

PRACTICE EXAM 12: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

1. What is the best approach to structuring an essay answer when the call lists multiple numbered parts?
 - A. Address each numbered part separately and clearly labeled in the answer
 - B. Combine all numbered parts into a single continuous narrative for efficiency
 - C. Address only the first part and incorporate the rest into the conclusion
 - D. Address the parts in reverse order to demonstrate analytical flexibility

2. A California essay involving the termination of an irrevocable trust requires analysis of:
 - A. Whether the trustee has filed all required tax returns over the trust's life
 - B. Whether the beneficiaries have unanimously voted to terminate the trust last year
 - C. Whether the trust has been in existence for at least twenty-five years already
 - D. Whether all beneficiaries consent and no material purpose remains, or statutory grounds apply

3. When a California essay involves a question of personal jurisdiction over an out-of-state defendant, the examinee should analyze:
 - A. Whether the defendant has paid all California state taxes for the year at issue
 - B. Whether the defendant holds any business licenses in California currently in effect
 - C. Minimum contacts with California and traditional notions of fair play and substantial justice
 - D. Whether the defendant has filed any prior actions in California courts as plaintiff

4. A California essay on Evidence involving the admissibility of a witness's prior consistent statement requires analysis of:

- A. Whether the witness has been deceased for at least one year before the trial
- B. Whether the statement was made before the alleged motive to fabricate arose
- C. Whether the witness has been previously convicted of a moral turpitude crime
- D. Whether the witness has testified in prior cases involving similar facts

5. When a California essay involves a procedural due process claim, the examinee should analyze:

- A. Whether the plaintiff has paid all federal court filing fees and costs up front
- B. Whether the plaintiff has retained admitted federal counsel for the action in court
- C. Whether the plaintiff served process on the named defendant timely and properly
- D. The deprivation of a life, liberty, or property interest and the process due

6. A California essay on Wills involving the requirements for an attested will requires analysis of:

- A. Whether the testator signed in the presence of two witnesses who signed during the testator's lifetime
- B. Whether the will was notarized by a duly licensed California notary public at execution
- C. Whether the witnesses were related to the testator by blood or marriage ties at signing
- D. Whether the will was filed with the probate court immediately after signing in California

7. A California essay involving the doctrine of equitable conversion in Real Property requires:

- A. Conclusion that the buyer takes legal title automatically at contract formation in California
- B. Analysis of whether the buyer holds equitable title and the seller holds legal title pending closing
- C. Conclusion that no equitable conversion ever occurs without a court order in California
- D. Application of only federal property law to the equitable conversion question presented

8. When a California essay involves a question of attempted murder, the examinee should analyze:

- A. Whether the defendant carried a concealed weapon at the time of the act in question
- B. Whether the defendant has a documented criminal record of prior violent felony offenses
- C. Whether the defendant has been previously cited for similar attempted crimes against persons
- D. Specific intent to kill and a direct but ineffectual act toward the killing

9. A California essay involving a motion for judgment on the pleadings requires analysis of:

- A. Whether the moving party has paid all required filing fees in advance of the motion
- B. Whether the parties have completed discovery in the pending action timely before motion
- C. Whether the parties have engaged in formal mediation prior to filing the motion
- D. Whether the pleadings on their face entitle the moving party to judgment

10. When a California essay involves a question of impossibility of performance, the examinee should analyze:

- A. Whether the parties were licensed to engage in the contract's subject matter at issue
- B. Whether the parties signed the contract in front of a California licensed notary public
- C. Whether performance was rendered objectively impossible by an unforeseen event
- D. Whether the parties have filed any prior breach actions against each other in court

11. A California essay on Professional Responsibility involving lawyer advertising requires application of:

- A. Only the federal advertising standards from the Federal Trade Commission rules nationally
- B. California Rules of Professional Conduct on lawyer advertising and solicitation
- C. The Restatement of the Law Governing Lawyers on commercial speech generally accepted
- D. Only the ABA Model Rules without any California-specific advertising restrictions

