. Find for the tenant because the broken heat violates the implied warranty of habitability
- C. Find for the landlord because the lease should specify all required services
- D. Find for the tenant only if the tenant has vacated the premises

170. A grantor conveys "to A for life, then to B if B graduates from college, otherwise to C." At the time of conveyance, B is a high school student. Describe B's interest.

- A. A contingent remainder subject to the condition precedent of graduation
- B. A vested remainder subject to total divestment
- C. An executory interest cutting short A's life estate
- D. A reversion in fee simple

171. A landowner owns property bordering a stream. He installs a large irrigation system that draws so much water that downstream landowners receive almost none. Downstream owners sue. The jurisdiction follows the reasonable use doctrine. How should the court rule?

- A. Permit the irrigation because the upstream owner has primary rights to water
- B. Permit the irrigation only if the downstream owners cannot demonstrate damages
- C. Restrict the irrigation only if it is for a non-domestic use
- D. Restrict the irrigation because excessive use unreasonably harms downstream owners

172. A landowner excavates near the boundary of his property, removing natural support and causing the adjacent owner's land to subside. The adjacent owner's house is damaged. How should the court rule?

- A. Find for the excavator because every owner may dig on his own land
- B. Find for the adjacent owner only if the excavator was negligent
- C. Find for the adjacent owner under strict liability for lateral support of land in its natural state
- D. Find for the excavator unless the adjacent owner notified him in advance

173. A defendant approaches the plaintiff from behind and grabs her hand to shake it without warning. The defendant intended a friendly gesture but the plaintiff is offended. The plaintiff sues for battery. How should the court rule?

- A. Find for the defendant because friendly greetings cannot constitute battery
- B. Find for the plaintiff because the intentional touching was offensive to a reasonable person
- C. Find for the defendant because subjective offense is insufficient for battery
- D. Find for the plaintiff only if she can show medical injury

174. A store employee suspects a customer of shoplifting. The employee locks the customer in a small office for two hours while waiting for police, without any reasonable basis for the suspicion. The customer sues for false imprisonment. How should the court rule?

- A. Find for the customer because confinement without justification is false imprisonment

- B. Find for the store because store owners may detain suspected shoplifters indefinitely
- C. Find for the customer only if she suffered physical harm
- D. Find for the store under the shopkeeper's privilege regardless of reasonableness

175. A defendant calls the plaintiff at 3 AM every night for three weeks, screaming obscenities and threatening her family. The plaintiff develops severe anxiety, insomnia, and depression. She sues for intentional infliction of emotional distress. How should the court rule?

- A. Find for the defendant because phone calls are not "extreme and outrageous"
- B. Find for the plaintiff only if the threats were physically carried out
- C. Find for the defendant because emotional distress alone is not actionable
- D. Find for the plaintiff because the conduct is extreme and outrageous, causing severe distress

176. A defendant believes she is on her own land but is actually crossing the plaintiff's property. She walks across the land openly with no harm or damage. The plaintiff sues for trespass. How should the court rule?

- A. Find for the defendant because she had no intent to trespass
- B. Find for the plaintiff because trespass requires only intent to enter, not knowledge of ownership
- C. Find for the defendant because mistake of fact is a defense to trespass
- D. Find for the plaintiff only if she can show actual damages

177. A defendant takes the plaintiff's car for a 15-minute joyride, returning it unharmed and in the same condition. The plaintiff sues for conversion. How should the court rule?

- A. Find for the plaintiff because any unauthorized taking constitutes conversion
- B. Find for the defendant only if no damage occurred
- C. Find for the plaintiff for trespass to chattels rather than conversion, given the minor interference
- D. Find for the defendant because brief unauthorized use is never tortious

178. A homeowner sets up a spring gun in his unoccupied vacation cabin to deter burglars. A burglar breaks in and is seriously wounded by the gun. The burglar sues. How should the court rule?

- A. Find for the burglar because deadly force solely to protect unoccupied property is impermissible
- B. Find for the homeowner because property owners may use any means to protect their property
- C. Find for the burglar only if the burglar was unarmed
- D. Find for the homeowner because the burglar was breaking the law

179. A swimming pool owner has children visiting his property frequently and unsupervised. He fails to fence the pool or post warnings. A young child wanders onto the property and drowns. The child's parents sue. How should the court rule?

- A. Find for the pool owner because trespassers have no protection from landowners
- B. Find for the pool owner because parents must supervise their children
- C. Find for the parents only if the pool was visible from public areas
- D. Find for the parents under the attractive nuisance doctrine

180. A driver violates a clearly posted speed limit and strikes a pedestrian crossing legally. The speeding driver violated a statute designed to protect pedestrians. The pedestrian sues. How should the court analyze duty and breach?

- A. Apply the reasonable person standard regardless of the statutory violation
- B. Apply negligence per se to establish all elements of the claim
- C. Apply negligence per se to establish duty and breach, but causation and damages must still be proved
- D. Apply negligence per se only if the driver's violation was intentional

181. A barrel of flour falls from an upper window of a flour mill and strikes a passerby. The mill operator has exclusive control of the building. The passerby cannot prove specifically what caused the barrel to fall. He sues the mill operator. How should the court analyze the claim?

- A. Apply *res ipsa loquitur*, permitting an inference of negligence

- B. Dismiss the claim because direct evidence of negligence is required
- C. Apply strict liability because flour mills are abnormally dangerous activities
- D. Dismiss the claim because the passerby was outside the building

182. A defendant negligently spills oil on a sidewalk. A pedestrian slips on the oil but is not injured by the fall itself. While lying on the ground recovering, a third party intentionally and maliciously strikes the pedestrian with a baseball bat. Is the original defendant liable for the bat injuries?

- A. Yes, because his negligence put the pedestrian in the position to be harmed
- B. No, because the malicious intentional act is a superseding cause breaking the causal chain
- C. Yes, because all subsequent harms are foreseeable
- D. No, because the slip itself caused no injury

183. A plaintiff is injured in a car accident. The jury finds the plaintiff 30% at fault and the defendant 70% at fault, with total damages of \$100,000. The jurisdiction applies pure comparative negligence. How much does the plaintiff recover?

- A. Nothing, because contributory negligence bars recovery
- B. \$50,000, the average between full and zero recovery
- C. \$30,000, reflecting only the plaintiff's degree of fault
- D. \$70,000, reflecting the defendant's percentage of fault

184. A baseball fan sits in unprotected seats behind first base at a major league game. A foul ball flies into the stands and strikes her. She sues the team for negligence. How should the court rule?

- A. Find for the fan because the team has a duty to protect all spectators
- B. Find for the team because attending a baseball game means accepting no risks
- C. Find for the team because the fan impliedly assumed the inherent risk of foul balls
- D. Find for the fan only if she had purchased premium seats

185. A defendant keeps a tiger as a pet in a secure enclosure. Despite all precautions, the tiger escapes and injures a neighbor. The neighbor sues. How should the court rule?

