

PRACTICE EXAM 12 — MBE SIMULATION (200 QUESTIONS)

1. A foreign manufacturer based in Japan designs specialized industrial valves. It sells the valves to a distributor in California, knowing the distributor sells them throughout the United States. A worker in Tennessee is injured by a defective valve and sues the manufacturer in Tennessee federal court. The manufacturer has no offices, employees, or direct sales in Tennessee. How should the court rule on personal jurisdiction?

- A. Find jurisdiction because any product sold in the United States subjects the manufacturer to nationwide jurisdiction
- B. Find jurisdiction because the manufacturer's California sales established sufficient U.S. presence
- C. Find no jurisdiction because foreign manufacturers are immune from suit in U.S. courts
- D. Find no jurisdiction unless the manufacturer purposefully directed activities at Tennessee specifically

2. A plaintiff from State X sues a defendant from State Y in federal court alleging breach of contract. The plaintiff seeks \$65,000 in compensatory damages and \$25,000 in punitive damages. State law permits punitive damages for breach of contract only in cases of fraud. The defendant moves to dismiss for lack of subject-matter jurisdiction. How should the court rule?

- A. Allow the case to proceed if the plaintiff's punitive damages claim is asserted in good faith and not legally certain to fail
- B. Dismiss the case because punitive damages cannot be included in the amount-in-controversy calculation
- C. Dismiss the case because compensatory damages alone fall below the threshold
- D. Allow the case to proceed because all claims combined exceed \$75,000 regardless of legal validity

3. A plaintiff sues a single defendant in federal court alleging diversity jurisdiction. The plaintiff asserts two unrelated state-law claims: a contract claim for \$40,000 and a separate tort claim for \$40,000 arising

from a different transaction. The defendant moves to dismiss for lack of subject-matter jurisdiction. How should the court rule?

- A. Dismiss both claims because they arise from different transactions
- B. Allow both claims because a single plaintiff may aggregate claims against a single defendant
- C. Allow only the contract claim because it was filed first
- D. Allow both claims only if they share common questions of law or fact

4. A defendant served with a state-court complaint files a notice of removal to federal court 60 days after service. The complaint and case were removable from the outset. The plaintiff moves to remand based on untimely removal. How should the court rule?

- A. Deny remand because removal may be filed at any time before final judgment
- B. Deny remand if the defendant shows good cause for the delay
- C. Grant remand because the 30-day removal period has expired
- D. Grant remand only if the plaintiff filed the motion within 30 days of removal

5. A plaintiff files a federal diversity suit in the Eastern District of New York, which is a proper venue under Section 1391. The defendant moves to transfer to the Northern District of California, where most witnesses reside and where the events giving rise to the claim occurred. The Northern District of California would also be a proper venue. How should the court analyze the motion?

- A. Apply Section 1404(a) factors of convenience and interest of justice with discretion to transfer
- B. Apply Section 1406(a) and dismiss because venue is improper in the Eastern District of New York
- C. Deny the motion because transfer is not permitted between proper venues
- D. Grant the motion only with the plaintiff's consent to the transfer

6. A federal court sitting in diversity faces a conflict between a Federal Rule of Civil Procedure on a particular procedural matter and a state law on the same subject. The Federal Rule was promulgated under the Rules Enabling Act and is procedural in nature. How should the court analyze the conflict?

- A. Apply the state law because Erie always requires substantive state law in diversity
- B. Apply the state law if the federal rule would lead to different outcomes
- C. Apply the Federal Rule if it is on point, valid under the Rules Enabling Act, and constitutional under *Hanna v. Plumer*
- D. Apply both rules concurrently to balance state and federal interests

7. An attorney signs a federal court complaint asserting claims that are not warranted by existing law or any nonfrivolous argument for extending the law, and based on factual allegations that lack evidentiary support. The opposing party serves a Rule 11 motion 21 days before filing it with the court. The attorney does not withdraw the complaint. How should the court rule on sanctions?

- A. Deny sanctions because attorneys have absolute discretion in pleading
- B. Consider sanctions because the safe-harbor period was honored and the violations are clear
- C. Impose mandatory sanctions in the amount of opposing counsel's fees
- D. Deny sanctions because pre-filing safe-harbor procedures are unconstitutional

8. A plaintiff files a federal civil RICO claim alleging fraud against multiple defendants. The complaint states only that "defendants engaged in fraudulent schemes" without specifying particular misrepresentations, dates, or participants. The defendants move to dismiss under Rule 9(b). How should the court rule?

- A. Deny the motion because notice pleading suffices for all federal claims
- B. Deny the motion because fraud allegations are inherently general
- C. Grant the motion only if the defendants can prove no fraud occurred
- D. Grant the motion because Rule 9(b) requires fraud claims to be pleaded with particularity

9. A plaintiff sues a defendant in federal court for breach of contract arising from a 2023 transaction. The defendant counterclaims against the plaintiff for an unrelated tort arising from a 2021 event. The counterclaim itself would not independently satisfy federal jurisdiction. How should the court rule on the counterclaim?

- A. Dismiss the counterclaim because permissive counterclaims require independent jurisdictional grounds

- B. Allow the counterclaim under supplemental jurisdiction regardless of relatedness
- C. Allow the counterclaim because all counterclaims are permitted under Rule 13
- D. Dismiss the counterclaim because permissive counterclaims must be filed in state court

10. Two co-defendants in a federal action believe one of them is primarily responsible for the plaintiff's damages. The less culpable defendant wants to assert a claim against the other defendant for indemnification arising from the same transaction. How should the defendant proceed?

- A. File a separate lawsuit because cross-claims among defendants are not permitted
- B. File a cross-claim under Rule 13(g) because it arises out of the same transaction or occurrence
- C. File an impleader under Rule 14 to bring in the other defendant
- D. File a counterclaim under Rule 13(a) against the other defendant

11. A defendant sued for breach of contract believes a third party (not currently in the suit) is responsible for indemnifying him if he is found liable. The defendant wants to bring the third party into the action. How should the defendant proceed?

- A. File a separate lawsuit against the third party after this case is resolved
- B. File a counterclaim against the plaintiff for the third party's actions
- C. Implead the third party under Rule 14 as a third-party defendant for indemnification
- D. Move to dismiss this action and join all parties in a new suit

12. A plaintiff with valid federal jurisdiction has multiple claims against the same defendant — some related to the original transaction, some entirely unrelated. The court has independent subject-matter jurisdiction over each claim. May the plaintiff join the unrelated claims?

- A. Yes, because Rule 18(a) permits a party to join as many claims as it has against an opposing party
- B. No, because unrelated claims must be filed in separate actions for judicial efficiency
- C. Yes, but only if all claims share common factual issues with the original transaction
- D. No, unless the court grants leave to consolidate the claims at trial

13. A group of state prisoners files a class action against state prison officials seeking injunctive relief to remedy alleged violations of constitutional rights. The plaintiffs seek no monetary damages, only systemic changes to prison conditions. Under which Rule 23(b) provision is certification most appropriate?

- A. Rule 23(b)(1)(A) because separate actions might create inconsistent obligations
- B. Rule 23(b)(1)(B) because individual actions might be dispositive of others' interests
- C. Rule 23(b)(3) because common questions predominate over individual issues
- D. Rule 23(b)(2) because the defendants have acted on grounds generally applicable to the class, making injunctive relief appropriate

14. A party serves 30 interrogatories on the opposing party in a federal lawsuit. The opposing party objects on the ground that the number exceeds the limit. How should the court rule?

- A. Overrule the objection because interrogatories have no numerical limit
- B. Sustain the objection because Rule 33(a)(1) limits interrogatories to 25, including discrete subparts, without leave of court
- C. Sustain the objection only if the party seeking discovery can show no need for additional interrogatories
- D. Overrule the objection because the limit applies only in cases involving consumer claims

15. A party seeks to depose a non-party witness located 200 miles from the courthouse. The witness lives in a city different from where she works. How should the court analyze the deposition's geographic scope?

- A. Permit the deposition within 100 miles of where the witness resides, is employed, or regularly transacts business
- B. Permit the deposition only at the courthouse where the case is pending
- C. Permit the deposition only with the witness's voluntary consent regardless of location
- D. Permit the deposition anywhere in the United States

16. A party in federal litigation receives notice that a lawsuit is pending. The party fails to preserve relevant electronic records and instead allows the routine destruction of email archives. The opposing party moves for sanctions. How should the court analyze the motion under Rule 37(e)?

- A. Impose dispositive sanctions automatically because failure to preserve always warrants severe sanctions
- B. Decline sanctions because routine business practices excuse preservation duties
- C. Impose monetary sanctions only because dispositive sanctions are unavailable for spoliation
- D. Consider sanctions based on prejudice, with adverse inference or dismissal reserved for intent to deprive

17. A defendant in a multi-claim civil action moves for summary judgment on one of several claims, asserting no genuine dispute as to that claim. The other claims remain in active dispute. How should the court rule?

- A. Deny the motion because summary judgment must be sought on the entire case
- B. Grant complete summary judgment for the defendant on all claims
- C. Grant partial summary judgment under Rule 56(a) if the movant is entitled to judgment as a matter of law on that claim
- D. Defer ruling until all claims are resolved together at trial

18. At the close of all evidence in a federal jury trial, the defendant moves for judgment as a matter of law. The plaintiff has presented evidence that, viewed most favorably, could support a verdict but is contested by the defendant's evidence. How should the court rule?

- A. Grant the motion because the defendant's evidence is uncontradicted
- B. Deny the motion because a reasonable jury could find for the plaintiff on the evidence presented
- C. Grant the motion because the defendant's evidence is more credible
- D. Deny the motion only if the parties stipulate to defer the issue

19. A plaintiff in federal court files an action seeking both monetary damages for breach of contract and injunctive relief for ongoing unfair business practices. The plaintiff demands a jury trial. The defendant argues there is no right to a jury for the equitable claim. How should the court rule?

- A. Deny a jury trial entirely because mixing legal and equitable claims defeats the right

- B. Grant a jury trial only on the legal claim, with the equitable claim tried separately to the court
- C. Grant a bench trial only because the equitable claim predominates
- D. Grant a jury trial on the legal claim, with the jury's findings binding the court on common factual issues affecting both claims

20. After a bench trial in federal court, the judge enters findings of fact and conclusions of law. The losing party appeals, arguing the factual findings are not supported by the evidence. Under what standard does the appellate court review the factual findings?

- A. Clearly erroneous standard, reversing only if the appellate court has a definite and firm conviction that a mistake has been made
- B. De novo review because all federal appellate review is unrestricted
- C. Abuse of discretion because findings of fact are within the trial judge's discretion
- D. Substantial evidence because that is the standard for administrative review

21. A losing party in a federal jury trial wants to appeal but did not preserve an issue by objecting during the trial. The party wants to raise the issue on appeal. How should the appellate court analyze the issue?

- A. Refuse to consider the issue under any circumstances
- B. Review only for plain error, which requires a clear or obvious error affecting substantial rights
- C. Apply de novo review regardless of preservation
- D. Remand to the trial court for further development of the record

22. A federal district court denies a defendant's motion to dismiss based on qualified immunity. The defendant immediately appeals before trial. How should the appellate court analyze its jurisdiction?

- A. Dismiss the appeal because all interlocutory rulings are non-appealable
- B. Hear the appeal because qualified immunity is a constitutional defense
- C. Hear the appeal under the collateral order doctrine because qualified immunity protects against the burdens of trial
- D. Hear the appeal only if the trial court certifies the issue under section 1292(b)

23. A party wants the appellate court to compel a district judge to grant a discovery request the judge has improperly denied. The discovery would clearly be permitted under the Federal Rules but the judge refuses. What is the appropriate appellate mechanism?

- A. Direct appeal under section 1291 because all discovery rulings are immediately appealable
- B. Certification by the district court under section 1292(b) for an interlocutory appeal
- C. Direct appeal under the collateral order doctrine
- D. Petition for writ of mandamus, the extraordinary remedy reserved for clear judicial error

24. In an earlier lawsuit between the same parties, a court determined that the contract was validly executed. The current lawsuit involves a different cause of action arising from the same contract. The plaintiff seeks to use issue preclusion to bar relitigation of contract validity. How should the court analyze the issue?

- A. Apply issue preclusion if the issue was actually litigated, necessary to the prior judgment, and the defendant had a full and fair opportunity
- B. Deny issue preclusion because issues must be relitigated in each new lawsuit
- C. Apply issue preclusion automatically based on the prior determination
- D. Deny issue preclusion because the causes of action are different

25. A plaintiff sues defendant A and loses on the merits. The plaintiff then sues defendant B, who has a close legal relationship with A (employee/employer). May claim preclusion bar the second suit?

- A. Yes automatically because A and B are related parties
- B. Yes, if B is in privity with A through legal relationship affecting their interests
- C. No, because claim preclusion requires identical parties
- D. No, because the second action is against a different person

26. A plaintiff files a federal lawsuit against a defendant living in Germany. The plaintiff wants to serve the defendant. Germany is a signatory to the Hague Convention on the Service Abroad of Judicial Documents. How should service proceed?

- A. Through the methods specified in the Hague Convention, which is the exclusive method for signatories
- B. By mail directly to the defendant in Germany without any special procedures
- C. By personal service in any manner valid under U.S. law
- D. By publication in a U.S. newspaper because foreign service is impractical

27. A plaintiff sues a limited liability company in federal court based on diversity jurisdiction. The LLC has members who are citizens of multiple states, including the plaintiff's state. How should the court analyze diversity?

- A. Treat the LLC as a corporation citizen of its state of organization
- B. Treat the LLC as a citizen of the state where it conducts most business
- C. Treat the LLC as a citizen of its principal place of business only
- D. Treat the LLC as a citizen of every state where any of its members is a citizen

28. A federal class action results in a settlement where unclaimed funds will be distributed to charitable organizations rather than returned to defendants or distributed pro rata to known class members. The court is asked to approve the settlement. How should it analyze the cy pres distribution?

- A. Reject the cy pres distribution because class settlements must return unclaimed funds to defendants
- B. Approve the distribution automatically because charitable donations are favored
- C. Evaluate whether the cy pres recipients' missions sufficiently relate to the class members' interests and whether direct distribution remains infeasible
- D. Approve the distribution only if class members vote unanimously to approve

29. A defendant who was properly served fails to answer within the required time. A default is entered against the defendant. Before default judgment is entered, the defendant moves to set aside the default, showing a meritorious defense and reasonable excuse for the delay. How should the court rule?

- A. Set aside the default for good cause shown under Rule 55(c)
- B. Refuse to set aside because default reflects defendant's lack of diligence
- C. Refuse to set aside unless the defendant deposits the disputed amount with the court

D. Set aside the default only with the plaintiff's consent

30. A challenger files a constitutional challenge to a federal regulation. While the case is pending, the federal agency rescinds the regulation entirely. The agency has not pledged not to reissue. The challenger argues the case is not moot. How should the court rule?

- A. Dismiss the case as moot because the challenged regulation no longer exists
- B. Continue the case if there is a reasonable expectation the challenged conduct will recur
- C. Dismiss because mootness automatically results when a regulation is withdrawn
- D. Continue the case only if the challenger has paid the agency's litigation costs

31. A federal court is asked to decide whether the Constitution requires the President to seek congressional approval before deploying troops abroad in a particular military operation. How should the court analyze justiciability?

- A. Decide the issue because all constitutional questions are within federal court jurisdiction
- B. Decide the issue only on the merits with no jurisdictional analysis
- C. Apply the political question doctrine and likely decline to decide given the textually committed nature of war powers
- D. Refer the issue to Congress for resolution by joint committee

32. Congress passes a law that, while not itself directly regulating commerce, makes it easier to enforce an existing constitutional federal regulation. The law's defenders rely on the Necessary and Proper Clause. How should the court analyze the law?

- A. Strike the law because the Necessary and Proper Clause is a limitation on power, not a grant
- B. Strike the law because Congress lacks a separate enumerated power for this regulation
- C. Uphold the law only if Congress can show no less intrusive alternative
- D. Uphold the law if it is rationally related to the execution of an enumerated power

33. A plaintiff sues a state official in federal court, seeking an injunction to stop the official's ongoing alleged violation of federal law. The plaintiff seeks no monetary damages. The state argues the suit is barred by the Eleventh Amendment. How should the court rule?