12. When a California essay involves a question of present sense impression as a hearsay exception, the examinee should analyze:

- A. Whether the declarant testified at the trial proceedings personally on the witness stand
- B. Whether the statement was reduced to writing within twenty-four hours of the event
- C. Whether the statement described an event while or immediately after the declarant perceived it
- D. Whether the declarant was under the influence of any substances at the time of statement

13. A California essay involving the transmutation of community property to separate property requires:

- A. Analysis of whether the transmutation was made in writing with an express declaration
- B. Conclusion that all transmutions are valid as long as the spouses agree orally
- C. Application of only the federal community property doctrines to the analysis at issue
- D. Conclusion that no transmutation may occur after the marriage has commenced legally

14. When a California essay involves a question of class action certification, the examinee should analyze:

- A. Numerosity, commonality, typicality, and adequacy of representation
- B. Whether the plaintiff has retained class action counsel admitted in California currently
- C. Whether the plaintiff has filed parallel state and federal class actions concurrently filed
- D. Whether the plaintiff has paid the class certification fee in advance of the motion

15. A California essay involving the doctrine of intentional interference with contractual relations requires analysis of:

- A. Whether the interfering party has paid any tort judgments in prior actions filed in court
- B. A valid contract, defendant's knowledge of contract, intentional interference, and damages
- C. Whether the parties to the original contract had retained legal counsel at the signing
- D. Whether the interfering party has been registered as an agent of any state currently

16. When a California essay involves a question of state action under the Fourteenth Amendment, the examinee should analyze:

- A. Whether the plaintiff has filed prior federal claims arising from similar facts in court
- B. Whether the plaintiff has paid all federal court filing fees in advance of the suit
- C. Whether the challenged conduct is fairly attributable to the government
- D. Whether the plaintiff has retained admitted counsel for the federal proceeding timely

17. A California essay involving a corporate officer's authority to bind the corporation requires analysis of:

- A. The officer's actual or apparent authority to act on behalf of the corporation
- B. Whether the officer has been employed by the corporation for at least one year of service
- C. Whether the officer holds shares in the corporation at the time of the disputed act
- D. Whether the officer has been registered with the California Secretary of State as officer

18. When a California essay involves a question of testamentary capacity, the examinee should analyze:

- A. Whether the testator was at least twenty-one years of age at the will's execution
- B. Whether the testator understood the nature of the act, the property, and the natural objects of bounty
- C. Whether the testator was represented by counsel during the execution of the will at issue
- D. Whether the testator's signature was notarized by a duly licensed notary public at signing

19. A California essay involving the doctrine of election of remedies requires analysis of:

- A. Whether the plaintiff has filed multiple lawsuits arising from the same transaction at issue
- B. Whether the plaintiff has retained the same counsel throughout the entire legal action
- C. Whether the plaintiff has paid the filing fees for all available remedies in advance of suit
- D. Whether the plaintiff must choose between inconsistent remedies arising from a transaction

20. When a California essay involves a question of search incident to lawful arrest, the examinee should analyze:

- A. Whether the arresting officer was wearing a body camera at the time of the arrest in question
- B. Whether the arrest occurred during regular daylight business hours of the day in question
- C. The arm's reach area and items within the suspect's immediate control at arrest
- D. Whether the arrest was made by a state or federal law enforcement officer on duty

21. A California essay involving the Rule in Shelley's Case requires analysis of:

- A. Whether the rule applies and a conveyance to A for life with remainder to A's heirs is treated as fee simple
- B. Whether the property was located within a California incorporated municipality at the time
- C. Whether the conveyance was recorded with the county recorder within the period required
- D. Whether the parties to the original conveyance were related by family or marital ties

22. When a California essay involves a question of an equal protection challenge to a gender-based classification, the examinee should apply:

- A. The strict scrutiny standard requiring a compelling government interest narrowly tailored to that end
- B. The rational basis standard requiring any conceivable legitimate government purpose rationally related
- C. The undue burden standard from abortion regulation jurisprudence in the federal Supreme Court
- D. The intermediate scrutiny standard requiring an important interest substantially related