- A. Apply strict liability because the defendant kept a wild animal
- B. Apply negligence because the enclosure was reasonably secure
- C. Apply rescuer doctrine because the tiger was contained
- D. Dismiss the claim because the defendant took all reasonable precautions

186. A car manufacturer designs a car with a gas tank in a position prone to rupture in rear-end collisions. The design conforms to industry standards at the time. A consumer is injured when his car's tank ruptures in an accident. He sues under products liability. How should the court analyze the design defect claim?

- A. Find no liability because industry standards establish reasonable design
- B. Apply risk-utility analysis to determine if a reasonable alternative design existed
- C. Find liability based solely on consumer expectations
- D. Find no liability unless the manufacturer knew of the specific risk

187. A national politician sues a newspaper for defamation based on a story that incorrectly accused him of accepting bribes. The newspaper investigated diligently but relied on a source that turned out to be unreliable. What must the politician prove to recover?

- A. Mere negligence in publishing the false statement
- B. Strict liability for any false statement about him
- C. Express malice in the sense of ill will or hatred
- D. Actual malice — knowledge of falsity or reckless disregard for truth

188. A defendant rents an apartment next to the plaintiff and installs a powerful telephoto lens to photograph the plaintiff inside her bedroom through a window. The plaintiff discovers the surveillance and sues. Under which theory does she have the strongest claim?

- A. Intrusion upon seclusion, because the surveillance invaded the plaintiff's private space

- B. Public disclosure of private facts, because photographs reveal personal information
- C. False light, because the photographs created a false impression
- D. Appropriation, because the photographs used the plaintiff's likeness

189. A mother witnesses her child being struck and seriously injured by a defendant's negligently driven car. The mother is not physically harmed but suffers severe emotional distress. May she recover?

- A. No, because emotional distress requires physical injury
- B. Yes, because she was close enough to witness the harm to a family member under the bystander rule
- C. No, because parents are not entitled to recover for harms to children
- D. Yes, only if she was within the immediate impact zone

190. An employee, during work hours, drives a company vehicle to a personal lunch appointment with friends. On the way back to work, the employee negligently causes an accident. The injured party sues the employer. How should the court rule?

- A. Find no vicarious liability because the employee was off-duty
- B. Find vicarious liability because the employee was driving a company vehicle
- C. Find vicarious liability if the personal detour was minor and the employee was returning to work duties
- D. Find no vicarious liability because all lunch breaks are personal time

191. Two defendants negligently cause a single indivisible injury to the plaintiff. The plaintiff sues both. The jury finds each defendant 50% at fault. The jurisdiction follows traditional joint and several liability. May the plaintiff collect the full judgment from one defendant?

- A. No, the plaintiff can only collect 50% from each
- B. No, the plaintiff must apportion damages by fault percentage
- C. Yes, but only with the consent of the other defendant
- D. Yes, the plaintiff may collect the full amount from either defendant, who then has contribution rights

192. A doctor is dining at a restaurant when another patron suddenly suffers cardiac arrest. The doctor recognizes the medical emergency but chooses not to assist, leaving the patron to die. The patron's family sues the doctor for failing to render aid. How should the court rule?

- A. Find for the family because doctors always have a duty to render emergency aid
- B. Find for the doctor because doctors are not always required to treat patients
- C. Find for the doctor because absent a special relationship, no duty to rescue exists
- D. Find for the family because the doctor's specialized knowledge created a duty

193. A defendant operates a fireworks manufacturing facility in compliance with all safety regulations. An unexpected accident causes an explosion that damages a neighboring building. The neighbor sues. How should the court analyze the claim?

- A. Apply strict liability because fireworks manufacturing is an abnormally dangerous activity
- B. Apply negligence because the defendant complied with regulations
- C. Apply *res ipsa loquitur* to permit an inference of fault
- D. Dismiss the claim because explosions are foreseeable risks in any neighborhood

194. A private citizen sues a local newspaper for publishing an article incorrectly accusing him of being convicted of a crime. The accusation involves a matter of public concern. What must the citizen prove regarding fault?

- A. Strict liability for any false statement
- B. At least negligence on the part of the newspaper
- C. Actual malice — knowledge of falsity or reckless disregard
- D. Only causation; no fault standard applies to private figures

195. A pharmaceutical company sells a drug with a known but rare side effect. The company does not include a warning in the product literature. A patient suffers the rare side effect and sues. The drug performs as designed for its intended purpose. How should the court analyze the claim?

- A. Find for the manufacturer because the drug performed as designed
- B. Find liability only if the company knew of frequency exceeding 5% of users
- C. Find liability based on failure to warn, because foreseeable risks require warning
- D. Find for the manufacturer because all drugs have inherent risks

196. A defendant operates a hog farm next to the plaintiff's residential property. The hog farm generates strong odors and noise that significantly interfere with the plaintiff's use and enjoyment of his home. The farm has been there for years. The plaintiff sues for private nuisance. How should the court analyze the claim?

- A. Find for the defendant because hog farming is a legitimate business
- B. Find for the defendant because the farm pre-dated the plaintiff's residence
- C. Find for the plaintiff only if the defendant violated a specific local ordinance
- D. Balance the utility of the defendant's conduct against the gravity of harm to the plaintiff

197. A surgeon performs an operation on a patient. The surgeon's technique conforms to the customary practice of similarly trained surgeons in the community. However, an unfortunate but known complication occurs. The patient sues for malpractice. How should the court analyze the claim?

- A. Find for the surgeon because conformity with customary medical practice generally establishes the standard of care
- B. Find for the patient because all complications indicate negligence
- C. Apply *res ipsa loquitur* to permit an inference of negligence
- D. Find for the patient unless the surgeon used the most advanced techniques

198. A defendant negligently leaves a heavy steel beam unsecured at a construction site. A child climbs onto the beam, which tips and falls, injuring the child. The defendant claims the child's actions were an intervening cause. How should the court rule?

- A. Find for the defendant because the child's action was independent
- B. Find for the defendant because children should not be on construction sites

- C. Find for the plaintiff because a child's foreseeable curiosity does not break the causal chain
- D. Find for the plaintiff only if the defendant intentionally failed to secure the beam

199. A defendant writes a defamatory letter about the plaintiff and mails it to the plaintiff alone, with no other person seeing it. The plaintiff sues for defamation. How should the court rule?

- A. Find for the plaintiff because written defamation is per se actionable
- B. Find for the defendant because publication to a third party is required
- C. Find for the plaintiff because the defendant intended to cause harm
- D. Find for the defendant only if the statement is true

200. A defendant negligently causes a car accident. A bystander rushes to help an injured victim and is herself injured by oncoming traffic in the process. The bystander sues the defendant. How should the court rule?

