

PRACTICE EXAM 14 — MBE SIMULATION (200 QUESTIONS)

1. A homeowner hired a contractor to install a swimming pool in her backyard. While digging the foundation, the contractor's employee negligently struck a buried gas line, causing an explosion that injured a neighbor mowing her own lawn next door. The neighbor sues the homeowner for her injuries on a theory of vicarious liability. Will the neighbor likely prevail?

- A. Yes, because the homeowner hired the contractor to perform work on her property
- B. Yes, because excavation work is inherently dangerous and creates strict liability for the property owner
- C. No, because the contractor was an independent contractor and the work was not abnormally dangerous
- D. No, because the neighbor was not in privity with the homeowner regarding the contract

2. A buyer and seller signed a written contract for the sale of a parcel of commercial real estate for \$850,000, with closing scheduled in 60 days. Two weeks before closing, the seller learned that a competitor was willing to pay \$1.1 million for the same property and notified the buyer that he would not perform. The buyer brings suit for specific performance. The seller defends on the ground that monetary damages would be adequate. How should the court rule?

- A. For the buyer, because real estate is considered unique as a matter of law
- B. For the buyer, because the seller acted in bad faith by seeking a higher price
- C. For the seller, because the buyer can use the damages to purchase similar property
- D. For the seller, because specific performance is disfavored in commercial transactions

3. A landowner conveyed Blackacre "to my daughter for life, then to my son if he survives my daughter, but if my son does not survive my daughter, then to my niece." At the time of the conveyance, the landowner's daughter, son, and niece were all alive. What interest does the niece hold?

- A. A vested remainder subject to divestment

- B. A contingent remainder in fee simple
- C. An executory interest in fee simple
- D. An alternative contingent remainder in fee simple

4. A defendant was charged with armed robbery of a convenience store. At trial, the prosecution called the store clerk, who testified that he could not identify the robber because the robber wore a ski mask. The prosecution then sought to introduce testimony from a police officer that, two hours after the robbery, the clerk had selected the defendant's photograph from an array of six photographs. The defense objects on hearsay grounds. How should the court rule?

- A. Sustain the objection, because the clerk's prior identification is inadmissible hearsay
- B. Overrule the objection, because the prior identification is admissible as non-hearsay
- C. Sustain the objection, because the clerk's failure to identify at trial precludes admission
- D. Overrule the objection, because the identification falls within the excited utterance exception

5. A state legislature enacted a statute requiring all commercial trucks operating on state highways to use a specific type of mud flap manufactured only by in-state companies. Out-of-state truckers challenged the statute under the Commerce Clause, arguing that it impermissibly burdened interstate commerce. The state defended the statute on the ground that it promoted highway safety. What is the most likely outcome?

- A. The statute is valid because states have broad police power over highway safety
- B. The statute is valid because the burden on interstate commerce is incidental to a legitimate state interest
- C. The statute is invalid because it violates the Privileges and Immunities Clause
- D. The statute is invalid because it discriminates against out-of-state commerce on its face

6. A plaintiff filed a federal diversity action against a defendant for breach of contract in the U.S. District Court for the Northern District of Illinois. The defendant was served with process while attending a family wedding in Illinois, even though she resided in Indiana and had no other contacts with Illinois. The defendant moves to dismiss for lack of personal jurisdiction. How should the court rule?

- A. Deny the motion, because in-state personal service establishes personal jurisdiction
- B. Grant the motion, because attending a wedding does not constitute purposeful availment

- C. Grant the motion, because the defendant lacked minimum contacts with Illinois
- D. Deny the motion, because the contract dispute arose from the wedding event

7. A driver was operating his car negligently when he struck a pedestrian. The pedestrian suffered a broken leg. While being transported to the hospital, the ambulance was struck by another negligent driver, and the pedestrian suffered additional injuries to his spine. The pedestrian sues the original driver for both the broken leg and the spinal injuries. Can the original driver be held liable for the spinal injuries?

- A. No, because the ambulance accident was an intervening superseding cause
- B. No, because the original driver's negligence ended when the ambulance arrived
- C. Yes, because the ambulance accident was a foreseeable consequence of the original injury
- D. Yes, because the original driver is strictly liable for all subsequent injuries

8. A merchant offered in writing to sell 500 widgets to a buyer at \$10 per widget, with the offer stating it would remain open for 30 days. The offer was signed by the merchant. Fifteen days later, the merchant sent a letter to the buyer revoking the offer. The buyer received the revocation but, the next day, sent an acceptance. Has a contract been formed?

- A. No, because the merchant validly revoked the offer before acceptance
- B. Yes, because the firm offer was irrevocable for 30 days under the UCC
- C. No, because the buyer's acceptance was untimely under the mailbox rule
- D. Yes, because consideration is not required for merchant firm offers

9. A tenant rented an apartment from a landlord under a one-year written lease. Six months into the lease, the tenant noticed that the heating system was malfunctioning, causing the apartment to fall below 55 degrees Fahrenheit. The tenant gave the landlord written notice, but the landlord refused to make repairs. The tenant moved out and stopped paying rent. The landlord sues for the remaining rent. What is the tenant's best defense?

- A. Constructive eviction based on the breach of the implied warranty of habitability
- B. Failure of consideration because the landlord did not provide promised utilities
- C. Frustration of purpose because the apartment was uninhabitable in winter

D. Impossibility of performance because the heating system could not be repaired

10. A defendant entered a bank, pointed an unloaded gun at the teller, and demanded money. The teller, believing the gun was loaded, handed over \$5,000. The defendant fled but was apprehended. He is charged with armed robbery, which requires the use of a "dangerous weapon." What is the strongest argument the prosecution should make to support the charge?

- A. The defendant's intent to rob the bank satisfies the armed robbery elements
- B. An unloaded gun is per se a dangerous weapon under the statute
- C. The teller's belief that the gun was loaded is sufficient to establish the element
- D. The gun was capable of being used as a bludgeon and therefore qualifies

11. A plaintiff sued a defendant in federal court for trademark infringement, seeking \$200,000 in damages. The defendant filed an answer denying the allegations and asserting a counterclaim for tortious interference with business relations, seeking \$50,000. The plaintiff moves to dismiss the counterclaim for lack of subject matter jurisdiction. How should the court rule?

- A. Grant the motion, because the counterclaim does not meet the amount in controversy
- B. Deny the motion, because the counterclaim falls within supplemental jurisdiction
- C. Grant the motion, because state-law counterclaims must be brought in state court
- D. Deny the motion, because all counterclaims are within the court's original jurisdiction

12. A defendant was charged with possession of cocaine. At trial, the prosecution sought to introduce evidence that the defendant had been arrested three years earlier for possession of marijuana. The defendant's attorney objects. Under the Federal Rules of Evidence, how should the court rule?

- A. Admit the evidence to show the defendant's propensity to commit drug crimes
- B. Admit the evidence to show the defendant's knowledge of how to handle illegal drugs
- C. Exclude the evidence as improper character evidence under Rule 404(b)
- D. Admit the evidence under the excited utterance exception to the hearsay rule

13. A homeowner discovered that her neighbor's tree had branches extending over her property, causing leaves to fall in her yard. The homeowner asked the neighbor to trim the branches, but the neighbor refused. The homeowner trimmed the branches herself, but in doing so, she damaged the trunk of the tree, killing it. The neighbor sues the homeowner for the value of the tree. What is the most likely result?

- A. The homeowner is liable because she exceeded the scope of her right to abate the nuisance
- B. The homeowner is not liable because she had the right to remove all encroaching vegetation
- C. The homeowner is liable for the entire value of the tree as the proximate cause of its death
- D. The homeowner is not liable because the neighbor refused to remedy the encroachment

14. A state passed a law requiring all public school teachers to recite a prayer at the beginning of each school day. A teacher who refused to comply was terminated. The teacher sues, alleging a violation of his constitutional rights. What is the strongest constitutional basis for the teacher's claim?

- A. The Free Exercise Clause of the First Amendment
- B. The Free Speech Clause of the First Amendment
- C. The Establishment Clause of the First Amendment
- D. The Due Process Clause of the Fourteenth Amendment

15. A seller and buyer entered into a written contract for the sale of 1,000 gallons of heating oil at \$3.50 per gallon, with delivery to be made in three installments over three months. The seller delivered the first installment on time, but it was 100 gallons short. The buyer accepted the delivery but informed the seller that any future shortage would constitute a material breach. What is the buyer's legal right regarding the first installment?

- A. The buyer may reject the entire contract and sue for total breach
- B. The buyer may keep the oil delivered without paying for any of it
- C. The buyer must accept the partial delivery without remedy
- D. The buyer may accept the oil and recover damages for the shortage

16. A defendant was arrested at his home pursuant to a valid arrest warrant. While the defendant was being handcuffed, officers conducted a protective sweep of the adjacent rooms and discovered drugs in plain

view in the bedroom. The defendant was charged with drug possession and moves to suppress the evidence. How should the court rule?

- A. Suppress the evidence because the warrant authorized only an arrest, not a search
- B. Deny suppression because the protective sweep and plain view doctrines apply
- C. Suppress the evidence because the drugs were not within the defendant's immediate control
- D. Deny suppression because all searches incident to arrest cover the entire home

17. A grandfather conveyed his farm to his grandson "so long as the property is used for agricultural purposes." Three years later, the grandson stopped farming and began using the property for residential development. The grandfather seeks to recover the property. What type of interest did the grandfather retain?

- A. A right of entry, requiring affirmative action to recover the property
- B. A reversion in fee simple absolute
- C. A contingent remainder that has now vested
- D. A possibility of reverter, which automatically reverts the property

18. A pedestrian was crossing the street at a marked crosswalk when she was struck by a car. The driver claimed that the sun was in his eyes and he did not see the pedestrian. At trial, the pedestrian seeks to introduce evidence that the driver had been involved in three similar accidents in the past five years. The defense objects. How should the court rule?

- A. Exclude the evidence as improper propensity character evidence
- B. Admit the evidence to show the driver's habit of careless driving
- C. Admit the evidence to show the driver's negligent state of mind
- D. Exclude the evidence under the rule against subsequent remedial measures

19. A federal statute prohibited the discharge of pollutants into "navigable waters of the United States." A landowner was charged with violating the statute by draining a small wetland on his rural property that was not connected to any river or lake. The landowner argues that Congress lacks the authority to regulate isolated wetlands. What is the strongest constitutional basis for upholding the statute as applied?

- A. The Necessary and Proper Clause permits Congress to regulate any activity
- B. The aggregate effect of wetlands draining substantially affects interstate commerce
- C. The Tenth Amendment delegates environmental regulation to the federal government
- D. The Property Clause grants Congress authority over all land within state borders

20. A plaintiff filed a complaint in federal court alleging breach of contract. The defendant filed an answer that denied liability and asserted three affirmative defenses but did not include a counterclaim. Six months later, the defendant moved to amend the answer to assert a counterclaim arising from the same contract. The plaintiff opposes the amendment. How should the court rule?

- A. Deny the motion, because the counterclaim should have been raised in the original answer
- B. Grant the motion, because amendments to add compulsory counterclaims are favored
- C. Grant the motion, because justice requires allowing the counterclaim to be considered on the merits
- D. Deny the motion, because the time to amend as of right has expired

21. A defendant was charged with first-degree murder. At trial, the prosecution sought to introduce a statement made by a witness who was now deceased. The witness had told a police officer, "I saw the defendant shoot the victim." The defense objects on hearsay and Confrontation Clause grounds. How should the court rule?

- A. Admit the statement under the present sense impression exception
- B. Admit the statement because the witness is now unavailable
- C. Admit the statement under the dying declaration exception
- D. Exclude the statement because it violates the Confrontation Clause

22. A pedestrian was crossing a busy street when she was struck by a car driven by an intoxicated driver. The pedestrian sustained serious injuries. In her negligence action against the driver, the pedestrian seeks punitive damages in addition to compensatory damages. Which of the following best supports an award of punitive damages?

- A. The driver's conduct was willful and wanton, demonstrating conscious disregard for safety

- B. The pedestrian's compensatory damages are insufficient to deter future misconduct
- C. The driver violated a traffic statute by driving while intoxicated
- D. The pedestrian suffered economic losses exceeding \$50,000

23. A buyer purchased a used car from a dealer for \$15,000. The dealer represented that the car had been driven only 50,000 miles. After purchase, the buyer discovered that the odometer had been rolled back and the car actually had 150,000 miles. The buyer sues the dealer for damages. What is the buyer's best theory of recovery?

- A. Mutual mistake of fact regarding the car's condition
- B. Breach of the implied warranty of merchantability
- C. Fraudulent misrepresentation regarding a material fact
- D. Unconscionability of the contract terms

24. A defendant was arrested for armed robbery and taken to the police station. Officers gave him Miranda warnings, and he requested an attorney. Officers stopped questioning him but, two hours later, a different officer approached him and asked if he wanted to talk about an unrelated burglary. The defendant agreed and made incriminating statements. He moves to suppress the statements. How should the court rule?