23. A California essay involving a question of expectation damages requires analysis of:

- A. Whether the plaintiff has filed parallel actions in state and federal courts of record concurrently
- B. The benefit of the bargain measure putting the plaintiff in the position of full performance
- C. Whether the plaintiff has retained counsel licensed in commercial contract matters in state

D. Whether the plaintiff has paid all filing fees in the breach of contract action filed timely

24. When a California essay involves a question of trust modification due to changed circumstances, the examinee should apply:

A. The doctrine of equitable deviation, allowing modification when the original administrative terms would defeat the trust's purpose

B. The general rule that all trust modifications require court approval after a noticed hearing in every case

C. The federal trust modification statutes as the binding authority for any California trust modification

D. The Restatement of Trusts on modification, without applying any California Probate Code provision

25. A California essay involving the doctrine of judicial notice requires analysis of:

A. Whether the parties have stipulated to the facts in writing prior to the trial proceedings

B. Whether the parties have engaged in formal discovery before the request to notice the fact

C. Whether the judicially noticed fact was raised in the original pleadings of record

D. Whether the fact is not subject to reasonable dispute and is either generally known or accurately determinable

26. When a California essay involves a question of an attorney's duty regarding client funds, the examinee should analyze:

A. Whether the attorney has held a California bar license for at least five years of practice

B. Whether the attorney has been disciplined by the State Bar in prior matters reported on the record

C. The requirement to hold client funds in a separate trust account and account for them

D. Whether the attorney has filed all required California state tax returns for the year in question

27. A California essay involving a question of intervention in a pending action requires analysis of:

A. Whether the intervenor has paid all filing fees in the original underlying action timely filed

- B. Whether the intervenor has an interest in the action and inadequate representation by parties
- C. Whether the intervenor has retained licensed California counsel for the proceeding at issue
- D. Whether the intervenor has filed parallel actions in any other state jurisdictions concurrently

28. When a California essay involves a question of defamation, the examinee should analyze:

- A. A false statement of fact, publication to a third party, fault, and damage to reputation
- B. Whether the parties were related by family or business ties at any prior time before now
- C. Whether the defendant has been previously sued for defamation in any prior actions filed
- D. Whether the statement was made in writing or only orally to a third party at issue

29. A California essay involving the doctrine of transferred intent requires analysis of:

- A. Whether the defendant has been previously convicted of any violent felony offenses on record
- B. Whether the defendant carried any weapons at the time of the alleged criminal offense
- C. Whether the defendant has expressed remorse for the act in any prior proceedings of record
- D. Whether the defendant intended one harm but caused harm to a different victim

30. When a California essay involves a question of equitable servitudes, the examinee should analyze:

- A. Whether the property is located within a California incorporated city or town at the time
- B. Whether the property has been listed for sale on the open market in the recent past at all
- C. Touch and concern, intent to bind successors, and notice (actual, inquiry, or record)
- D. Whether the property has been subject to a recent change in zoning classification rules

31. A California essay involving a question of joint and mutual wills requires analysis of:

- A. Whether the testators were domiciled in California at the time of execution and at death

- B. Whether a contract not to revoke existed and whether the survivor breached such contract
- C. Whether the wills were filed jointly with the probate court at the time of execution timely
- D. Whether the testators had retained the same attorney to draft both joint wills in tandem

32. When a California essay involves a question of a corporation's de facto status, the examinee should analyze:

- A. Whether the corporation has filed all annual statements with the Secretary of State on time
- B. Whether the corporation has paid all California franchise taxes for each year of operation
- C. Whether the corporation has held shareholder meetings every year of operation since formation
- D. A good faith attempt to incorporate, colorable compliance, and use of corporate powers

33. A California essay involving the doctrine of authentication of evidence requires analysis of:

- A. Whether sufficient evidence supports a finding that the matter is what its proponent claims
- B. Whether the proponent has filed the evidence with the court at least thirty days in advance
- C. Whether the witness who authenticates has been previously qualified as an expert in court
- D. Whether the evidence was preserved by a certified evidence custodian throughout the chain