- A. Dismiss the suit because all federal suits against state officials are barred
- B. Allow the suit under *Ex parte Young* because prospective injunctive relief against state officials does not violate the Eleventh Amendment
- C. Dismiss the suit because state officials cannot be sued in their official capacity
- D. Allow the suit only with the state's consent

34. A state law restricts certain public employment positions to U.S. citizens, including police officers, public school teachers, and other positions involving discretionary government functions. A lawful permanent resident challenges the law on equal protection grounds. How should the court analyze the classification?

- A. Apply rational basis review because of the "political function" exception for citizenship requirements in self-governance positions
- B. Apply strict scrutiny because all alienage classifications are suspect
- C. Apply intermediate scrutiny because resident aliens are a quasi-suspect class
- D. Strike down the law because legal residents have full constitutional protection

35. A state imposes a tax exclusively on non-residents working in the state, while resident workers pay no such tax. A non-resident worker challenges the tax. How should the court analyze the challenge under the Article IV Privileges and Immunities Clause?

- A. Uphold the tax because states have plenary authority over taxation
- B. Strike down the tax only if non-residents can prove discriminatory intent
- C. Apply strict scrutiny because the tax discriminates against non-residents on a fundamental privilege of earning a livelihood
- D. Uphold the tax because non-residents benefit from state services without sharing the burden

36. A state passes a generally applicable law that incidentally burdens a religious practice. The challenger argues that the law also infringes parental rights and freedom of speech. How should the court analyze the claim under the "hybrid rights" theory?

- A. Apply rational basis review because the law is neutral and generally applicable
- B. Apply strict scrutiny under the hybrid rights theory because additional fundamental rights are implicated, requiring narrow tailoring to a compelling interest
- C. Apply strict scrutiny because all religious burdens trigger heightened review
- D. Uphold the law because Free Exercise requires only rational basis after Smith

37. A state program provides scholarships that may be used at public or private schools, including religious schools. Parents choose where to send their children, and money flows to religious schools only as a result of individual parental choice. Opponents challenge the program under the Establishment Clause. How should the court rule?

- A. Strike the program because government funds reaching religious schools always violate the Establishment Clause
- B. Strike the program because some religious schools may discriminate in admissions
- C. Uphold the program only if all funds go to secular activities at religious schools
- D. Uphold the program under *Zelman v. Simmons-Harris* because aid reaches religious schools by genuine private choice

38. A defendant posts statements on social media that a reasonable person would interpret as threatening serious bodily harm against a specific identified individual. The defendant claims First Amendment protection. How should the court analyze the speech under existing precedent?

- A. Find the speech unprotected as a true threat, defined as a serious expression of an intent to commit unlawful violence
- B. Find the speech protected as political speech because online posts are inherently political
- C. Find the speech protected unless the speaker can be shown to be truly dangerous
- D. Apply intermediate scrutiny because of the speech's online context

39. A protester at a political rally burns an American flag as a form of expressing opposition to government policies. A state law criminalizes flag desecration. The protester is convicted and appeals on First Amendment grounds. How should the court rule?

- A. Uphold the conviction because the law protects national identity and unity
- B. Uphold the conviction because flag burning falls outside the First Amendment
- C. Strike down the conviction under *Texas v. Johnson* because flag burning is expressive conduct protected by the First Amendment
- D. Strike down the conviction only if no risk of breach of the peace existed

40. A state convicts a defendant for distributing material the state classifies as obscene. The defendant challenges the conviction under the First Amendment. Under what standard does the court analyze whether the material is obscene?

- A. Apply strict scrutiny to any restriction on sexually explicit material
- B. Uphold the conviction because all sexually explicit material is unprotected
- C. Apply rational basis because state morality regulations are entitled to deference
- D. Apply the *Miller v. California* three-part test: appeal to prurient interest, patently offensive sexual conduct, and lack of serious literary, artistic, political, or scientific value

41. A reporter is called before a federal grand jury investigating drug crimes and is asked to identify confidential sources. The reporter refuses, citing the First Amendment. How should the court rule under existing federal precedent?

- A. Reject the reporter's privilege claim under *Branzburg v. Hayes* because journalists have no general First Amendment privilege to refuse grand jury testimony
- B. Recognize an absolute reporter's privilege under the First Amendment
- C. Recognize the privilege only if the reporter can show the testimony would compromise national security
- D. Apply intermediate scrutiny to the subpoena

42. A state prison transfers an inmate from general population to long-term solitary confinement. The transfer involves significantly more restrictive conditions for an indefinite period. The inmate challenges the transfer on procedural due process grounds. How should the court rule?

- A. Find no due process violation because all prison conditions are within institutional discretion
- B. Find a protected liberty interest under *Sandin v. Conner* if the conditions impose an atypical and significant hardship in relation to ordinary prison life
- C. Find a due process violation only if the transfer involves physical mistreatment
- D. Find a protected liberty interest because all prison transfers require procedural protections

43. A city conditions issuance of a building permit on the landowner dedicating a portion of his property to public use. The dedication is unrelated to any impact the proposed building would have. The landowner challenges the condition as a taking. How should the court rule?

- A. Uphold the condition because permits may be conditioned on any government interest
- B. Uphold the condition because police power justifies all land-use conditions
- C. Strike the condition only if it exceeds the value of the proposed building
- D. Strike the condition under *Nollan* and *Dolan* because exactions must have an essential nexus and rough proportionality to project impacts

44. A competent adult patient refuses to consent to a life-saving blood transfusion based on religious beliefs. The hospital obtains a court order to administer the transfusion. The patient challenges the order on constitutional grounds. How should the court rule?

- A. Strike down the order because competent adults have a fundamental right to refuse unwanted medical treatment under *Cruzan*
- B. Uphold the order because the state's interest in preserving life is compelling
- C. Uphold the order because religious beliefs cannot override medical necessity
- D. Uphold the order only if the patient has dependent children

45. Congress passes a law under Section 5 of the Fourteenth Amendment requiring states to take certain actions beyond what the Fourteenth Amendment itself requires. A state challenges Congress's authority. How should the court analyze the law?

- A. Uphold the law because Section 5 grants Congress plenary authority over constitutional rights
- B. Uphold the law because Congress may expand constitutional rights at will
- C. Apply Boerne's "congruence and proportionality" test, requiring the remedy to be congruent and proportional to the constitutional violation
- D. Strike down the law because Section 5 only allows Congress to enforce existing rights

46. Congress passes a law making it a federal crime to commit a particular non-economic activity (such as gender-motivated violence) within the United States. The defenders argue the law is justified by the Commerce Clause's effects on commerce. How should the court analyze the law under existing precedent?

- A. Uphold the law because all activities have some effect on commerce
- B. Strike the law under *United States v. Morrison* because non-economic activity may not be regulated by the Commerce Clause based on attenuated effects
- C. Uphold the law because criminal regulation falls within federal police power
- D. Strike the law unless Congress identifies specific commercial activity

47. A state-owned cement plant refuses to sell to out-of-state buyers, reserving production for in-state customers. An out-of-state buyer challenges the policy under the Dormant Commerce Clause. How should the court rule?

- A. Uphold the policy under the market participant doctrine because the state is acting as a participant in the market rather than as a regulator
- B. Strike the policy because all discrimination against interstate commerce is unconstitutional
- C. Apply Pike balancing to determine if the policy unduly burdens interstate commerce
- D. Uphold the policy only if the state can show alternative sources of supply

48. A private prison operator, acting under contract with the state, is sued for civil rights violations under section 1983. The operator argues it is not a state actor. How should the court rule?

- A. Find no state action because private contractors are not state employees
- B. Find no state action because section 1983 applies only to government employees
- C. Find state action only if the private operator received direct state funding
- D. Find state action under the public function doctrine because operating prisons is traditionally an exclusively governmental function

49. The U.S. Senate ratifies a treaty with another country covering matters that would ordinarily be within state authority. Congress then passes implementing legislation under the treaty. A state challenges the legislation. How should the court analyze the law's constitutionality?

- A. Strike the law because Congress cannot legislate on state matters under the treaty
- B. Uphold the law under *Missouri v. Holland* because treaties may expand federal legislative authority into areas otherwise reserved to states
- C. Strike the law only if the treaty itself is unconstitutional
- D. Apply rational basis review to the implementing legislation

50. A non-citizen detained as an enemy combatant at Guantanamo Bay seeks federal court review through habeas corpus. The federal government argues that habeas jurisdiction does not extend to non-citizens at the base. How should the court rule under *Boumediene*?

- A. Deny habeas because non-citizens have no constitutional rights
- B. Grant habeas only if the detainee was captured on U.S. soil
- C. Grant habeas jurisdiction because the Constitution's Suspension Clause extends to Guantanamo detainees under *Boumediene v. Bush*
- D. Deny habeas because military detention is exclusively within executive authority

51. A doctor challenges a state law that restricts her patients' access to certain medications, arguing the law burdens her patients' constitutional rights. The state contests her standing. How should the court analyze the claim?

- A. Grant third-party standing when there is a close relationship between the litigant and the third party, and obstacles prevent the third party from asserting their own rights

- B. Deny third-party standing because only those whose own rights are infringed may sue
- C. Grant standing automatically because doctors always represent their patients' interests
- D. Grant standing only with explicit patient authorization

52. A landowner challenges a city's zoning regulation as a regulatory taking. The landowner has not yet applied for a variance or sought any administrative remedy. The city moves to dismiss on ripeness grounds. How should the court rule?

- A. Allow the case because constitutional claims are immediately ripe
- B. Allow the case only if the landowner pays the property taxes under protest
- C. Dismiss only if the city demonstrates clear inadequacy of damages
- D. Dismiss as unripe because the landowner has not pursued available administrative remedies and obtained a final decision

53. A state department of motor vehicles offers specialty license plates with various messages. The state denies an applicant's proposed message it deems offensive. The applicant challenges the denial under the First Amendment. How should the court rule under Walker?

- A. Strike the denial because state programs cannot censor messages
- B. Uphold the denial because specialty license plates are government speech, not private speech, and the government may select its own messages
- C. Apply strict scrutiny because viewpoint discrimination is involved
- D. Strike the denial only if the state has no rational basis

54. A state law requires private businesses to display specific government-mandated messages about social issues. A business challenges the requirement under the First Amendment. How should the court analyze the law?

- A. Apply strict scrutiny under Wooley v. Maynard because compelled speech receives the same First Amendment protection as restrictions on speech
- B. Uphold the law because government may regulate business practices

- C. Apply intermediate scrutiny because business speech is commercial
- D. Uphold the law if the message is factually accurate

55. A government building has a designated area where members of the public may post notices about community events. The government bans political speech in that area while permitting other types of community messages. A political organization challenges the ban. How should the court analyze the limited public forum?

- A. Apply strict scrutiny to all speech restrictions in limited public forums
- B. Apply rational basis review because limited public forums have no constitutional restrictions
- C. Apply the limited public forum standard requiring reasonable, viewpoint-neutral restrictions
- D. Apply intermediate scrutiny for time-place-manner concerns

56. A public high school student wears a t-shirt to school with a politically controversial message that does not disrupt class. The school disciplines the student. The student challenges under the First Amendment. How should the court rule under Tinker?

- A. Uphold the discipline because schools have plenary authority over student speech
- B. Strike the discipline because schools cannot regulate any student speech
- C. Uphold the discipline based on the controversial nature of the message
- D. Strike the discipline under Tinker because schools may restrict student speech only when it substantially disrupts school activities

57. A state law denies certain inheritance rights to children born outside marriage. An affected child challenges the law on equal protection grounds. Under what standard does the court analyze the classification?

- A. Apply strict scrutiny because the classification involves fundamental rights
- B. Apply intermediate scrutiny because illegitimacy is a quasi-suspect classification
- C. Apply rational basis because state inheritance laws are economic regulation
- D. Uphold the law because states have plenary authority over family law

58. Congress passes a statute prohibiting members of a specific named organization from holding federal employment. A member of that organization challenges the law as a bill of attainder. How should the court analyze the law?

- A. Uphold the law because Congress may regulate federal employment
- B. Uphold the law because the organization's activities are public knowledge
- C. Strike the law as an unconstitutional bill of attainder because it imposes punishment on identifiable persons without trial
- D. Uphold the law only if the organization is foreign-controlled

59. A buyer enters a "requirements contract" with a seller obligating the buyer to purchase all its requirements for steel from the seller for one year, with quantities specified to be "the buyer's actual needs." The buyer's needs vary based on market conditions. The seller argues the contract is too indefinite to be enforceable. How should the court rule?

- A. Enforce the contract under UCC § 2-306 because requirements contracts are valid with good-faith quantity determinations
- B. Strike down the contract for indefiniteness because the quantity is uncertain
- C. Enforce the contract only if the parties' prior course of dealing establishes the quantity
- D. Enforce the contract only at a minimum quantity equivalent to the previous year's actual needs

60. An offeror sends a written offer by mail. The offeree, without seeing the offer, mails a written counter-offer to the offeror on the same matter. The counter-offer is received first by the offeror. The offeror later receives the original offer, which the offeree has now decided to accept in a separate later communication. The offeror argues no contract was ever formed. How should the court analyze formation?

- A. Find a contract because the offeree's later acceptance is effective
- B. Find a contract because both parties expressed willingness to deal
- C. Find no contract because crossed communications cancel each other out automatically
- D. Analyze whether the counter-offer killed the original offer when made, then evaluate any subsequent offer and acceptance

61. A buyer pays a seller \$500 for a 30-day option to purchase a parcel of land for \$200,000. Five days into the 30-day period, the seller attempts to revoke the option. The buyer wishes to accept. How should the court rule?

- A. Find the option revoked because all offers are revocable
- B. Find the option binding because consideration was paid to keep it open, making it an enforceable option contract
- C. Find the option binding only if the buyer has shown actual reliance
- D. Find the option revocable but require restitution of the \$500

62. A purported contract provides that the seller "may, at the seller's discretion, deliver such goods as the seller chooses to deliver." The buyer agrees to pay if goods are delivered. Is the contract enforceable?

- A. Unenforceable because the seller's promise is illusory, lacking consideration
- B. Enforceable because the buyer's promise is sufficient consideration
- C. Enforceable if the seller actually delivers goods to demonstrate the promise was not illusory
- D. Enforceable as a unilateral contract

63. An oral employment contract is for a fixed five-year term. After three years, the employer terminates the employee and refuses to honor the remaining two years. The employee sues for breach. How should the court rule?

- A. Enforce the contract because oral contracts are generally enforceable
- B. Enforce the contract because partial performance takes it out of the statute of frauds
- C. Refuse to enforce because contracts not to be performed within one year must be in writing under the statute of frauds
- D. Enforce the contract only if the employee can prove monetary loss

64. A written contract for the sale of a business contains a merger clause. The buyer alleges the seller orally misrepresented the company's financial condition to induce signing. The seller objects to evidence of the oral misrepresentation. How should the court rule?

- A. Exclude the evidence because the merger clause is conclusive
- B. Exclude the evidence because all prior negotiations are barred by the parol evidence rule
- C. Admit the evidence only if it relates to the price of the contract
- D. Admit the evidence because parol evidence is admissible to prove fraud in the inducement, even with a merger clause

65. An offeror promises to pay \$1,000 to anyone who returns a lost dog. The offeree, having seen the offer, finds and returns the dog without saying anything in advance to the offeror. Is there a contract?

- A. No, because no advance notification of acceptance was given
- B. Yes, because acceptance of a unilateral offer is made by completing performance
- C. No, because the offeror cannot be bound without a formal acceptance
- D. Yes, only if the offeree had verbal contact with the offeror before completing the search

66. A buyer and seller exchange forms with conflicting (not merely additional) terms on a particular issue, such as warranty disclaimers. Both forms recognize a contract. The buyer and seller proceed with performance. Under the UCC 2-207 knockout rule, what becomes of the conflicting terms?