- A. Admit the statements because the defendant was questioned about a different offense
- B. Suppress the statements because the defendant's request for counsel applies to all questioning
- C. Admit the statements because the second officer was not present for the original interrogation
- D. Suppress the statements because the two-hour delay was insufficient to cure the violation

25. A landowner owned a parcel of property that bordered a public road. She sold the rear portion of the parcel to a buyer, but the deed did not mention any access rights to the public road. The only way for the buyer to reach the public road was across the landowner's retained property. The buyer sues to establish an easement. What type of easement is the buyer most likely to establish?

- A. An easement by necessity, implied by law due to the absence of alternative access
- B. An easement by estoppel based on the landowner's representations during the sale

- C. An easement by prescription through years of continuous use
- D. An express easement that was inadvertently omitted from the deed

26. A state enacted a statute imposing a special tax on businesses that primarily sell goods imported from other states. The tax was double the tax imposed on businesses selling primarily in-state goods. An out-of-state importer challenges the tax. What is the strongest constitutional argument against the statute?

- A. The Privileges and Immunities Clause of Article IV
- B. The Equal Protection Clause of the Fourteenth Amendment
- C. The Due Process Clause of the Fifth Amendment
- D. The Commerce Clause's prohibition on discriminatory state taxation

27. A plaintiff sued a defendant in federal court for \$80,000 in damages arising from a car accident. The plaintiff is a citizen of Texas, and the defendant is a citizen of Texas but was working in Oklahoma at the time of the accident. The defendant moves to dismiss for lack of subject matter jurisdiction. How should the court rule?

- A. Deny the motion, because the accident occurred in Oklahoma
- B. Grant the motion, because the parties are not diverse citizens
- C. Deny the motion, because the amount in controversy exceeds \$75,000
- D. Grant the motion, because federal courts cannot hear tort claims

28. A husband and wife owned property as tenants by the entirety. After several years of marriage, the husband executed a deed purporting to convey his interest in the property to his brother. The wife was not informed of the conveyance. The husband died shortly thereafter. Who owns the property?

- A. The brother, who received a valid conveyance of the husband's interest
- B. The wife and the brother as tenants in common
- C. The wife alone, by right of survivorship
- D. The husband's estate, because the conveyance was void

29. A defendant was charged with the murder of his neighbor. At trial, the prosecution called a witness who testified that, on the day of the murder, she saw the defendant arguing with the neighbor. On cross-examination, defense counsel sought to ask the witness about her conviction five years earlier for embezzlement, for which she had served two years in prison. The prosecution objects. How should the court rule?

- A. Admit the conviction for impeachment because crimes of dishonesty are admissible
- B. Exclude the conviction because it is too remote in time to be probative
- C. Admit the conviction only if the probative value substantially outweighs prejudice
- D. Exclude the conviction because the witness has already served her sentence

30. A homeowner contracted with a roofer to replace the roof on her house for \$12,000. The roofer purchased materials and began work but, halfway through the job, demanded an additional \$3,000 to complete the work. The homeowner, needing the roof completed before an impending storm, agreed in writing and paid the additional amount. After the work was completed, the homeowner sues to recover the \$3,000. What is the homeowner's strongest argument?

- A. The roofer breached the original contract by demanding more money
- B. The modified agreement violates the parol evidence rule
- C. The original contract should be reformed to reflect the parties' intent
- D. The modification lacked consideration because the roofer was already obligated to perform

31. A motorist was driving on a rural highway when his car collided with a cow that had escaped from a nearby pasture. The motorist was injured and sues the cow's owner. State law imposes strict liability on the owners of livestock that trespass and cause damage. Which of the following is most likely a defense to the strict liability claim?

- A. The motorist was driving over the speed limit at the time of the collision
- B. The owner had taken all reasonable precautions to confine the cow
- C. The cow's escape was caused by an unforeseeable act of a third party
- D. The motorist failed to maintain a proper lookout for animals on the road

32. A federal statute required all employers with more than 50 employees to provide paid family leave. A state government with 1,000 employees challenged the statute as applied to the state, arguing it violated the Tenth Amendment. What is the strongest argument supporting the federal statute's validity as applied to the state?

- A. The state waived its Tenth Amendment rights by accepting federal funds
- B. Federal employment laws apply equally to states under the Commerce Clause
- C. The Tenth Amendment does not protect states from federal regulation
- D. The statute regulates the relationship between states and federal contractors

33. A plaintiff filed a federal court action against a defendant. After the complaint was filed but before service, the defendant filed for bankruptcy. Federal bankruptcy law imposes an automatic stay on lawsuits against debtors. The plaintiff continued with service of process. What is the legal effect of the service?

- A. The service is valid because the lawsuit was filed before the bankruptcy petition
- B. The service tolls the automatic stay for the limited purpose of perfecting jurisdiction
- C. The service is valid but proceedings must be stayed until bankruptcy is resolved
- D. The service is void because it violates the automatic stay

34. A defendant was convicted of grand larceny based on evidence that he had stolen a car. On appeal, the defendant argues that the prosecution failed to prove all elements of the offense beyond a reasonable doubt. The state's grand larceny statute requires proof that the defendant took property valued at more than \$1,000 with intent to permanently deprive the owner. Which element is most likely to be challenged on appeal?

- A. The intent to permanently deprive the owner of the property
- B. The unlawful taking and carrying away of the property
- C. The value of the stolen property exceeding \$1,000
- D. The defendant's knowledge that the property belonged to another

35. A buyer ordered 100 widgets from a seller at \$50 per widget. The contract specified delivery in 30 days. The seller delivered 110 widgets, accompanied by a letter stating that the additional widgets were a

gift. The buyer rejected the entire shipment, citing the non-conforming delivery. The seller sues for breach. How should the court rule?

- A. For the seller, because the buyer accepted by failing to immediately reject
- B. For the seller, because the additional widgets were a gift and not a breach
- C. For the buyer, because the delivery did not conform to the contract terms
- D. For the buyer, because the seller failed to provide reasonable accommodation

36. A pedestrian was walking on a sidewalk when she was struck by a falling flower pot from a third-floor balcony. The pot belonged to a tenant, but the building was owned by a landlord. The pedestrian sues both the tenant and the landlord. Under what circumstance would the landlord most likely be held liable?

- A. The landlord had no knowledge that the tenant kept flower pots on the balcony
- B. The landlord knew of a dangerous condition on the balcony and failed to repair it
- C. The landlord had inspected the building one year before the incident
- D. The landlord had provided the tenant with flower pots as part of the lease

37. A state passed a law prohibiting the sale of pornographic materials to minors under 18. A bookstore owner was charged with violating the statute by selling a magazine to a 17-year-old. The owner challenges the statute on First Amendment grounds. What is the most likely result?

- A. The statute is constitutional because protecting minors from harmful materials is a compelling interest
- B. The statute is unconstitutional as a content-based restriction on protected speech
- C. The statute is unconstitutional because it is overbroad in defining "pornographic materials"
- D. The statute is constitutional only if it requires actual knowledge of the buyer's age

38. A defendant was charged with conspiracy to distribute heroin. At trial, the prosecution sought to introduce statements made by an alleged co-conspirator who pleaded guilty and refused to testify. The statements were made during the conspiracy and were intended to advance its purposes. The defense objects on hearsay grounds. How should the court rule?

- A. Exclude the statements because the co-conspirator is not a party-opponent
- B. Admit the statements only if the defendant had an opportunity to cross-examine
- C. Exclude the statements because the co-conspirator pleaded guilty
- D. Admit the statements as non-hearsay statements by a co-conspirator

39. A landlord and tenant entered into a two-year written lease for a commercial property. After eighteen months, the tenant gave the landlord written notice that he was vacating the premises and stopped paying rent. The landlord did nothing to rerent the property. The landlord sues for the remaining six months of rent. What is the tenant's strongest defense?

- A. The lease was an executory contract that could be terminated at will
- B. The landlord had a duty to mitigate damages by attempting to rerent the property
- C. The tenant's notice constituted a valid surrender of the leasehold
- D. The lease violated the statute of frauds because it exceeded one year

40. A plaintiff sued a defendant in federal court for negligence following a slip and fall in the defendant's store. After completion of discovery, the defendant moved for summary judgment, arguing that the plaintiff had not presented sufficient evidence of negligence. The plaintiff opposed the motion by submitting an affidavit from an expert witness opining that the defendant was negligent. How should the court rule?

- A. Grant the motion if the plaintiff's evidence shows no genuine dispute of material fact
- B. Deny the motion because expert affidavits create issues of credibility for the jury
- C. Deny the motion because the expert opinion creates a genuine dispute of material fact
- D. Grant the motion because expert affidavits are insufficient to defeat summary judgment

41. A homeowner hired an interior designer to redecorate her living room for \$5,000. The designer agreed to complete the work within 30 days. After 15 days, the designer informed the homeowner that he had been offered a more lucrative job and would not complete the work. The homeowner hired another designer at a cost of \$7,000 to complete the project. What damages can the homeowner recover from the original designer?

- A. \$2,000, representing the difference between the original and substitute contracts
- B. \$7,000, representing the full cost of the substitute contract
- C. \$5,000, representing the amount paid under the original contract
- D. \$12,000, representing both the original and substitute contract amounts

42. A defendant entered a department store with the intent to steal jewelry. While walking through the store, he picked up an expensive watch from a display, placed it in his pocket, and continued shopping. Before leaving the store, a security guard apprehended him. The defendant is charged with larceny. What is the defendant's best defense?

- A. He did not exit the store, so no taking was completed
- B. The watch remained on the store's premises throughout the incident
- C. The store was open to the public, so his presence was not unlawful
- D. He had no intent to permanently deprive the store of the watch

43. A plaintiff filed a federal court action seeking damages for sexual harassment under Title VII. The defendant moved to dismiss for failure to state a claim. The plaintiff's complaint alleged that her supervisor made repeated sexual comments and propositioned her, but did not allege any tangible employment action. How should the court rule on the motion?

- A. Grant the motion because tangible employment action is required for Title VII claims
- B. Deny the motion if the complaint alleges severe or pervasive sexual harassment
- C. Grant the motion if the harassment was not motivated by gender
- D. Deny the motion because all Title VII claims survive a motion to dismiss

44. A defendant was charged with battery for striking a victim in the face. At trial, the prosecution sought to introduce testimony from the victim's mother that, two days after the incident, the victim told her, "The defendant hit me in the face during a fight." The defense objects on hearsay grounds. How should the court rule?

- A. Admit the statement under the present sense impression exception

- B. Exclude the statement as inadmissible hearsay
- C. Admit the statement under the excited utterance exception
- D. Admit the statement under the dying declaration exception

45. A landlord leased a house to a tenant for a one-year term. The lease was silent on the issue of maintenance. After moving in, the tenant discovered that the water heater was broken and there was significant mold in the bathroom. The tenant gave written notice to the landlord, but the landlord refused to make repairs. The tenant continues to occupy the premises. What is the tenant's best legal remedy?

- A. Constructive eviction based on the breach of the implied warranty of habitability
- B. Specific performance compelling the landlord to make repairs
- C. Termination of the lease and recovery of all rent paid
- D. An action for trespass against the landlord for failing to maintain the property

46. A federal statute prohibited any person from "knowingly transporting any minor across state lines for the purpose of engaging in prostitution." A defendant was charged with violating the statute after he drove a 15-year-old from New York to New Jersey. The defendant argues that he did not know the minor's true age and believed she was 18. What is the most likely result?

- A. The defendant is guilty because the statute imposes strict liability regarding age
- B. The defendant is not guilty if he had a reasonable belief that the minor was an adult
- C. The defendant is guilty because "knowingly" applies only to the transportation element
- D. The defendant is not guilty because the statute requires actual knowledge of the age

47. A plaintiff sued a defendant in federal court for breach of contract. The plaintiff is a citizen of California, and the defendant is a citizen of Nevada. The contract dispute involves the sale of equipment for \$100,000. The defendant moves to transfer the case to the U.S. District Court for the District of Nevada. The contract specifies that all disputes shall be resolved in California. How should the court rule?

- A. Grant the motion because Nevada is more convenient for the defendant
- B. Deny the motion because forum selection clauses are unenforceable

- C. Grant the motion because the defendant cannot be compelled to litigate in California
- D. Deny the motion because the forum selection clause is presumptively enforceable

48. A defendant was driving on a highway when his car suddenly veered off the road and struck a pedestrian who was walking on the shoulder. The defendant claimed that he had suffered an unexpected seizure that caused him to lose control. The pedestrian sues for negligence. What is the strongest argument for the defendant?

- A. Pedestrians on highway shoulders assume the risk of being struck by vehicles
- B. The defendant could not have foreseen the seizure and therefore was not negligent
- C. The seizure was caused by an unforeseen medical event, breaking the chain of causation
- D. The pedestrian's contributory negligence in walking on the shoulder bars recovery

49. A buyer entered into a contract with a seller to purchase a custom-built yacht for \$2 million. The contract included a clause stating that "time is of the essence" with respect to the delivery date. The seller was three weeks late in delivering the yacht. The buyer rejected delivery and sued for breach. The seller argues that the delay was minor and the buyer should have accepted. How should the court rule?