34. When a California essay involves a question of substantive due process and economic liberty, the examinee should apply:

- A. The strict scrutiny standard requiring a compelling state interest and narrow tailoring of means
- B. The rational basis standard requiring any legitimate government purpose rationally related
- C. The intermediate scrutiny standard requiring an important interest substantially related to means
- D. The undue burden standard from abortion jurisprudence applied to all economic regulations

35. A California essay involving a question of voluntary dismissal of an action requires analysis of:

- A. Whether the dismissing party has paid all costs incurred in the action to date and in full
- B. Whether the dismissing party has retained licensed counsel admitted in California currently
- C. The procedural posture of the case and whether dismissal is with or without prejudice
- D. Whether the dismissing party has filed any parallel actions in other jurisdictions concurrently

36. When a California essay involves a question of preliminary injunction, the examinee should analyze:

- A. Whether the plaintiff has paid all filing fees and bond requirements in advance of the motion
- B. Whether the plaintiff has retained counsel licensed in equitable remedies in California currently
- C. Whether the plaintiff has filed an action within the statute of limitations period for the claim
- D. Likelihood of success on the merits, irreparable harm, balance of hardships, and public interest

37. A California essay involving a question of third-party beneficiaries requires analysis of:

- A. Whether the third party is an intended beneficiary with enforceable rights under the contract
- B. Whether the third party has filed a parallel action in any other jurisdictions on the contract claim
- C. Whether the third party has retained legal counsel admitted in contract matters in California
- D. Whether the third party has paid any consideration directly to the contracting parties at issue

38. When a California essay involves a question of the duty of impartiality of a trustee, the examinee should analyze:

- A. Whether the trustee has filed all required state tax returns timely each year of trust administration
- B. Whether the trustee has acted impartially among the beneficiaries with conflicting interests
- C. Whether the trustee has held the position for at least three years of active administration
- D. Whether the trustee has filed annual accountings with the probate court of record on time

39. A California essay involving the exclusionary rule requires analysis of:

- A. Whether the defendant has prior convictions for any felonies of moral turpitude on file currently
- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial
- C. Whether the prosecution has filed all required discovery within the period set by the court
- D. Whether the evidence was obtained through a violation of the defendant's constitutional rights

40. When a California essay involves a question of the doctrine of marketable title, the examinee should analyze:

- A. Whether the property has been listed for sale on the open market for at least one year recently
- B. Whether the property has been recently appraised by a licensed California appraiser in writing
- C. Whether the title is free from reasonable doubt as to title's validity by the closing date
- D. Whether the property has been subject to a recent change in zoning by the local municipality

41. A California Bar essay's "memorization" component typically involves:

- A. Knowing the elements, exceptions, and California distinctions for each tested subject area
- B. Memorizing every appellate decision from the California Reports by year and citation number
- C. Memorizing all California statutory section numbers from the Codes verbatim from memory
- D. Memorizing the Bar Examiners' grading rubric and point allocation by subject category

42. When the call of a California Bar essay asks "How should the court rule?" the examinee should:

- A. Decline to predict an outcome and present only the arguments of both sides equally and impartially
- B. Conclude in favor of the party who appears to be more sympathetic in the underlying fact pattern
- C. Analyze each issue and conclude on how the court should rule based on the analysis
- D. Provide only the rule of law without applying it to the specific facts of the case at issue

43. The California Bar Performance Test does NOT typically test:

- A. The ability to identify relevant facts from a closed-universe file of documents and materials
- B. The ability to apply legal authorities from a closed-universe library to specific facts at hand
- C. The ability to produce a written legal work product such as a memorandum or persuasive brief
- D. The memorization of California substantive law that is tested elsewhere on the bar exam