- A. The buyer's terms control because the buyer initiated the transaction
- B. The seller's terms control because the seller is the second to respond
- C. Both conflicting terms become part of the contract
- D. Both conflicting terms knock out, with UCC default rules filling the gap

67. A construction contract is silent on the order of performance. The contractor demands payment in advance. The owner refuses to pay until work is complete. Under common law, what is the proper order?

- A. The contractor must perform first because work that takes time must precede the obligation to pay
- B. The owner must pay first because money is the consideration that motivates performance
- C. The parties must perform simultaneously because of mutual obligations
- D. The order is determined by industry custom only

68. A contract calls for the sale of 100 units at \$50 per unit. The seller delivers 60 units. The buyer accepts the 60 but refuses to pay any portion of the price. The seller sues. How should the court rule?

- A. Award the seller nothing because the seller failed to deliver all 100 units
- B. Award the seller damages equal to the total contract price
- C. Treat the contract as divisible and award the seller payment for the units actually delivered
- D. Award the seller damages only for the value of the delivered units, not at contract price

69. A doctor renders emergency medical services to an unconscious patient unable to consent. The patient survives and refuses to pay, citing lack of express contract. The doctor sues for the value of services. How should the court rule?

- A. Refuse recovery because there was no express contract
- B. Award the doctor reasonable value of services under quasi-contract to prevent unjust enrichment
- C. Award the doctor only direct out-of-pocket costs
- D. Award nothing because emergency services are gratuitous

70. A buyer breaches a contract for the purchase of land. The seller had refused other offers, expended sums preparing for sale, and incurred attorneys' fees, but cannot prove the value lost on the contract itself. The seller seeks reliance damages. How should the court rule?

- A. Award reliance damages — out-of-pocket costs incurred in reliance on the contract
- B. Award only nominal damages because reliance damages are unavailable
- C. Award reliance damages plus expectation damages even though expectation is unproven
- D. Award reliance damages only with proof of bad faith by the breacher

71. A plaintiff partially performs a contract, conferring substantial benefit on the defendant. The defendant materially breaches before completion. The plaintiff sues. What measure of damages best preserves the value of benefit conferred?

- A. Expectation damages, the value of full performance

- B. Reliance damages, the plaintiff's out-of-pocket costs
- C. Specific performance to compel the defendant's full performance
- D. Restitution damages, the value of benefit conferred on the defendant

72. An employee in an employment contract refuses to continue working. The employer sues for specific performance. How should the court rule?

- A. Grant specific performance because the employer relies on the employee
- B. Grant specific performance only if the employee signed an exclusive employment agreement
- C. Deny specific performance because personal service contracts will not be specifically enforced as such, though injunctive relief against competing employment may be available
- D. Grant specific performance for at least the contract term

73. A contractor bids on a project. Due to a clerical error, the bid is significantly lower than intended. The owner notices the obvious error before accepting but does not inform the contractor. The owner then accepts. The contractor seeks rescission. How should the court rule?

- A. Permit rescission because the owner had reason to know of the contractor's mistake (palpable mistake)
- B. Refuse rescission because unilateral mistakes are not grounds for relief
- C. Refuse rescission because acceptance binds both parties to the literal terms
- D. Permit rescission only if the contractor pays liquidated damages

74. A seller induces a buyer to sign a contract by knowingly misrepresenting material facts about the subject matter. The buyer signs without reading. The buyer later seeks to rescind. The seller argues the contract is binding once signed. How should the court rule?

- A. Bind the buyer to the contract because failure to read excuses no contract violations
- B. Permit rescission for fraud in the inducement, which makes the contract voidable
- C. Bind the buyer but allow damages for any misrepresentation
- D. Permit rescission only if the buyer offers to return any consideration received

75. An elderly testator signs a contract giving substantial assets to a caregiver who has isolated her from family, controls her medications, and pressures her constantly to sign. The testator later seeks to rescind. How should the court rule?

- A. Uphold the contract because the testator was legally competent at signing
- B. Uphold the contract because consent was given in writing
- C. Uphold the contract only if family members can prove the testator's lack of mental capacity
- D. Permit rescission because the contract was the product of undue influence

76. A 16-year-old purchases a car from a dealer using funds from a part-time job. After driving the car for a year and causing significant wear, the minor returns the car and demands a full refund, citing minority. How should the court rule?

- A. Refuse the refund because the minor benefited from the car
- B. Refuse the refund because the contract was for a necessary
- C. Grant the refund less the reasonable value of use, depending on jurisdiction, because contracts with minors are voidable
- D. Refuse the refund because cars are luxury items beyond minor's capacity

77. A person with severe cognitive impairment signs a contract to sell a valuable property at significantly below market value. The buyer was aware of the seller's condition. The seller's guardian seeks to void the contract. How should the court rule?

- A. Void the contract because the seller lacked mental capacity to understand the transaction
- B. Enforce the contract because all signed contracts are binding regardless of capacity
- C. Enforce the contract at fair market value rather than the contract price
- D. Void the contract only if the seller can prove specific medical conditions

78. A contract calls for one party to commit an illegal act in exchange for payment. After performance, the party who committed the illegal act sues for payment. How should the court rule?

- A. Enforce the contract because the work was completed
- B. Award the value of the services rendered through quasi-contract
- C. Enforce the contract only if the parties are equally at fault
- D. Refuse to enforce the contract because contracts for illegal purposes are void

79. A contract restricts an employee from working in any related field for 50 years after termination, regardless of geographic area. The employee leaves and immediately starts a competing business. The employer sues. How should the court rule?

- A. Enforce the restriction because the parties freely agreed
- B. Refuse to enforce the restriction because its overbreadth in time and scope makes it contrary to public policy
- C. Enforce the restriction but reduce damages
- D. Enforce the restriction only if the employee was paid additional consideration

80. A debtor owes a creditor \$1,000 in an undisputed debt. The debtor sends a check for \$700 with a notation: "Payment in full of all claims." The creditor cashes the check. Does the creditor's acceptance discharge the debt?

- A. Yes, because cashing the check is consent to all conditions
- B. No, because the debt was clearly \$1,000
- C. No, because there is no genuine dispute about the debt amount; accord and satisfaction requires a bona fide dispute
- D. Yes, because accord and satisfaction always operates regardless of dispute

81. A debtor, original creditor, and new creditor agree that the new creditor will replace the original creditor in a contractual obligation. The original creditor's involvement is terminated by mutual consent. What is the legal effect?

- A. The original creditor remains liable until full performance
- B. A novation has occurred, substituting a new party and discharging the original creditor's obligations

- C. An assignment has occurred, but the original creditor remains as guarantor
- D. No change has occurred because contracts cannot transfer parties

82. Two parties to an executory contract mutually agree to terminate the contract. Neither party has yet performed. What is the legal effect?

- A. The contract remains binding because rescission requires mutual consideration
- B. The mutual rescission is effective because the discharge of remaining duties supplies mutual consideration
- C. The rescission is effective only if both parties pay damages
- D. The contract is enforceable until specifically performed

83. Two merchants modify a sales contract to reduce the agreed price. No new consideration is exchanged. Both act in good faith. The seller later seeks the original higher price. How should the court rule?

- A. Enforce the modification under UCC § 2-209 because modifications need no consideration if made in good faith
- B. Enforce the original price because all modifications require new consideration
- C. Enforce the modification only if it benefits the seller
- D. Enforce the original price unless the modification is in writing

84. A customer asks an appliance store for "an industrial-strength washing machine for a commercial laundry operation." The store recommends a specific model. The model fails to handle commercial loads. The customer sues. Under which warranty does the customer have the strongest claim?

- A. Implied warranty of merchantability, because the product is defective
- B. Express warranty, because the store described the product
- C. Implied warranty of fitness for a particular purpose, because the seller knew the buyer's purpose and the buyer relied on the seller's skill
- D. No warranty applies because commercial use exceeds normal expectations

85. A seller wishes to exclude all implied warranties from a sales contract. The contract states: "All implied warranties, including merchantability, are hereby disclaimed." The disclaimer is conspicuously printed. How should the court rule on its enforceability?

- A. Strike the disclaimer because consumers cannot waive warranty rights
- B. Strike the disclaimer because warranties exist by law
- C. Strike the disclaimer only if the buyer was a consumer rather than a merchant
- D. Enforce the disclaimer because UCC § 2-316 permits conspicuous, specific disclaimers using the word "merchantability"

86. A buyer of goods is breached when the seller fails to deliver. The buyer purchases substitute goods from another source at a higher price. How does the UCC measure the buyer's damages?

- A. The difference between the cover price and the contract price, plus incidental and consequential damages, under UCC § 2-712
- B. The contract price minus any value retained, regardless of actual market alternatives
- C. The market price at the time of delivery minus the contract price only
- D. Specific performance plus damages

87. A federal statute requires that a defendant act "knowingly" with respect to a particular fact. The defendant claims he was unaware of the fact but acted recklessly. How should the court analyze the mens rea?

- A. Find the mens rea satisfied because reckless conduct exceeds the knowing standard
- B. Find the mens rea not satisfied because "knowingly" requires actual awareness of the fact
- C. Find the mens rea satisfied because the defendant should have known
- D. Find the mens rea not satisfied because all federal crimes require purpose

88. A statute prohibits possession of a controlled substance without requiring knowledge that the substance is illegal. A defendant possesses the substance, mistakenly believing it is legal. What is the defendant's likely liability?

- A. No liability because mistake of fact about legality is a defense
- B. Liability for general intent, with mistake of law being a defense
- C. Liability under the strict liability rule, where mistake of fact or law is generally not a defense
- D. Liability only if the prosecution proves the defendant knew the substance was controlled

89. A defendant breaks into a building intending to use it as a temporary shelter from the weather. He has no intent to commit any felony inside. He is charged with burglary. How should the court rule?

- A. Convict because all unauthorized entries constitute burglary
- B. Convict because the defendant's purpose is irrelevant
- C. Convict only if the building was a residence
- D. Acquit because burglary is a specific intent crime requiring intent to commit a felony inside at the time of entry

90. A defendant punches a victim who has an undiagnosed heart condition. The victim suffers a fatal heart attack. The defendant claims he could not have foreseen this severe consequence. How should the court analyze causation?

- A. Find liability under the eggshell victim rule because the defendant takes the victim as he finds him
- B. Find no liability because the victim's condition was unforeseeable
- C. Find liability only for the underlying battery, not the death
- D. Find no liability because the medical condition was the actual cause

91. A defendant fires a gun multiple times into a crowded room without any specific target, killing a bystander. The defendant claims no intent to kill anyone specifically. What is the most likely homicide charge?

- A. Voluntary manslaughter for the heat-of-passion shooting
- B. Involuntary manslaughter for the unintentional killing
- C. First-degree murder requiring premeditation

D. Depraved-heart (second-degree) murder for extreme indifference to human life

92. A defendant commits an aggravated assault that kills the victim. The prosecution charges felony murder, with aggravated assault as the underlying felony. The defendant argues the merger doctrine. How should the court rule?

A. Apply felony murder because all violent felonies support the doctrine

B. Apply felony murder because aggravated assault is a felony

C. Apply the merger doctrine to preclude felony murder when the underlying felony is integral to the killing itself (assault)

D. Apply felony murder only if the prosecution can show premeditation

93. A defendant intentionally sets fire to a structure with significant smoke damage but minimal physical damage to walls or structure. The structure was a vacant warehouse. Is this arson at common law?

A. Yes, because any fire setting is arson

B. Yes, because charring rather than complete destruction is sufficient under common-law arson, and modern statutes typically include any building

C. No, because arson requires the burning of a dwelling

D. No, because the structure was vacant

94. A defendant signs another person's name to a check without authorization. The defendant believes the actual person owed him money. Is this forgery?

A. No, because the defendant had a legitimate underlying claim

B. No, because forgery requires no intent to defraud when there is a valid debt

C. Yes, but only larceny because the defendant believed he was owed money

D. Yes, because forgery is creating a false writing with intent to defraud, regardless of the underlying debt

95. A defendant uses the U.S. mail to send fraudulent invoices to customers, intending to obtain payment for goods never delivered. The mail crosses state lines. How should the court analyze federal jurisdiction?

- A. Mail fraud is satisfied by use of the mail in furtherance of a scheme to defraud, with broad federal jurisdiction
- B. Mail fraud requires the goods to actually cross state lines
- C. Mail fraud is satisfied only if the defendant personally drives the mail
- D. Mail fraud requires the customers to be unaware of fraud

96. Three defendants conspire to commit a series of robberies. During one robbery, one of the three commits an unauthorized murder. The other two are charged with the murder under Pinkerton liability. How should the court analyze the issue?

- A. Convict all three because conspiracy creates joint liability for all acts
- B. Acquit the non-shooters because they lacked intent for murder
- C. Convict the non-shooters under Pinkerton if the murder was a reasonably foreseeable consequence of the conspiracy
- D. Acquit the non-shooters because Pinkerton applies only to property crimes

97. A defendant fully participates in conspiratorial planning but withdraws before any overt act and notifies law enforcement of the plan. The other conspirators proceed without him. How should the court analyze the defendant's liability?

- A. Convict because all conspiracy participation is criminal
- B. Convict because withdrawal cannot erase the conspiracy
- C. Convict, but mitigate punishment
- D. Acquit for conspiracy if the defendant communicated withdrawal to all conspirators and took affirmative steps to prevent the crime, depending on jurisdiction

98. A defendant supplies the murder weapon to the killer, knowing it will be used for murder. The defendant is not present at the killing. How should the court characterize the defendant's liability?

- A. Charge as a principal because supplying the weapon caused the death

- B. Charge as an accomplice (aider and abettor) because the defendant intentionally facilitated the principal's crime
- C. Charge only with conspiracy because the defendant was not present
- D. Acquit because the defendant did not personally cause the death

99. A defendant solicits another to commit a crime. The other agrees and then commits the crime. The defendant is charged with both solicitation and the completed crime. How should the court rule?

- A. Convict for both because they are separate offenses
- B. Convict only for solicitation because that occurred first
- C. Convict only for the completed crime, as solicitation merges when the underlying crime is completed
- D. Convict for both because solicitation has independent value

100. A defendant attempts to pick a victim's pocket, but the pocket is empty. The defendant is caught reaching for it. How should the court rule on attempt liability?

- A. Convict for attempted larceny because factual impossibility is not a defense
- B. Acquit because no theft actually occurred
- C. Acquit because the pocket being empty made the act incomplete
- D. Convict only if the defendant intended to steal a specific item

101. A defendant initiates a fight with a victim, who responds with deadly force. The defendant then uses deadly force in apparent self-defense. How should the court analyze the defense?

- A. Allow self-defense because the defendant was facing deadly force
- B. Deny self-defense because the defendant was the initial aggressor and did not withdraw before using deadly force
- C. Allow self-defense if the defendant had a good-faith belief in danger
- D. Deny self-defense only if the defendant intended fatal harm

102. A defendant, walking down the street, sees what appears to be a violent assault on a stranger. The defendant intervenes with force to defend the apparent victim. In fact, the "victim" was an undercover officer making a lawful arrest. The defendant didn't know this. How should the court analyze the defense?

- A. Allow the defense because the defendant acted in good faith
- B. Deny the defense because the defendant should have known
- C. Apply the alter ego rule (in jurisdictions following it): the defender steps into the shoes of the defended; if defended had no privilege, neither does the defender
- D. Allow the defense in all cases of reasonable mistake

103. A defendant commits arson because a third party threatens to kill the defendant's child if she does not. The defendant is later prosecuted for arson. How should the court analyze the duress defense?

- A. Deny the defense because duress is not available for arson
- B. Deny the defense because the threat was conditional on future events
- C. Allow the defense only if the prosecution agrees to leniency
- D. Allow the defense because duress applies to non-homicide crimes when the threat is imminent, of serious harm, and no reasonable alternative exists

104. A defendant breaks into a house to escape a tornado threatening to kill him. The defendant takes shelter and is later charged with burglary. How should the court rule on the necessity defense?