- A. For the seller, because three weeks is a reasonable delay for a complex product
- B. For the buyer, but limited to consequential damages
- C. For the buyer, because the time is of the essence clause makes timely delivery a material term
- D. For the seller, because the buyer suffered no actual damages from the delay

50. A landowner conveyed Whiteacre "to my friend for life, then to her children." At the time of the conveyance, the friend was alive but had no children. Three years later, the friend gave birth to a child. What is the interest of the child at the time of birth?

- A. A vested remainder subject to open in fee simple
- B. A contingent remainder in fee simple
- C. An executory interest in fee simple
- D. A vested remainder in fee simple absolute

51. A defendant was charged with burglary, which is defined by state law as the breaking and entering of a dwelling at night with intent to commit a felony therein. At trial, evidence showed that the defendant entered an apartment through an unlocked door during the day with intent to steal. What is the defendant's best argument for acquittal?

- A. The defendant lacked the requisite felonious intent at the time of entry
- B. Burglary requires breaking and entering at night, neither of which occurred
- C. Apartments are not "dwellings" within the meaning of the statute
- D. Intent to steal does not constitute intent to commit a felony

52. A state statute required all motorcyclists to wear helmets. A motorcyclist who suffered a brain injury in an accident sued the other driver for negligence. The other driver argues that the motorcyclist's failure to wear a helmet constitutes contributory negligence. The state recognizes comparative negligence. What is the most likely result?

- A. The motorcyclist's failure to wear a helmet bars recovery as contributory negligence
- B. The motorcyclist's failure to wear a helmet is not relevant to the negligence action
- C. The other driver cannot raise the helmet defense if the accident was his fault
- D. The motorcyclist's failure to wear a helmet reduces damages based on comparative fault

53. A federal court is presiding over a diversity action involving state law claims. The plaintiff seeks to introduce evidence under a state evidentiary rule that conflicts with the Federal Rules of Evidence. Which rule should the federal court apply?

- A. The Federal Rules of Evidence, because evidentiary rules are procedural
- B. The state evidentiary rule, because state law governs in diversity cases
- C. The rule that is more favorable to the plaintiff
- D. The rule that is more consistent with the federal forum's interests

54. A landlord owned a commercial building that was leased to multiple tenants. The landlord hired a maintenance contractor to repair the elevator. While performing repairs, the contractor's employee

negligently caused the elevator to fall, injuring a tenant. The tenant sues both the landlord and the contractor. What is the landlord's best defense to the tenant's negligence claim?

- A. The landlord delegated all maintenance responsibilities to the contractor
- B. The contractor was hired as a sub-contractor without the landlord's knowledge
- C. The contractor was an independent contractor and was not acting under the landlord's control
- D. The landlord had inspected the elevator one week before the incident

55. A seller offered to sell his vintage car to a buyer for \$20,000. The buyer responded by saying, "I'll buy the car for \$20,000 if you include the spare tire." The seller refused. The buyer then said, "I accept your original offer of \$20,000 without the spare tire." Has a contract been formed?

- A. Yes, because the buyer ultimately accepted the seller's offer on its original terms
- B. No, because the buyer's first response constituted a counteroffer that rejected the original offer
- C. Yes, because the seller has a duty to perform after the buyer's clear acceptance
- D. No, because the seller revoked the offer by refusing the buyer's counteroffer

56. A defendant was charged with possession of a controlled substance with intent to distribute. At trial, the prosecution sought to introduce statements made by the defendant to his cellmate while in jail. The cellmate was acting as a government informant. The defense objects on the ground that the statements were obtained in violation of the Sixth Amendment right to counsel. How should the court rule?

- A. Admit the statements because the cellmate was not a state actor
- B. Suppress the statements because the defendant's right to counsel was violated
- C. Admit the statements because they were voluntary
- D. Suppress the statements because they were obtained without Miranda warnings

57. A buyer ordered a refrigerator from a seller for \$1,500. The contract stated that the refrigerator would be delivered "in good working condition." Upon delivery, the buyer discovered that the refrigerator made a loud noise but otherwise functioned properly. The buyer rejected the refrigerator. The seller sues for the contract price. How should the court rule?

- A. For the buyer, because the noise constitutes a material breach
- B. For the buyer, because the refrigerator did not conform to the contract description
- C. For the seller, because the refrigerator is functional and the noise is not material
- D. For the seller, because the buyer must accept the refrigerator and recover damages

58. A driver was involved in a car accident that injured a pedestrian. The pedestrian sued the driver for negligence. At trial, the driver sought to introduce evidence that, after the accident, he had paid for the pedestrian's medical expenses. The pedestrian's attorney objects. How should the court rule?

- A. Exclude the evidence because payment of medical expenses is not admissible to show liability
- B. Admit the evidence to show the driver's good character
- C. Admit the evidence as a statement against the driver's interest
- D. Exclude the evidence under the rule prohibiting evidence of liability insurance

59. A state enacted a statute requiring all candidates for state office to be at least 35 years old. A 30-year-old candidate challenged the statute as a violation of the Equal Protection Clause. What level of scrutiny should the court apply?

- A. Strict scrutiny because age is a suspect classification
- B. Intermediate scrutiny because age affects fundamental rights
- C. Strict scrutiny because the right to seek office is fundamental
- D. Rational basis review because age is not a suspect classification

60. A plaintiff filed a federal court action against a defendant under the Federal Tort Claims Act. The plaintiff served the United States, but did not serve the individual federal employee whose conduct gave rise to the claim. The defendant moves to dismiss for insufficient service of process. How should the court rule?

- A. Grant the motion because the individual federal employee must be served
- B. Deny the motion because the United States is the only proper defendant in FTCA actions
- C. Grant the motion because federal employees are immune from suit

D. Deny the motion because service on the federal agency is sufficient

61. A defendant was charged with armed robbery. At trial, the defendant called a witness who testified that the defendant had a peaceful character and was not the type of person who would commit a robbery. On cross-examination, the prosecution sought to ask the witness about a specific incident in which the defendant had punched a co-worker three years earlier. The defense objects. How should the court rule?

- A. Sustain the objection because specific acts of misconduct are not admissible
- B. Overrule the objection because the defendant's prior conduct is relevant to the charge
- C. Overrule the objection because the defense opened the door by introducing character evidence
- D. Sustain the objection because the incident is too remote in time

62. A homeowner contracted with a roofer to install a new roof. The contract specified that the work would be completed within 60 days. Sixty days later, the roof was 80% complete. The homeowner refused to allow the roofer to continue working and hired another contractor at a higher price. The roofer sues for breach of contract. What is the homeowner's strongest defense?

- A. The roofer's failure to complete on time constituted a material breach
- B. The roofer's partial performance was inadequate consideration for the contract
- C. The contract was terminable at will because no specific completion date was required
- D. The roofer's performance was excused by the homeowner's anticipatory repudiation

63. A landlord and tenant entered into a one-year residential lease. The lease included a provision stating that "either party may terminate this lease upon 60 days' written notice." Three months into the lease, the landlord gave the tenant 60 days' written notice of termination. The tenant refused to vacate. The landlord sues for possession. How should the court rule?

- A. For the tenant, because residential leases cannot be terminated by mutual provision
- B. For the landlord, because the termination clause was a valid and enforceable provision
- C. For the tenant, because the lease term protects tenants from termination
- D. For the landlord, but only if the tenant breached a substantive term of the lease

64. A pedestrian was crossing a street when she was struck by a car. The driver had been talking on his cell phone and did not see her. The pedestrian sued the driver and won a verdict of \$100,000. The driver appealed, arguing that the trial court erred in admitting evidence of his cell phone use. Which of the following best supports the admissibility of the cell phone evidence?

- A. The cell phone use is evidence of the driver's habit of distracted driving
- B. The cell phone use shows the driver's character for negligence
- C. The cell phone use is a prior consistent statement
- D. The cell phone use is relevant to the driver's negligence at the time of the accident

65. A buyer entered into a written contract to purchase a house from a seller for \$400,000. The closing was scheduled for 30 days later. One week before closing, the seller informed the buyer that he had received a higher offer and would not honor the contract. The buyer immediately found another house and purchased it for \$450,000. The buyer sues the original seller for damages. What damages can the buyer recover?

- A. \$400,000, the original purchase price
- B. \$450,000, the cost of the substitute house
- C. \$50,000, the difference between the original and substitute contracts
- D. Nominal damages because the buyer obtained a comparable substitute house

66. A defendant was arrested for shoplifting and charged with theft. At trial, the prosecution sought to introduce evidence that, after his arrest, the defendant attempted to flee the police station. The defense objects on relevance grounds. How should the court rule?

- A. Admit the evidence as consciousness of guilt
- B. Exclude the evidence because flight from custody is a separate offense
- C. Admit the evidence to show the defendant's character for dishonesty
- D. Exclude the evidence as more prejudicial than probative

67. A state passed a law prohibiting any person from publishing material that is critical of the state government. A newspaper publisher was charged with violating the statute after publishing an editorial

criticizing the governor. The publisher challenges the statute on First Amendment grounds. What is the most likely result?

- A. The statute is constitutional because states may regulate defamatory speech
- B. The statute is constitutional because criticism of government undermines order
- C. The statute is unconstitutional because all criticism of government is protected speech
- D. The statute is unconstitutional as a content-based restriction on political speech

68. A plaintiff filed a federal court action against a defendant for copyright infringement. The plaintiff served the defendant with the summons and complaint by mailing them to the defendant's last known address. The defendant moves to dismiss for insufficient service of process. How should the court rule?

- A. Deny the motion because mail service is always sufficient in federal court
- B. Grant the motion because mail service requires a signed acknowledgment of receipt
- C. Deny the motion because the defendant received actual notice of the lawsuit
- D. Grant the motion because federal court actions require personal service

69. A defendant was charged with assault. At trial, the prosecution sought to introduce a video recording of the alleged assault taken by a security camera. The defendant objects, arguing that the prosecution has not authenticated the recording. What is the prosecution's best method of authentication?

- A. Have the victim identify himself in the recording
- B. Submit an affidavit from the camera's manufacturer
- C. Call a witness who can identify the location and verify the recording's accuracy
- D. Rely on the recording itself as self-authenticating

70. A homeowner's neighbor began installing a tall fence along the property line. The homeowner objected, but the neighbor continued construction. The homeowner believed the fence would block his view of the lake. The homeowner sues for an injunction to stop the construction. What is the most likely result?

- A. The homeowner has no legal right to an unobstructed view in the absence of an easement
- B. The homeowner will prevail because the fence violates zoning ordinances
- C. The homeowner can establish a prescriptive easement for the view
- D. The neighbor must compensate the homeowner for the loss of the view

71. A defendant was charged with first-degree murder. The defendant raised the defense of insanity and called a psychiatrist to testify that he suffered from a mental illness at the time of the offense. On cross-examination, the prosecution sought to ask the psychiatrist whether the defendant had told her that he intended to harm the victim. The defense objects, citing the patient-psychiatrist privilege. How should the court rule?

- A. Sustain the objection because the privilege protects all communications
- B. Overrule the objection because the defendant is the holder of the privilege
- C. Sustain the objection because the privilege applies in criminal proceedings
- D. Overrule the objection because the defendant waived the privilege by calling the psychiatrist

72. A buyer ordered 500 widgets from a seller at \$10 each. The seller shipped the widgets, but the buyer refused to accept delivery. The market price of widgets at the time of refusal was \$7 per widget. The seller sold the widgets to another buyer at \$7 per widget. What damages can the seller recover from the original buyer?

- A. \$5,000, the full contract price
- B. \$1,500, representing the difference between the contract price and the resale price
- C. \$3,500, the resale price received from the second buyer
- D. Nominal damages because the seller mitigated by reselling

73. A federal statute required all individuals to obtain health insurance or pay a tax penalty. A taxpayer challenged the statute as exceeding Congress's authority. Which constitutional provision provides the strongest basis for upholding the statute?

- A. The taxing power, which permits Congress to impose taxes for the general welfare

- B. The Commerce Clause, which authorizes regulation of all health-related activities
- C. The Necessary and Proper Clause, which authorizes any law to implement enumerated powers
- D. The General Welfare Clause, which provides independent legislative authority

74. A pedestrian was struck by a car and sustained serious injuries. The pedestrian sued the driver for negligence. At trial, the driver moved for a directed verdict, arguing that the pedestrian had failed to look both ways before crossing the street. The pedestrian's evidence showed that the driver was traveling well above the speed limit and had run a red light. How should the court rule?

