

PRACTICE EXAM 13: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

1. A California Bar essay covering Wills and Trusts in a single fact pattern requires:
 - A. Analysis under only the will doctrine since wills control over trusts in California
 - B. Separate analysis under each body of law as the facts implicate them
 - C. Application of only the trust doctrine since trusts are the broader topic
 - D. Refusal to address either subject without further clarification from the examiners

2. When a California essay involves a question of the rule against perpetuities, the examinee should analyze:
 - A. Whether the interest must vest, if at all, within twenty-one years after a life in being
 - B. Whether the grantor expressly stated a particular vesting deadline in the conveyance instrument
 - C. Whether the property was conveyed by a duly recorded deed in California state records
 - D. Whether the parties to the original conveyance were related by family or marital ties closely

3. A California essay involving the doctrine of accord and satisfaction requires analysis of:
 - A. Whether the parties were licensed in the field of the underlying contract at the time
 - B. Whether the contract was reviewed by an attorney before being signed by the parties
 - C. Whether the contract included a force majeure clause for unexpected events of any kind
 - D. The disputed claim, the accord agreement, and the satisfaction that discharges the original

4. When a California essay involves a question of the privilege against self-incrimination, the examinee should determine:

- A. Whether the witness has a criminal record of prior convictions in the state of California
- B. Whether the witness has retained admitted counsel for the proceeding at issue in the case
- C. Whether the testimony could subject the witness to criminal liability
- D. Whether the witness has been previously deposed in any prior civil action filed in court

5. A California essay involving the duty of loyalty owed by a corporate director requires analysis of:

- A. Whether the director has held the position for at least three years of corporate service
- B. The director's avoidance of self-dealing and conflicts of interest with the corporation
- C. Whether the director has been previously sued in any prior shareholder derivative actions
- D. Whether the director has filed all required California state tax returns timely each year

6. When a California essay involves a question of the statute of limitations for breach of a written contract, the examinee should apply:

- A. The four-year limitations period under California Code of Civil Procedure §337
- B. The three-year limitations period applied to all written contracts in California uniformly
- C. The two-year limitations period applied to all written contracts in California uniformly
- D. The federal limitations period for written contract actions filed in federal court generally

7. A California essay involving the doctrine of equitable lien requires:

- A. Conclusion that all liens are automatically equitable in nature without further analysis at all
- B. Application of only federal lien law to the California analysis of equitable liens generally
- C. Conclusion that no equitable liens may be imposed without express statutory authorization

D. Analysis of whether unjust enrichment justifies the imposition of a lien on identified property

8. When a California essay involves a question of relevance under the Evidence Code, the examinee should analyze:

- A. Whether the evidence has been previously offered in any related prior proceedings of record
- B. Whether the evidence has any tendency to make a fact of consequence more or less probable
- C. Whether the evidence was discovered before the close of formal discovery in the action
- D. Whether the evidence was prepared by an expert qualified to testify in the matter at trial

9. A California essay involving the requirements of a valid offer in Contracts requires analysis of:

- A. Whether the communication manifested a present intent to be bound with definite terms
- B. Whether the offer was reduced to writing within forty-eight hours of communication to offeree
- C. Whether the offeror was licensed to engage in the subject matter of the contract at issue
- D. Whether the offer was witnessed by at least one independent third party present at signing

10. When a California essay involves a question of community property and a separately titled bank account, the examinee should analyze:

- A. Whether the account holder has paid all California income taxes for the year at issue
- B. Whether the account holder has reported the account to the IRS as required by federal law
- C. Whether the funds in the account can be traced to community or separate sources
- D. Whether the account holder has retained the same financial institution throughout marriage

11. A California essay involving the doctrine of qualified privilege in defamation requires analysis of:

- A. Whether the publisher has paid any defamation judgments in prior similar actions filed timely
- B. Whether the statement was made on an occasion of qualified privilege and within the scope

- C. Whether the publisher has retained counsel admitted in defamation matters in California
- D. Whether the publisher has been previously sued for defamation in any prior actions filed