- A. Allow the defense because the defendant acted to avoid a greater harm (death) than the harm caused (trespass)
- B. Deny the defense because all property crimes require specific intent
- C. Allow the defense only if the defendant compensates the homeowner
- D. Deny the defense because tornadoes are foreseeable natural occurrences

105. A defendant commits an act that turns out to be illegal under a recent and obscure regulation. The defendant has consulted no source and is unaware of the new law. How should the court analyze mistake of law as a defense?

- A. Allow the defense because everyone is presumed to know the law
- B. Allow the defense if the defendant lacked culpable disregard
- C. Generally deny the defense, with narrow exceptions for due-process notice issues or reliance on official statements
- D. Allow the defense in any case of obscure regulations

106. A defendant in a specific intent crime claims voluntary intoxication negates the required intent. How should the court analyze this defense?

- A. Deny the defense in all criminal cases
- B. Allow the defense only for specific intent crimes, where voluntary intoxication may negate the specific intent
- C. Allow the defense for any crime where the defendant was significantly intoxicated
- D. Allow the defense only if the intoxication was prescribed by a physician

107. A police officer applies for a search warrant based on information from a confidential informant. The informant has been reliable in the past, but the current information is somewhat vague. How should the magistrate analyze probable cause?

- A. Apply Illinois v. Gates totality of circumstances test, considering the informant's veracity, reliability, and basis of knowledge
- B. Apply the strict Aguilar-Spinelli two-prong test requiring proof of each element
- C. Require an unbroken chain of corroboration before issuing the warrant
- D. Refuse the warrant because confidential informant information is generally inadmissible

108. Police officers, lawfully present in a defendant's home executing a search warrant for stolen jewelry, observe in plain view what appears to be illegal drugs. May they seize the drugs without obtaining a separate warrant?

- A. No, because each item requires its own warrant
- B. No, because the warrant authorized only jewelry

- C. Yes, but only if the officers can prove the warrant was independently valid
- D. Yes, under the plain view doctrine if the officers are lawfully present and the contraband's incriminating nature is immediately apparent

109. A police officer observes a defendant walking back and forth in front of a closed store late at night, peering in the windows. The officer approaches and conducts a brief frisk for weapons. How should the court analyze the frisk?

- A. Strike the frisk because all stops require probable cause
- B. Strike the frisk because the defendant had not committed any visible offense
- C. Allow the frisk under *Terry v. Ohio* if the officer had reasonable suspicion of criminal activity and reasonable belief that the suspect was armed
- D. Allow the frisk because police can frisk anyone they choose

110. A police officer stops a vehicle with probable cause to believe it contains contraband. The officer searches the vehicle without a warrant. The defendant moves to suppress. How should the court rule?

- A. Suppress because vehicle searches require warrants
- B. Admit the evidence under the automobile exception, which permits warrantless searches of vehicles with probable cause due to mobility and reduced privacy expectations
- C. Suppress only if no exigent circumstances existed
- D. Admit only with consent of the driver

111. A traveler enters the United States at an international airport. Customs officials thoroughly search the traveler's luggage without any individualized suspicion. The traveler challenges the search. How should the court rule?

- A. Strike the search because all searches require suspicion
- B. Strike the search because borders don't justify suspicionless searches
- C. Strike the search unless customs has probable cause

D. Allow the search because routine border searches require no individualized suspicion under the border exception

112. School officials, with reasonable suspicion that a student is hiding drugs, search the student's backpack on school grounds. The student challenges the search. How should the court analyze the search?

A. Apply *New Jersey v. T.L.O.*'s reasonable suspicion standard for school searches by school officials

B. Apply the warrant requirement to all school searches

C. Apply strict probable cause standards

D. Strike the search because students retain full Fourth Amendment rights

113. A defendant is charged with an offense punishable by up to one year in jail. The defendant demands a jury trial. The state argues this is a petty offense not requiring a jury. How should the court rule?

A. Deny the right because petty offenses never trigger jury rights

B. Deny the right because state defines petty offenses

C. Grant the right because offenses punishable by more than six months' imprisonment are not petty offenses

D. Grant the right only if the defendant waived counsel

114. A defendant is charged with a crime. The trial is delayed substantially without the defendant's consent and without justification. The defendant moves to dismiss on speedy trial grounds. How should the court analyze the claim?

A. Dismiss because all delays violate the Sixth Amendment

B. Apply the *Barker v. Wingo* four-factor analysis: length of delay, reason for delay, defendant's assertion, and prejudice

C. Dismiss only if the defendant was held in custody

D. Refuse dismissal because trial date is within state's discretion

115. A jury convicts a defendant of a crime. At sentencing, the judge increases the sentence beyond the statutory maximum based on a fact not found by the jury beyond a reasonable doubt. The defendant challenges the sentence. How should the court rule?

- A. Allow the sentence because judges have sentencing discretion
- B. Strike the sentence only if the judge's fact-finding was clearly erroneous
- C. Allow the sentence if supported by preponderance of the evidence
- D. Strike the sentence under *Apprendi v. New Jersey* because any fact increasing the statutory maximum must be found by a jury beyond a reasonable doubt

116. A witness testifies that she saw a particular event. The proponent of her testimony offers no evidence she was actually present at the location. The opponent objects to her testimony on relevance grounds. How should the court analyze the objection?

- A. Admit the testimony because witness testimony is always relevant
- B. Exclude the testimony because witnesses must independently establish credibility
- C. Admit the testimony only if she signs an affidavit
- D. Admit the testimony subject to evidence sufficient to support a finding that the conditional fact (her presence) exists, per FRE 104(b)

117. In a defamation case, the defendant's defense is that the statement was true. The defendant wants to introduce evidence of the plaintiff's character to prove the statement (alleging dishonesty) was true. How should the court rule?

- A. Exclude because character evidence is inadmissible in civil cases
- B. Admit because character is an essential element of the defense in a defamation action where truth is at issue
- C. Admit only if the plaintiff opens the door
- D. Exclude because reputation evidence is hearsay

118. A criminal defendant seeks to introduce evidence that another person committed prior similar crimes, suggesting that person, not the defendant, committed the charged crime. How should the court analyze the evidence?

- A. Exclude because all prior bad acts evidence is inadmissible
- B. Exclude because the evidence is of a non-party
- C. Admit ("reverse 404(b)") because the defendant may use other-acts evidence to prove a non-propensity purpose such as identity
- D. Admit only if the other person consents

119. A witness testifies as to the defendant's reputation in the community. Opposing counsel wishes to cross-examine the witness about specific instances of the defendant's conduct. How should the court rule?

- A. Allow the cross-examination as to relevant specific instances of conduct on cross of a character witness under FRE 405(a)
- B. Exclude all specific instances of conduct in cross-examination
- C. Allow cross-examination only on convictions
- D. Exclude because character witnesses cannot be tested on specific instances

120. In a sexual assault prosecution, the defendant wishes to introduce evidence of the victim's prior sexual behavior. The defense argues consent. How should the court analyze the admissibility?

- A. Always admit evidence of prior sexual conduct as relevant to consent
- B. Always exclude such evidence as character evidence
- C. Admit only if the defendant pays the victim's attorney's fees
- D. Apply FRE 412 rape shield exceptions, admitting only specific instances of prior sexual conduct with the accused or in narrow exceptions

121. In a criminal sexual assault case, the prosecution offers evidence that the defendant committed prior sexual assaults against different victims. How should the court analyze the admissibility?

- A. Exclude as character evidence under FRE 404
- B. Exclude because prior crimes evidence is always inadmissible
- C. Admit under FRE 413 because in sexual assault cases, evidence of similar prior offenses is admissible for propensity (rule of inclusion for sex offenses)
- D. Admit only if the defendant testifies first

122. A 4-year-old child is called to testify in a trial. The defense objects on competency grounds. How should the court analyze the issue?

- A. Apply FRE 601 — every person is presumed competent. The court evaluates whether the child can understand the duty to tell the truth and is capable of relating events
- B. Exclude the child as inherently incompetent
- C. Exclude unless an adult corroborates the testimony
- D. Apply state competency rules in all cases

123. A witness testifies that "the defendant had been planning the crime for months." When asked the basis, the witness admits he learned this from a friend, not from any personal observation. How should the court rule?

- A. Allow the testimony because witnesses may convey reasonable inferences
- B. Exclude the testimony because FRE 602 requires personal knowledge for witness testimony
- C. Allow only with corroboration by the friend
- D. Exclude because the testimony is conclusory

124. A witness is testifying and cannot recall a fact. Opposing counsel shows the witness a document to refresh recollection. The witness then testifies from refreshed memory. What is the document's status?

- A. The document becomes evidence automatically
- B. The document remains undisclosed unless the proponent introduces it
- C. The opposing party has the right to inspect the document, cross-examine the witness about it, and introduce relevant portions into evidence under FRE 612

D. The document is privileged and cannot be reviewed

125. A witness testifies in trial. On cross-examination, opposing counsel seeks to impeach with a prior statement that contradicts the trial testimony. The prior statement was made informally to a friend, not under oath. How should the court rule on admissibility?

A. Exclude the prior statement because it was not under oath

B. Admit only as substantive evidence

C. Admit only with corroboration

D. Admit for impeachment purposes (FRE 613); admissible as substantive evidence only if made under oath at a prior proceeding under FRE 801(d)(1)(A)

126. A witness denies on cross-examination a collateral fact unrelated to the merits. The opposing party seeks to introduce extrinsic evidence (another witness) to contradict the answer. How should the court rule?

A. Exclude under the collateral matters rule — extrinsic evidence is generally not admissible to impeach on collateral matters

B. Admit because all impeachment is permitted

C. Admit if the witness's credibility is contested

D. Admit only with court permission

127. A witness's religious beliefs are sought to be introduced to discredit the witness. The opponent argues religious beliefs affect credibility. How should the court rule?

A. Admit the evidence to help the jury evaluate credibility

B. Exclude under FRE 610 — religious beliefs or opinions are inadmissible for credibility purposes

C. Admit only if it concerns the witness's general truthfulness

D. Admit if it concerns the witness's specific dishonesty

128. A witness's character for truthfulness has been attacked by the opposing party. The proponent of the witness seeks to introduce evidence of the witness's good character for truthfulness. How should the court rule?

- A. Exclude because rehabilitation is improper
- B. Admit only with court permission
- C. Admit only if the attack was particularly severe
- D. Admit because once attacked, character for truthfulness may be supported under FRE 608(a)

129. An expert witness bases an opinion partly on facts not in evidence and not personally observed. The opposing party objects. How should the court rule under FRE 703?

- A. Exclude the opinion because experts must rely on observed facts
- B. Admit only if the facts are admitted in evidence first
- C. Admit if the facts or data are of a type reasonably relied upon by experts in the field; the underlying facts may be disclosed only if their probative value substantially outweighs prejudicial effect
- D. Admit but exclude the opinion if not corroborated

130. An attorney asks an expert a complex hypothetical question summarizing the evidence in the case and asking the expert's opinion based on those facts. The opponent objects. How should the court rule?

- A. Sustain because hypothetical questions are improper for experts
- B. Overrule because hypothetical questions are a traditional method of eliciting expert opinions based on assumed facts
- C. Sustain only if the hypothetical includes unproven facts
- D. Overrule only if the expert has personally examined the subject

131. A complex case involves disputed technical issues. The court is dissatisfied with the parties' partisan experts. The court appoints its own neutral expert. How should the court analyze the appointment?

- A. Apply FRE 706 — the court may appoint its own expert witness, who may be examined by all parties, with the court's expert testimony given equal weight as parties' experts
- B. Refuse appointment because experts must be retained by parties
- C. Appoint only with consent of all parties
- D. Allow the appointment but exclude the expert's testimony

132. A witness testifies at trial. The opposing party offers a prior statement given by the witness under oath at a deposition in the same case, asserting the statement is inconsistent with the trial testimony. The opponent objects. How should the court rule on admissibility?

- A. Exclude because all prior statements are hearsay
- B. Exclude because depositions are inadmissible at trial
- C. Admit only for impeachment, not substantive evidence
- D. Admit as substantive evidence under FRE 801(d)(1)(A) because the prior statement was given under oath at a proceeding and is inconsistent with current testimony

133. A conspiracy is in progress. One conspirator makes statements to another conspirator in furtherance of the conspiracy. At trial, the statements are offered against another conspirator who was not present when made. How should the court rule?

- A. Exclude as hearsay because conspirator statements are not party admissions
- B. Admit under FRE 801(d)(2)(E) — statements by coconspirators in furtherance of the conspiracy are non-hearsay party admissions against all conspirators
- C. Admit only if the statement was tape-recorded
- D. Exclude unless the conspiracy was charged

134. In a criminal case, the prosecution offers a police officer's report describing the officer's observations at the crime scene. The officer does not testify. The defendant objects. How should the court rule?

- A. Exclude under FRE 803(8)(A)(ii) — police observations of matters are inadmissible against criminal defendants

- B. Admit because public records are exempt from hearsay rules
- C. Admit if the officer signed the report
- D. Admit if certified by the agency custodian

135. An expert witness on cross-examination is asked about statements in a published medical treatise that contradict her opinion. The treatise is established as authoritative. May the cross-examiner introduce the treatise?

- A. Exclude because all written publications are hearsay
- B. Admit only if the expert agrees with the treatise
- C. Admit under FRE 803(18) because statements in established learned treatises are non-hearsay when discussed with expert testimony, but the treatise is read into evidence, not received as an exhibit
- D. Admit as substantive evidence in full

136. A declarant is alive and present in the country but refuses to testify, citing privilege. Several hearsay exceptions require unavailability. Does the declarant qualify as unavailable?

- A. No, because the declarant could physically appear
- B. Yes, but only for testimonial privilege
- C. No, because unavailability requires physical inability
- D. Yes — FRE 804(a) defines unavailability to include claims of privilege, refusing to testify, lack of memory, death, illness, or absence beyond process

137. A defendant intentionally murders the only witness against him to prevent her testimony. The prosecution wants to introduce the witness's prior statements at the defendant's trial. How should the court rule?

- A. Exclude because all hearsay is barred
- B. Admit under FRE 804(b)(6) — a party who has engaged in wrongdoing to procure the declarant's unavailability forfeits the right to confront the declarant
- C. Admit only with explicit waiver of confrontation rights

D. Exclude because the witness cannot be cross-examined

138. A statement does not fit any specific hearsay exception but has equivalent guarantees of trustworthiness, is offered to prove a material fact, is more probative than other obtainable evidence, and serves the purposes of the rules. How should the court analyze admissibility?

A. Exclude because exclusion is preferred when no enumerated exception applies

B. Admit only if both parties stipulate

C. Apply FRE 807 residual exception, which permits admission of trustworthy hearsay not covered by enumerated exceptions

D. Admit only with the court's special permission

139. A statement contains multiple levels of out-of-court statements. Each layer must be analyzed for hearsay. The court must determine how to analyze the layered statements. How should the court rule?

A. Apply FRE 805 — each layer of hearsay must independently satisfy a hearsay exception or rule of non-hearsay

B. Apply only the outer layer for analysis

C. Apply only the inner layer for analysis

D. Admit because layered statements are exempt from hearsay rules

140. A defendant confides in his minister about a crime committed. The prosecution subpoenas the minister to testify. The minister invokes privilege. How should the court rule?

A. Compel the testimony because there is no federal clergy privilege

B. Compel the testimony only after in-camera review

C. Allow the privilege only if the conversation occurred in a religious building

D. Recognize the clergy-penitent privilege protecting confidential communications made to clergy for spiritual counseling

141. A corporation seeks privilege protection for an internal investigation conducted by its in-house counsel. The investigation involved interviews with corporate employees about alleged misconduct. How should the court analyze the privilege?

- A. Deny privilege because corporations have no privilege rights
- B. Apply *Upjohn v. United States* — communications between corporate employees and counsel for legal advice purposes are privileged, even with broader employee participation
- C. Apply privilege only to communications with high-ranking officers
- D. Deny privilege because employee interviews are factual investigations

142. A witness in a civil case asserts the Fifth Amendment privilege against self-incrimination in response to a question that could expose criminal liability. The opposing party seeks to compel an answer. How should the court rule?