- A. Grant the motion because the pedestrian's failure to look constitutes contributory negligence
- B. Deny the motion because the driver's traffic violations were the proximate cause of the injury
- C. Grant the motion because both parties were negligent and the pedestrian assumes the risk
- D. Deny the motion because directed verdicts in negligence cases are disfavored

75. A buyer and seller entered into a written contract for the sale of 100 tons of wheat at \$200 per ton. The contract did not specify the time for delivery. Two weeks later, the buyer demanded immediate delivery. The seller delivered the wheat one month later. The buyer rejected the delivery as untimely. What is the seller's best defense?

- A. The contract was modified by the buyer's demand for immediate delivery
- B. A reasonable time for delivery is implied when not specified in the contract
- C. The seller's delivery within one month was timely as a matter of law
- D. The buyer's acceptance of partial delivery created a new contract

76. A defendant was charged with bribery of a public official. At trial, the prosecution sought to introduce a tape recording of a conversation between the defendant and the official. The conversation was recorded by the official with the consent of law enforcement. The defendant objects on Fourth Amendment grounds. How should the court rule?

- A. Suppress the recording because the defendant did not consent to being recorded
- B. Admit the recording because consent of one party to the conversation is sufficient

- C. Suppress the recording because law enforcement directed the official to record
- D. Admit the recording because bribery is excepted from the Fourth Amendment

77. A landlord rented a residential apartment to a tenant. The lease required the tenant to pay rent on the first of each month. The tenant fell behind on rent for three months. The landlord gave the tenant a notice to quit and, when the tenant did not vacate, filed an eviction action. The tenant defends on the ground that the landlord failed to make promised repairs. What is the most likely result?

- A. For the landlord, because nonpayment of rent is a separate ground from breach of warranty
- B. For the tenant, because breach of warranty justifies withholding rent
- C. For the landlord, because residential leases are governed by strict performance
- D. For the tenant, because the landlord's failure to repair excused the tenant's performance

78. A driver was involved in an accident with another car. Both drivers were injured. The driver of the other car sued, alleging negligence. At trial, the defendant driver sought to introduce evidence that, six months before the accident, the other driver had also been involved in a similar accident. The plaintiff objects. How should the court rule?

- A. Admit the evidence to show the plaintiff's propensity for careless driving
- B. Admit the evidence to show the plaintiff's habit of negligent driving
- C. Exclude the evidence as improper character evidence
- D. Exclude the evidence because it is too remote in time

79. A federal court is hearing a case involving a federal employment discrimination claim and a state-law breach of contract claim arising from the same employment relationship. After the federal claim is dismissed before trial, the defendant moves to dismiss the state-law claim for lack of jurisdiction. How should the court rule?

- A. Deny the motion because the court has supplemental jurisdiction
- B. Grant the motion because the state-law claim is no longer related to a federal claim
- C. Deny the motion because dismissal of the federal claim divests the court of all jurisdiction

D. Exercise discretion to dismiss the state-law claim without prejudice

80. A defendant was charged with embezzlement from his employer. At trial, the prosecution sought to introduce business records showing the defendant's daily cash receipts. The defense objects on hearsay grounds. The prosecution offers to call the employer's accountant to testify that the records were kept in the ordinary course of business. How should the court rule?

A. Exclude the records because they constitute inadmissible hearsay

B. Admit the records only if the defendant created them

C. Exclude the records because the accountant did not create them

D. Admit the records under the business records exception to the hearsay rule

81. A homeowner conveyed Greenacre to his daughter "for life, then to her children equally." At the time of the conveyance, the daughter was alive and had two children, A and B. Three years later, the daughter gave birth to a third child, C. What is the effect of C's birth on A and B's interest?

A. A and B's vested remainders are subject to open and now include C

B. C's birth does not affect A and B's interests because they were vested at the time of conveyance

C. A and B's interests are extinguished by C's birth

D. C must wait until the daughter dies to share in the property

82. A state required all attorneys to be U.S. citizens to be admitted to practice. A lawful permanent resident from Canada challenged the requirement under the Equal Protection Clause. What is the most likely result?

A. The requirement is constitutional because state regulation of the legal profession is a traditional area of state authority

B. The requirement is constitutional because attorneys serve as officers of the court

C. The requirement is unconstitutional because alienage is a suspect classification subject to strict scrutiny

D. The requirement is unconstitutional because all state employment restrictions on aliens fail strict scrutiny

83. A defendant was charged with reckless driving after striking a pedestrian. At trial, the prosecution sought to introduce the defendant's driving record, which showed three prior reckless driving convictions in the past five years. The defense objects. How should the court rule?

- A. Admit the evidence to show the defendant's propensity for reckless driving
- B. Admit the evidence to show the defendant's intent at the time of the accident
- C. Exclude the evidence as improper character evidence
- D. Exclude the evidence as more prejudicial than probative

84. A buyer entered into a contract with a manufacturer to purchase 1,000 specialized parts for \$50 each. The contract specified delivery by June 1. On May 15, the manufacturer informed the buyer that he could not deliver before July 1. The buyer immediately contracted with another supplier for the parts at \$60 each. The buyer sues the original manufacturer for damages. What is the buyer's recovery?

- A. \$10,000, representing the difference between the contracts plus consequential damages
- B. \$10,000, representing the difference between the original and substitute contract prices
- C. \$60,000, the full cost of the substitute contract
- D. Nominal damages because the buyer could not establish actual loss

85. A pedestrian was walking on a sidewalk when a delivery truck owned by a corporation struck and killed him. The pedestrian's estate sues the corporation for wrongful death. The truck driver had been working overtime to complete deliveries and had taken stimulants to stay awake. What is the corporation's strongest defense?

- A. The driver's use of stimulants was an unauthorized criminal act
- B. The driver was an independent contractor at the time of the accident
- C. The accident occurred outside the scope of the driver's employment
- D. The driver was acting in violation of company policy regarding work hours

86. A homeowner conveyed her property by deed to her son. The deed contained a clause stating "and to his heirs." The son's only heir was his daughter. Several years later, the son died, and his will left all his property to his wife. Who owns the property?

- A. The son's wife, because she inherited under the will
- B. The son's daughter, because the deed conveyed the property to the son and his heirs
- C. The son's estate, until the daughter reaches the age of majority
- D. The wife and daughter as tenants in common

87. A defendant was charged with kidnapping a child. At trial, the prosecution called the child's mother, who testified that the child had told her, immediately after being released, "The defendant took me." The defense objects on hearsay grounds. How should the court rule?

- A. Admit the statement as a prior identification
- B. Exclude the statement because it was made to the mother
- C. Admit the statement under the dying declaration exception
- D. Admit the statement under the excited utterance exception

88. A plaintiff filed a federal court action against a defendant for breach of contract. After a bench trial, the court entered judgment for the defendant. The plaintiff filed a notice of appeal 30 days after the judgment. The defendant moves to dismiss the appeal as untimely. The federal rules require notice of appeal to be filed within 30 days. How should the court rule?

- A. Grant the motion because notice of appeal must be filed within 28 days
- B. Deny the motion if the plaintiff filed within the 30-day deadline
- C. Grant the motion because federal appeals require filing within 14 days
- D. Deny the motion based on substantial compliance with appellate rules

89. A defendant was arrested for driving under the influence. At the police station, officers asked him to take a breathalyzer test. The defendant refused. State law provides that refusal to submit to a breathalyzer is admissible at trial. The defendant moves to suppress the evidence of his refusal. How should the court rule?

- A. Suppress the evidence because it violates the Fifth Amendment right against self-incrimination
- B. Admit the evidence because breathalyzer refusal is not testimonial

- C. Suppress the evidence because the defendant was not given Miranda warnings
- D. Admit the evidence because all DUI evidence is constitutionally permissible

90. A homeowner contracted with a contractor to build an addition to her house. The contract price was \$50,000, payable in three installments. The contractor completed the work and demanded the final payment of \$20,000. The homeowner refused to pay, claiming the work was defective. The contractor sues for the final payment. What is the contractor's burden?

- A. The contractor must prove the work was completed in strict accordance with the contract
- B. The contractor must prove the homeowner accepted the work as conforming
- C. The contractor must prove the homeowner breached without justification
- D. The contractor must prove substantial performance of the contract

91. A driver was operating his car when he experienced a sudden and unforeseeable heart attack. His car drifted across the center line and struck another vehicle. The other driver sues for negligence. What is the most likely result?

- A. The driver is not liable because the heart attack was sudden and unforeseeable
- B. The driver is liable under the doctrine of negligence per se
- C. The driver is liable because he was operating a vehicle on a public road
- D. The driver is liable for strict liability as the owner of the vehicle

92. A federal statute prohibited the possession of marijuana on federal lands. A state legalized the possession of marijuana for medical purposes. A defendant was charged with violating the federal statute after he was found possessing medical marijuana in a national park. The defendant raises the state law as a defense. How should the court rule?

- A. For the defendant, because federal law cannot preempt state medical marijuana laws
- B. For the defendant, because the state has a sovereign right to regulate medical practice
- C. For the prosecution, because federal law is supreme over conflicting state law
- D. For the prosecution, but only if the marijuana was used for non-medical purposes

93. A defendant was charged with sexual assault. At trial, the prosecution sought to introduce evidence that the defendant had committed two prior sexual assaults that did not result in convictions. The defense objects. Under the Federal Rules of Evidence, how should the court rule?

- A. Exclude the evidence as improper character evidence
- B. Admit the evidence under Rule 413, which allows similar crimes in sexual assault cases
- C. Exclude the evidence because the prior acts were not the subject of convictions
- D. Admit the evidence only to show the defendant's habit of sexual misconduct

94. A buyer and seller entered into a written contract for the sale of a car for \$30,000. After the contract was signed but before the car was delivered, the buyer claimed that the seller had orally agreed to provide an extended warranty for an additional \$1,000. The written contract was silent on the warranty issue. What is the legal effect of the parol evidence rule on the buyer's claim?

- A. The buyer cannot introduce evidence of the oral agreement because it contradicts the written contract
- B. The buyer can introduce evidence of the oral agreement if the contract is ambiguous
- C. The buyer can introduce evidence to show fraud in the inducement
- D. The buyer cannot recover under the oral agreement because it lacks consideration

95. A state passed a law requiring that all signs displayed on commercial buildings be in English. A bilingual business owner challenged the law as a violation of the First Amendment. The state defended the law as necessary to facilitate communication with emergency responders. What level of scrutiny should the court apply?

- A. Rational basis review because the law regulates commercial speech
- B. Strict scrutiny because the law is a content-based restriction on speech
- C. Intermediate scrutiny because the law involves a content-neutral time, place, and manner restriction
- D. Intermediate scrutiny because the law regulates commercial speech

96. A plaintiff filed a complaint in federal court alleging a federal claim. The defendant moved to dismiss for failure to state a claim. The court granted the motion and dismissed the case with prejudice. The plaintiff then filed a new action in state court, asserting the same claim under state law. The defendant moves to dismiss based on res judicata. How should the court rule?

- A. Grant the motion because the federal dismissal precludes the state action
- B. Deny the motion because state courts are not bound by federal dismissals
- C. Grant the motion because all dismissals with prejudice have preclusive effect
- D. Deny the motion because the state claim is different from the federal claim

97. A defendant was charged with assault after a bar fight. At trial, the defendant claimed self-defense. The prosecution sought to introduce evidence that the defendant had been involved in two previous bar fights. The defense objects. How should the court rule?

- A. Admit the evidence to rebut the self-defense claim by showing the defendant was the aggressor
- B. Exclude the evidence as improper character evidence under Rule 404(b)
- C. Admit the evidence to show the defendant's character for violence
- D. Exclude the evidence because the prior fights are too remote in time

98. A landowner conveyed a parcel of property "to my son, his heirs, and assigns forever, but if my son ever uses the property for commercial purposes, then to my daughter." Three years later, the son began operating a small store from the property. What is the daughter's legal right?

- A. The daughter has no rights because the conveyance violated the Rule Against Perpetuities
- B. The daughter must wait for the son's death before her interest takes effect
- C. The daughter has an executory interest that becomes possessory upon the violation
- D. The daughter has a contingent remainder in the property

99. A buyer contracted with a seller for the purchase of a parcel of real estate for \$300,000. The buyer placed a \$30,000 earnest money deposit with the seller. Two weeks later, the buyer changed his mind and refused to complete the purchase. The seller kept the earnest money deposit and resold the property to another buyer for \$310,000. The original buyer sues to recover the deposit. What is the most likely result?

- A. The buyer recovers the full \$30,000 because the seller suffered no actual damages
- B. The buyer recovers \$20,000, the amount above the seller's actual damages
- C. The seller may retain the deposit if it represents a reasonable estimate of damages
- D. The seller must return the deposit because liquidated damages clauses are generally unenforceable

100. A pedestrian was crossing a street when she was struck by a car. The driver was on his way to a business meeting. The pedestrian sues the driver's employer for negligence under a theory of vicarious liability. Which of the following facts would be most important to the determination of liability?

- A. The driver had a valid driver's license at the time of the accident
- B. The driver was acting within the scope of his employment
- C. The driver had been employed by the defendant for over a year
- D. The employer had insurance coverage for the accident

101. A defendant was charged with burglary. At trial, the prosecution called the homeowner, who testified that he discovered the burglary the next morning and found the defendant's wallet on the floor. The defense objects on relevance grounds. How should the court rule?