44. A California essay involving a question of commercial speech under the First Amendment requires application of:

- A. The Central Hudson test for commercial speech regulation under First Amendment principles
- B. The strict scrutiny standard applied to all commercial speech regulations universally without exception
- C. The rational basis standard applied to all commercial speech without any further analysis required
- D. The undue burden standard from substantive due process jurisprudence in California state courts

45. When a California essay involves a question of a will's revocation by a subsequent will, the examinee should analyze:

- A. Whether the subsequent will was filed with the probate court at the time of execution timely
- B. Whether the subsequent will was witnessed by the same witnesses as the prior will at signing
- C. Whether the subsequent will expressly revokes the prior will or is wholly inconsistent
- D. Whether the subsequent will was drafted by the same attorney as the prior will originally

46. A California essay involving a question of waiver of personal jurisdiction requires analysis of:

- A. Whether the defendant has paid all required filing fees in the underlying action timely filed
- B. Whether the defendant raised the defense in the answer or first responsive pleading
- C. Whether the defendant has retained licensed California counsel for the action defense at trial
- D. Whether the defendant has filed parallel actions in any other state jurisdictions concurrently

47. When a California essay involves a question of vicarious liability of an employer, the examinee should analyze:

- A. Whether the employee acted within the scope of employment at the time of the act
- B. Whether the employer has paid any tort judgments in prior similar tort actions filed in court
- C. Whether the employer has been registered as an entity with the California Secretary of State
- D. Whether the employer has retained counsel licensed in tort and employment matters in California

48. A California essay involving a question of the doctrine of equitable subrogation requires analysis of:

- A. Whether the lender holds a California-issued license to engage in the lending business in state
- B. Whether the property is located within an incorporated California city limits at the time
- C. Whether the borrower has filed any parallel lending actions in other state forums concurrently
- D. Whether one paying a debt at the request of another may stand in the creditor's shoes

49. When a California essay involves a question of conflict between current clients, the examinee should analyze:

- A. Whether the lawyer has held a California license for at least five years of active practice
- B. Whether the clients have paid all legal fees owed for prior representations to date and in full
- C. Whether the representation is directly adverse and whether informed written consent was obtained
- D. Whether the lawyer has filed all required California State Bar reports timely each year of practice

50. A California essay involving a question of a procedural due process deprivation of property requires analysis of:

- A. Whether the property owner has paid all property taxes on the disputed parcel timely each year
- B. The nature of the property interest, the risk of erroneous deprivation, and the government interest
- C. Whether the property has been appraised by a licensed California appraiser within thirty days of suit

D. Whether the property has been previously subject to any government taking by eminent domain proceedings

PRACTICE EXAM 12: CALIFORNIA ESSAY EXAM SIMULATION – ANSWER KEY

1. A — Each numbered part of a multi-part call should be addressed separately under its own heading or label. Bar graders score by question part, and labeling tracks the rubric directly so the grader can locate and award points for each part. Combining numbered parts into a single narrative obscures the analysis and risks losing credit for parts actually addressed.

2. D — Termination of an irrevocable trust requires consent of all beneficiaries with no material purpose remaining, or statutory grounds. California Probate Code §§15403–15414 permits termination on these grounds, and the analysis must address whether continuing the trust serves any material purpose of the settlor. Statutory grounds also include impracticability, illegality, and uneconomical administration.

3. C — Personal jurisdiction over an out-of-state defendant applies the minimum contacts test and the traditional notions of fair play and substantial justice. *International Shoe v. Washington* and its progeny require sufficient contacts with the forum plus that exercising jurisdiction be reasonable under factors including burden, forum interest, and judicial efficiency. Both branches must be analyzed.

4. B — Prior consistent statements are admissible if made before the alleged motive to fabricate arose. FRE 801(d)(1)(B) and California Evidence Code §791 permit prior consistent statements to rebut an express or implied charge of recent fabrication only when made before the motive existed. Timing relative to the motive is the controlling element.

5. D — Procedural due process requires deprivation of a life, liberty, or property interest plus the process constitutionally due. The *Mathews v. Eldridge* framework identifies the protected interest, assesses the deprivation, and balances factors to determine adequate procedural safeguards. Both interest and process due must be analyzed.