- A. Compel the answer because the privilege applies only in criminal cases
- B. Compel the answer only if the witness is granted immunity
- C. Allow the privilege because the Fifth Amendment privilege applies in any proceeding where compelled testimony could be used in a criminal prosecution
- D. Compel the answer because civil proceedings cannot generate criminal liability

143. A trial court, dissatisfied with the parties' presentation of evidence on a key issue, calls a witness on its own initiative. Both parties object. How should the court analyze its authority?

- A. Refuse because courts cannot independently call witnesses
- B. Refuse because witness calling is reserved for the parties
- C. Allow only with consent of both parties
- D. Apply FRE 614 — the court may call witnesses on its own initiative and examine them; either party may cross-examine

144. A grantor conveys property "to A and the heirs of his body." In a jurisdiction recognizing modern adaptations of fee tail, what is the effect?

- A. The fee tail is generally converted by statute to fee simple absolute or fee simple subject to executory limitation, depending on jurisdiction
- B. The fee tail strictly limits succession to A's direct descendants
- C. The fee tail terminates the conveyance because it is no longer recognized
- D. The fee tail creates a contingent estate dependent on A having heirs

145. A grantor conveys property "to A and his heirs; but if the property is used for commercial purposes, the grantor may re-enter and reclaim the property." 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 power of termination (right of entry)
- C. A fee simple subject to executory limitation, with a third party holding the future interest
- D. A life estate, with grantor holding a reversion

146. A grantor conveys property "to A's children, share and share alike." At the time of conveyance, A has two living children, B and C. A later has a third child, D, after the conveyance. How does the rule of convenience apply?

- A. D shares equally with B and C
- B. D is excluded automatically
- C. The class closes on A's death only
- D. Under the rule of convenience, the class typically closes when any member is entitled to demand distribution, potentially excluding later-born members

147. A grantor conveys property "to A and B" without specifying the form of concurrent ownership. The deed contains no language about survivorship. What form of ownership exists?

- A. Tenancy in common is the default form of concurrent ownership absent clear intent to create joint tenancy
- B. Joint tenancy with right of survivorship as the default

- C. Tenancy by the entirety, regardless of marital status
- D. No form of ownership exists without explicit specification

148. A joint tenant grants a mortgage on her interest in property. In a title-theory jurisdiction, how does this affect the joint tenancy?

- A. The joint tenancy continues unaffected
- B. The joint tenancy is severed only if the mortgage is foreclosed
- C. In a title-theory jurisdiction, granting a mortgage severs the joint tenancy because title passes to the mortgagee
- D. The joint tenancy is severed only with consent of all joint tenants

149. One cotenant excludes another cotenant from possession of the property by force or claim of exclusive title. The excluded cotenant sues. How should the court analyze the claim?

- A. Find no remedy because cotenants share possession
- B. Find the excluded cotenant's interest extinguished
- C. Find for the excluding cotenant if she is the larger owner
- D. Find an ouster, entitling the excluded cotenant to damages including potential rent and recognition of constructive trust

150. A life tenant deliberately fails to maintain the property, allowing it to deteriorate substantially. The remainderman sues. What type of waste has occurred?

- A. Voluntary waste because the tenant intentionally caused damage
- B. Permissive waste because the tenant failed to maintain the property as required
- C. Ameliorative waste because the deterioration changed the property
- D. No waste because life tenants have full control

151. A tenant in a one-year lease transfers possession for 6 months (less than the remaining term) to a third party. The original tenant retains the right to return for the remaining 6 months. How is this characterized?

- A. Assignment because all of the tenancy is transferred
- B. Lease termination because the transfer is partial
- C. Sublease because the tenant transfers less than the entire remaining term
- D. License because no recorded document was filed

152. A landlord's repeated unauthorized entries into a tenant's apartment significantly interfere with the tenant's use. The tenant terminates the lease and sues. Under which covenant does the tenant have the strongest claim?

- A. The implied covenant of quiet enjoyment, which is breached by landlord interference with the tenant's possession
- B. The covenant of habitability, because the disturbance is severe
- C. The covenant of marketable title, because the disturbance affects value
- D. No covenant applies because tenants must accept lease conditions

153. A tenant's lease ends. The tenant continues to occupy without the landlord's consent. The landlord accepts a rent payment for the next month after lease expiration. What is the legal effect?

- A. The tenant becomes a tenant at sufferance, with no rights
- B. The tenant becomes a periodic tenant based on the original lease terms (typically month-to-month), once rent is accepted
- C. The tenant becomes a tenant at will only
- D. No tenancy exists; the tenant is a trespasser

154. A landlord, frustrated with a tenant who has not paid rent, changes the locks and removes the tenant's belongings while the tenant is at work. The tenant sues. How should the court rule?

- A. Find for the landlord because non-paying tenants forfeit their rights
- B. Find for the landlord if the tenant cannot pay back rent within a reasonable period
- C. Find for the tenant only if the landlord refuses to allow re-entry after notice
- D. Find for the tenant — self-help eviction is generally unlawful; landlords must use judicial process

155. A purports to convey land to B that A does not yet own. A later acquires the same land. Does title automatically pass to B?

- A. No, because A did not own the land at conveyance
- B. No, unless A executes a new deed after acquiring title
- C. Yes, by estoppel by deed (after-acquired title doctrine) — A's later title automatically passes to B
- D. Yes, only if B has paid full consideration

156. A grantor signs a deed but does not appear before a notary to acknowledge the signature. The deed is recorded. A subsequent purchaser claims the deed is invalid. How should the court analyze the issue?

- A. The deed remains valid between the parties even without acknowledgment, but recording without proper acknowledgment may not provide constructive notice to subsequent purchasers
- B. The deed is invalid because acknowledgment is required for validity
- C. The deed is valid but cannot be recorded
- D. The deed is invalid only if challenged by the grantor

157. A buyer and seller agree to sell Lot 1, but the deed mistakenly describes Lot 2. Both parties understand the deal involves Lot 1. The error is discovered after recording. How should the court rule?

- A. Refuse to alter the deed because it is recorded
- B. Order rescission of the sale
- C. Compel the seller to convey Lot 2 because the deed is binding
- D. Reform the deed to reflect the actual agreement of Lot 1 due to mutual mistake

158. The holder of an express easement over a neighbor's property substantially increases use beyond what was contemplated. The servient owner sues. How should the court rule?

- A. Allow unlimited use because easements have no scope limits
- B. Limit the use to that contemplated at the time the easement was created and reasonable subsequent development
- C. Allow unlimited use if it is technically possible
- D. Terminate the easement entirely

159. A property owner gives a friend oral permission to walk across her property to reach a fishing spot. The friend has done so for years. The owner now wants to revoke the permission. How should the court analyze the issue?

- A. Find an irrevocable license because of long use
- B. Find an easement by prescription has formed
- C. Find a license that is generally revocable at will, though estoppel may sometimes prevent revocation if substantial reliance occurred
- D. Find a binding contract that cannot be revoked

160. A landowner grants a neighbor the right to extract timber from her property. The neighbor's right is what type of interest?

- A. Profit a prendre — a non-possessory interest to enter and take resources from another's land
- B. Easement — a non-possessory right of use without resource extraction
- C. License — a revocable permission
- D. Leasehold — a possessory interest in the land

161. A current owner of a parcel attempts to enforce a real covenant burdening neighboring property. The original parties to the covenant transferred the burdened property to the current owner. Is vertical privity satisfied?

- A. Yes, automatically because the property has been transferred
- B. Yes, only if explicitly mentioned in the deed
- C. No, because vertical privity requires direct successor-in-interest relationship
- D. Yes, vertical privity for the burden requires that the successor hold the same estate as the original covenantor (typically by direct deed or inheritance)

162. A developer creates a subdivision with restrictions in the deeds of most lots. Some deeds, including yours, are silent. Is your lot subject to the restrictions?

- A. No, because the restriction does not appear in your deed
- B. Yes, under the implied reciprocal servitude doctrine if the developer had a common scheme of restrictions at the time of the lot sales and your deed was issued under that scheme
- C. Yes, only if you signed an amendment to your deed
- D. No, because all restrictions must be express

163. A subdivision's restrictive covenants require all homeowners to maintain their lawns to a specific standard. A homeowner fails to do so. Other homeowners sue. How should the court analyze the enforceability of affirmative covenants?

- A. Apply enforcement if the affirmative covenant touches and concerns the land, satisfies the requirements of running covenants, and is reasonable
- B. Refuse enforcement because affirmative covenants are never enforceable
- C. Enforce only by monetary damages, not injunction
- D. Enforce only if specifically allowed by statute

164. A subdivision has comprehensive Conditions, Covenants, and Restrictions (CC&Rs) recorded with the lots. A new owner purchases without reading them and violates one. The HOA sues. How should the court rule?

- A. Excuse the new owner because she had no actual knowledge
- B. Excuse her because she has not yet joined the HOA

- C. Bind her to the CC&Rs because they are properly recorded, giving constructive notice
- D. Bind her only if she signed a separate acknowledgment

165. The federal government takes private land for a public highway project. The owner challenges the taking. How should the court analyze the case?

- A. Strike the taking because no government may take private land
- B. Strike the taking because the highway is not necessary
- C. Strike the taking if the owner shows the land has emotional significance
- D. Uphold the taking if the purpose is public and just compensation is provided; the Fifth Amendment requires both

166. A landmark preservation law prevents the owner of a historic building from constructing a tower on top of it, significantly reducing development value. The owner challenges as a taking. How should the court analyze?

- A. Find a per se taking because development was prevented
- B. Apply Penn Central balancing — economic impact, interference with investment-backed expectations, and character of the government action
- C. Find a per se taking because the building has unique value
- D. Refuse to find a taking because all police power regulations are permitted

167. A landowner seeks an exception from a zoning ordinance to allow a non-conforming use. The proposed use will not significantly affect neighbors. How should the zoning board analyze the variance request?

- A. Deny because variances violate zoning principles
- B. Grant automatically because all property has unique characteristics
- C. Apply the standard requiring undue hardship, hardship unique to the property, and that the variance not be contrary to the public interest
- D. Grant only if the landowner pays additional taxes

168. A property has been used for commercial purposes for decades. The area is later rezoned residential. The owner wants to continue commercial use. How should the court analyze the issue?

- A. Recognize the nonconforming use as a lawful continuation, though typically subject to restrictions on expansion or transfer
- B. Compel the owner to comply with the new zoning immediately
- C. Allow continuation only if the owner pays additional fees
- D. Treat the property as a new property subject to current zoning

169. A developer subdivides land. Local regulations require dedication of land for streets, parks, and other public uses as a condition of approval. The developer challenges the dedication requirements. How should the court analyze the validity?

- A. Strike the requirements because they constitute takings
- B. Strike the requirements because subdivisions cannot be regulated
- C. Uphold only with explicit consent of the developer
- D. Apply the Nollan-Dolan-Koontz test — exactions must have essential nexus and rough proportionality to project impacts

170. A residential subdivision was created with restrictive covenants. Over time, the surrounding area has dramatically changed to commercial use, making residential restrictions impractical. A property owner seeks to terminate the restrictions. How should the court rule?

- A. Refuse to terminate because covenants are perpetual
- B. Apply the changed conditions doctrine — courts may decline to enforce covenants when changes have so fundamentally altered the area that the original purpose is defeated
- C. Terminate automatically when conditions change
- D. Refuse to terminate without unanimous owner consent

171. A grantor conveys land to A, who fails to record. A then conveys to B, who records. The grantor later conveys the same land to C, who records, without notice of either prior transaction. The original chain of title in the grantor's name shows nothing of the prior transactions. How is B's recorded deed treated?

- A. B's recording protects against all subsequent purchasers
- B. B's recording is invalid as a wild deed
- C. B's deed is a "wild deed" — outside the chain of title in C's search — providing no constructive notice to subsequent purchasers
- D. B's deed becomes the controlling instrument

172. A grantor conveys land to A, who delays recording. The grantor then conveys to B, who has actual knowledge of A's prior unrecorded deed. B promptly records. The jurisdiction has a pure race statute. Who has priority?

- A. B, because under a pure race statute, the first to record prevails regardless of notice
- B. A, because of the prior conveyance
- C. A, because B had notice
- D. Both share equally as tenants in common

173. A defendant intends to commit battery against A but mistakenly strikes B. Both A and B can sue. Under what doctrine?

- A. Strict liability for any intentional act
- B. Mistake doctrine — the strike is not actionable
- C. Transferred intent — the intent to commit a tort against one person transfers to the unintended victim
- D. Constructive intent — the defendant is liable for foreseeable consequences

174. A 5-year-old child pulls a chair out from under an adult sitting down, knowing with substantial certainty that the adult will fall. The adult is injured. The child is sued for battery. How should the court analyze intent?

- A. Find intent because the child acted with substantial certainty that contact would occur, satisfying the intent element under *Garratt v. Dailey*
- B. Find no intent because the child is too young to form intent
- C. Find no intent because the child did not specifically intend injury

D. Find no intent because intent requires desire to harm

175. A captain steers a ship onto a stranger's dock to save passengers from a storm, causing damage to the dock. The dock owner sues. How should the court rule?

A. Find no defense because the captain caused the damage

B. Find liability because dock owners have absolute rights

C. Find a complete defense and award damages

D. Find a complete defense based on public necessity (saving lives) — no compensation owed

176. A private individual takes shelter on a stranger's property during a sudden storm threatening only the individual's safety. The property owner orders him to leave; he refuses. Damage occurs from the storm to the property. The owner sues. How should the court rule?

A. Find a complete defense with no liability

B. Find an incomplete privilege — private necessity excuses the trespass but requires compensation for actual damages caused

C. Find no defense because the owner asked the trespasser to leave

D. Find a complete defense because all storms justify entry

177. A defendant chases a thief who has taken his property. The defendant catches up and uses reasonable force to recover the stolen item. The thief sues for battery. How should the court rule under recapture of chattels?

A. Find no defense because force was used

B. Find a defense only if the property is recovered intact

C. Find a privilege for recapture of chattels if pursuit was fresh and force was reasonable; available when the original taking was wrongful

D. Find a complete defense regardless of circumstances

178. A shopkeeper has reasonable suspicion that a customer is shoplifting. The shopkeeper detains the customer for a reasonable time and uses minimal force. The shopkeeper acted reasonably. The customer sues. How should the court rule?

- A. Find liability because retail detention is always actionable
- B. Find liability unless the shopkeeper has actual proof of theft
- C. Find the privilege only if the customer is actually guilty
- D. Find a complete defense under the shopkeeper's privilege because the suspicion was reasonable, the detention was reasonable, and minimal force was used

179. An 8-year-old child operates a bicycle and negligently causes an accident with a pedestrian. The pedestrian sues. How should the court analyze the child's standard of care?

- A. Apply the adult reasonable person standard regardless of age
- B. Apply a strict liability standard to all child conduct
- C. Apply the standard of a reasonable child of the same age, intelligence, and experience, unless the child engaged in an adult activity (such as motor vehicle operation)
- D. Find no liability because children cannot be negligent

180. A patient sues a surgeon for malpractice. How should the court determine the standard of care?

- A. Apply the reasonable person standard
- B. Apply the standard of similarly situated physicians of the same specialty practicing under similar circumstances
- C. Apply the standard of the most renowned surgeon in the field
- D. Apply the strict liability standard

181. An industry-wide practice does not include certain safety equipment. A plaintiff is injured when the equipment is missing. The defendant argues compliance with industry custom. How should the court analyze?

- A. Apply the T.J. Hooper principle: customary practice is evidence of the standard of care but not conclusive; an entire industry may negligently lag in adopting available safety measures
- B. Apply industry custom as the conclusive standard
- C. Apply strict liability because the industry was negligent
- D. Apply only the manufacturer's specifications

182. A defendant's conduct creates risk of harm. The cost of preventing the harm was relatively low while the probability and severity of harm were high. The defendant did not take preventive steps. How should the court analyze breach under the Hand formula?