12. When a California essay involves a question of the doctrine of negligent entrustment, the examinee should analyze:

- A. Whether the entrustor has been previously sued for negligent entrustment in prior cases filed
- B. Whether the entrustor has paid any tort judgments in prior similar entrustment actions filed
- C. Whether the entrustor knew or should have known the trustee was incompetent or unfit
- D. Whether the entrustor was registered as an agent of any state or licensed entity in California

13. A California essay involving the requirements of a valid contract under the UCC requires analysis of:

- A. Whether the parties signed the contract in front of a duly licensed California notary public
- B. Whether the contract was reviewed by an attorney before being signed by all of the parties
- C. Whether the parties were both merchants in the same line of business activity historically
- D. Goods, identified parties, sufficient writing for goods over \$500, and objective indication of agreement

14. When a California essay involves a question of the doctrine of frustration of purpose, the examinee should analyze:

- A. Whether the principal purpose of the contract was substantially frustrated by an unforeseen event
- B. Whether the contract was reduced to writing before performance commenced by either party originally
- C. Whether the parties had retained counsel during the contractual negotiations originally signed
- D. Whether the parties had previously transacted business together in similar prior contracts

15. A California essay involving a question of the elements of false imprisonment requires analysis of:

- A. Intentional confinement of the plaintiff within bounded area and the plaintiff's awareness or harm

- B. Whether the plaintiff has filed any prior false imprisonment actions against similar defendants
- C. Whether the confinement occurred at a public location during business hours of the day in question
- D. Whether the defendant has been previously cited for similar misconduct in the past on record

16. When a California essay involves a question of due process in administrative proceedings, the examinee should analyze:

- A. Whether the proceeding was conducted in compliance with all state agency regulations applicable
- B. Whether the agency has retained licensed counsel for the proceeding throughout it in California
- C. Whether notice and an opportunity to be heard were provided before the deprivation
- D. Whether the proceeding was conducted within thirty days of the underlying triggering event

17. A California essay involving the doctrine of part performance in real estate contracts requires analysis of:

- A. Whether the buyer has paid the full purchase price for the property in cash at closing
- B. Whether the contract was prepared by a California licensed real estate attorney at signing
- C. Whether the seller has executed and delivered a recorded deed to the buyer at any time
- D. Whether the buyer's conduct unequivocally refers to the alleged oral contract for the land

18. When a California essay involves a question of the affirmative defense of consent in a battery claim, the examinee should analyze:

- A. Whether the consent was reduced to writing before the alleged contact occurred between them
- B. Whether the consent was effective and the contact was within the scope of consent
- C. Whether the consent was given in the presence of at least one independent witness present
- D. Whether the parties had previously engaged in similar conduct in prior consensual interactions

19. A California essay involving the doctrine of acceleration of mortgage debt requires analysis of:

- A. Whether the lender has been previously involved in any prior similar foreclosure actions filed
- B. Whether the mortgage contains an acceleration clause and the default triggered acceleration
- C. Whether the lender has retained licensed counsel admitted in California for the action filed
- D. Whether the lender holds a current California-issued license to engage in lending business

20. When a California essay involves a question of the doctrine of inevitable discovery, the examinee should analyze:

- A. Whether the defendant has prior convictions for any felonies of moral turpitude on record currently
- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial
- C. Whether the prosecution would have inevitably discovered the evidence through lawful means
- D. Whether the prosecution has filed all required discovery within the period set by the court

21. A California essay involving the doctrine of contribution among joint tortfeasors requires analysis of:

- A. Whether the contributing party has paid any tort judgments in any prior similar actions filed
- B. Whether the contributing party has retained licensed California tort defense counsel for action
- C. Whether the parties were named in the same original complaint at the start of the action
- D. The respective fault of each tortfeasor and the right of one to recover from others

22. When a California essay involves a question of a corporation's authority to indemnify directors and officers, the examinee should analyze:

- A. The statutory and bylaw provisions on indemnification plus standards for mandatory and permissive coverage
- B. Whether the corporation has paid any prior indemnification claims in similar matters arising in court
- C. Whether the directors have held their positions for at least three years of corporate service
- D. Whether the corporation has filed all annual reports with the Secretary of State on time each year

23. A California essay involving the requirements of a valid trust requires analysis of:

- A. Whether the trust was registered with the California Probate Court at the time of creation
- B. Whether the settlor was at least twenty-one years of age at the time of trust creation
- C. A settlor with capacity, trust property, identifiable beneficiaries, intent, and a proper purpose
- D. Whether the trustee has been bonded by a California-licensed surety company for the trust

24. When a California essay involves a question of the doctrine of substantial performance in Contracts, the examinee should analyze:

- A. Whether the parties signed the contract in front of a California licensed notary public at signing
- B. Whether the performance was substantially complete and the breach not material
- C. Whether the contract was reviewed by an attorney before the parties signed it timely in writing
- D. Whether the parties had transacted business together in any prior similar contracts of record

25. A California essay involving a question of the corporate opportunity doctrine requires analysis of:

- A. Whether the corporation has paid the director's full compensation amount for the year at issue
- B. Whether the corporation has filed all required California state tax returns timely each year operating
- C. Whether the director has held the position for at least three years of active corporate service
- D. Whether the opportunity was related to the corporation's business and offered to the director in capacity

26. When a California essay involves a question of the implied covenant of good faith and fair dealing, the examinee should analyze:

- A. Whether one party's conduct frustrated the other's right to receive the benefits of the contract
- B. Whether the parties had signed a written contract that expressly excluded the implied covenant
- C. Whether the parties had transacted business together in prior similar contractual relationships
- D. Whether the parties had retained legal counsel during the contractual negotiations originally

27. A California essay involving the doctrine of necessities in Contracts requires analysis of:

- A. Whether the supplier of necessities has been previously sued in any prior similar actions
- B. Whether the minor or incapacitated party received goods or services reasonably required
- C. Whether the supplier has retained licensed California counsel for the action at issue currently
- D. Whether the supplier holds a current California-issued license for the goods or services provided

28. When a California essay involves a question of an attorney's duty to a prospective client, the examinee should analyze:

- A. Whether the prospective client has signed a written retainer agreement with the attorney first
- B. Whether the attorney has held a California license for at least five years of active practice
- C. Whether the prospective client has paid any consultation fees to the attorney in advance
- D. The duties of confidentiality and conflict avoidance owed to the prospective client

29. A California essay involving the doctrine of charitable immunity requires analysis of:

- A. Whether California recognizes charitable immunity, which has been largely abolished by statute
- B. Whether the charitable organization is registered with the California Attorney General's office
- C. Whether the charitable organization has filed all required California state tax returns timely
- D. Whether the charitable organization has retained counsel licensed in California currently practicing

30. When a California essay involves a question of the doctrine of equitable estoppel against a government entity, the examinee should analyze:

- A. Whether the government entity has been previously estopped in any prior similar matters filed
- B. Whether the government entity has paid any prior judgments in equitable estoppel cases on record
- C. The traditional elements of estoppel plus the additional requirement of avoiding manifest injustice
- D. Whether the government entity has retained counsel admitted in California for the matter

31. A California essay involving the doctrine of unconscionability under the UCC requires analysis of:
- A. Whether the contract was signed in front of a California licensed notary public at the signing
 - B. Both procedural unconscionability and substantive unconscionability under the sliding scale
 - C. Whether the contract was reviewed by counsel before the parties signed the agreement at issue
 - D. Whether the parties had transacted business together in any prior similar contracts before now
32. When a California essay involves a question of the doctrine of contributory negligence in California, the examinee should:
- A. Apply the contributory negligence rule as a complete bar to all recovery in California
 - B. Decline to address the issue because contributory negligence is not tested on essays in California
 - C. Apply California's pure comparative fault rule that has replaced contributory negligence
 - D. Conclude that contributory negligence applies only to certain product liability claims in California
33. A California essay involving the requirements of a valid assignment of contract rights requires analysis of:
- A. Whether the assignor manifested intent to transfer rights, the rights are assignable, and notice was given
 - B. Whether the assignor has paid any prior assignment-related fees to the obligor in advance of action
 - C. Whether the assignment was reduced to writing within thirty days of the contract formation generally
 - D. Whether the assignor was licensed in the field of the underlying contract at the time of assignment
34. When a California essay involves a question of the doctrine of judicial review of administrative action, the examinee should analyze:
- A. Whether the petitioner has paid all administrative filing fees in the prior agency proceeding
 - B. Whether the petitioner has retained admitted counsel for the judicial review petition timely filed
 - C. Whether the petitioner has filed parallel actions in any other administrative forums concurrently