- A. Admit the evidence because the wallet's presence is circumstantial evidence of identity
- B. Exclude the evidence because the wallet could have been planted
- C. Admit the evidence only if the defendant confessed to the crime
- D. Exclude the evidence because it is more prejudicial than probative

102. A federal statute required all employers to provide a written employment contract to each employee, specifying terms of employment. An employer challenged the statute as exceeding Congress's power. Which constitutional provision provides the strongest basis for upholding the statute?

- A. The General Welfare Clause, which authorizes regulation of the workplace
- B. The Necessary and Proper Clause, which permits incidental regulations
- C. The Commerce Clause, because employment substantially affects interstate commerce

D. The Taxing Clause, which permits regulation through tax penalties

103. A buyer purchased a used car from a dealer who represented that the car was "in good mechanical condition." Two days after the purchase, the engine failed completely. The buyer sues for breach of warranty. Which of the following is the dealer's strongest defense?

- A. The dealer is not a merchant in used cars
- B. The contract included a clear "as is" disclaimer that the buyer signed
- C. The buyer failed to inspect the car before purchase
- D. The engine failure was caused by the buyer's negligent operation

104. A defendant was charged with murder. The defendant moved to suppress a confession he made to the police, arguing that it was involuntary because he had been questioned for 12 hours without a break. At the suppression hearing, the prosecution presented evidence that the defendant had been given regular breaks for food and rest. The court denied the motion. On appeal, what is the standard of review?

- A. The defendant's testimony at the hearing is reviewed de novo
- B. The trial court's factual findings are reviewed for clear error
- C. The trial court's legal conclusions are reviewed for abuse of discretion
- D. The trial court's findings are accepted unless they are clearly erroneous

105. A homeowner installed a swimming pool in his backyard without obtaining the required permit from the city. The city sued to compel removal of the pool. What is the homeowner's best defense?

- A. The pool does not violate any zoning ordinances
- B. The city is estopped from enforcement because of delay
- C. The homeowner has a constitutional right to make improvements to his property
- D. The city does not have standing to enforce permit requirements

106. A driver was speeding through a school zone when she struck a child. The child's parents sued for negligence. The driver argues that she had no reason to expect a child to be in the road at that time of day. What is the most likely result?

- A. The driver is liable because the school zone requires heightened care
- B. The driver is liable because she violated the speed limit
- C. The driver is not liable because the child was not visible
- D. The driver is not liable because the child ran into the road

107. A federal statute prohibited the discharge of any pollutant into "navigable waters of the United States." A landowner was charged with violating the statute by discharging waste into a small stream on his property that flowed into a larger creek. The defendant argues that the stream is not "navigable" within the meaning of the statute. What is the most likely result?

- A. The defendant is not guilty because the stream is not navigable
- B. The defendant is guilty because all waters are navigable under federal law
- C. The defendant is guilty because the small stream is connected to a navigable creek
- D. The defendant is not guilty because the statute requires intent to pollute

108. A buyer ordered 1,000 widgets from a seller. The seller acknowledged the order by sending an invoice that included a clause requiring all disputes to be resolved through arbitration. The buyer did not respond to the invoice. The widgets were delivered, and the buyer paid the invoice. A dispute later arose. Is the arbitration clause binding on the buyer?

- A. Yes, because the buyer accepted the invoice by paying for the widgets
- B. No, because the arbitration clause materially altered the original contract
- C. Yes, because the buyer had notice of the clause and did not object
- D. No, because arbitration clauses are not enforceable in commercial transactions

109. A defendant was charged with disorderly conduct after being arrested at a protest. The prosecution sought to introduce a video of the protest showing the defendant shouting. The defendant claims he was

shouting in support of the protest, not engaging in disorderly conduct. The prosecution argues that his words are clearly disorderly. How should the court rule?

- A. Suppress the video because political speech is protected
- B. Admit the video, but the jury must determine whether the speech was disorderly conduct
- C. Admit the video and find the defendant guilty as a matter of law
- D. Suppress the video because the protest was a public assembly

110. A landlord and tenant entered into a one-year lease. After six months, the tenant abandoned the property. The landlord made no effort to re-rent the property and sued the tenant for the remaining six months' rent. What is the most likely result in a jurisdiction that requires landlords to mitigate damages?

- A. The landlord recovers only damages he could not have mitigated through reasonable efforts
- B. The landlord recovers all unpaid rent because the tenant abandoned the lease
- C. The landlord recovers only damages incurred up to the date of abandonment
- D. The landlord must wait until the lease expires before recovering damages

111. A defendant was arrested for armed robbery and gave a confession to the police. At the time of the confession, the defendant was not represented by counsel and had not been given Miranda warnings. The prosecution argues that the confession is admissible because it was voluntary. How should the court rule?

- A. Admit the confession because it was given voluntarily
- B. Suppress the confession because Miranda warnings were required for custodial interrogation
- C. Admit the confession because the defendant had not yet been formally charged
- D. Suppress the confession only if it was made after the defendant requested counsel

112. A homeowner agreed to sell his house to a buyer for \$250,000. The contract was signed and the buyer made a \$25,000 deposit. Before closing, the house was completely destroyed by a fire that was not the fault of either party. Under the common law doctrine of equitable conversion, who bears the loss?

- A. The seller, because he owned the property at the time of the fire

- B. The seller, because he had a duty to maintain the property until closing
- C. The buyer and seller equally, because both were parties to the contract
- D. The buyer, because he had equitable title to the property

113. A defendant was charged with attempted murder. At trial, the prosecution presented evidence that the defendant had purchased a gun the day before the attack and had researched the victim's daily routine. The defendant argues that mere preparation is insufficient to establish attempt. What is the most likely result?

- A. The defendant is guilty because the preparations constitute a substantial step toward the crime
- B. The defendant is not guilty because mere preparation does not constitute attempt
- C. The defendant is guilty if he had the present ability to commit the crime
- D. The defendant is not guilty because intent alone is insufficient

114. A state passed a law restricting the sale of violent video games to minors under 18. A video game retailer challenges the law on First Amendment grounds. The state argues that it has a compelling interest in protecting minors. What is the most likely result?

- A. The law is constitutional because protecting minors is a compelling interest
- B. The law is constitutional as a content-neutral regulation
- C. The law is unconstitutional because video games are protected expression
- D. The law is constitutional only if it includes parental consent provisions

115. A driver was distracted by a text message and rear-ended another car. The other driver was seriously injured. At trial, the injured driver seeks to introduce evidence that the at-fault driver had received three previous traffic citations for using a cell phone while driving. The at-fault driver objects. How should the court rule?

- A. Admit the evidence to show the at-fault driver's propensity for distracted driving
- B. Admit the evidence to show the at-fault driver's character for negligence
- C. Exclude the evidence because it is too prejudicial

D. Exclude the evidence as improper character evidence

116. A plaintiff filed a federal court action against multiple defendants for breach of contract. One of the defendants was a citizen of the same state as the plaintiff. The plaintiff seeks to maintain diversity jurisdiction by arguing that the non-diverse defendant is not an indispensable party. How should the court rule?

A. Maintain jurisdiction because the non-diverse defendant is not necessary to the case

B. Dismiss the case because complete diversity is lacking

C. Maintain jurisdiction if the non-diverse defendant has been served properly

D. Dismiss only the non-diverse defendant if the remaining parties are diverse

117. A defendant was charged with the attempted murder of his wife after he poisoned her food. The wife survived but suffered permanent kidney damage. The defendant argues that he should be charged with battery, not attempted murder, because his wife did not die. How should the court rule?

A. The defendant should be charged with battery because the victim survived

B. The defendant should be charged with both attempted murder and battery

C. The defendant should be charged with attempted murder regardless of the outcome

D. The defendant should be charged with reckless endangerment

118. A buyer contracted to purchase a house from a seller for \$400,000. The contract was contingent on the buyer obtaining financing within 30 days. After 30 days, the buyer had not obtained financing and asked for an extension. The seller refused to grant the extension and sold the house to another buyer. The original buyer sues for breach. How should the court rule?

A. For the seller, because the financing contingency was a material condition that was not satisfied

B. For the buyer, because the seller had a duty to grant a reasonable extension

C. For the buyer, because financing contingencies are presumed to be extendable

D. For the seller, but only if the seller can prove damages

119. A defendant was charged with stalking a victim over a period of three months. At trial, the prosecution sought to introduce evidence of phone calls the defendant made to the victim during that period. The defense objects on relevance grounds. How should the court rule?

- A. Exclude the evidence because phone calls are private communications
- B. Admit the evidence only if the prosecution can identify each call
- C. Exclude the evidence as improper character evidence
- D. Admit the evidence to show the pattern of stalking behavior

120. A federal statute prohibited the possession of a firearm by any person convicted of a felony. A defendant was charged with violating the statute after being arrested while in possession of a handgun. The defendant's prior felony conviction was for tax evasion. The defendant argues that tax evasion is not a "violent" felony and should not trigger the prohibition. How should the court rule?

- A. For the defendant, because the statute requires a violent felony conviction
- B. For the prosecution, because all felony convictions trigger the prohibition under the statute
- C. For the defendant, because the statute is unconstitutionally vague
- D. For the prosecution, because tax evasion is treated as a violent felony

121. A driver was operating his car when his brakes suddenly failed. The car struck a pedestrian, causing serious injuries. Investigation revealed that the brakes had been improperly installed by the driver's mechanic two weeks earlier. The pedestrian sues both the driver and the mechanic. What is the most likely result regarding the driver's liability?

- A. The driver is liable because owners are responsible for the maintenance of their vehicles
- B. The driver is not liable if he had no reason to know the brakes were defective
- C. The driver is liable under the doctrine of strict liability
- D. The driver is not liable because the mechanic's negligence superseded his own

122. A landlord owned a residential apartment building. He hired a property manager to handle all aspects of the rental business. The property manager refused to rent an apartment to a prospective tenant because

of the tenant's race. The tenant sues both the landlord and the property manager. What is the landlord's strongest defense?

- A. The property manager acted contrary to the landlord's express instructions
- B. The landlord had no personal knowledge of the racial discrimination
- C. The landlord did not personally discriminate against the tenant
- D. The property manager was an independent contractor

123. A defendant was charged with conspiracy to commit fraud. At trial, the prosecution sought to introduce statements made by an alleged co-conspirator who was now deceased. The statements were made during the conspiracy and in furtherance of it. The defense objects on Confrontation Clause grounds. How should the court rule?

- A. Suppress the statements because the co-conspirator is unavailable for cross-examination
- B. Admit the statements because they are non-testimonial in nature
- C. Suppress the statements because they were made in the absence of the defendant
- D. Admit the statements only if the defendant was present when they were made

124. A plaintiff filed a federal court action against a defendant for trademark infringement. After filing the complaint, the plaintiff discovered additional evidence supporting a related copyright infringement claim. The plaintiff seeks to amend the complaint to add the copyright claim. The defendant opposes the amendment. How should the court rule?

- A. Deny the amendment because the additional claim is unrelated to the original action
- B. Grant the amendment if the defendant consents in writing
- C. Deny the amendment because plaintiffs cannot add claims after filing
- D. Grant the amendment because justice requires allowing the related claim

125. A homeowner conveyed her property to her son. The deed was properly executed and delivered. However, the son never recorded the deed. Several years later, the homeowner sold the same property to a buyer who paid full value and had no knowledge of the previous conveyance. The buyer recorded his deed. Who owns the property?

- A. The son, because his deed was first in time
- B. The homeowner, because the conveyance to the son was never recorded
- C. The buyer, because he was a bona fide purchaser without notice
- D. The buyer and son as tenants in common

126. A defendant was charged with burglary. At trial, the prosecution called a witness who testified that, on the night of the burglary, he saw the defendant near the victim's home. On cross-examination, the defense sought to ask the witness about his pending charge for theft, which carried a maximum sentence of two years. The prosecution objects. How should the court rule?

- A. Admit the evidence because pending charges may show bias toward the prosecution
- B. Exclude the evidence because pending charges are not admissible for impeachment
- C. Exclude the evidence because the charge is too remote in time
- D. Admit the evidence only if the defendant was previously convicted

127. A federal statute required all banks to report transactions over \$10,000 to the government. A bank challenged the statute as a violation of customers' Fourth Amendment rights. What is the most likely result?

- A. The statute is unconstitutional because it compels banks to disclose customers' private information
- B. The statute is constitutional only if the customer consents to the disclosure
- C. The statute is constitutional because customers' financial records are not protected
- D. The statute is unconstitutional because banks have a privacy obligation to customers

128. A buyer entered into a contract with a seller for the purchase of 500 bushels of wheat at \$5 per bushel. The contract specified delivery on a particular date. On the delivery date, the seller delivered only 400 bushels, claiming the harvest had been less successful than expected. The buyer accepted the partial delivery. What is the buyer's legal recourse?