- A. Find no breach because the defendant did not intend harm
- B. Find no breach because reasonable steps were taken
- C. Find breach only if specific risk was foreseeable
- D. Find breach under the Hand formula because the burden of prevention (B) was less than the probability (P) of harm times the magnitude (L) of the loss

183. Two defendants both negligently fire shotguns toward a victim. Only one of the pellets striking the victim could have come from each gun. The plaintiff cannot prove which gun struck him. How should the court analyze causation?

- A. Dismiss because the plaintiff cannot prove which defendant caused the harm
- B. Apply alternative liability (*Summers v. Tice*), shifting the burden to each defendant to disprove causation
- C. Dismiss because both defendants cannot be liable
- D. Apply strict liability automatically

184. A plaintiff is injured by a generic product manufactured by several companies with identical formulations. The plaintiff cannot identify which manufacturer's specific unit caused harm. How should the court analyze causation?

- A. Dismiss because the plaintiff cannot identify the specific manufacturer

- B. Apply joint and several liability automatically
- C. Apply market share liability (*Sindell v. Abbott Labs*) — each defendant pays a share proportional to its market share at the time of injury
- D. Apply strict liability against the smallest manufacturer

185. A patient with cancer is misdiagnosed by a physician, reducing the patient's chance of survival from 40% to 10%. The patient dies. The patient's family sues. How should the court analyze causation?

- A. Apply the loss of chance doctrine, recognized in many jurisdictions, permitting recovery for the loss of a chance of recovery proportional to the diminished probability
- B. Dismiss because the patient was likely to die regardless
- C. Award full damages because there was malpractice
- D. Award only nominal damages

186. A mother witnesses her child being struck by a car. She is not in physical danger but is present at the scene and contemporaneously aware of the harm. She suffers severe emotional distress. How should the court analyze her claim?

- A. Deny recovery because there was no physical contact
- B. Apply *Dillon v. Legg* bystander criteria: close relationship to victim, presence at scene, and contemporaneous awareness of the harm
- C. Deny recovery because emotional distress requires the plaintiff's own physical injury
- D. Apply zone-of-danger rule strictly, denying recovery for those outside

187. A defendant's negligence causes a fatal injury. Who may bring claims arising from the death and the period of injury?

- A. Only the deceased can bring claims, but the claims abate at death
- B. Only the estate can sue, with all damages going to creditors
- C. Only the decedent's spouse can sue for emotional damages

D. Survival actions may be brought by the estate for the decedent's pre-death suffering, and wrongful death actions may be brought by surviving family members for their own losses

188. A husband is seriously injured by a defendant's negligence. The wife sues for loss of consortium. How should the court analyze the claim?

- A. Reject because consortium claims have been abolished
- B. Allow only the husband to sue
- C. Allow loss of consortium for the spouse based on the loss of services, society, affection, and conjugal relations
- D. Allow only economic loss of consortium

189. A customer enters a department store. While shopping, she slips on a wet floor and is injured. The store knew about the spill but failed to clean it. How should the court analyze the duty owed?

- A. No duty because customers must protect themselves
- B. The store owes the customer (an invitee) a duty of reasonable care, including inspecting for and warning of hidden hazards or repairing them
- C. A duty only to invite customers safely
- D. A duty only if a specific hazard was reported

190. A landowner invites a friend to her home as a social guest. The friend slips on a wet floor that the homeowner knew was wet but did not warn about. How should the court analyze the duty owed?

- A. The landowner owes the licensee (social guest) a duty to warn of known dangerous conditions but no duty to inspect for unknown hazards
- B. The landowner owes no duty at all
- C. The landowner owes the same duty as to invitees
- D. The landowner owes only a duty of nondiscrimination

191. A trespasser enters a property and is injured by a hidden hazard the landowner knew of but did not warn about. The hazard was not designed to harm trespassers. How should the court analyze the duty owed?

- A. The landowner owes the same duty as to invitees
- B. The landowner owes a duty to warn of all hazards
- C. The landowner owes a duty to inspect for hazards
- D. The landowner generally owes only the duty to refrain from willful or wanton injury to trespassers, with limited exceptions for known frequent trespassers

192. A firefighter is injured while responding to a fire negligently caused by a homeowner. The firefighter sues the homeowner. How should the court analyze the claim?

- A. Allow recovery because firefighters are entitled to damages
- B. Allow recovery only with prior consent of the homeowner
- C. Apply the firefighter's rule (in jurisdictions following it) — public safety officers generally cannot recover from those whose negligence caused the situation requiring their response
- D. Allow recovery only for the most severe injuries

193. A defendant maintains a large dog as a household pet. The dog has never shown aggression. It bites the plaintiff. How should the court analyze the case?

- A. Apply negligence — domestic dogs are common usage and do not trigger strict liability absent known dangerous propensity (one-bite rule)
- B. Apply strict liability automatically because dogs are dangerous
- C. Apply strict liability only if the dog is large
- D. Find no liability because pet ownership is permitted

194. A consumer is injured when a product malfunctions. The defect resulted from an error during manufacturing — the specific unit did not conform to the design specifications. How should the court analyze liability?

- A. Apply negligence because consumer products are not strict liability
- B. Apply strict liability for the manufacturing defect — the product deviated from the intended design
- C. Apply strict liability only if the manufacturer knew of the defect
- D. Apply negligence and require proof of intent

195. A consumer is injured by a product manufactured years ago. At the time of manufacture, the technology used was state of the art, but newer designs are now considered safer. The manufacturer relies on this defense. How should the court analyze?

- A. Reject the defense because all products must meet current safety standards
- B. Apply strict liability automatically regardless of state of the art
- C. Apply the defense only if the manufacturer can prove no defects existed
- D. Consider the state-of-the-art defense — in most jurisdictions, a design defect claim is evaluated by knowledge and technology reasonably available at the time of manufacture

196. A defendant publishes a written statement accusing the plaintiff of a serious crime. The statement is later proven false. The plaintiff sues for defamation. How should the court analyze damages?

- A. Award only nominal damages
- B. Award only proven economic damages
- C. Apply libel per se — categories of defamation considered so harmful (criminal accusations, loathsome disease, unchastity, professional incompetence) that damages may be presumed without proof
- D. Require proof of special damages always

197. A reporter testifies under oath in a deposition about an allegedly defamatory matter. The witness sued for defamation argues the testimony was defamatory. How should the court analyze the privilege?

- A. Apply absolute privilege — statements made in the course of legal proceedings are absolutely privileged from defamation liability
- B. Apply qualified privilege requiring good faith
- C. Apply no privilege because reporters are public figures

D. Apply privilege only if the testimony was truthful

198. A defendant publishes truthful but private information about a private individual — facts not of legitimate public concern. The individual sues for invasion of privacy. How should the court analyze the claim?

A. Reject because truthful statements are never actionable

B. Apply only defamation analysis

C. Apply public disclosure of private facts — invasion of privacy for publication of private information not of legitimate public concern, in a manner highly offensive

D. Apply only if the publication caused economic harm

199. A plaintiff sues for misrepresentation arising from a transaction. The plaintiff has not yet entered a contract with the defendant. How should the court analyze the appropriate cause of action?

A. Dismiss because there is no contract

B. Apply tort law — misrepresentation may be brought in tort for damages even absent privity of contract, with elements of false statement, scienter (in fraud), reliance, and damages

C. Treat as contract law only with implied contract

D. Apply equity for rescission only

200. A defendant intentionally induces a third party to breach an existing contract with the plaintiff. The plaintiff sues. How should the court analyze the claim?

A. Dismiss because only the contracting parties may sue

B. Apply only contract law remedies

C. Apply tort law only with proof of intent to cause specific harm

D. Apply tortious interference with contract — intentional, improper interference with an existing contractual relationship causing breach and damages

PRACTICE EXAM 12 ANSWER KEY WITH EXPLANATIONS (1-200)

- 1. D** — Under *J. McIntyre Machinery v. Nicastro* and *World-Wide Volkswagen*, mere placement in the stream of commerce is insufficient for specific personal jurisdiction; the manufacturer must purposefully direct activities at the forum state. Selling through a national distributor without targeting Tennessee specifically does not satisfy minimum contacts.
- 2. A** — Under *St. Paul Mercury Indemnity v. Red Cab*, the plaintiff's good-faith allegation of the amount in controversy controls unless it appears to a legal certainty that the claim is for less than the threshold. Punitive damages are included if recoverable under applicable state law.
- 3. B** — A single plaintiff may aggregate any claims against a single defendant for amount-in-controversy purposes under 28 U.S.C. § 1332, regardless of whether the claims are related. The aggregate of \$80,000 satisfies the jurisdictional threshold.
- 4. C** — Under 28 U.S.C. § 1446(b), the notice of removal must be filed within 30 days of service of the initial pleading when the case is removable from the outset. A 60-day delay forfeits the right to remove.
- 5. A** — Section 1404(a) permits transfer between proper venues "for the convenience of parties and witnesses, in the interest of justice." Section 1406 applies only when venue in the transferor court is improper.
- 6. C** — Under *Hanna v. Plumer*, a valid Federal Rule of Civil Procedure that is on point and within the Rules Enabling Act governs in diversity, even if state law would produce a different outcome. Erie analysis applies only where no Federal Rule is on point.
- 7. B** — Rule 11(c)(2) requires a 21-day safe-harbor period for opposing-party motions, after which the court may impose discretionary sanctions for violations of Rule 11(b). The procedure was followed, and the substantive violations are evident.
- 8. D** — Rule 9(b) requires fraud and mistake to be pleaded with particularity — specifying the who, what, when, where, and how of the misrepresentation. Conclusory allegations without specifics fail this heightened pleading standard.
- 9. A** — Permissive counterclaims under Rule 13(b) do not arise from the same transaction and therefore are not within supplemental jurisdiction. They must have an independent jurisdictional basis to be heard in federal court.
- 10. B** — Rule 13(g) cross-claims are allowed between co-parties when they arise out of the same transaction or occurrence as the original action. Indemnification claims arising from the same set of facts qualify.

11. C — Rule 14 third-party practice (impleader) allows a defendant to bring in a third party who may be liable for all or part of the plaintiff's claim against the defendant. Indemnification is the classic basis for impleader.

12. A — Rule 18(a) permits a party to join any number of claims against an opposing party, related or unrelated. Joinder of claims is liberally permitted, with subject-matter jurisdiction analyzed separately for each claim.

13. D — Rule 23(b)(2) certification is appropriate when the defendants have acted on grounds generally applicable to the class, making injunctive or declaratory relief appropriate for the class as a whole. Civil rights class actions seeking institutional reform fit squarely within this provision.

14. B — Rule 33(a)(1) limits each party to serving 25 interrogatories (including discrete subparts) on any other party, absent leave of court or stipulation. Thirty interrogatories without permission exceed the limit.

15. A — Rule 45(c)(1) permits subpoenas requiring deposition attendance only within 100 miles of where the person resides, is employed, or regularly transacts business. This geographic limit protects non-parties from undue burden.

16. D — Rule 37(e), as amended in 2015, permits proportional sanctions for spoliation of electronically stored information based on prejudice. The most severe sanctions (adverse inference instructions, dismissal) require a finding that the party acted with intent to deprive.

17. C — Rule 56(a) explicitly permits a party to move for partial summary judgment on a claim, defense, or part thereof. Granting partial summary judgment narrows the case for trial on the remaining claims.

18. B — JMOL is granted only when no reasonable jury could find for the nonmoving party, viewing the evidence in the light most favorable to the nonmovant. Contested evidence creating a genuine factual dispute precludes JMOL.

19. D — Under *Beacon Theatres v. Westover* and *Dairy Queen v. Wood*, in mixed legal and equitable actions, legal issues must be tried first to a jury, and the jury's findings on common factual issues bind the court on the equitable claims.

20. A — Rule 52(a)(6) requires appellate courts to review a trial court's findings of fact in bench trials under the clearly erroneous standard. The appellate court must have a definite and firm conviction of mistake to reverse.

21. B — Unpreserved issues on appeal are reviewed only under the plain error standard: a clear or obvious error affecting substantial rights and the fairness or integrity of judicial proceedings. Most unpreserved issues are forfeited.

22. C — Under *Mitchell v. Forsyth*, denial of qualified immunity falls within the collateral order doctrine because the immunity is from the burden of trial itself, which would be lost if the case proceeded. Immediate appellate review preserves the immunity's purpose.

23. D — Mandamus under 28 U.S.C. § 1651 is an extraordinary writ available only when the petitioner has no other adequate means of relief and the right to issuance is clear and indisputable. It is reserved for clear judicial overreach or refusal to perform a clear duty.

24. A — Issue preclusion requires that the issue was actually litigated, was necessary to a valid final judgment, and that the party to be precluded had a full and fair opportunity to litigate. All elements must be satisfied for preclusion to apply.

25. B — Claim preclusion may extend to non-parties who are in privity with prior parties — those who share a sufficient legal relationship that their interests were effectively represented. Close employer-employee or principal-agent relationships often qualify.

26. A — Under the Hague Service Convention, the methods specified are exclusive for service on parties in signatory countries. Compliance is mandatory; alternative methods invalid under the Convention will not constitute proper service.

27. D — Under *Carden v. Arkoma Associates*, unincorporated associations including LLCs are treated as citizens of every state where any member is a citizen. Diversity is destroyed if any LLC member shares state citizenship with the opposing party.

28. C — Modern federal courts approving *cy pres* distributions in class settlements require the recipient charities' missions to sufficiently relate to the class members' interests and that direct distribution remains infeasible. Purely tangential *cy pres* awards have been rejected.

29. A — Rule 55(c) permits setting aside an entry of default for "good cause shown" — a relatively lenient standard requiring a meritorious defense, reasonable excuse, and no prejudice to the opposing party. Setting aside is preferred before judgment.

30. B — A case is not moot when there is a reasonable expectation that the challenged conduct will recur, particularly under the voluntary cessation doctrine. The defendant bears a heavy burden to show the conduct cannot reasonably be expected to recur.

31. C — Under *Baker v. Carr*'s six-factor test and subsequent cases, foreign affairs and war powers questions often present political questions due to textual commitments to coordinate branches and the lack of judicially discoverable standards. Courts generally decline to second-guess executive military decisions.

32. D — Under *McCulloch v. Maryland*, the Necessary and Proper Clause permits Congress to choose any rational and appropriate means to execute its enumerated powers, provided the means are not constitutionally prohibited. The clause expands rather than restricts congressional authority.

33. B — Under *Ex parte Young*, federal courts may enjoin state officials from ongoing violations of federal law without violating the Eleventh Amendment. The fiction treats officials acting unconstitutionally as stripped of their state authority for purposes of injunctive relief.

- 34. A** — Under *Foley v. Connelie* and *Ambach v. Norwick*, the political function exception permits rational basis review for alienage classifications related to self-governance positions — police, teachers, jurors, and similar discretionary public functions. Strict scrutiny otherwise applies.
- 35. C** — Under *Toomer v. Witsell*, the Article IV Privileges and Immunities Clause requires a substantial reason and substantial relationship for state discrimination against non-residents on fundamental privileges. Earning a livelihood is a fundamental privilege protected by the clause.
- 36. B** — The Smith Court reserved the "hybrid rights" theory: claims combining Free Exercise with other constitutional rights (parental rights, free speech) may trigger strict scrutiny even when the law is neutral and generally applicable. The dual-rights claim survives the Smith default.
- 37. D** — *Zelman v. Simmons-Harris* upheld voucher programs that include religious schools when aid reaches those schools only through the genuine and independent private choice of individual beneficiaries. The intervening private choice breaks the link to government endorsement.
- 38. A** — True threats — serious expressions of intent to commit unlawful violence against an identifiable victim — are unprotected speech under the First Amendment. *Counterman v. Colorado* clarified that the speaker must have at least recklessly disregarded the threatening nature of the statements.
- 39. C** — *Texas v. Johnson* held that flag burning is expressive conduct protected by the First Amendment. Government cannot prohibit expression of an idea simply because society finds it offensive or disagreeable.
- 40. D** — *Miller v. California* established the three-part test for unprotected obscenity: appeal to prurient interest under contemporary community standards, depiction of patently offensive sexual conduct specifically defined by applicable law, and lack of serious literary, artistic, political, or scientific value. All three must be present.
- 41. A** — *Branzburg v. Hayes* rejected a First Amendment privilege for journalists to refuse grand jury testimony about confidential sources, holding that the public interest in law enforcement outweighs incidental burdens on newsgathering. Some lower courts have developed qualified privileges by statute or rule.
- 42. B** — *Sandin v. Conner* held that prisoner liberty interests under procedural due process arise only when prison conditions impose "atypical and significant hardship" in relation to the ordinary incidents of prison life. Long-term solitary confinement may meet this standard.
- 43. D** — Under *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, permit conditions requiring property dedications must have an essential nexus to a legitimate state interest and rough proportionality to the impacts of the proposed development. Unrelated exactions are unconstitutional takings.
- 44. A** — *Cruzan v. Director, Missouri Department of Health*, recognized that competent adults have a constitutionally protected liberty interest in refusing unwanted medical treatment, including life-sustaining treatment. This right is grounded in substantive due process.