D. The applicable standard of review and whether the agency action satisfies that standard

35. A California essay involving the doctrine of equitable redemption in mortgage law requires analysis of:

- A. Whether the mortgagor has paid all property taxes on the disputed property timely each year
- B. Whether the mortgagor may redeem the property by paying the full debt before foreclosure
- C. Whether the mortgagor has retained counsel licensed in real estate matters in California currently
- D. Whether the mortgagor has been previously involved in any prior similar foreclosure matters

36. When a California essay involves a question of the doctrine of estoppel by deed, the examinee should analyze:

- A. Whether the property has been recorded with the county recorder's office timely in California
- B. Whether the property has been recently surveyed by a licensed California land surveyor recently
- C. Whether the grantor purported to convey property they did not own but later acquired
- D. Whether the property has been subject to any prior recorded conveyances of record in writing

37. A California essay involving the doctrine of mutual assent in contract formation requires analysis of:

- A. Whether the parties objectively manifested agreement to the same essential terms of the contract
- B. Whether the parties signed the agreement in front of a California licensed notary public at signing
- C. Whether the parties had transacted business together in any prior similar contractual matters before
- D. Whether the parties had retained legal counsel during the contractual negotiations on the deal

38. When a California essay involves a question of the right to a jury trial in civil actions, the examinee should analyze:

- A. Whether the parties have paid all required filing fees in the underlying civil action timely filed

- B. Whether the cause of action is one at law (jury right) or in equity (no jury right)
- C. Whether the parties have retained licensed counsel admitted in California for the action filed
- D. Whether the parties have engaged in formal discovery before requesting a jury trial in writing

39. A California essay involving the doctrine of merger of estates in Real Property requires:

- A. Conclusion that all estates automatically merge whenever held by a single owner without exception
- B. Application of only federal property law to the merger of estates analysis in California courts
- C. Conclusion that estates never merge in California regardless of common ownership of estates ever
- D. Analysis of whether the lesser and greater estates are held by the same person and merged together

40. When a California essay involves a question of the duty to mitigate damages in Contracts, the examinee should analyze:

- A. Whether the nonbreaching party has paid any prior costs in the underlying transaction at issue
- B. Whether the nonbreaching party has retained licensed California contract counsel for the action
- C. Whether the nonbreaching party took reasonable steps to avoid or minimize the losses
- D. Whether the nonbreaching party has filed parallel actions in other jurisdictions of record concurrently

41. A California essay involving the doctrine of constructive eviction in landlord-tenant law requires analysis of:

- A. Whether the landlord's conduct substantially deprived the tenant of the use and enjoyment of the premises
- B. Whether the tenant has paid all rent owed under the lease through the date of vacating the premises
- C. Whether the tenant has retained counsel licensed in landlord-tenant matters within the state of California
- D. Whether the tenant has filed parallel actions in any other state forums against landlord in the past

42. When a California essay involves a question of the doctrine of res judicata, the examinee should analyze:

- A. Whether the prior action was filed in a California court of competent jurisdiction at start of suit
- B. Whether the parties have retained licensed counsel admitted in California for the action filed timely
- C. Whether the prior action was tried within thirty days of the original filing of the complaint of record
- D. Whether there is a final judgment on the merits, identity of parties, and identity of claims