- A. Find for the defendant because the bystander voluntarily assumed the risk
- B. Find for the defendant because rescue was unnecessary
- C. Find for the bystander only if she has prior medical training
- D. Find for the bystander under the rescue doctrine — negligence toward the original victim extends to foreseeable rescuers

PRACTICE EXAM 11 :ANSWER KEY WITH EXPLANATIONS (1-200)

1. B — A corporation is "at home" for general jurisdiction purposes only in its state of incorporation and principal place of business under *Daimler v. Bauman*. The small State Y sales office does not make the corporation "at home" there, and because the claim does not arise from State Y activities, no specific jurisdiction exists either.

2. D — Diversity jurisdiction under 28 U.S.C. § 1332 requires complete diversity between all plaintiffs and all defendants. Adding a defendant from the same state as the plaintiff destroys complete diversity, and the court must dismiss unless the non-diverse party is dropped.

- 3. A** — Under *Erie Railroad v. Tompkins*, a federal court sitting in diversity applies state substantive law and federal procedural law. Certificate-of-merit requirements are typically considered substantive because they are outcome-determinative and affect the underlying right to sue.
- 4. C** — The forum-defendant rule under 28 U.S.C. § 1441(b)(2) prohibits removal in diversity cases when any properly joined and served defendant is a citizen of the forum state. Because the State X defendant is a citizen of the forum, the case cannot be removed regardless of which defendant filed the notice.
- 5. B** — Under 28 U.S.C. § 1391(b)(2), venue is proper in any district where a substantial part of the events or omissions giving rise to the claim occurred. Performance of the contract in the Western District of Pennsylvania constitutes such a substantial part.
- 6. D** — Under FRCP 12(h)(1), defenses of personal jurisdiction, venue, insufficient process, and insufficient service of process are waived if not raised in the first responsive pleading or pre-answer motion. Raising venue after answering forfeits the defense.
- 7. C** — Under *Twombly* and *Iqbal*, a complaint must plead facts showing plausible entitlement to relief; conclusory allegations are not entitled to the presumption of truth. Bare assertions of conspiracy without supporting factual content fail this standard.
- 8. A** — Joint obligors on a contract are typically necessary parties under Rule 19(a) because complete relief cannot be accorded without them. When joinder is feasible and does not destroy jurisdiction, the court must order joinder rather than dismiss.
- 9. D** — Rule 23(b)(3) certification requires that common questions predominate over individual questions and that a class action is superior to other available methods. The court conducts a rigorous analysis of these factors rather than applying any automatic rule for securities cases.
- 10. B** — Discovery under Rule 26(b)(1) is limited to relevant matters proportional to the needs of the case. A request for "all emails ever sent" concerning anything related to the plaintiff is facially overbroad and not proportional.
- 11. C** — Voluntary disclosure of privileged communications to a non-attorney third party generally waives the attorney-client privilege. The consultant is not an agent necessary for the rendering of legal advice, so the privilege is lost.
- 12. A** — Opinion work product — reflecting an attorney's mental impressions, conclusions, opinions, and legal theories — receives near-absolute protection under Rule 26(b)(3). Trial strategy memoranda fall squarely within this protection.
- 13. D** — Under *Celotex Corp. v. Catrett*, once the movant points to the absence of evidence supporting the nonmovant's claim, the nonmovant must come forward with specific facts showing a genuine dispute. Mere allegations or speculation are insufficient to defeat summary judgment.

14. B — To preserve a Rule 50(b) renewed motion, the defendant must first make a Rule 50(a) motion at the close of all evidence. Failure to renew the motion at that point forfeits the right to seek renewed JMOL after the verdict.

15. A — Remittitur conditions a new trial on the plaintiff's acceptance of a reduced damages award. The trial judge cannot unilaterally reduce the verdict (additur is unconstitutional in federal court), so remittitur is the proper mechanism.

16. C — Under Rule 54(b), a court may direct entry of final judgment as to fewer than all parties or claims if it expressly determines there is no just reason for delay. Without this certification, a partial summary judgment is interlocutory and not immediately appealable.

17. D — Claim preclusion bars relitigation of claims that were or could have been raised in a prior action between the same parties that ended in a final judgment on the merits. Fraud arising from the same transaction could have been pleaded and is therefore precluded.

18. B — Issue preclusion requires that the party against whom preclusion is asserted had a full and fair opportunity to litigate the issue in the prior action. Because the truck driver was not a party to the first suit, no preclusion may be asserted against him.

19. A — Rule 4(m) requires service within 90 days of filing the complaint; if not served, the court must dismiss without prejudice or order service within a specified time, unless good cause is shown. Service on May 20 of a January 15 complaint exceeds 90 days.

20. C — Rule 15(c)(1)(C) requires that the newly named party receive notice of the action within the Rule 4(m) service period for relation back to apply. Without timely notice, the amendment does not relate back to the original filing.

21. D — Under Rule 55(b)(1), the clerk may enter default judgment only when the claim is for a sum certain. Unliquidated damages such as pain and suffering require court determination under Rule 55(b)(2), often through a hearing.

22. B — Forum non conveniens dismissal is appropriate when an adequate alternative forum exists and private and public interest factors strongly favor litigation in that forum. The location of witnesses, evidence, and applicable law in Country Z supports dismissal.

23. C — Under the well-pleaded complaint rule, federal question jurisdiction must appear on the face of the plaintiff's properly pleaded complaint. A federal defense, including preemption, does not create federal question jurisdiction.

24. A — Under *Hertz Corp. v. Friend*, a corporation is a citizen of its state of incorporation and the state of its principal place of business — the "nerve center," typically the corporate headquarters. Operational facilities do not establish citizenship.

25. D — Statutory interpleader under 28 U.S.C. § 1335 requires only minimal diversity between any two claimants and at least \$500 in controversy, with nationwide service available. This is the most efficient mechanism for resolving competing claims to a fund.

26. C — Rule 24(a) provides intervention as of right when an applicant claims a protectable interest, disposition may impair that interest, and existing parties do not adequately represent it. All three elements are satisfied here.

27. B — Under 28 U.S.C. § 1367(c)(3), the court may decline supplemental jurisdiction over state-law claims after dismissing all claims with original jurisdiction. The decision is discretionary, considering judicial economy and fairness.

28. D — Rule 37(b)(2) authorizes a range of sanctions for failure to comply with discovery orders, including dismissal. The court considers willfulness, prejudice, and proportionality, with dismissal reserved for serious or repeated noncompliance.

29. A — Under a 50% modified comparative negligence rule, a plaintiff whose fault exceeds 50% recovers nothing. Because the jury found the plaintiff 70% at fault, the threshold is exceeded and judgment must be entered for the defendant.

30. C — Associational standing requires that members would have standing individually, the interests are germane to the organization's purpose, and the claim does not require individual member participation. Breathing polluted air constitutes concrete injury satisfying these requirements.