- 45. C** — Under *City of Boerne v. Flores*, Section 5 enforcement legislation must be congruent and proportional to the constitutional violation Congress seeks to remedy. Congress cannot use Section 5 to expand the substantive scope of Fourteenth Amendment rights.
- 46. B** — Under *United States v. Lopez* and *United States v. Morrison*, the Commerce Clause does not reach purely non-economic activity based on attenuated chains of effects on commerce. Gender-motivated violence is non-economic and falls outside Commerce Clause reach.
- 47. A** — Under *Reeves, Inc. v. Stake*, the market participant doctrine exempts states from Dormant Commerce Clause scrutiny when acting as buyers or sellers in the market rather than as regulators. States may favor in-state interests when participating commercially.
- 48. D** — The public function doctrine treats private entities performing traditionally and exclusively governmental functions as state actors for constitutional purposes. Operating prisons is a traditional government function subjecting private operators to § 1983 liability.
- 49. B** — Under *Missouri v. Holland*, a valid treaty may support federal legislation that would otherwise exceed Congress's enumerated powers. The treaty power may reach matters that would otherwise be reserved to the states.
- 50. C** — *Boumediene v. Bush* held that the constitutional habeas corpus right extends to non-citizen detainees at Guantanamo Bay, given the U.S.'s de facto sovereignty over the base. The Suspension Clause cannot be circumvented by holding detainees outside formal U.S. territory.
- 51. A** — Under *Singleton v. Wulff* and similar cases, third-party standing is permitted when there is a close relationship between the litigant and the third party, and obstacles prevent the third party from asserting their own rights. The doctor-patient relationship satisfies this standard.
- 52. D** — Under *Williamson County Regional Planning Commission v. Hamilton Bank* and subsequent cases, a regulatory takings claim is unripe until the plaintiff has obtained a final decision from the regulating body. Although *Knick* eliminated the state exhaustion requirement, finality from the agency remains required.
- 53. B** — *Walker v. Texas Division, Sons of Confederate Veterans* held that specialty license plates are government speech, not private speech. The government may select and reject messages on its own speech without violating the First Amendment.
- 54. A** — Under *Wooley v. Maynard* and *303 Creative LLC v. Elenis*, compelled speech receives the same First Amendment protection as restrictions on speech. The government cannot force private actors to convey government-mandated messages without satisfying strict scrutiny.
- 55. C** — In a limited public forum (a government property opened for specified speech purposes), restrictions must be reasonable in light of the forum's purpose and viewpoint-neutral. Restrictions cannot discriminate based on viewpoint within the topics permitted.

56. D — *Tinker v. Des Moines Independent Community School District* held that students retain First Amendment rights in school, and schools may restrict student speech only when it materially and substantially disrupts school activities or invades others' rights. Non-disruptive political speech is protected.

57. B — Under *Clark v. Jeter*, illegitimacy classifications trigger intermediate scrutiny: the classification must be substantially related to an important government interest. This quasi-suspect status reflects the historical disadvantage faced by non-marital children.

58. C — Under *United States v. Lovett* and *United States v. Brown*, legislative acts inflicting punishment on specifically identified persons or groups without trial are unconstitutional bills of attainder. Targeting named organizations or persons for adverse treatment by name fits this prohibition.

59. A — Under UCC § 2-306, requirements and output contracts are valid despite the apparent quantity indefiniteness. Quantity is governed by the buyer's actual good-faith requirements (with limitations on disproportionate amounts), and the contract is enforceable.

60. D — Crossed offers do not automatically form contracts. Each communication must be analyzed under offer/acceptance principles: the counter-offer typically operates as a rejection of any prior offer, and any subsequent communication must constitute a new offer or acceptance to form a contract.

61. B — An option contract supported by consideration is irrevocable for the agreed period. The \$500 payment is consideration making the option binding; the offeror cannot revoke before the option period expires.

62. A — A promise that leaves the promisor with complete discretion not to perform is illusory and lacks consideration. Without consideration, the purported contract is unenforceable for want of mutuality of obligation.

63. C — Under the Statute of Frauds, contracts not capable of performance within one year by their terms must be in writing to be enforceable. A five-year employment contract by definition cannot be performed within one year, requiring a writing.

64. D — The parol evidence rule does not bar evidence offered to prove fraud, duress, mistake, or other defects in formation. Evidence of fraudulent inducement is admissible even when the writing contains a merger clause.

65. B — Under the Restatement (Second) of Contracts §§ 53 and 54, a unilateral offer is accepted by completing the requested performance. Advance notice of acceptance is generally not required for unilateral contracts.

66. D — Under the majority knockout rule, when both parties' forms contain materially conflicting terms, those terms cancel each other out and are replaced by UCC default rules. The conflicting terms do not become part of the contract.

- 67. A** — Under *Kingston v. Preston* and constructive conditions of exchange, when one party's performance requires substantial time and the other party's performance can be rendered instantaneously, the time-consuming performance is a constructive condition precedent. The contractor must perform first.
- 68. C** — A divisible contract is one whose performance is divided into corresponding units of work and payment. Partial performance entitles the performing party to corresponding partial compensation at the contract rate.
- 69. B** — Quasi-contract (unjust enrichment) permits recovery of reasonable value when a benefit was conferred without opportunity for express consent, particularly in emergency contexts. The doctrine prevents inequitable retention of benefits without payment.
- 70. A** — Reliance damages restore the non-breaching party to its pre-contract position by reimbursing out-of-pocket reliance expenditures. This measure is available when expectation damages cannot be proven with reasonable certainty.
- 71. D** — Restitution damages measure the value of the benefit conferred on the breaching party, regardless of the plaintiff's expectation or reliance. This remedy is particularly valuable when the contract would have been a losing one for the plaintiff.
- 72. C** — Specific performance is unavailable for personal service contracts under both common law (involuntary servitude concerns) and equitable supervision difficulties. Negative injunctions barring competing employment may be available where the services are unique.
- 73. A** — Unilateral mistake permits rescission when the non-mistaken party knew or had reason to know of the mistake (palpable mistake). The owner's recognition of the obvious bidding error precludes enforcement.
- 74. B** — Fraud in the inducement (knowingly false misrepresentations of material facts inducing the contract) makes the contract voidable at the defrauded party's option. Failure to read does not bar rescission where fraud is established.
- 75. D** — Undue influence occurs when one party uses a confidential, dominant, or dependent relationship to overcome the other party's free will. Isolation, control of medications, and persistent pressure from a caregiver against a dependent elderly person satisfy these elements.
- 76. C** — Contracts with minors are voidable at the minor's option, and the minor may disaffirm and recover consideration. Most jurisdictions deduct the reasonable value of use or depreciation from the refund, balancing the minor's protection with fairness to the seller.
- 77. A** — Contracts entered into by parties lacking the mental capacity to understand the nature and consequences of the transaction are voidable. The other party's knowledge of the incapacity reinforces the voidability and undermines any claim of good-faith reliance.
- 78. D** — Contracts requiring performance of an illegal act are void and unenforceable. Courts will not lend their aid to either party in a contract that violates law or public policy.

79. B — Restrictive covenants restricting employment must be reasonable in time, scope, and geographic area. Restrictions of 50 years with unlimited geographic scope are vastly overbroad and contrary to public policy supporting employment mobility.

80. C — Accord and satisfaction requires a bona fide dispute about the amount owed. Without an actual dispute, the creditor's acceptance of partial payment marked "in full" does not discharge the undisputed remainder.

81. B — Novation is a tripartite agreement in which a new party assumes a contractual obligation and the original party is discharged. The mutual consent of debtor, original creditor, and new creditor effects the substitution.

82. B — Mutual rescission of an executory contract is effective. Each party's release of the other from remaining obligations supplies the consideration to support the rescission agreement.

83. A — UCC § 2-209(1) eliminates the common-law consideration requirement for modifications of contracts for the sale of goods, requiring only good faith. The modification is enforceable as agreed.

84. C — UCC § 2-315's implied warranty of fitness for a particular purpose arises when the seller has reason to know the buyer's particular purpose and the buyer relies on the seller's skill or judgment. Disclosing commercial laundry needs satisfies these requirements.

85. D — UCC § 2-316(2) permits disclaimer of the implied warranty of merchantability through conspicuous language that mentions "merchantability." The disclaimer here uses the word and is conspicuous.

86. A — UCC § 2-712 "cover" remedy permits a buyer to purchase substitute goods in good faith and without unreasonable delay, and to recover the difference between the cover price and the contract price, plus incidental and consequential damages.

87. B — "Knowingly" under federal criminal mens rea standards requires actual awareness of the fact in question or practical certainty. Recklessness — conscious disregard of a substantial risk — is a lower standard that does not satisfy "knowingly."

88. C — Strict liability offenses dispense with mens rea requirements. Mistake of fact, even reasonable mistake, is not a defense to strict liability crimes because the prosecution need not prove any culpable mental state.

89. D — Burglary is a specific intent crime requiring intent to commit a felony in the building at the time of entry. Entry merely to take shelter, without intent to commit a separate felony, lacks the required specific intent.

90. A — Under the eggshell victim rule (thin skull rule), the defendant takes the victim as he finds the victim. The unforeseeable extent of harm due to a pre-existing vulnerability does not break the chain of causation.

91. D — Depraved-heart murder (second-degree murder in many jurisdictions) is satisfied by extreme recklessness showing depraved indifference to human life, such as firing into a crowded room. No specific intent to kill is required.

92. C — The merger doctrine bars felony murder when the underlying felony is integral to the killing itself, such as assault. To prevent the merger from swallowing the manslaughter rule, the underlying felony must have a felonious purpose independent of the homicide.

93. B — Common-law arson required only charring of the structure, not complete destruction. Modern statutes typically extend arson to any building or structure, including vacant buildings.

94. D — Forgery is the false making or material alteration of a writing with intent to defraud. A subjective belief in a valid underlying debt does not authorize unauthorized signing of another's name and does not negate forgery's mens rea.

95. A — Mail fraud under 18 U.S.C. § 1341 requires only a scheme to defraud and use of the U.S. mails in furtherance of the scheme. The mail need not personally cross state lines and federal jurisdiction is broad.

96. C — Under *Pinkerton v. United States*, conspiracy members are liable for crimes committed by co-conspirators that are reasonably foreseeable consequences of the conspiracy. Murder during armed robbery is typically foreseeable, exposing all conspirators.

97. D — Withdrawal from a conspiracy requires communication of withdrawal to all other conspirators and, in some jurisdictions, affirmative steps to prevent the crime. Withdrawal is a defense in many jurisdictions if accomplished before any overt act.

98. B — An accomplice (aider and abettor) is one who intentionally facilitates the principal's commission of the crime, even without being present. Modern law treats accomplices the same as principals for liability purposes.

99. C — Solicitation merges with the completed underlying offense once that offense is committed. The solicitor is convicted only of the completed crime, not separately of solicitation, to prevent double punishment for the same conduct.

100. A — Factual impossibility — circumstances making completion of the crime impossible — is not a defense to attempt. The defendant's intent to commit larceny combined with substantial steps toward completion supports attempted larceny liability.

101. B — The initial aggressor generally cannot claim self-defense unless they have communicated withdrawal and the other party continues to use force. Failing to withdraw before responding with deadly force forecloses the defense.

102. C — Under the traditional alter ego rule (still followed in some jurisdictions), the defender of others may use only such force as the defended person would lawfully be entitled to use. If the defended person had no privilege (because facing a lawful arrest), the defender has none either.

103. D — Duress is available as a defense to most crimes (excluding murder and sometimes treason) when the actor faces imminent threat of serious harm with no reasonable alternative. Threats to family members satisfy the imminent harm requirement.

104. A — Necessity (choice of evils) excuses criminal conduct that prevents a greater harm than that caused, when no reasonable lawful alternative exists. Trespass to escape a tornado threatening death is the classic application.

105. C — Mistake of law is generally not a defense to criminal liability, with narrow exceptions for due process notice violations or reasonable reliance on official statements of law. Unfamiliarity with obscure regulations is not a defense.

106. B — Voluntary intoxication may negate the specific intent required for specific intent crimes (premeditated murder, larceny, burglary). It is not a defense to general intent crimes or crimes of recklessness.

107. A — Under *Illinois v. Gates*, probable cause for a search warrant is determined by the totality of the circumstances, weighing the informant's veracity, reliability, and basis of knowledge as relevant factors. The *Aguilar-Spinelli* two-prong test was abandoned in favor of this flexible standard.

108. D — Under *Horton v. California*, the plain view doctrine permits seizure of contraband when officers are lawfully present and the contraband's incriminating nature is immediately apparent. Additional warrant requirements would be impractical and unnecessary.

109. C — Under *Terry v. Ohio*, police may conduct a brief investigative stop with reasonable suspicion of criminal activity and a frisk for weapons if reasonable belief exists that the suspect is armed and dangerous. The suspicious behavior near a closed store satisfies the suspicion requirement.

110. B — The automobile exception under *Carroll v. United States* and *California v. Carney* permits warrantless searches of vehicles with probable cause to believe they contain contraband or evidence. The exception reflects vehicles' mobility and reduced privacy expectations.

111. D — Routine border searches at U.S. borders or functional equivalents (international airports) require no individualized suspicion. The government's interest in protecting borders permits suspicionless searches of incoming persons and luggage.

112. A — Under *New Jersey v. T.L.O.*, school searches by school officials require only reasonable suspicion that the search will yield evidence of violation of school rules or law. The diminished Fourth Amendment standards reflect the educational setting.

113. C — Under *Baldwin v. New York*, the Sixth Amendment jury trial right applies to all non-petty offenses, with petty offenses defined as those punishable by no more than six months' imprisonment. An offense with a one-year maximum is non-petty and triggers jury rights.

114. B — *Barker v. Wingo* established the four-factor balancing test for speedy trial violations: length of delay, reason for delay, defendant's assertion of the right, and prejudice to the defendant. No single factor is dispositive.

115. D — *Apprendi v. New Jersey* held that any fact (other than the fact of prior conviction) that increases the penalty beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Judicial fact-finding cannot increase the prescribed range.

116. D — FRE 104(b) governs conditional relevance: when the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court admits the evidence subject to the conditional proof.

117. B — When character is itself an essential element of a claim or defense in a civil case, character evidence is admissible to prove that element. In defamation actions where truth is at issue, the plaintiff's character may be directly relevant.

118. C — "Reverse 404(b)" permits a criminal defendant to introduce evidence of another person's other acts to suggest that the other person, not the defendant, committed the charged crime. The same non-propensity purposes (identity, modus operandi) authorize this use.

119. A — FRE 405(a) permits cross-examination of a character witness about relevant specific instances of conduct, to test the witness's knowledge of the subject and the basis of the reputation testimony. Specific instances are not admissible on direct examination.

120. D — FRE 412 (the rape shield rule) generally excludes evidence of a victim's prior sexual behavior, with narrow exceptions for prior sexual conduct with the accused, evidence of source of injury or semen, and constitutional requirements. Consent is not a general gateway to such evidence.