6. A — An attested will requires the testator to sign in the presence of two witnesses, both of whom must sign during the testator's lifetime. California Probate Code §6110 imposes these formalities, with witnesses needing to understand the document is the testator's will. Defective execution voids the attested will absent harmless error.

7. B — Equitable conversion gives the buyer equitable title while the seller retains legal title pending closing. The doctrine treats the buyer as the equitable owner from the moment of a binding contract for sale, with the seller holding bare legal title as security. Risk of loss generally follows equitable title in California.

8. D — Attempted murder requires specific intent to kill plus a direct but ineffectual act toward the killing. California requires the specific mental state (intent to kill, not merely intent to harm) and an overt act sufficient to constitute attempt rather than mere preparation. Both elements must be established.

9. D — A motion for judgment on the pleadings tests whether the pleadings on their face entitle the moving party to judgment. Under California CCP §438, the court considers only the pleadings and matters subject to judicial notice; no extrinsic evidence is considered. The motion functions similarly to a demurrer but is filed after the answer.

10. C — Impossibility of performance requires that performance was rendered objectively impossible by an unforeseen event. The doctrine excuses performance when an unforeseen event makes performance objectively impossible (not merely more difficult or expensive). The objective standard distinguishes impossibility from frustration of purpose.

11. B — California Rules of Professional Conduct on lawyer advertising and solicitation govern California attorneys. California Rules 7.1–7.5 plus Business and Professions Code §§6157–6159.2 regulate advertising, with California maintaining state-specific restrictions beyond federal commercial speech standards. Both ABA-based rules and California statutes apply.

12. C — A present sense impression requires a statement describing an event while or immediately after the declarant perceived it. FRE 803(1) and California Evidence Code §1241 admit such statements based on the contemporaneity that reduces the risk of fabrication. Timing relative to perception is the key element.

13. A — Transmutation of community to separate property requires a writing with an express declaration. California Family Code §852(a) requires the transmutation to be in writing, expressly declared, and joined in, consented to, or accepted by the adversely affected spouse. Oral transmutions are invalid in California.

14. A — Class certification requires numerosity, commonality, typicality, and adequacy of representation. FRCP 23(a) and California CCP §382 (with analogous standards) require all four elements, plus satisfaction of one of the Rule 23(b) categories. Each prerequisite must be analyzed against the facts.

15. B — Intentional interference with contractual relations requires a valid contract, defendant's knowledge, intentional interference, and damages. The tort protects existing contracts from third-party disruption and requires both knowledge of the contract and intent to induce breach or disrupt performance. Damages must result from the interference.

16. C — State action under the Fourteenth Amendment requires conduct fairly attributable to the government. The doctrine asks whether the challenged conduct can be ascribed to the state through public function, joint participation, significant encouragement, or other recognized theories. Private conduct is generally outside the Amendment's reach.

17. A — A corporate officer's authority to bind the corporation derives from actual or apparent authority. Actual authority arises from the officer's position and any express grant; apparent authority arises when a

third party reasonably relies on the corporation's manifestations of authority. Both branches must be analyzed.

18. B — Testamentary capacity requires the testator to understand the nature of the act, the nature of their property, and the natural objects of bounty. California Probate Code §6100.5 codifies these requirements, with capacity assessed at the time of execution. Mental incapacity at execution invalidates the will.

19. D — Election of remedies requires the plaintiff to choose between inconsistent remedies arising from a transaction. The doctrine bars a plaintiff from pursuing remedies that contradict each other (such as both rescission and damages on the same theory). Cumulative or alternative remedies are permitted only if consistent.

20. C — Search incident to lawful arrest covers the arm's reach area and items within the suspect's immediate control. *Chimel v. California* limits the search to the area from which the suspect could obtain weapons or destroy evidence at the time of arrest. The scope is contemporaneous with and proportionate to the arrest.