- A. The buyer may keep the wheat and recover damages for the shortage as a contract breach
- B. The buyer may keep the wheat and recover damages for the shortage as breach of contract

- C. The buyer cannot recover damages because she accepted the partial delivery
- D. The buyer must reject the entire delivery to claim damages

129. A defendant was charged with murder. At trial, the prosecution sought to introduce a recording of a 911 call made by the victim immediately before her death. The victim had said, "He's going to kill me. It's the defendant." The defense objects on hearsay and Confrontation Clause grounds. How should the court rule?

- A. Admit the statement under the dying declaration exception
- B. Suppress the statement because the victim could not be cross-examined
- C. Admit the statement under the excited utterance exception
- D. Suppress the statement because it violates the Confrontation Clause

130. A driver was injured when his car collided with another vehicle at an intersection. The other driver had run a red light. At trial, the injured driver sought to introduce evidence that the other driver had run three previous red lights in the past year. The other driver objects. How should the court rule?

- A. Admit the evidence to show the driver's propensity for traffic violations
- B. Admit the evidence as character evidence relevant to the case
- C. Exclude the evidence as improper character evidence under Rule 404
- D. Exclude the evidence because it is too remote in time

131. A federal statute prohibited the importation of any goods from a specified foreign country. A small American business challenged the statute, arguing that it violated the Equal Protection Clause by discriminating against businesses that traded with the country. What is the most likely result?

- A. The statute is unconstitutional because it discriminates against a class of citizens
- B. The statute is constitutional only if the foreign country presents a national security threat
- C. The statute is unconstitutional because it imposes restrictions on free trade
- D. The statute is constitutional under the foreign affairs and commerce powers

132. A buyer contracted with a manufacturer to purchase 100 custom-made parts at \$500 each. The manufacturer began production but, before completion, discovered that the buyer had filed for bankruptcy. The manufacturer ceased production. The buyer's bankruptcy trustee demanded that the manufacturer complete the order. What is the manufacturer's best defense?

- A. The bankruptcy filing constitutes an anticipatory repudiation of the contract
- B. The manufacturer may suspend performance under the UCC for inadequate assurance
- C. The contract was discharged by the buyer's filing for bankruptcy
- D. The manufacturer cannot be compelled to perform on a non-paying customer

133. A defendant was arrested at his home for assault. While being booked at the police station, officers searched his wallet and found a small amount of cocaine. The defendant was then charged with drug possession in addition to the assault. The defendant moves to suppress the cocaine. How should the court rule?

- A. Suppress the cocaine because the search of the wallet was outside the scope of arrest
- B. Admit the cocaine because all searches incident to arrest are constitutional
- C. Admit the cocaine because the search was incident to a lawful arrest
- D. Suppress the cocaine because the defendant had not been charged with drug possession

134. A landowner conveyed her property "to my brother for life, then to my sister." The brother and sister are alive at the time of the conveyance. Five years later, the brother dies. The sister claims the property. Is the sister entitled to immediate possession?

- A. Yes, because her remainder vested upon execution of the deed and is now possessory
- B. Yes, because the brother's life estate has ended
- C. No, because remainders must be expressly conveyed
- D. No, because the sister was only a contingent remainderman

135. A defendant was charged with theft of services. At trial, the prosecution called the manager of a hotel, who testified that the defendant had stayed at the hotel for three nights without paying. The defense

argues that the manager's testimony is hearsay because she did not personally witness the defendant's stay. How should the court rule?

- A. Admit the testimony because it is based on personal knowledge
- B. Admit the testimony as based on the manager's personal observations and business records
- C. Exclude the testimony as inadmissible hearsay
- D. Exclude the testimony because the manager has no personal knowledge

136. A homeowner sold his house to a buyer. The buyer paid the purchase price and took possession of the house. The seller had failed to disclose that the house had a leaky roof, which the seller knew about. The buyer discovered the leak after taking possession. What is the buyer's best theory of recovery?

- A. Breach of the implied warranty of habitability
- B. Fraud in the inducement based on misrepresentation by silence
- C. Mistake of fact regarding the property's condition
- D. Fraudulent concealment of a material defect

137. A driver was operating his car when he experienced a sudden onset of dizziness. He believed he could continue driving safely but, moments later, lost control and struck a pedestrian. The pedestrian sues the driver for negligence. What is the most likely result?

- A. The driver is liable because he chose to continue driving despite knowing of the dizziness
- B. The driver is not liable because the dizziness was sudden and unforeseeable
- C. The driver is liable for strict liability as a motorist on a public road
- D. The driver is not liable because he had no reasonable opportunity to stop the car

138. A federal statute prohibited the manufacture and possession of certain chemical weapons. The statute also imposed a duty on chemists to report any knowledge of unauthorized manufacture. A chemist learned of an unauthorized manufacture but failed to report it. The chemist was charged with violating the reporting requirement. What is the chemist's best defense?

- A. The reporting requirement violates the Fifth Amendment right against self-incrimination
- B. The chemist had no duty to report under common law principles
- C. The reporting requirement violates the First Amendment right to free speech
- D. The federal statute exceeds Congress's authority

139. A buyer and seller entered into a contract for the sale of a parcel of land. The contract specified that the seller would deliver "marketable title." Two weeks before closing, the buyer discovered that there was an outstanding mortgage of \$50,000 on the property. The seller offered to use the proceeds of the sale to pay off the mortgage at closing. Is the title "marketable"?

- A. No, because the existence of any mortgage renders title unmarketable
- B. Yes, because the seller can use the sale proceeds to clear the mortgage
- C. No, because the buyer would assume the mortgage upon closing
- D. Yes, because outstanding mortgages can be satisfied at closing

140. A defendant was charged with first-degree murder. At trial, the prosecution sought to introduce a photograph showing the victim's body at the crime scene. The defense objects on relevance grounds, arguing that the photograph is unduly prejudicial. How should the court rule?

- A. Exclude the photograph because crime scene photographs are inherently prejudicial
- B. Admit the photograph if its probative value outweighs the unfair prejudice
- C. Admit the photograph because the prosecution has a right to present evidence of the crime
- D. Exclude the photograph because the defendant has not contested the cause of death

141. A pedestrian was struck by a delivery truck owned by a corporation. The truck driver had been using his cell phone at the time of the accident. The pedestrian sues the corporation, alleging vicarious liability. What is the corporation's strongest defense?

- A. The driver was authorized to use his cell phone during work
- B. The driver's cell phone use was specifically prohibited by company policy

- C. The corporation's policy prohibited use of cell phones while driving, and the driver was acting outside the scope of his employment
- D. The corporation provided the driver with a hands-free device

142. A state passed a law requiring all public school students to recite the Pledge of Allegiance daily. A student who refused to participate was suspended from school. The student sues, alleging a violation of his constitutional rights. What is the most likely result?

- A. The suspension is unconstitutional because it violates the student's First Amendment rights
- B. The suspension is constitutional because the Pledge is a tradition in American schools
- C. The suspension is unconstitutional only if the student claims religious objection
- D. The suspension is constitutional because schools may regulate student speech

143. A plaintiff filed a federal court action against a defendant for breach of contract. After trial, the jury returned a verdict for the plaintiff. The defendant filed a motion for a new trial, arguing that the verdict was against the weight of the evidence. How should the court rule?

- A. Grant the motion if the verdict shocks the conscience of the court
- B. Deny the motion because juries are the final arbiters of fact
- C. Grant the motion if the court finds the verdict was clearly contrary to the weight of the evidence
- D. Deny the motion because new trials are disfavored after a verdict

144. A defendant was charged with assault and battery. At trial, the prosecution called the alleged victim, who testified that the defendant had struck her in the face. On cross-examination, the defense sought to ask the victim about her recent conviction for perjury. The prosecution objects. How should the court rule?

- A. Exclude the evidence because perjury is too remote in time
- B. Exclude the evidence as more prejudicial than probative
- C. Admit the evidence only if the conviction involved violence
- D. Admit the evidence because perjury is a crime of dishonesty admissible for impeachment

145. A buyer entered into a contract with a seller for the purchase of a parcel of real estate. The contract included a clause stating that "time is of the essence" with respect to the closing date. Two weeks before closing, the seller's attorney requested a brief extension to clear title. The buyer refused the extension and declared the seller in breach. How should the court rule?

- A. For the buyer, because the time is of the essence clause makes timely closing essential
- B. For the seller, because the buyer should grant a reasonable extension
- C. For the buyer, because the seller had a duty to deliver clear title on time
- D. For the seller, because the extension was minor and would not have caused substantial harm

146. A defendant was charged with selling controlled substances. At trial, the prosecution called an undercover officer who testified that he had purchased drugs from the defendant on three occasions. The defense argues that the officer's testimony is hearsay because she relied on her notes. How should the court rule?

- A. Admit the testimony because the officer has personal knowledge
- B. Exclude the testimony because the officer relied on notes
- C. Admit the testimony if the officer's recollection is refreshed by her notes
- D. Exclude the testimony as inadmissible hearsay

147. A homeowner contracted with a builder to construct a swimming pool in her backyard for \$30,000. The contract specified that the pool would be completed within 60 days. Sixty days later, the pool was complete except for the installation of a diving board, which would take an additional week. The homeowner refused to pay any portion of the contract price until the diving board was installed. The builder sues for the full contract price minus the value of the diving board. What is the homeowner's best defense?

- A. The contract was breached when the builder failed to complete on time
- B. The builder's failure to install the diving board constitutes a material breach
- C. The homeowner is entitled to set off the value of the missing diving board
- D. The homeowner can recover damages for delay caused by the unfinished work

148. A federal statute prohibited the discrimination against any person based on race, color, religion, sex, or national origin in any place of public accommodation. A small bakery refused to bake a wedding cake for a same-sex couple, claiming religious objections. The couple sues the bakery under the federal statute. What is the most likely result?

- A. The bakery is liable because public accommodations cannot discriminate based on sexual orientation
- B. The bakery is not liable because the federal statute does not cover sexual orientation
- C. The bakery is not liable because religious beliefs are protected
- D. The bakery is liable only if it is a large commercial establishment

149. A defendant was charged with felony murder. The underlying felony was armed robbery. During the robbery, an innocent bystander was killed by a police officer's bullet aimed at the defendant. The defendant argues that he should not be liable for the death because the bystander was not killed by his hand. How should the court rule?

- A. The defendant is not liable because the death was caused by the police officer
- B. The defendant is liable for second-degree murder, not felony murder
- C. The defendant is liable for felony murder because the death occurred during the felony
- D. The defendant is not liable if the police officer was negligent

150. A buyer entered into a written contract to purchase a parcel of real estate from a seller for \$300,000. The contract was contingent upon the buyer obtaining financing within 30 days. The buyer failed to obtain financing within 30 days. The seller terminated the contract and sold the property to another buyer for \$310,000. The original buyer sued for breach. How should the court rule?

- A. For the seller, because the financing contingency was not satisfied
- B. For the buyer, because the seller benefited from the higher resale price
- C. For the buyer, because financing contingencies are presumed to be extendable
- D. For the seller, but only if the seller suffered actual damages

151. A driver was operating his car in a construction zone when he struck a worker. The worker sued for negligence. At trial, the driver argued that the worker had failed to wear a high-visibility vest, as required by safety regulations. The worker's failure to wear the vest constitutes what type of defense?

- A. Assumption of risk because the worker accepted the dangers of construction work
- B. Contributory negligence in jurisdictions that recognize it
- C. Comparative negligence in jurisdictions that recognize it
- D. Comparative negligence, allowing reduction of the worker's damages based on his fault

152. A landlord and tenant entered into a written lease for a residential property. The lease provided that the tenant would pay rent on the first of each month. After six months, the tenant fell behind on rent. The landlord sent the tenant a notice of default and demanded payment within 30 days. The tenant did not pay. What is the landlord's next step in the eviction process?

- A. File a lawsuit for breach of contract immediately
- B. File an eviction action in court after the notice period has expired
- C. Change the locks and physically remove the tenant
- D. Contact the local sheriff to remove the tenant from the property

153. A defendant was charged with the murder of his business partner. At trial, the prosecution sought to introduce a statement made by the defendant's wife to a friend that "my husband had something to do with the partner's death." The wife is not testifying. The defense objects on hearsay grounds. How should the court rule?

- A. Exclude the statement because it is inadmissible hearsay without exception
- B. Admit the statement under the present sense impression exception
- C. Admit the statement under the excited utterance exception
- D. Admit the statement under the dying declaration exception

154. A federal statute required all federal employees to undergo random drug testing. A federal employee challenged the statute as a violation of his Fourth Amendment rights. The government defended the testing as necessary to maintain workplace safety. What is the most likely result?

- A. The testing is unconstitutional because random drug testing requires individualized suspicion
- B. The testing is unconstitutional because federal employees have a right to privacy
- C. The testing is constitutional because the government has a substantial interest in workplace safety
- D. The testing is unconstitutional because it violates the Fifth Amendment

155. A buyer ordered 100 widgets from a seller at \$50 per widget, with delivery to be made in three installments of 30, 30, and 40 widgets. The seller delivered the first installment of 30 widgets on time. Twenty days later, the seller failed to deliver the second installment. The buyer immediately notified the seller of his intention to cancel the contract. What is the buyer's best claim?