121. C — FRE 413, 414, and 415 permit evidence of prior similar offenses in sexual assault, child molestation, and civil sex misconduct cases for any matter to which it is relevant, including propensity. These rules carve out an exception to FRE 404's general bar.

122. A — FRE 601 presumes every person competent to testify, including children, with the court conducting voir dire to assess the child's understanding of the duty to tell the truth and ability to perceive and relate events. Age alone does not disqualify.

123. B — FRE 602 requires a witness to have personal knowledge of the matter testified to. Statements based on what others said are not personal knowledge and are inadmissible (and may also be hearsay).

124. C — FRE 612 permits the opposing party to inspect a writing used to refresh recollection, cross-examine the witness about it, and introduce relevant portions into evidence. The proponent does not introduce the refreshing document into evidence.

125. D — Under FRE 613, prior inconsistent statements may be used for impeachment regardless of whether they were under oath. Under FRE 801(d)(1)(A), they are substantively admissible only if made under oath at a prior proceeding (including depositions).

126. A — The collateral matters rule bars extrinsic evidence to contradict a witness on a matter collateral to the merits of the case. Counsel is "stuck with the answer" on cross-examination of collateral matters.

127. B — FRE 610 prohibits using a witness's religious beliefs or opinions to attack or support the witness's credibility. Religious beliefs are not a permissible basis for impeachment.

128. D — Under FRE 608(a), evidence of a witness's truthful character is admissible to rehabilitate only after the witness's character for truthfulness has been attacked. The rehabilitation must be limited to truthfulness.

129. C — FRE 703 permits experts to base opinions on facts of a type reasonably relied upon by experts in the field, even if those facts are not admissible in evidence. The underlying inadmissible facts may be disclosed to the jury only if their probative value substantially outweighs their prejudicial effect.

130. B — Hypothetical questions are a traditional method of eliciting expert opinions, asking the expert to assume specified facts in evidence and offer an opinion. The trier of fact ultimately decides whether the assumed facts are true.

131. A — FRE 706 permits courts to appoint their own expert witnesses, sua sponte or on motion. The court's expert may be examined by all parties, and the parties may disclose the appointment to the jury.

132. D — Under FRE 801(d)(1)(A), a witness's prior statement is admissible as substantive evidence (non-hearsay) if the declarant testifies and is subject to cross-examination, the statement is inconsistent with the trial testimony, and was given under oath at a prior proceeding (including depositions).

133. B — FRE 801(d)(2)(E) makes statements by a coconspirator during and in furtherance of the conspiracy non-hearsay party admissions against all coconspirators. The doctrine reflects vicarious liability for conspiratorial statements.

134. A — FRE 803(8)(A)(ii) explicitly excludes police observations of matters when offered against criminal defendants. The exclusion respects the Confrontation Clause and the adversarial nature of criminal prosecutions.

135. C — FRE 803(18) admits statements from authoritative learned treatises when called to an expert's attention on cross-examination or relied on by the expert on direct. The treatise may be read into evidence but is not received as an exhibit, to prevent jurors from misusing the publication.

136. D — FRE 804(a) defines unavailability broadly to include claims of privilege, persistent refusal to testify, inability to recall, death or illness, and absence beyond process. Physical absence is not required.

137. B — FRE 804(b)(6) forfeiture by wrongdoing treats a party as having forfeited objections to hearsay (and the Confrontation Clause) when the party engaged in or acquiesced in wrongdoing intended to procure the declarant's unavailability. Witness tampering forfeits the right of confrontation.

138. C — FRE 807 residual exception permits admission of hearsay not falling within enumerated exceptions when the statement has equivalent guarantees of trustworthiness, is offered as evidence of a

material fact, is more probative than other obtainable evidence, and serves the general purposes of the rules.

139. A — FRE 805 hearsay within hearsay requires that each layer of hearsay independently satisfy a hearsay exception or constitute non-hearsay. Otherwise, the layered statement is inadmissible.

140. D — Federal courts recognize a clergy-penitent privilege protecting confidential communications made to clergy in their spiritual role. The privilege fosters religious counseling and is widely accepted in state and federal law.

141. B — Under *Upjohn Co. v. United States*, attorney-client privilege protects communications between corporate employees and counsel made for purposes of legal advice, even when the employees are not in the "control group." The privilege reflects the realities of corporate legal advice.

142. C — The Fifth Amendment privilege against self-incrimination applies in any proceeding (criminal, civil, administrative, congressional) where compelled testimony could be used in a subsequent criminal prosecution. The privilege protects against compelled self-incrimination across all proceedings.

143. D — FRE 614 permits the court to call witnesses on its own initiative and to examine witnesses called by the parties. The parties retain the right to cross-examine any witness, including those called by the court.

144. A — Most modern jurisdictions have abolished the strict fee tail by statute, converting "to A and the heirs of his body" to either fee simple absolute or a fee simple subject to executory limitation. Direct linear succession through the heirs of the body is no longer recognized.

145. B — The combination of "but if" and an express right to re-enter creates a fee simple subject to a condition subsequent, with the grantor holding a power of termination (right of entry). The estate does not end automatically; the grantor must elect to re-enter.

146. D — The rule of convenience closes class gifts when any member becomes entitled to demand distribution or possession. After-born members are excluded if their inclusion would defeat the rule's purpose of providing certainty to existing class members.

147. A — Tenancy in common is the default form of concurrent ownership when the deed does not specify and the language does not clearly create joint tenancy with right of survivorship. Joint tenancy requires explicit intent and the four unities.

148. C — In a title-theory jurisdiction, granting a mortgage transfers title to the mortgagee, destroying one of the four unities required for joint tenancy. The joint tenancy is thereby severed; in a lien-theory state, mortgage does not effect severance.

149. D — Ouster occurs when one cotenant excludes another from possession by force or claim of exclusive title. The excluded cotenant may recover proportionate rent for the period of exclusion and seek other equitable remedies.

150. B — Permissive waste is the failure of a life tenant to maintain the property as required by ordinary care and legal obligation. It contrasts with voluntary waste (active destruction) and ameliorative waste (changes that may increase value).

151. C — A transfer of less than the entire remaining lease term is a sublease, with the original tenant retaining a reversionary interest. An assignment transfers the entire remaining term and ends the original tenant's reversion.

152. A — The implied covenant of quiet enjoyment, present in every lease, protects the tenant against landlord interference with peaceful possession and use of the premises. Repeated unauthorized entries by the landlord breach this covenant.

153. B — Acceptance of rent from a holdover tenant typically creates a periodic tenancy on terms based on the original lease — generally month-to-month if rent is paid monthly. The acceptance manifests assent to continued occupancy on those terms.

154. D — Self-help eviction is generally unlawful in modern jurisdictions, even when the tenant has not paid rent. Landlords must use formal judicial eviction processes; violations can give rise to wrongful eviction claims and damages.

155. C — The doctrine of estoppel by deed (after-acquired title doctrine) treats the grantor's subsequent acquisition of title as automatically inuring to the benefit of the original grantee. The grantor is estopped from denying the validity of the prior conveyance.

156. A — A deed without proper acknowledgment may still be valid between the parties to the conveyance, but recording without proper acknowledgment may not provide constructive notice to subsequent purchasers. Recording requirements protect third-party reliance on the record.

157. D — Reformation is an equitable remedy permitting a court to correct a written instrument to reflect the actual agreement of the parties when a mutual mistake produced the incorrect description. The deed may be reformed to convey Lot 1.

158. B — An easement's scope is limited to that contemplated at the time of creation, with reasonable evolution for changes in use. Use that overburdens the servient estate beyond contemplated bounds may be enjoined or limited.

159. C — A license is generally revocable at the licensor's will, regardless of duration of use. Estoppel may sometimes prevent revocation if the licensee has made substantial investments in reliance on the license, converting it to an irrevocable license.

160. A — A profit a prendre is a non-possessory interest in another's land allowing the holder to enter and take resources — minerals, timber, game, or other valuable substances. It is distinguished from an easement, which permits use without resource extraction.

161. D — Vertical privity for the burden of a real covenant requires that the successor hold the same or equivalent estate as the original covenantor, typically through deed conveyance or inheritance. Less than full successor interests may not satisfy vertical privity for the burden.

162. B — The implied reciprocal servitude doctrine binds all lots in a subdivision sold under a common scheme of restrictions, even when a particular deed omits the restriction. The developer's common scheme creates mutual restrictions enforceable by all owners.

163. A — Affirmative covenants requiring positive action (such as maintenance) are enforceable if they touch and concern the land, satisfy the privity requirements of running covenants, and are reasonable. Modern law treats affirmative and negative covenants under similar standards.

164. C — Recorded CC&Rs provide constructive notice to subsequent purchasers, binding them to the restrictions regardless of actual knowledge. The duty to investigate the record is fundamental to the recording system.

165. D — The Fifth Amendment Takings Clause requires that government takings of private property be for public use and accompanied by just compensation. Highway construction is a paradigmatic public use, and just compensation must be paid.

166. B — Penn Central Transportation Co. v. New York City established the multi-factor balancing test for non-categorical regulatory takings: economic impact, interference with investment-backed expectations, and character of the government action. Landmark designations are evaluated under this framework.

167. C — Variances require a showing of undue hardship, hardship unique to the property (not personal to the owner), and that the variance is not contrary to the public interest or the zoning plan. Routine convenience does not qualify.

168. A — Pre-existing nonconforming uses are typically grandfathered as lawful continuations under modern zoning law. However, restrictions on expansion, intensification, change in use, or transfer often apply, and abandonment may terminate the protection.

169. D — Under Nollan, Dolan, and Koontz, exactions imposed as conditions on land use approvals must have an essential nexus to a legitimate state interest and rough proportionality to the impacts of the proposed development. Subdivision dedication requirements are evaluated by this standard.

170. B — The changed conditions doctrine permits courts to decline equitable enforcement of restrictive covenants when changes in the area have so fundamentally altered the surrounding circumstances that the original purpose of the covenants is defeated. Damages may still be available where injunctive enforcement is denied.

171. C — A "wild deed" is one outside the chain of title — a recorded deed from a grantor whose own title is not of record at the time of search. A wild deed does not give constructive notice to subsequent purchasers searching the title index.

172. A — Under a pure race statute, the first to record a deed prevails over a prior unrecorded grantee, regardless of notice. The race statute prioritizes the recording system over the protection of innocent purchasers.

173. C — Transferred intent doctrine transfers the intent to commit a tort against the intended victim to the actual victim. The doctrine applies among the five "trespassory" torts (battery, assault, false imprisonment, trespass to land, trespass to chattels).

174. A — Under *Garratt v. Dailey*, intent for battery includes acting with substantial certainty that the harmful or offensive contact will occur. A child who knows with substantial certainty that pulling a chair will cause a fall has the required intent.

175. D — Public necessity — actions taken to avert imminent public disaster or save lives — is a complete defense to trespass and other intentional torts. No compensation is owed when the action is necessary to protect the public.

176. B — Private necessity is an incomplete privilege: it excuses the trespass but requires compensation for actual damages caused. *Vincent v. Lake Erie Transportation Co.* is the leading authority for this incomplete privilege.

177. C — The privilege of recapture of chattels permits the use of reasonable force to recover wrongfully taken property if pursuit is fresh and the original taking was wrongful. The privilege is limited to immediate recovery, not delayed action.

178. D — The shopkeeper's privilege provides a complete defense to false imprisonment and battery claims when the shopkeeper reasonably suspects shoplifting, detains the suspect in a reasonable manner and time, and uses no more force than necessary. All three elements are satisfied here.

179. C — Children are generally held to the standard of a reasonable child of similar age, intelligence, and experience. When children engage in adult activities (such as driving motor vehicles), they are held to the adult reasonable person standard. Bicycle riding is generally treated as a child's activity.

180. B — The professional standard of care in medical malpractice is that of similarly situated physicians of the same specialty practicing under similar circumstances. The standard is typically established through expert testimony.

181. A — Under *The T.J. Hooper* (Judge Learned Hand), customary industry practice is evidence of the standard of care but is not conclusive. An entire industry may negligently lag in adopting available safety measures, and compliance with custom does not necessarily satisfy due care.

182. D — Under Judge Learned Hand's formula in *United States v. Carroll Towing Co.* ($B < PL$), breach exists when the burden of taking precautions is less than the probability of harm times the magnitude of the loss. The formula provides an economic framework for negligence analysis.

183. B — Under *Summers v. Tice*, alternative liability shifts the burden of causation to the defendants when multiple actors negligently created the same risk and the plaintiff cannot prove which one caused the harm. Each defendant must disprove causation or face joint liability.

184. C — Market share liability under *Sindell v. Abbott Laboratories* allocates damages among multiple manufacturers of an identical or fungible product based on their respective market shares at the time of injury, when the specific causative product cannot be identified.

185. A — The loss of chance doctrine, adopted in many jurisdictions, permits recovery in medical malpractice when a physician's negligence reduces the patient's probability of a favorable outcome, even when survival was not more probable than not. Damages are calculated proportionally to the lost chance.

186. B — *Dillon v. Legg* established the bystander rule for NIED: close family relationship, presence at the scene of the injury, and contemporaneous awareness of the harm. Witnessing a child's injury without physical danger to oneself qualifies under this standard.

187. D — Survival statutes preserve the decedent's claims for pre-death damages (pain, suffering, lost earnings), which are recovered by the estate. Wrongful death statutes permit surviving family members to recover for their own losses (lost support, companionship, consortium).

188. C — Loss of consortium is a recognized derivative claim by the spouse of an injured person, encompassing the loss of services, society, companionship, affection, and conjugal relations. Many jurisdictions extend the action to parent-child relationships as well.

189. B — Business invitees are owed a duty of reasonable care, including the duty to inspect for hidden dangers and warn of or repair them. A store with knowledge of a spill that fails to clean it or warn customers breaches this duty.

190. A — Licensees (social guests and persons on the land for their own purposes with permission) are owed a duty to warn of known dangerous conditions but no duty to inspect for unknown ones. The host's actual knowledge of the wet floor triggers a warning duty.

191. D — At common law, landowners owe undiscovered trespassers only the duty to refrain from willful or wanton injury. Limited exceptions apply for known or frequent trespassers, child trespassers (attractive nuisance), and discovered trespassers in peril.

192. C — The firefighter's rule (followed in many jurisdictions) bars public safety officers from recovering against those whose negligence caused the emergency requiring their response. The rule reflects assumption of risk by professional rescuers compensated for the risks.

193. A — Domestic dogs are considered common usage, so strict liability does not apply absent the owner's knowledge of a specific dangerous propensity (the "one bite rule" or "scienter rule"). The plaintiff must proceed under negligence in the absence of known propensity.

194. B — Manufacturing defects (deviations from the intended design) generate strict liability against commercial sellers under Restatement (Second) of Torts § 402A. The specific unit's failure to conform to design specifications is the hallmark of a manufacturing defect.

195. D — The state-of-the-art defense permits a manufacturer to argue that the product met the safety standards available at the time of design and manufacture. In most jurisdictions, design defects are evaluated by knowledge and technology reasonably available at manufacture, not by subsequent advances.

196. C — Libel per se categories — accusations of crime, loathsome disease, unchastity, or professional incompetence — permit presumed damages without specific proof of harm. The accusation of a serious crime falls within this category.

197. A — Absolute privilege protects statements made in the course of judicial proceedings, regardless of malice or motive. Witnesses, attorneys, judges, and parties enjoy absolute immunity for relevant statements made in connection with judicial proceedings.

198. C — Public disclosure of private facts is an invasion of privacy tort requiring publication of private information, not of legitimate public concern, in a manner highly offensive to a reasonable person. Truth is not a defense to this privacy tort, distinguishing it from defamation.

199. B — Misrepresentation may be brought as a tort claim (fraud or negligent misrepresentation) without contractual privity. The elements include a false statement of material fact, scienter (in fraud), justifiable reliance, and damages.

200. D — Tortious interference with contract requires intentional and improper interference with an existing contractual relationship that causes breach and resulting damages. The doctrine recognizes that contracts have value beyond the parties' direct relationship.