43. A California essay involving the doctrine of fraudulent inducement requires analysis of:

- A. Whether the parties signed the contract in front of a California licensed notary public at signing
- B. Misrepresentation of a material fact, scienter, intent to induce reliance, reliance, and damages
- C. Whether the parties had transacted business together in any prior similar contracts before now
- D. Whether the parties had retained legal counsel during the contractual negotiations originally signed

44. When a California essay involves a question of the doctrine of the implied warranty of merchantability under the UCC, the examinee should analyze:

- A. Whether the seller has been previously sued for breach of warranty in any prior actions filed
- B. Whether the seller has retained licensed California product liability counsel for the action filed
- C. Whether the seller is a merchant and the goods are fit for their ordinary purposes
- D. Whether the seller holds a current California-issued license to sell the goods at issue here

45. A California essay involving the doctrine of marital property characterization upon death requires analysis of:

- A. Whether the property is community, quasi-community, or separate property under California law
- B. Whether the deceased spouse had filed a will at the time of death with the probate court of record
- C. Whether the surviving spouse has retained admitted probate counsel for the action filed timely

D. Whether the surviving spouse has filed all required California state tax returns for the year at issue

46. When a California essay involves a question of negligent infliction of emotional distress under the bystander rule, the examinee should apply:

- A. The federal common law standards on bystander emotional distress claims nationally accepted
- B. The Restatement of Torts standards on bystander emotional distress claims as authority generally
- C. The general intentional infliction of emotional distress standards applied to bystanders directly
- D. The Dillon v. Legg factors: close relationship, presence at scene, and contemporaneous awareness

47. A California essay involving the doctrine of equitable mootness requires analysis of:

- A. Whether the parties have paid all costs in the underlying action up to the present date in full
- B. Whether the relief sought can still be effectively granted given subsequent events that occurred
- C. Whether the parties have retained licensed California counsel admitted for the action at issue
- D. Whether the parties have filed parallel actions in any other state jurisdictions concurrently filed

48. When a California essay involves a question of the formation requirements for a partnership, the examinee should analyze:

- A. Whether an association of two or more persons exists to carry on business as co-owners for profit
- B. Whether the partnership has been registered with the California Secretary of State's office on time
- C. Whether the partnership has filed all required California state tax returns timely each year of operation
- D. Whether the partnership has retained licensed California counsel admitted for the formation of entity

49. A California essay involving the doctrine of attractive nuisance requires analysis of:

- A. Whether the landowner has been previously sued for attractive nuisance in any prior actions of record
- B. Whether the landowner has retained counsel licensed in premises liability matters in California

- C. Whether the landowner has filed all required California state tax returns for the year of injury
- D. Whether the dangerous condition was likely to attract children unable to appreciate the risk

50. When a California essay involves a question of the doctrine of equitable conversion at death of a contract seller, the examinee should analyze:

- A. Whether the contract was prepared by a licensed California real estate attorney at the signing
- B. Whether the property has been recorded with the county recorder's office within days of signing
- C. Whether the buyer holds equitable title and the seller's interest passes as personalty at death
- D. Whether the buyer has paid all property taxes on the disputed parcel timely each year of contract

PRACTICE EXAM 13: CALIFORNIA ESSAY EXAM SIMULATION – ANSWER KEY

1. B — A cross-over Wills and Trusts essay requires separate analysis under each body of law as the facts implicate them. Each has distinct doctrines, formalities, and remedies, and graders score the subjects under separate rubrics. Combining them into one analysis obscures the structure and forfeits points under both rubrics.

2. A — The Rule Against Perpetuities requires any contingent future interest to vest, if at all, within twenty-one years after a life in being at creation. California also has a statutory wait-and-see alternative under Probate Code §21205 that gives interests up to 90 years to actually vest. The vesting analysis is the core of any RAP question.

3. D — Accord and satisfaction requires a disputed claim, an accord agreement substituting a new performance, and satisfaction of that new performance. All three elements must be established before the original obligation is discharged. The doctrine permits parties to resolve genuine disputes through compromise.