31. B — *Gonzales v. Raich* upheld federal regulation of purely intrastate marijuana cultivation under the aggregation principle of *Wickard v. Filburn*. Cumulative intrastate activity that substantially affects interstate commerce is within Congress's commerce power.

32. A — Facially discriminatory state laws against interstate commerce face the virtually per se rule of invalidity unless the state shows the law serves a legitimate purpose that cannot be achieved by less discriminatory means. Strict scrutiny is the applicable standard.

33. D — Age is not a suspect or quasi-suspect classification under federal equal protection jurisprudence. Age classifications by the government receive only rational basis review and are upheld if rationally related to any legitimate governmental interest.

34. C — A law that prohibits speech criticizing a particular government official while permitting other political speech is a content-based and viewpoint-based restriction. Such restrictions in a public forum face strict scrutiny and almost always fail.

35. A — *Lee v. Weisman* held that government-sponsored prayer at a public school graduation violates the Establishment Clause because the school setting creates impermissible coercion of students. The presence of religious exercise in a school context is constitutionally problematic.

36. B — Under *Employment Division v. Smith*, neutral and generally applicable laws that incidentally burden religion need only satisfy rational basis review. The law's drug prohibition is neutral and generally applicable.

37. D — Procedural due process claims involving deprivation of a protected interest are analyzed under the *Mathews v. Eldridge* balancing test: the private interest, risk of erroneous deprivation, and government interest. The required process varies with the circumstances.

38. C — Under *Lucas v. South Carolina Coastal Council*, a regulation that denies all economically beneficial use of property constitutes a categorical per se taking requiring just compensation. The total prohibition on building eliminates economic value.

39. B — *INS v. Chadha* struck down the legislative veto as a violation of bicameralism and presentment requirements of Article I. Legislative action altering legal rights must pass both houses and be presented to the President.

40. D — Under Justice Jackson's *Youngstown* framework, presidential action contrary to express or implied congressional will is at its "lowest ebb" and carries the heaviest constitutional burden. Steel seizure without congressional authorization, when Congress had declined to enact such authority, fails this test.

41. A — Under *Supreme Court of New Hampshire v. Piper*, the practice of law is a fundamental right protected by the Article IV Privileges and Immunities Clause. Residency requirements substantially burdening this right are unconstitutional absent a substantial reason and substantial relationship.

42. C — Viewpoint discrimination in a traditional public forum (a street) is presumptively unconstitutional under the First Amendment. A permit denial based on the unpopularity of the speaker's message cannot satisfy the strict scrutiny required.

43. B — Under *Lawrence v. Texas* and subsequent substantive due process jurisprudence, the right to engage in intimate personal relationships is a fundamental liberty interest. Criminalizing cohabitation impermissibly intrudes on this protected sphere.

44. A — Under *Adarand Constructors v. Peña* and *Students for Fair Admissions*, all racial classifications by the government — including benign or remedial ones — trigger strict scrutiny. The classification must be narrowly tailored to a compelling interest.

45. D — Constitutional protections generally apply only to government action, not purely private conduct. Under *Hudgens v. NLRB*, a private shopping mall is not a state actor merely because it is open to the public for commercial purposes.

46. B — The Eleventh Amendment bars federal court suits against unconsenting states by private parties for monetary damages, absent valid congressional abrogation. Sovereign immunity is jurisdictional and requires dismissal.

47. C — Under *South Dakota v. Dole* and *NFIB v. Sebelius*, conditions on federal spending must be unambiguous, related to the federal interest, not coercive, and otherwise constitutional. The court applies these factors to evaluate the validity of conditional spending.

48. A — Commercial speech receives intermediate First Amendment protection under the *Central Hudson* test: it must be lawful and not misleading, the state must have a substantial interest, the regulation must directly advance that interest, and the means must be reasonably tailored.

49. D — The Fifth Amendment grand jury indictment requirement is one of the few Bill of Rights provisions that has not been incorporated against the states. Under *Hurtado v. California*, states may use alternative charging mechanisms.

50. B — *NFIB v. Sebelius* struck down the Medicaid expansion's all-or-nothing condition as unconstitutionally coercive under the Spending Clause. Threatening loss of all existing Medicaid funding for refusing to expand constituted impermissible pressure on state sovereignty.

51. C — Under *Cleveland Board of Education v. Loudermill*, tenured public employees have a constitutionally protected property interest in continued employment. Termination without notice and an opportunity to be heard violates procedural due process.

52. D — Under *Frothingham v. Mellon* and subsequent cases, generalized taxpayer grievances about federal expenditures do not satisfy Article III standing requirements. Without a particularized injury distinct from any other taxpayer, standing is denied.

53. A — *Pierce v. Society of Sisters* established that parents have a fundamental substantive due process right to direct the upbringing and education of their children, including the choice of private schooling. State laws mandating public-only attendance impermissibly burden this right.

54. B — Under *Hicklin v. Orbeck*, employment on state-funded projects is a fundamental privilege protected by the Article IV Privileges and Immunities Clause. State residency preferences require a substantial reason and substantial relationship to peculiar evils.

55. C — *Cohen v. California* held that offensive but non-threatening political speech is protected under the First Amendment. The state cannot punish speech merely because the audience finds the words offensive.

56. A — Under *Orr v. Orr* and *Craig v. Boren*, gender classifications receive intermediate scrutiny and must be substantially related to an important government interest. Laws based on overbroad gender stereotypes about earnings and dependency fail this test.

57. D — *Printz v. United States* held that Congress cannot commandeer state executive officials to enforce federal regulatory programs. The Brady Act's requirement that state law enforcement perform background checks violated the Tenth Amendment.

58. C — Under longstanding precedent including *NFIB v. Sebelius*, Congress's taxing power permits exactions intended to influence behavior, so long as the measure functions as a tax raising revenue rather than as a penal sanction. The taxing power is not limited to revenue-only measures.

59. B — Under *Lefkowitz v. Great Minneapolis Surplus Store*, an advertisement constitutes an offer when its terms are clear, definite, and explicit, leaving nothing open to negotiation. "First come, first served" with specific item and price terms qualifies as an offer.

60. D — Under UCC § 2-205, a firm offer by a merchant in a signed writing is irrevocable for the stated time or a reasonable time, not to exceed three months. No consideration is required, and attempted revocation is ineffective within that period.

61. A — Under the common-law pre-existing duty rule, modifications of service contracts require new consideration to be enforceable. The roofer was already obligated to perform the work, so the promise to pay additional money lacks new consideration.

62. B — Promissory estoppel under Restatement § 90 makes a promise enforceable when the promisor should reasonably expect to induce reliance, the promisee actually relies, and injustice can be avoided only by enforcement. Quitting a job in reliance is the classic case.