- A. Breach of the contract terms, allowing recovery of damages for nonconforming delivery
- B. Anticipatory repudiation, allowing immediate cancellation of the contract
- C. Mistake of fact regarding the delivery schedule
- D. Breach of installment contract, allowing the buyer to cancel future installments

156. A defendant was arrested for armed robbery. At the police station, officers gave him Miranda warnings. The defendant did not request counsel and answered the officers' questions. He made a confession that the prosecution sought to introduce at trial. The defendant moved to suppress the confession, arguing that he had been confused and did not understand the warnings. How should the court rule?

- A. Admit the confession because the defendant did not request counsel
- B. Suppress the confession if the defendant did not voluntarily and knowingly waive his rights
- C. Admit the confession because Miranda warnings are not required for armed robbery
- D. Suppress the confession if any officer was present during the questioning

157. A homeowner conveyed her property "to my son for life, then to his children." At the time of the conveyance, the son was alive and had two children, A and B. Three years later, A died, leaving children X and Y. What is the legal effect on the property interests?

- A. X and Y take A's interest by representation, sharing in the property

- B. B takes the entire interest of the son's children
- C. A's children X and Y have no interest because A died before the son
- D. The son's life estate is extinguished by A's death

158. A defendant was charged with possession of stolen property. At trial, the prosecution sought to introduce evidence that the defendant had been seen running away from the victim's home shortly after the burglary. The defense objects on relevance grounds. How should the court rule?

- A. Exclude the evidence as more prejudicial than probative
- B. Admit the evidence because it shows the defendant's character for criminal behavior
- C. Admit the evidence as circumstantial evidence of the defendant's involvement
- D. Exclude the evidence because it is too speculative

159. A pedestrian was struck by a car while crossing a street. The driver had been distracted by an argument with a passenger and did not see the pedestrian. The pedestrian sues the driver. What is the most likely result regarding the driver's liability?

- A. The driver is not liable if the argument was the proximate cause of the inattention
- B. The driver is liable because his distraction did not constitute reasonable care
- C. The driver is liable for strict liability as a motorist
- D. The driver is not liable because the passenger was equally at fault

160. A state enacted a statute requiring all residential construction to comply with energy efficiency standards. A homeowner challenged the statute, arguing that it violated the Takings Clause by reducing the value of his property. What is the most likely result?

- A. The statute violates the Takings Clause because it imposes economic loss on property owners
- B. The statute violates the Takings Clause only if it deprives the property of all economic value
- C. The statute violates the Due Process Clause as an unreasonable restriction on property
- D. The statute is constitutional because reasonable building regulations are not takings

161. A defendant was charged with possession of an unregistered firearm. At trial, the defendant argued that he had inherited the firearm from his deceased father and was unaware of the registration requirement. What is the defendant's best legal defense?

- A. The defendant was not aware that the firearm was unregistered
- B. The defendant did not know the firearm needed to be registered
- C. Mistake of law is generally not a defense to criminal liability
- D. The defendant had no intent to use the firearm

162. A plaintiff filed a federal court action against a defendant for fraud. After completion of discovery, the defendant moved for summary judgment. The plaintiff opposed the motion by submitting affidavits and depositions. The court denied the motion. At trial, the jury returned a verdict for the plaintiff. The defendant appealed, arguing that summary judgment should have been granted. How should the court of appeals review the denial?

- A. Review the denial de novo, looking at the evidence in the light most favorable to the non-moving party
- B. Affirm the denial because the case proceeded to trial without prejudice
- C. Reverse if the evidence at trial showed that summary judgment was warranted
- D. Review the denial for abuse of discretion by the trial court

163. A homeowner contracted with a roofer to install a new roof. The contract price was \$20,000. The roofer completed the work, but the homeowner refused to pay, claiming the work was defective. The roofer filed a mechanic's lien on the property and sued for the contract price. What is the legal effect of the mechanic's lien?

- A. The lien automatically results in the foreclosure sale of the property
- B. The lien must be combined with a personal action for the contract price
- C. The lien gives priority over subsequent encumbrances on the property
- D. The lien provides the roofer with a security interest in the property

164. A defendant was charged with the murder of his neighbor. At trial, the prosecution presented evidence that the defendant had a long-running feud with the victim and had threatened him several months before the murder. The defense objects on relevance grounds. How should the court rule?

- A. Exclude the evidence as improper character evidence
- B. Admit the evidence to show the defendant's motive and intent
- C. Admit the evidence to show the defendant's character for violence
- D. Exclude the evidence because the threats are too remote in time

165. A federal court is hearing a case involving claims arising under both federal and state law. The federal claim has been dismissed before trial. The court is considering whether to retain jurisdiction over the state-law claim. What is the most likely outcome?

- A. The court will likely dismiss the state-law claim without prejudice
- B. The court will retain jurisdiction because the parties have invested resources in the case
- C. The court will dismiss the state-law claim with prejudice
- D. The court will transfer the state-law claim to state court

166. A buyer ordered 1,000 specialized parts from a manufacturer at \$100 each. The contract specified delivery within 60 days. After 30 days, the manufacturer's main supplier went bankrupt, and the manufacturer informed the buyer that delivery would be delayed by an additional 60 days. The buyer immediately cancelled the contract and purchased the parts from another supplier at \$120 each. The buyer sues for damages. What is the most likely result?

- A. The buyer recovers the difference between the contract price and the substitute price as damages
- B. The buyer recovers only the actual costs incurred in finding a substitute supplier
- C. The buyer recovers nothing because the supplier's bankruptcy was an unforeseeable event
- D. The buyer recovers the entire amount paid to the substitute supplier

167. A defendant was charged with felony murder. The underlying felony was armed robbery. During the robbery, the defendant's accomplice shot and killed a customer. The defendant argues that he should not

be liable for the customer's death because his accomplice was the one who pulled the trigger. How should the court rule?

- A. The defendant is not liable because he did not directly cause the death
- B. The defendant is liable for felony murder under the rule that all participants are responsible for deaths during the commission of a felony
- C. The defendant is liable only if he intended to cause the death
- D. The defendant is not liable because his accomplice acted on his own initiative

168. A homeowner conveyed her property "to my son so long as the property is used for residential purposes." Three years later, the son began operating a small business from the property. What is the legal effect on the property?

- A. The son's interest is automatically forfeited and the property reverts to the homeowner
- B. The son must continue residential use to maintain his interest in the property
- C. The son's interest continues unless the homeowner takes affirmative action to recover
- D. The son's interest is terminated and the property automatically reverts to the homeowner

169. A defendant was charged with possession of a controlled substance. At trial, the prosecution presented evidence that the defendant had been seen handling a small plastic bag containing a white powder. A laboratory analysis confirmed that the powder was cocaine. The defendant argues that the prosecution has not established that he knew the contents of the bag. How should the court rule?

- A. The defendant is not guilty because the prosecution must prove knowledge of the substance
- B. The defendant is guilty if the jury finds beyond a reasonable doubt that he knew the contents of the bag
- C. The defendant is guilty if he had constructive possession of the substance regardless of knowledge
- D. The defendant is not guilty because possession of any substance is constitutionally protected

170. A state passed a law restricting the sale of alcohol to persons under the age of 21. A 19-year-old college student challenged the law, arguing that it violated the Equal Protection Clause by discriminating against young adults. What is the most likely result?

- A. The law is constitutional because it serves a legitimate state interest in regulating alcohol sales
- B. The law is unconstitutional because age discrimination violates equal protection
- C. The law is unconstitutional only if young adults can demonstrate that they are responsible
- D. The law is constitutional only if the state can show a compelling interest

171. A driver was operating his car when his brakes failed. He had been warned by his mechanic two weeks earlier that the brakes needed immediate repair but had not made the repair. The driver's car struck a pedestrian, causing serious injuries. The pedestrian sues for negligence. What is the driver's most likely liability?

- A. The driver is not liable because the brake failure was unforeseeable
- B. The driver is liable for strict liability as the owner of the vehicle
- C. The driver is not liable because the mechanic should have made the repair
- D. The driver is liable because he had notice of the defective brakes and failed to repair them

172. A federal statute prohibited the use of certain types of firearms in the commission of a federal felony. A defendant was charged with violating the statute. The defendant argues that the statute is unconstitutionally vague because it does not clearly define which firearms are prohibited. How should the court rule?

- A. The statute is unconstitutional because it gives law enforcement unlimited discretion
- B. The statute is constitutional if it provides ordinary persons with reasonable notice of prohibited conduct
- C. The statute is unconstitutional only if the defendant did not know which firearms were prohibited
- D. The statute is constitutional only if the prohibited firearms are easily identifiable

173. A pedestrian was struck by a car while crossing a street. The driver was using his cell phone at the time of the accident. The pedestrian sues for negligence. At trial, the driver moved for a directed verdict, arguing that the pedestrian had stepped into the street without looking. How should the court rule?

- A. Grant the motion because the pedestrian's failure to look bars recovery
- B. Grant the motion because pedestrians have a duty to look before crossing

- C. Deny the motion because there is a genuine factual dispute regarding the cause of the accident
- D. Deny the motion because the driver's negligence was the sole cause of the accident

174. A landlord and tenant entered into a written lease for a residential property. After six months, the tenant discovered that the landlord had not made required repairs to the building's electrical system. The tenant moved out and stopped paying rent. The landlord sues for the remaining rent. What is the tenant's best defense?

- A. Constructive eviction based on the landlord's failure to maintain habitable conditions
- B. Breach of contract based on the landlord's failure to make repairs
- C. Mutual mistake regarding the condition of the property
- D. Failure of consideration because the landlord did not provide promised services

175. A defendant was charged with bribery of a public official. At trial, the prosecution called the official, who testified that the defendant had offered him a \$10,000 payment in exchange for a favorable contract. The defense sought to introduce evidence that the official had previously been convicted of perjury. The prosecution objects. How should the court rule?

- A. Exclude the evidence because perjury convictions are not admissible
- B. Admit the evidence because perjury is a crime of dishonesty admissible for impeachment
- C. Exclude the evidence because it is too prejudicial
- D. Admit the evidence only if the perjury conviction is recent

176. A federal statute prohibited the discrimination against any person in the rental of housing based on race, color, religion, sex, or national origin. A landlord refused to rent an apartment to a Hispanic family, claiming that he wanted to avoid issues with the existing tenants who were predominantly white. The family sues the landlord under the federal statute. What is the most likely result?

- A. The landlord is not liable because he was protecting his existing tenants
- B. The landlord is liable only if the family can prove malicious intent
- C. The landlord is not liable because the discrimination was based on tenant preferences

D. The landlord is liable because the federal statute prohibits discrimination based on national origin

177. A buyer and seller entered into a contract for the sale of a unique antique vase. The contract specified delivery within 30 days. On the delivery date, the seller informed the buyer that the vase had been broken in shipment and could not be delivered. The buyer sues for specific performance. What is the most likely result?

- A. The court will not order specific performance because the vase is no longer available
- B. The court will award the buyer damages equal to the contract price plus any consequential losses
- C. The court will order the seller to find a replacement vase
- D. The court will award the buyer punitive damages for the seller's negligence

178. A defendant was charged with attempted robbery. At trial, the prosecution presented evidence that the defendant had entered a bank, approached a teller, and demanded money. The teller activated a silent alarm and the police arrived. The defendant claimed he was joking. How should the court rule?

- A. The defendant is not guilty because his actions were ambiguous
- B. The defendant is guilty if he had the present ability to commit the robbery
- C. The defendant is guilty if the prosecution can prove specific intent to rob
- D. The defendant is not guilty because no money was taken

179. A landowner conveyed her property to her son and daughter as joint tenants with right of survivorship. Three years later, the son sold his interest to a third party. What is the legal effect of the son's sale on the joint tenancy?

- A. The third party becomes a joint tenant with the daughter
- B. The daughter retains her right of survivorship over the entire property
- C. The third party becomes a tenant in common with the daughter
- D. The son's sale terminates the joint tenancy and creates a tenancy in common

180. A defendant was charged with the murder of his girlfriend. At trial, the prosecution sought to introduce evidence that the defendant had threatened to kill the girlfriend on three previous occasions. The defense objects on relevance grounds. How should the court rule?

- A. Exclude the evidence because the threats are too remote in time
- B. Admit the evidence to show the defendant's intent, motive, and absence of mistake
- C. Admit the evidence to show the defendant's character for violence
- D. Exclude the evidence as improper character evidence

181. A homeowner contracted with a builder to construct an addition to her house for \$50,000. The contract specified that the addition would be completed within 90 days. Ninety days later, the addition was complete but for the installation of certain fixtures, which would take an additional two weeks. The homeowner refused to pay any portion of the contract price until the fixtures were installed. The builder sues for the full contract price. What is the most likely result?