4. C — The privilege against self-incrimination applies when testimony could subject the witness to criminal liability. The Fifth Amendment privilege protects against compelled testimony that could be used in a criminal prosecution, asking whether testimony would create a real risk of criminal liability.

5. B — The director's duty of loyalty requires avoidance of self-dealing and conflicts of interest with the corporation. Directors must not use their position to obtain personal benefits at the corporation's expense, and any conflicted transaction must satisfy procedural protections (disclosure, disinterested approval) or be fair to the corporation under California Corporations Code §310.

- 6. A** — California Code of Civil Procedure §337 provides a four-year limitations period for actions on a written contract. The four-year period contrasts with two years for oral contracts under CCP §339 and other shorter periods for specific actions. Identifying the contract as written triggers the four-year period.
- 7. D** — Equitable lien rests on unjust enrichment justifying the imposition of a lien on identified property. The remedy secures a debt against specific property when equity so requires, often arising from fraud, mistake, or breach of fiduciary duty resulting in the wrongful holder's enrichment. Identification of the property is essential.
- 8. B** — California Evidence Code §210 defines relevant evidence as having any tendency to make a fact of consequence more or less probable than without the evidence. The threshold is minimal — any tendency suffices — and relevance is the gateway requirement for admissibility, subject to §352 balancing.
- 9. A** — A valid offer requires a present intent to be bound communicated with definite terms. Under the objective theory, what matters is whether a reasonable person would understand the communication as inviting acceptance, with sufficient definiteness (parties, subject, price, time) to permit enforcement. Vague proposals are mere invitations to negotiate.
- 10. C** — Tracing controls characterization of commingled bank accounts. When community and separate funds are mixed, the party claiming separate character bears the burden of tracing specific funds to a separate source under recognized methods (exhaustion, direct tracing). Without successful tracing, the community property presumption controls.
- 11. B** — Qualified privilege in defamation requires the statement to be made on an occasion of privilege and within the privilege's scope. Recognized occasions include employer references, credit reports, and petitions to government; the privilege is lost if the statement exceeds the scope or is made with actual malice.
- 12. C** — Negligent entrustment requires the entrustor to have known or should have known that the trustee was incompetent, untrained, intoxicated, or otherwise unfit. The doctrine imposes liability for entrusting a dangerous instrumentality to a person whose unfitness foreseeably created the risk of harm.
- 13. D** — A UCC contract for goods requires identified parties, goods, sufficient writing for sales over \$500 under UCC §2-201, and an objective indication of agreement. UCC §2-204 permits formation through any manner showing the parties' agreement, including conduct, and gap-fillers supply missing terms such as price or delivery. Strict mirror-image acceptance is not required.
- 14. A** — Frustration of purpose excuses performance when the principal purpose of one party is substantially frustrated by an unforeseen event without that party's fault. The doctrine differs from impossibility — performance remains possible — but the value to the frustrated party has been destroyed by changed circumstances the contract did not allocate.
- 15. A** — False imprisonment requires intentional confinement of the plaintiff within a bounded area plus the plaintiff's awareness of the confinement or actual harm from it. The tort protects freedom of movement against intentional restraint without legal justification.

16. C — Administrative due process requires notice and an opportunity to be heard before the deprivation. The constitutional minimum is procedural fairness — meaningful notice of the proposed action and a chance to respond — with additional safeguards required under the *Mathews v. Eldridge* balancing test depending on the interests at stake.

17. D — Part performance takes an oral real estate contract out of the Statute of Frauds when the buyer's conduct is unequivocally referable to the alleged contract. The doctrine requires conduct (payment plus possession, or possession plus improvements) that can only be explained by reference to a contract for the sale of the land.

18. B — Consent to battery is effective only if voluntarily and competently given and the contact stays within the scope of what was consented to. Consent obtained by fraud, duress, or to an illegal act may be invalid, and contact exceeding the consented-to scope is actionable battery.

19. B — Mortgage acceleration requires both an acceleration clause in the mortgage and a default triggering the clause's operation. Without an acceleration clause, the lender can only sue for missed installments as they come due; with the clause and a triggering default, the entire balance becomes immediately due.