63. C — Contracts for the sale of land must be evidenced by a writing satisfying the Statute of Frauds. Partial payment alone, without possession and improvements, generally does not satisfy the part-performance exception sufficient to permit specific performance.

64. D — A merger clause is strong evidence that the writing is a fully integrated agreement, barring evidence of prior or contemporaneous oral agreements that supplement or contradict the written terms. The parol evidence rule excludes the maintenance promise.

65. B — Under the mailbox rule, acceptance is effective upon dispatch when made by an authorized means, while revocation is effective only upon receipt. The acceptance letter creates a contract before the offeror's revocation reaches the offeree.

66. A — Under UCC § 2-207(2), between merchants, additional terms in an acceptance become part of the contract unless they materially alter it, the offer expressly limits acceptance to its terms, or the offeror objects. A prompt-payment discount is not a material alteration.

67. C — Substantial performance allows the performing party to recover under the contract; only a material breach permits the non-breaching party to refuse performance. A barely noticeable paint-shade deviation is a minor breach giving rise to damages, not refusal of payment.

68. B — Anticipatory repudiation gives the non-repudiating party an immediate right to sue, await performance for a commercially reasonable time, or treat the contract as discharged. An unequivocal pre-performance refusal is a present breach.

69. D — Impossibility excuses performance when an unforeseen event renders performance objectively impossible, including incapacitating illness in personal service contracts. The singer's medical condition preventing performance excuses her obligation.

70. A — Specific performance is available when legal remedies are inadequate, including when the subject matter is unique. Antique items are presumptively unique because monetary damages cannot replace them.

71. C — Mutual mistake about a basic assumption that materially affects the agreed exchange makes the contract voidable by the adversely affected party, absent risk allocation. Both parties' mistake about the existence of the timber satisfies this standard.

72. D — Intended third-party beneficiaries — those whom the promisee primarily intended to benefit — may enforce the contract directly. The son is the intended beneficiary of a tutoring contract paid for by his father.

73. A — The implied warranty of merchantability under UCC § 2-314 arises automatically when a merchant sells goods of the kind. It requires the goods to be fit for ordinary purposes regardless of the seller's knowledge of defects.

74. C — Under modern law, the landlord has a duty to mitigate damages by making reasonable efforts to re-rent the abandoned premises. Damages are reduced by the amount that could have been recovered through reasonable mitigation.

75. B — When an offer specifies an exclusive method of acceptance, only acceptance by that method creates a contract. Email is not certified mail, and the offeror's specification controls.

76. D — Liquidated damages clauses are enforceable when actual damages are difficult to estimate at the time of contracting and the agreed amount is a reasonable forecast of likely loss. Validity is judged at formation, not retrospectively based on actual damages.

77. A — Unconscionability under *Williams v. Walker-Thomas Furniture Co.* requires both procedural unfairness (limited choice, complex fine print) and substantive unfairness (oppressive terms). The cross-collateralization clause against an unsophisticated consumer satisfies both.

78. B — Once an obligor receives notice of an assignment, the obligor must pay the assignee. Payment to the assignor after notice does not discharge the obligation and exposes the obligor to a second demand from the assignee.

79. C — Under *Jacob & Youngs v. Kent*, substantial performance allows recovery of the contract price minus the diminution in value (or cost of completion when economically reasonable). Use of equivalent materials with no value difference yields minimal or no offset.

80. D — UCC § 2-601's perfect tender rule permits a buyer to reject goods that fail to conform in any respect, subject to the seller's right to cure if time remains. Nonconformity in quantity, however small, triggers the rule.

81. A — A party who benefits from a condition has an implied good-faith duty to make reasonable efforts to bring the condition about. Failing to even attempt to obtain financing breaches that duty and excuses the seller's performance.

82. B — Frustration of purpose, established in the Coronation Cases, excuses performance when an unforeseen event destroys the principal purpose of the contract known to both parties. Cancellation of the procession frustrates the rental's purpose even though the room remains physically usable.

83. C — Under UCC § 2-209(1), modifications of contracts for the sale of goods need no consideration if made in good faith. The reduction in quantity is enforceable without new consideration.

84. A — An implied-in-fact contract arises from the parties' conduct and course of dealing that manifests mutual assent. Years of services rendered and bills paid establish a contractual relationship by conduct.

85. D — Under UCC § 2-509(1), in a shipment contract such as FOB seller's plant, risk of loss passes to the buyer when the goods are duly delivered to the carrier. Loss during transit is the buyer's responsibility.

86. B — The modern view, exemplified by *Webb v. McGowin* and Restatement § 86, enforces a promise made in recognition of a material benefit previously received to the extent necessary to prevent injustice. Life-saving constitutes material benefit supporting the subsequent promise.

87. D — Under the doctrine of transferred intent, the defendant's intent to kill the intended victim transfers to the actual victim. Murder liability attaches even though the bullet struck a person the defendant did not specifically intend to kill.

88. C — Discovering a spouse in flagrante delicto is the classic example of adequate provocation that would inflame a reasonable person. A killing in the immediate heat of passion under such provocation reduces murder to voluntary manslaughter.

89. A — Under the majority "agency" theory of felony murder, liability extends only to killings committed by the felons or their agents, not by police officers or victims responding to the felony. The officer's shot does not generate felony murder liability for the robbers.

90. B — The continuing trespass doctrine treats an initially innocent taking as a continuing trespass; when the intent to permanently deprive forms while the property remains in the taker's possession, larceny is complete. Discovery of ownership followed by intent to keep satisfies the elements.

91. D — Common-law burglary requires breaking and entering the dwelling of another at night with intent to commit a felony therein. Once given as gifts, items belong to the recipient, so intent to take them is intent to commit larceny — a felony — sufficing for burglary.

92. C — Robbery requires force or threat of immediate harm to overcome the victim's resistance. Mere snatching without struggle generally lacks the force element and is properly charged as larceny from the person rather than robbery.