21. A — The Rule in *Shelley's Case* treats a conveyance to A for life with remainder to A's heirs as a fee simple in A. The rule, where it still applies, merges the life estate and remainder into a fee simple in the named life tenant. California has abolished the rule by statute, though the doctrinal analysis remains testable conceptually.

22. D — Gender-based equal protection classifications receive intermediate scrutiny under *Craig v. Boren*. The classification must serve important governmental objectives and be substantially related to the achievement of those objectives. Strict scrutiny is reserved for race, national origin, and fundamental rights.

23. B — Expectation damages put the plaintiff in the position of full performance under the contract. The benefit-of-the-bargain measure includes the value of the promised performance plus consequential and incidental damages, subject to foreseeability, certainty, and mitigation limits. This is the default contract damages measure.

24. A — Equitable deviation permits modification of administrative trust terms when the original terms would defeat the trust's purpose. California Probate Code §15409 codifies the doctrine, allowing modification of administrative (not distributive) provisions when changed circumstances would impair the trust's purpose. Distributive modifications require different doctrines such as *cy pres*.

25. D — Judicial notice requires the fact to be not subject to reasonable dispute and either generally known or accurately determinable. California Evidence Code §452 permits judicial notice of facts generally known within the territorial jurisdiction or capable of accurate and ready determination from authoritative sources. The standard ensures reliability without formal proof.

26. C — An attorney's duty regarding client funds requires holding the funds in a separate trust account and maintaining accountings. California Rule of Professional Conduct 1.15 requires segregation in an IOLTA or client trust account, complete records, and prompt accounting and delivery upon request. Commingling violates the duty.

27. B — Intervention requires the intervenor to have an interest in the action and inadequate representation by existing parties. Federal Rule 24 and California CCP §387 permit intervention as of right when the intervenor's interest may be impaired and is inadequately represented. Permissive intervention requires common questions of law or fact.

28. A — Defamation requires a false statement of fact, publication to a third party, fault, and damage to reputation. The standard elements (with state and federal constitutional variations on fault and damages) form the analytical framework. Truth, privilege, and opinion are defenses analyzed in this framework.

29. D — Transferred intent transfers the defendant's intent from an intended harm or victim to the actual harm or victim. The doctrine permits liability when the defendant intends one tort (or victim) but causes a different harm (or harms a different victim). The intent transfers to satisfy the mens rea for the resulting harm.

30. C — Equitable servitudes require touch and concern, intent to bind successors, and notice (actual, inquiry, or record). The doctrine drops the privity requirements of real covenants but retains these other elements for enforceability against successors in interest. Notice protects bona fide purchasers without knowledge.

31. B — Joint and mutual wills are enforceable only if a contract not to revoke existed and the survivor breached. The legal effect turns on whether the testators had a binding contract not to revoke (shown by terms or clear extrinsic evidence) and whether the survivor revoked or made inconsistent dispositions in breach. Mere similar wills do not create the contract.

32. D — De facto corporation status requires a good faith attempt to incorporate, colorable statutory compliance, and use of corporate powers. The doctrine protects defectively formed corporations from collateral attack when all three elements are satisfied. It shields the incorporators from personal liability arising from the defect.

33. A — Authentication requires sufficient evidence to support a finding that the matter is what its proponent claims. FRE 901(a) and California Evidence Code §1400 impose a low threshold that goes to the jury for weight rather than admissibility. The proponent need only make a prima facie showing.

34. B — Substantive due process for economic liberty applies the rational basis standard. *Williamson v. Lee Optical* and modern jurisprudence require only a legitimate government interest rationally related to the means; economic regulations are virtually always upheld under this deferential review. Strict scrutiny is reserved for fundamental rights.

35. C — Voluntary dismissal analysis turns on the procedural posture and whether dismissal is with or without prejudice. California CCP §581 and FRCP 41 permit voluntary dismissal before trial without prejudice, with the two-dismissal rule converting a second voluntary dismissal of the same claim into an adjudication on the merits. Posture and prior dismissals control.