20. C — The inevitable discovery exception to the exclusionary rule requires the prosecution to show by a preponderance that the evidence would have been discovered through lawful means. *Nix v. Williams* established the doctrine, permitting admission when independent lawful investigation would have inevitably uncovered the evidence.

21. D — Contribution permits a joint tortfeasor who has paid more than their proportionate share to recover from other tortfeasors based on respective fault. California Code of Civil Procedure §875 et seq. provides the statutory framework, with apportionment based on each tortfeasor's percentage of comparative fault.

22. A — Corporate indemnification analysis applies the statutory and bylaw provisions plus the standards for mandatory and permissive indemnification. California Corporations Code §317 provides mandatory indemnification for successful defense and permissive indemnification subject to good-faith and other standards. Bylaws may expand or limit indemnification within statutory limits.

23. C — A valid trust requires a settlor with capacity, identifiable trust property, identifiable beneficiaries, the settlor's intent to create a trust, and a proper purpose. California Probate Code §15201 et seq. codifies these requirements. Each element must be satisfied for trust validity.

24. B — Substantial performance permits recovery on the contract when the performance is substantially complete and any breach is not material. The substantially performing party recovers the contract price minus damages caused by the minor breach. Material breach defeats the doctrine.

25. D — The corporate opportunity doctrine prohibits a director from taking for themselves an opportunity that was related to the corporation's business and offered to the director in their corporate capacity. The doctrine asks both whether the opportunity belongs to the corporation by line of business and the capacity in which the director received it.

26. A — The implied covenant of good faith and fair dealing prohibits conduct that frustrates the other party's right to receive the benefits of the contract. Every California contract carries this covenant, providing a basis for liability when conduct technically complies with terms but defeats the contract's purpose.

27. B — The necessities doctrine imposes quasi-contractual liability on minors and incapacitated persons for the reasonable value of necessities received. Necessaries include food, shelter, clothing, and medical care reasonably required for the person's station in life; recovery is on the reasonable value, not the contract price.

28. D — Duties to prospective clients include confidentiality and conflict avoidance. ABA Model Rule 1.18 and California Rule 1.18 require lawyers to maintain confidentiality of information shared by prospective clients and to avoid representations adverse to the prospective client on substantially related matters, even if no engagement ensues.

29. A — California has largely abolished charitable immunity by statute and case law. Modern California law holds charitable organizations liable for their torts on the same basis as other organizations, with limited exceptions such as good Samaritan statutes covering specific conduct.

30. C — Equitable estoppel against a government entity requires the traditional estoppel elements plus the additional showing that applying estoppel is necessary to avoid manifest injustice. California courts apply estoppel against the government cautiously, requiring that the public interest not be undermined.

31. B — UCC unconscionability requires both procedural and substantive unconscionability under the sliding scale. Greater procedural unconscionability (oppression or surprise in formation) reduces the substantive showing required (overly harsh terms), and vice versa. Both elements must be present in some measure.

32. C — California applies pure comparative fault, having replaced contributory negligence in *Li v. Yellow Cab Co.* (1975). The plaintiff's recovery is reduced by the plaintiff's percentage of fault but never barred, regardless of how high the plaintiff's percentage of fault might be. Contributory negligence is not California law.

33. A — A valid assignment requires the assignor's manifested intent to immediately transfer rights, the rights to be assignable (not personal services, not prohibited by contract or law), and notice to the obligor to protect the assignee against payment to the assignor. Each element must be addressed.

34. D — Judicial review of administrative action requires identifying the applicable standard of review and assessing whether the agency action satisfies that standard. California courts apply independent judgment to fundamental rights, substantial evidence to legislative-type findings, and abuse of discretion to discretionary actions. The standard drives the analysis.

35. B — Equitable redemption permits the mortgagor (or junior lienholder) to redeem the property by paying the entire outstanding debt before the foreclosure sale is completed. The right is distinct from statutory redemption (which may extend beyond the sale in some jurisdictions) and is an essential safeguard against forfeiture.