- 93. A** — Embezzlement is the fraudulent conversion of property lawfully entrusted to the defendant. The intent to return the money does not negate the fraudulent conversion at the time of taking; embezzlement is complete upon conversion.
- 94. D** — At common law, conspiracy was complete upon the agreement; many modern statutes require an overt act. Withdrawal limits future Pinkerton liability but does not erase the completed offense of conspiracy.
- 95. B** — Under the Model Penal Code's substantial step test, attempt requires conduct strongly corroborating criminal purpose. Purchasing poison, traveling to the victim's home, and reaching for the doorbell with intent to kill clearly constitutes a substantial step.
- 96. C** — Deadly force in self-defense is justified only against threats of death or serious bodily injury. Many jurisdictions also require retreat before deadly force when safe retreat is available, except inside the home under the castle doctrine.
- 97. A** — Under M'Naghten, a defendant is legally insane if, due to mental disease, the defendant did not know the nature and quality of the act or did not know it was wrong. Believing the victim was a demon and the killing morally justified satisfies the test.
- 98. D** — Larceny is a specific intent crime requiring intent to permanently deprive another of property. An honest mistake about ownership negates that specific intent, even if the mistake is unreasonable.
- 99. B** — A Fourth Amendment seizure of a person occurs only when a reasonable person would not feel free to leave or terminate the encounter. Voluntary, consensual encounters in which police merely request information are not seizures.
- 100. C** — Under *Georgia v. Randolph*, when a physically present co-occupant expressly refuses consent to a search, the police may not search the shared premises even with the other co-occupant's consent. The objecting occupant's refusal controls.
- 101. A** — Under *Edwards v. Arizona*, once a suspect invokes Miranda counsel rights, all custodial interrogation must cease until counsel is present, regardless of which officer initiates further questioning. The ignorance of the second officer does not excuse the violation.
- 102. B** — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at indictment and prohibits deliberate elicitation of statements without counsel present. Government informants used to circumvent this rule violate the Sixth Amendment.
- 103. C** — Under *Arizona v. Gant*, a vehicle search incident to arrest is permissible only if the arrestee is unsecured and within reaching distance of the passenger compartment, or it is reasonable to believe the vehicle contains evidence of the offense of arrest. Neither applies here.
- 104. D** — The Double Jeopardy Clause absolutely bars retrial after acquittal, regardless of newly discovered evidence or prosecutorial diligence. The finality of acquittal is constitutionally protected.

105. A — Under *United States v. Leon*, the good-faith exception to the exclusionary rule admits evidence obtained in objectively reasonable reliance on a facially valid warrant later found defective. Officer reliance was reasonable here.

106. B — Voluntariness of confessions is determined by the totality of circumstances. Twelve hours of interrogation without food, water, or sleep amounts to coercion that renders even a Mirandized confession involuntary and inadmissible.

107. D — *Padilla v. Kentucky* held that defense counsel must advise a defendant of clear deportation consequences of a guilty plea. Failure to do so constitutes deficient performance under the Sixth Amendment and may support withdrawal of the plea.

108. A — Under *Crawford v. Washington*, the Confrontation Clause bars testimonial hearsay against a criminal defendant unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. Statements during formal police questioning are testimonial.

109. C — Battery requires intent to commit harmful or offensive contact and resulting harmful or offensive contact. Intent to touch combined with an offensive or harmful result satisfies the mens rea; the precise degree of force need not be intended.

110. B — Under the natural and probable consequences doctrine, an accomplice is liable for crimes committed by the principal that are foreseeable consequences of the planned offense. Killing during an armed robbery is foreseeable, exposing the driver to murder liability.

111. D — Solicitation is complete upon the act of enticing, advising, or commanding another to commit a crime, regardless of whether the solicited party agrees or acts. The undercover officer's lack of intent to perform the killing does not affect the solicitor's liability.

112. C — True strict liability crimes have no mens rea requirement, and mistake of fact — even reasonable mistake — is not a defense. Statutes regulating sale of alcohol to minors are commonly treated as strict liability offenses.

113. A — Under *Minnesota v. Olson*, an overnight guest has a reasonable expectation of privacy in the host's home and therefore standing to challenge a search under the Fourth Amendment. The temporary nature of the guest's stay does not eliminate this expectation.

114. B — Subsequent medical treatment, even when negligently performed, is generally considered a foreseeable intervening cause that does not break the chain of causation from the original wrongful act. The defendant remains liable for the resulting death.

115. D — Under *Minnesota v. Dickerson*, plain feel during a Terry frisk permits seizure of contraband only when its incriminating nature is immediately apparent from the touch. Continued manipulation beyond identifying a weapon exceeds the scope of a Terry frisk.

116. C — An excited utterance under FRE 803(2) is a statement relating to a startling event made while the declarant was under the stress of excitement caused by the event. Spontaneous statements immediately after a car crash qualify.

117. B — Under FRE 404(a)(2), a criminal defendant may offer evidence of a pertinent character trait. Peaceful and non-violent reputation is pertinent to an assault charge, and the defense may introduce it as part of the case-in-chief.

118. A — FRE 1004 permits secondary evidence (such as a photocopy) when the original is lost or destroyed, provided the proponent did not act in bad faith. Loss in a flood satisfies this condition.

119. D — Under FRE 801(d)(2)(D), a statement by a party's agent or employee concerning a matter within the scope of employment, made during the employment relationship, is admissible as a non-hearsay party admission against the principal.

120. C — Under FRE 609(b), convictions older than 10 years from conviction or release are admissible only if probative value substantially outweighs prejudicial effect, with reasonable advance notice. A 12-year-old perjury conviction must meet this stringent standard.

121. B — FRE 407 excludes evidence of subsequent remedial measures when offered to prove negligence, culpable conduct, defect, or need for warning. The exclusion encourages safety improvements without litigation penalty.

122. A — Under FRE 701, lay opinions are admissible when rationally based on the witness's perception, helpful to understanding, and not based on specialized knowledge. Intoxication based on common observations is a classic permissible lay opinion.

123. D — Under *Melendez-Diaz v. Massachusetts*, forensic lab reports identifying substances are testimonial statements requiring the analyst's live testimony (or a prior opportunity for cross-examination). Submission of the report without the analyst violates the Confrontation Clause.

124. C — FRE 803(3) admits statements of the declarant's then-existing state of mind, including intent. The testator's statement of testamentary intent is admissible for that purpose without violating the hearsay rule.

125. A — FRE 901(b)(2) permits authentication by a non-expert witness familiar with the alleged signer's handwriting from prior, non-litigation exposure. Repeated personal observation of the signer writing supplies sufficient familiarity.

126. B — The attorney-client privilege protects confidential communications between attorney and client made for the purpose of obtaining or providing legal advice. The privilege applies in both criminal and civil cases and bars compelled disclosure of the conversation.

127. D — FRE 406 admits habit evidence — a regular, specific response to repeated situations — to prove conduct in conformity on a particular occasion. Corroboration and eyewitnesses are not required.

128. A — FRE 803(5) permits introducing a record of a matter the witness once knew but cannot now recall, when the record was made or adopted while fresh in memory and accurately reflects that knowledge. The license plate notation satisfies this exception.

129. C — Under FRE 804(b)(3), statements against the declarant's pecuniary, proprietary, or penal interest made when the declarant was unavailable are admissible if a reasonable person would not have made them unless true. An admission of speeding and missing a stop sign is against pecuniary interest.

130. B — The best evidence rule under FRE 1002 requires production of the original writing when its contents are at issue, if the original is available. Witness testimony from memory is not a substitute when the original can be produced.

131. C — FRE 403 requires balancing probative value against the danger of unfair prejudice; exclusion occurs only when prejudice substantially outweighs probative value. A defendant's stipulation may reduce probative value but does not automatically require exclusion.