36. D — Preliminary injunction analysis applies the four factors of likelihood of success on the merits, irreparable harm, balance of hardships, and public interest. *Winter v. Natural Resources Defense Council*

and California case law require the moving party to show all four factors favor injunctive relief. The factors are weighed together.

37. A — Only intended (not incidental) third-party beneficiaries may enforce a contract. The intended-versus-incidental classification turns on whether the contracting parties intended to confer a benefit on the third party directly, evidenced by naming, performance running to the third party, and the contract's purpose. Classification controls standing to sue.

38. B — The trustee's duty of impartiality requires acting impartially among beneficiaries with conflicting interests. California Probate Code §16003 requires the trustee to balance income beneficiaries' and remainder beneficiaries' interests fairly, neither favoring nor disfavoring either group. The duty applies throughout administration.

39. D — The exclusionary rule applies when evidence was obtained through a violation of the defendant's constitutional rights. *Mapp v. Ohio* extended the federal exclusionary rule to states; the analysis requires identifying a constitutional violation (typically Fourth, Fifth, or Sixth Amendment) and evaluating any applicable exceptions such as good faith or inevitable discovery.

40. C — Marketable title requires the title to be free from reasonable doubt as to validity by the closing date. The implied covenant of marketable title obligates the seller to convey title without significant encumbrances, chain-of-title defects, or zoning violations rendering the title unmerchantable. The standard is reasonableness, not perfection.

41. A — Effective memorization for the California Bar essays requires knowing elements, exceptions, and California distinctions for each tested subject. The essay portion tests application of substantive law, and accurate rule statements require knowing the elements of each doctrine, recognized exceptions, and how California rules differ from majority or federal positions. Memorizing case citations is far less important.

42. C — A "How should the court rule?" call requires analysis of each issue and a reasoned conclusion. The call directly asks for predicted outcomes, requiring full IRAC treatment culminating in a conclusion on how the court should rule based on the application of law to facts. Refusing to conclude forfeits the conclusion points.

43. D — The Performance Test does NOT test memorization of California substantive law, which is tested on the essay portion. The PT provides all needed legal authorities in the closed-universe library; it tests practical lawyering skills such as fact analysis, legal reasoning, and drafting of written work product. Outside law is irrelevant.

44. A — Commercial speech regulation is analyzed under the four-part Central Hudson test. The test asks: (1) whether the speech is lawful and not misleading; (2) whether the government interest is substantial; (3) whether the regulation directly advances the interest; and (4) whether it is no more extensive than necessary. All four factors must be analyzed.

45. C — A subsequent will revokes a prior will by express revocation or by being wholly inconsistent. California Probate Code §6120 provides for revocation by a subsequent will that either expressly revokes

the prior will or is wholly inconsistent with it. Partial inconsistency creates a partial revocation, leaving the consistent portions in effect.

46. B — Personal jurisdiction must be raised in the answer or first responsive pleading or it is waived. FRCP 12(h)(1) and California CCP §418.10 require the defense to be raised promptly; failure to assert it in the initial response constitutes waiver. Subject matter jurisdiction differs because it cannot be waived.

47. A — Vicarious liability under respondeat superior requires the employee to have acted within the scope of employment. The scope analysis considers whether the act was incidental to job duties, foreseeable, and within the employer's authorization. Frolics or detours outside the scope generally defeat respondeat superior liability.

48. D — Equitable subrogation allows one paying a debt at the request of another (or to protect their own interest) to stand in the creditor's shoes. The doctrine substitutes the payor for the original creditor, with the same rights and remedies, preventing unjust enrichment of the debtor. Volunteer payments generally do not qualify.

49. C — Concurrent client conflicts require analysis of direct adversity (or material limitation) and informed written consent. California Rule 1.7 prohibits representation if directly adverse or materially limited, unless the lawyer reasonably believes competent representation is possible and each affected client gives informed written consent. The analysis is dual.

50. B — Procedural due process deprivation of property applies the Mathews v. Eldridge balancing test. The three factors are (1) the nature of the private interest affected; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the government interest, including administrative burden. The factors are balanced together.