36. C — Estoppel by deed prevents a grantor who purported to convey property they did not own from denying the conveyance when the grantor later acquires title. The after-acquired title passes automatically to the grantee by operation of estoppel, protecting the grantee's reliance on the conveyance.

37. A — Mutual assent under the objective theory requires the parties to have objectively manifested agreement to the same essential terms. What matters is what a reasonable person would understand from the parties' outward conduct and language, not subjective intent. The essential terms (parties, subject, price, time) must be agreed upon.

38. B — The right to a jury trial in civil actions turns on whether the cause of action is at law (jury right) or in equity (no jury right). The Seventh Amendment and California Constitution preserve the right for legal actions (damages) but not equitable actions (injunction, specific performance, rescission). The historical action-type analysis governs.

39. D — Merger of estates requires the lesser and greater estates to be held by the same person without intent to keep them separate. When merger occurs, the lesser estate is extinguished into the greater. Merger may be defeated by manifested intent to keep the estates separate or by prejudice to third parties.

40. C — The duty to mitigate requires the nonbreaching party to take reasonable steps to avoid or minimize the losses caused by the breach. Damages that could have been reasonably avoided through ordinary diligence are not recoverable. The standard requires reasonableness, not extraordinary efforts.

41. A — Constructive eviction requires the landlord's conduct (or breach of duty) to substantially deprive the tenant of the use and enjoyment of the premises. The doctrine excuses the tenant from paying rent and permits surrender, treating the situation as if the landlord had physically evicted the tenant.

42. D — Res judicata requires a final judgment on the merits, identity of parties (or privity), and identity of claims. California applies the primary rights theory for claim identity, asking whether the same primary right has been adjudicated; federal courts apply the transactional approach. Each element must be analyzed.

43. B — Fraudulent inducement requires misrepresentation of a material fact, scienter (knowledge of falsity), intent to induce reliance, justifiable reliance, and resulting damages. The five elements track common-law fraud and California Civil Code §§1709–1710. Each must be established.

44. C — The implied warranty of merchantability under UCC §2-314 requires the seller to be a merchant of goods of that kind and the goods to be fit for the ordinary purposes for which such goods are used. The warranty arises automatically in every sale by a qualifying merchant unless properly disclaimed.

45. A — Marital property characterization at death applies the community, quasi-community, or separate property classification under California law. Community property (acquired during marriage), quasi-community property (acquired elsewhere that would be community if acquired in California), and separate property (premarital, gift, inheritance) each have distinct rules for disposition at death.

46. D — Bystander NIED in California applies the *Dillon v. Legg* factors as tightened by *Thing v. La Chusa*: a close relationship between plaintiff and victim, presence at the scene at the time of injury, and

contemporaneous sensory awareness of the injury-producing event. Thing imposes strict satisfaction rather than balancing of factors.

47. B — Equitable mootness asks whether the relief sought can still be effectively granted given subsequent events. The doctrine applies when intervening events (such as completion of a transaction or distribution of estate assets) make it impossible or impracticable for the court to fashion effective relief, even though a live controversy technically remains.

48. A — Partnership formation requires an association of two or more persons to carry on a business as co-owners for profit. California Corporations Code §16101 (RUPA) uses this functional test; subjective intent to form a partnership is not required when the conduct fits the definition. Registration is not a formation requirement.

49. D — Attractive nuisance requires the dangerous condition to be likely to attract children who are unable to appreciate the risk. The Restatement (Second) of Torts §339 (followed in California) imposes liability on landowners when the landowner knows or should know children are likely to trespass, the condition poses an unreasonable risk, the children cannot appreciate the danger, and the burden of remediation is slight compared to the risk.

50. C — At the death of a contract seller, the buyer holds equitable title and the seller's interest passes as personalty. Under equitable conversion, once a binding contract for sale exists, the buyer is treated as the equitable owner of the land and the seller's interest is converted to personalty (the right to receive the purchase price), passing to the seller's personal representatives accordingly.