132. D — An excited utterance under FRE 803(2) requires only that the declarant be under the stress of the startling event when the statement is made. A visibly shaken, breathless witness twenty minutes later may still satisfy this stress requirement, even if the time bar for present sense impression has passed.

133. A — FRE 404(b)(2) permits evidence of other acts for non-propensity purposes such as motive, intent, preparation, plan, knowledge, identity, or absence of mistake. A prior similar fraud may be admitted to show intent or modus operandi.

134. B — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, federal courts evaluate expert testimony for reliability using factors including testability, peer review, error rate, and general acceptance. The trial court serves as gatekeeper.

135. C — FRE 803(4) admits statements made for the purpose of and reasonably pertinent to medical diagnosis or treatment, including descriptions of symptoms, pain, and general cause. Statements identifying fault are admissible if pertinent to treatment.

136. A — FRE 201(b)(2) permits judicial notice of adjudicative facts not subject to reasonable dispute that are capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned. Astronomical data from the U.S. Naval Observatory qualifies.

137. D — FRE 803(6) admits business records made at or near the time of the recorded event, by a person with knowledge, kept in the regular course of business, and authenticated by a custodian or qualified witness. The foundation here satisfies the exception.

138. B — Under *Davis v. Washington*, statements made during ongoing emergencies for the primary purpose of resolving the emergency are non-testimonial and outside the Confrontation Clause. A real-time 911 call describing an attack in progress is non-testimonial.

139. C — Under *Trammel v. United States*, the federal spousal testimony privilege belongs to the witness-spouse, who may choose to testify against the defendant-spouse. The defendant-spouse cannot prevent voluntary testimony by the other.

140. A — FRE 801(d)(2)(A) makes a party's own statement non-hearsay when offered against that party. FRE 408's exclusion of compromise discussions does not apply to statements made outside formal settlement negotiations.

141. B — Under FRE 901(b)(5), voice identification by any person who has heard the voice at any time, including in person, is sufficient for authentication. Familiarity from two prior in-person conversations satisfies the standard.

142. D — FRE 804(b)(2) admits dying declarations in homicide prosecutions and civil cases when the declarant believed death was imminent. Dying declarations are historically recognized and survive Confrontation Clause analysis under *Crawford*.

143. C — Under *Jaffee v. Redmond*, the Supreme Court recognized a federal psychotherapist-patient privilege protecting confidential communications made for the purpose of diagnosis or treatment. The privilege is absolute and cannot be overridden by need.

144. A — The language "so long as" creates a fee simple determinable that terminates automatically upon breach of the condition. The grantor retains a possibility of reverter — a future interest that becomes possessory automatically.

145. B — A life tenant who removes valuable timber or otherwise destroys property in a manner diminishing the value of the future interest commits voluntary waste. The remainderman may sue to recover for waste even before the life estate ends.

146. D — A shifting executory interest in a third party of indefinite duration is void under the common-law Rule Against Perpetuities because the triggering condition may occur far beyond lives in being plus 21 years. The interest is stricken, leaving A with fee simple absolute.

147. A — A joint tenant's unilateral conveyance severs the joint tenancy as to the conveyed interest, destroying the unities required for joint tenancy. The grantee and remaining joint tenant hold as tenants in common.

148. C — In a notice jurisdiction, a subsequent bona fide purchaser for value without notice prevails over a prior unrecorded grantee, even if the BFP has not yet recorded. B satisfies these requirements and prevails over A.

149. D — Adverse possession requires possession that is open, notorious, continuous, hostile, and exclusive for the full statutory period. Nineteen years of possession falls short of the required twenty years, so title has not vested in the trespasser.

150. B — An express easement created by deed for the benefit of a specific parcel is an easement appurtenant. The benefit and burden run with the land, binding successors of both the dominant and servient estates.

151. A — Constructive eviction permits the tenant to terminate the lease and cease paying rent when the landlord substantially interferes with use and enjoyment, the tenant gives notice and a reasonable opportunity to cure, and the tenant vacates. A severe rodent infestation that the landlord refuses to address satisfies these elements.

152. C — Under traditional equitable conversion, the buyer becomes the equitable owner upon execution of a binding land sale contract and bears the risk of loss between contract and closing. The buyer must pay despite the destruction unless the contract allocates risk differently.

153. B — A senior mortgage foreclosure extinguishes junior liens, with junior lienholders entitled to share in any surplus proceeds in order of priority. The junior lien no longer encumbers the property after the foreclosure sale.

154. D — The future covenants in a general warranty deed — quiet enjoyment, warranty, and further assurances — are breached only when the grantee is actually disturbed by a paramount claim. Present covenants are breached at conveyance, but it is the future covenants that respond to subsequent disturbance.

155. A — Cotenants who collect rents from third parties must account to their cotenants for a proportionate share. The cotenant in possession cannot retain all rental income without sharing.

156. C — When the dominant and servient estates come into common ownership, the easement is extinguished by merger. A subsequent severance does not automatically revive the easement; a new grant is required.

157. B — Marketable title is title free from unreasonable risk of litigation, including unreleased recorded liens. An unreleased 50-year-old mortgage of record renders title unmarketable, justifying the buyer's refusal to close.

158. A — An implied easement by prior existing use arises when a parcel previously under common ownership is severed and the prior use was apparent, continuous, and reasonably necessary to the conveyed parcel. All elements are satisfied here.

159. D — A real covenant or equitable servitude that touches and concerns the land, that the parties intended to bind successors, and as to which the necessary privity and notice exist, runs with the land and is enforceable against successive owners. The residential restriction is enforceable.

160. C — Effective deed delivery requires the grantor's present intent to make the deed presently operative. Retaining the deed in a safe deposit box without communicating to the grantee shows lack of present intent, and no title passes.

161. B — Under constructive adverse possession with color of title, actual possession of part of the parcel described in the defective deed gives constructive possession of the entire parcel. The trespasser thus acquires title to the full 100 acres after satisfying the statutory period.

162. D — Tenancy by the entirety protects marital property against individual creditors of one spouse; only joint debts of both spouses can reach the entirety property. The husband's individual creditor cannot reach the marital estate.

163. A — The part-performance doctrine takes an oral land sale contract out of the Statute of Frauds when the buyer takes possession, pays substantial consideration, and makes improvements. Specific performance is appropriate to prevent fraud or unjust enrichment.

164. C — An easement by necessity arises automatically when a conveyance creates a landlocked parcel from previously unified ownership, regardless of express language. Strict necessity at the time of severance gives rise to the easement.

165. B — Tenant trade and domestic fixtures — installed for the tenant's use and convenience — may generally be removed before the end of the tenancy, provided removal does not cause material damage to the premises. Custom bookshelves are typical examples.

166. A — A deed description is sufficient if extrinsic evidence can identify the land conveyed. The reference to "all my land in Smith County" permits identification of the grantor's holdings and satisfies the description requirement.

167. D — Where deficiency judgments are permitted, the lender may sue the borrower personally for the shortfall between the foreclosure sale proceeds and the outstanding mortgage debt. The personal obligation survives foreclosure.

168. C — In a race-notice jurisdiction, a subsequent purchaser prevails only if she takes without notice AND records first. Because B had actual notice of the prior conveyance to A, B does not qualify, and A prevails despite recording later.

169. B — The implied warranty of habitability requires residential landlords to maintain premises in conditions fit for human habitation. A broken heating system in winter is a clear violation, and the tenant may withhold rent without abandoning the premises in many jurisdictions.

170. A — A remainder subject to a condition precedent (graduation from college) that has not yet been satisfied is a contingent remainder. The interest will vest only if and when B graduates; until then, it remains contingent.

171. D — Under the reasonable use doctrine, riparian owners may use water only in ways that do not unreasonably interfere with the rights of other riparian owners. Excessive irrigation depriving downstream users of water is unreasonable and may be enjoined.

172. C — Adjacent landowners are strictly liable for damage to neighboring land in its natural state caused by withdrawal of lateral support. For damage to artificial structures on the adjacent land, negligence must typically be shown.

173. B — Battery is the intentional harmful or offensive contact with another. Offensiveness is judged by a reasonable person standard, and a stranger's unexpected nonconsensual grabbing of a person's hand qualifies as offensive contact.

174. A — False imprisonment requires intentional confinement without lawful justification. The shopkeeper's privilege requires reasonable basis for the suspicion; confining a customer for two hours without any reasonable suspicion exceeds the privilege.

175. D — IIED requires extreme and outrageous conduct, intent or recklessness, causation, and severe emotional distress. Three weeks of nightly threatening calls satisfy the extreme and outrageous element and the resulting harm.

176. B — Trespass to land requires only intent to enter the land; knowledge of ownership is not required. Mistake about the boundary or ownership is no defense, and the trespass is actionable even without damages.

177. C — Conversion requires interference so substantial that the defendant may justly be required to pay the full value of the chattel. A brief joyride without damage is more appropriately treated as trespass to chattels, with damages limited to actual harm.

178. A — Under *Katko v. Briney*, a property owner may not use deadly force, including mechanical devices like spring guns, solely to defend unoccupied property against intruders. Human life is valued above property even when the intruder is unlawfully on the premises.

179. D — The attractive nuisance doctrine imposes a duty on landowners with respect to artificial conditions likely to attract children of tender years who cannot appreciate the danger. An unfenced swimming pool to which children regularly have access satisfies the doctrine.

180. C — Negligence per se establishes duty and breach when the defendant violates a statute designed to protect the type of harm suffered by a member of the protected class. Causation and damages remain to be proved separately.

181. A — *Res ipsa loquitur* permits an inference of negligence when the harm is of a type that ordinarily does not occur without negligence, the instrumentality was in the defendant's exclusive control, and the plaintiff did not contribute. *Byrne v. Boadle* (the original case) involved exactly these facts.

182. B — Intentional criminal acts by third parties are generally considered unforeseeable superseding causes that break the causal chain. The original negligent defendant is not liable for harm directly caused by such intervening criminal conduct.

183. D — Under pure comparative negligence, recovery is reduced by the plaintiff's percentage of fault. $\$100,000 \times (1 - 0.30) = \$70,000$, regardless of how high the plaintiff's fault percentage may be.

184. C — Implied assumption of risk applies to inherent and obvious risks of an activity. Foul balls at baseball games are quintessential inherent risks that a spectator in unprotected seats is deemed to have accepted.

185. A — Owners of wild animals are strictly liable for harm caused by their characteristic dangerous propensities, regardless of the precautions taken. The reasonableness of the enclosure is irrelevant to liability for a tiger's escape.

186. B — Under the Restatement (Third) of Products Liability, design defects are evaluated by risk-utility analysis: whether the foreseeable risks could have been reduced or avoided by a reasonable alternative design. Industry custom is relevant but not dispositive.

187. D — Under *New York Times Co. v. Sullivan*, public officials and public figures must prove actual malice — knowledge of falsity or reckless disregard for truth — to recover for defamation. Diligent investigation undermines a showing of reckless disregard.

188. A — Intrusion upon seclusion is an intentional intrusion, physical or otherwise, on the solitude or private affairs of another in a manner highly offensive to a reasonable person. Photographing a person through her bedroom window is classic intrusion.

189. B — Under the bystander rule (*Dillon v. Legg* and similar formulations), close family members who are at the scene and contemporaneously aware of an injury to a loved one may recover for negligent infliction of emotional distress without being in the zone of physical danger.

190. C — A minor deviation from work duties — a frolic and detour — may remain within the scope of employment, especially when the employee is returning to work. The employer is vicariously liable for negligence during such minor deviations.

191. D — Under traditional joint and several liability, each defendant who causes a single indivisible injury is liable for the entire judgment. The plaintiff may collect the full amount from either defendant, who then has contribution rights against the other.

192. C — The general rule is that no duty to rescue exists absent a special relationship, undertaking, or creation of the risk. A doctor dining as a private citizen has no doctor-patient relationship with a stranger and therefore no duty to render aid.

193. A — Abnormally dangerous activities — those creating foreseeable and significant risks of harm even when reasonable care is exercised, and not in common usage — generate strict liability. Fireworks manufacturing meets this standard regardless of regulatory compliance.

194. B — Under *Gertz v. Robert Welch, Inc.*, private-figure plaintiffs must prove at least negligence to recover for defamation on matters of public concern. Actual malice is required only for presumed and punitive damages.

195. C — Failure-to-warn liability arises when foreseeable risks of harm could have been reduced or avoided by reasonable warnings. Known side effects, even if rare, must be disclosed to permit informed user decisions.

196. D — Private nuisance requires a substantial and unreasonable interference with use and enjoyment of land. Courts balance the utility of the defendant's conduct against the gravity of harm; "coming to the nuisance" is one factor in the balance, not a bar.

197. A — In medical malpractice, customary professional practice generally establishes the standard of care. A physician who conforms to customary medical practice is generally not negligent merely because an unfortunate known complication occurs.

198. C — Foreseeable intervening acts, including foreseeable behavior of children near hazardous conditions, do not break the causal chain. A child's curiosity about unsecured construction equipment is foreseeable to a defendant who creates such hazards.

199. B — Defamation requires publication to a third party — communication of the defamatory statement to someone other than the plaintiff. A letter sent only to the plaintiff with no third party seeing it lacks the publication element.

200. D — Under the rescue doctrine ("danger invites rescue"), a defendant whose negligence creates a peril is liable not only to the original victim but also to those who reasonably attempt rescue. The bystander is a foreseeable rescuer.