- A. The homeowner can recover damages for the delay in completion
- B. The builder can recover the full contract price because of substantial performance
- C. The builder can recover the contract price minus the cost to complete the unfinished work
- D. The builder cannot recover anything until the work is fully completed

182. A driver was operating his car when he experienced a sudden and unforeseeable seizure. His car drifted across the center line and struck another vehicle. The other driver was injured and sued for negligence. At trial, the driver presented evidence that the seizure was the result of a previously undiagnosed medical condition. What is the most likely result?

- A. The driver is not liable because the seizure was sudden and unforeseeable
- B. The driver is liable because the seizure does not excuse negligent operation
- C. The driver is liable for strict liability as a motorist
- D. The driver is not liable only if he had reasonable warning of the seizure

183. A federal statute prohibited the importation of any item used in the commission of a federal crime. A defendant was charged with violating the statute after he was found in possession of imported electronic

equipment that he had used to commit wire fraud. The defendant argues that the statute is overbroad because it could apply to common household items. How should the court rule?

- A. The statute is unconstitutional because it is overbroad
- B. The statute is constitutional because the defendant did not have reasonable notice of its prohibitions
- C. The statute is unconstitutional only if the equipment was specifically designed for criminal use
- D. The statute is constitutional if it requires that the item be used in furtherance of a federal crime

184. A defendant was charged with felony murder. The underlying felony was burglary. During the burglary, the homeowner shot and killed an accomplice who was attempting to escape. The defendant argues that he should not be liable for his accomplice's death. How should the court rule?

- A. The defendant is liable for felony murder because the death occurred during the commission of a felony
- B. The defendant is liable for felony murder under the "agency theory" if the accomplice's death was foreseeable
- C. The defendant is liable only if the defendant was the cause of the death
- D. The defendant is not liable under most jurisdictions because the death was caused by the homeowner, not by the felons

185. A pedestrian was struck by a car while crossing the street. The driver had failed to maintain a proper lookout. The pedestrian sues the driver. At trial, the driver moved for a directed verdict, arguing that the pedestrian had jaywalked. How should the court rule?

- A. Deny the motion because jaywalking does not bar recovery as a matter of law
- B. Grant the motion because jaywalking constitutes contributory negligence
- C. Grant the motion because pedestrians have a duty to cross at marked crosswalks
- D. Deny the motion only if the driver was speeding

186. A buyer and seller entered into a written contract for the sale of a parcel of land for \$200,000. The contract specified that the seller would deliver "marketable title" at closing. Two weeks before closing, the buyer discovered that the property was subject to a 10-foot easement for utility purposes. The seller claims that easements do not affect marketability. How should the court rule?

- A. For the buyer, because all easements render title unmarketable
- B. For the seller, because utility easements are standard for residential property
- C. For the buyer, because the easement materially affects the buyer's use of the property
- D. For the seller, because the buyer should have inspected the property for easements

187. A defendant was charged with the murder of his estranged wife. At trial, the prosecution sought to introduce a recording of a 911 call made by the defendant's neighbor, who said, "I just saw the defendant entering his wife's house with what looked like a gun." The defense objects on hearsay and Confrontation Clause grounds. How should the court rule?

- A. Admit the statement under the present sense impression exception, but allow cross-examination
- B. Suppress the statement because the neighbor cannot be cross-examined
- C. Admit the statement under the excited utterance exception
- D. Admit the statement under the present sense impression exception

188. A driver was operating his car when he was distracted by his passenger. The car drifted off the road and struck a tree. The passenger was injured and sued the driver for negligence. The driver argues that the passenger should not be allowed to recover because she was the cause of the distraction. What is the most likely result?

- A. The passenger is barred from recovery because she was the cause of the distraction
- B. The passenger's recovery is reduced by the percentage of her contributory fault
- C. The passenger can recover only if she can prove the driver's conduct was reckless
- D. The passenger can recover full damages because the driver had the duty to maintain control

189. A federal court is hearing a case involving claims arising under both federal and state law. The federal claim was based on a statute that was later repealed. The state-law claim continues to exist. What is the most likely outcome regarding the federal court's jurisdiction over the state-law claim?

- A. The court must dismiss the state-law claim because the federal claim is no longer viable
- B. The court must transfer the state-law claim to state court

C. The court may exercise supplemental jurisdiction over the state-law claim even after the federal claim is dismissed

D. The court loses all jurisdiction once the federal claim is dismissed

190. A homeowner contracted with a contractor to install a swimming pool in her backyard for \$30,000. The contractor began work but encountered unexpectedly rocky soil that required additional excavation. The contractor informed the homeowner that the additional work would cost \$5,000. The homeowner agreed in writing to the additional cost. After completion, the homeowner refused to pay the additional \$5,000. The contractor sues. What is the most likely result?

A. The contractor recovers the additional \$5,000 because the modification was supported by unforeseen difficulties

B. The contractor cannot recover the additional amount because the original contract was binding

C. The contractor cannot recover the additional amount because no new consideration was provided

D. The contractor recovers only the original contract amount because modifications require formal acknowledgment

191. A driver was operating his car in a school zone when he struck a child crossing the street. The driver had been driving at the posted speed limit. The child's parents sue the driver for negligence. What is the most likely result?

A. The driver is not liable because he was driving at the speed limit

B. The driver is liable because school zones require heightened care, even at the posted speed limit

C. The driver is liable for strict liability because of the school zone designation

D. The driver is not liable because the child was responsible for crossing safely

192. A landlord and tenant entered into a written lease for a commercial property. The lease specified that the tenant could not assign the lease without the landlord's written consent. After one year, the tenant attempted to assign the lease to another business without obtaining the landlord's consent. The landlord refused to accept rent from the new tenant and filed an eviction action. What is the legal effect?

A. The new tenant has acquired the lease rights of the original tenant

- B. The assignment is valid because the original tenant can transfer his interest
- C. The landlord must accept rent from the new tenant under the doctrine of waiver
- D. The assignment is invalid without the landlord's consent, and the landlord may terminate the lease

193. A defendant was charged with selling controlled substances. At trial, the prosecution sought to introduce evidence that the defendant had been previously convicted of drug trafficking. The defense objects. How should the court rule?

- A. Exclude the evidence as improper character evidence under Rule 404
- B. Admit the evidence to show the defendant's propensity for drug trafficking
- C. Admit the evidence to show the defendant's modus operandi
- D. Exclude the evidence because the prior conviction is too remote in time

194. A buyer and seller entered into a contract for the sale of a parcel of real estate. The contract specified that the closing would occur within 60 days. Two weeks before closing, the buyer's bank denied his loan application. The buyer requested an extension to seek alternative financing. The seller refused to grant the extension. The buyer sues for breach. What is the most likely result?

- A. The buyer can sue for breach because the seller had a duty to grant a reasonable extension
- B. The buyer can recover his earnest money deposit because the financing contingency failed
- C. The seller is not liable because the buyer failed to satisfy the financing contingency
- D. The seller is not liable because the buyer was responsible for his own financing failure

195. A state passed a law requiring all citizens to vote in state elections. A citizen who refused to vote was fined \$50. The citizen challenges the statute on First Amendment grounds. What is the most likely result?

- A. The statute is unconstitutional because it compels political expression in violation of the First Amendment
- B. The statute is constitutional because the state has a legitimate interest in democratic participation
- C. The statute is unconstitutional only if the citizen has a religious objection
- D. The statute is constitutional because voting is a civic duty, not protected speech

196. A plaintiff filed a federal court action against a defendant for breach of contract. The plaintiff is a citizen of Texas, and the defendant is a citizen of Oklahoma. The contract was for the sale of equipment for \$50,000. The defendant moves to dismiss for lack of subject matter jurisdiction. How should the court rule?

- A. Deny the motion because diversity jurisdiction is established
- B. Grant the motion because the amount in controversy is below the diversity threshold
- C. Deny the motion because the contract dispute arises under federal law
- D. Grant the motion because federal courts cannot hear breach of contract claims

197. A defendant was charged with the murder of his neighbor. At trial, the prosecution sought to introduce a confession that the defendant had made to his cellmate while in jail. The cellmate was not acting as a government informant. The defense objects on the ground that the confession was obtained without Miranda warnings. How should the court rule?

- A. Suppress the confession because the defendant was in custody
- B. Admit the confession because Miranda warnings are not required for non-state actors
- C. Admit the confession because the cellmate was not a state actor and Miranda did not apply
- D. Suppress the confession because all jailhouse statements are coercive

198. A homeowner contracted with a contractor to build an addition to her house for \$40,000. The contract specified that the work would be completed within 120 days. After 90 days, the contractor had completed about 50% of the work but informed the homeowner that he would not finish on time. The homeowner immediately hired another contractor to complete the work for \$30,000. The original contractor sues for the value of his work. What is the most likely result?

- A. The original contractor can recover the reasonable value of his completed work, less damages caused by his breach
- B. The original contractor cannot recover anything because he breached the contract
- C. The original contractor can recover the full original contract price
- D. The original contractor can recover only the actual cost of materials and labor

199. A federal statute prohibited the discrimination against any person in employment based on race, color, religion, sex, or national origin. An employer refused to hire a qualified Black applicant, claiming that he had hired a Hispanic applicant for the position instead. The Black applicant sues under the federal statute. What is the most likely result?

- A. The employer is not liable because the position was filled by a member of a minority group
- B. The employer is liable because federal law prohibits discrimination based on race
- C. The employer is not liable only if the Hispanic applicant was more qualified
- D. The employer is liable only if the Black applicant can show malicious intent

200. A defendant was charged with possession of a controlled substance. At trial, the prosecution presented evidence that the defendant had been seen handling a small plastic bag containing a white powder. A laboratory analysis confirmed that the powder was cocaine. The defendant argues that the prosecution has not established beyond a reasonable doubt that he knew the contents of the bag. What is the most likely result?

- A. The defendant is not guilty because the prosecution must prove knowledge of the substance
- B. The defendant is guilty if the jury finds he had constructive possession of the substance
- C. The defendant is not guilty because possession requires actual knowledge of the substance
- D. The defendant is guilty if the jury finds beyond a reasonable doubt that he knew the contents of the bag based on the surrounding circumstances

ANSWER KEY WITH EXPLANATIONS

1. C — Generally, an employer is not vicariously liable for the torts of an independent contractor. The exception for inherently dangerous activities applies only to abnormally dangerous activities like blasting, not ordinary excavation. Routine swimming pool construction, even involving digging, does not trigger the non-delegable duty doctrine, so the homeowner is not liable for the contractor's negligence.

2. A — Specific performance is the standard remedy for breach of a real estate sales contract because real property is considered legally unique. Each parcel has distinct characteristics that monetary damages cannot adequately replace. The buyer's motive in seeking specific performance and the seller's reasons for breaching are immaterial to the availability of this remedy.

3. D — The niece holds an alternative contingent remainder because her interest is conditioned on the son not surviving the daughter. The son and niece have alternative contingent remainders, with each interest contingent on the failure of the other. Both interests will become possessory only upon the daughter's death.

4. B — Under Federal Rule of Evidence 801(d)(1)(C), a prior identification of a person made after perceiving the person is admissible as non-hearsay if the declarant testifies at trial. The clerk's photo identification is admissible as substantive evidence, not just for impeachment, even though the clerk cannot now identify the defendant in court.

5. D — The statute facially discriminates against out-of-state commerce by requiring use of in-state manufactured mud flaps. Under the dormant Commerce Clause, such facial discrimination is virtually per se invalid unless the state can show that the regulation advances a legitimate local purpose that cannot be served by reasonable alternative non-discriminatory means.

6. A — Under *Burnham v. Superior Court*, personal service within the forum state ("tag jurisdiction") is sufficient to establish personal jurisdiction over an individual, even if the individual is only briefly present in the state. The defendant's presence at the wedding subjected her to the jurisdiction of Illinois courts, regardless of her contacts.

7. C — Under the doctrine of foreseeable intervening causes, the original tortfeasor remains liable for additional injuries caused by reasonably foreseeable subsequent events, including subsequent negligent acts during the medical treatment process. Subsequent negligence of emergency responders or healthcare providers is generally considered foreseeable, so the original driver is liable for both injuries.

8. B — Under UCC § 2-205, a merchant's written firm offer is irrevocable for the time stated in the offer, up to three months, without consideration. The merchant's attempt to revoke the offer was ineffective, and the buyer's subsequent acceptance formed a binding contract within the 30-day period.

9. A — Constructive eviction occurs when a landlord's failure to maintain habitable conditions makes the premises uninhabitable, effectively forcing the tenant to vacate. The implied warranty of habitability is breached when a residential property lacks essential services like heat in winter, providing the tenant a defense to an action for unpaid rent.

10. D — The strongest argument is that the gun was capable of being used as a bludgeon, making it a dangerous weapon under most jurisdictions' definitions. While an unloaded gun cannot fire, it can still

cause serious injury when used as a striking weapon, satisfying the "dangerous weapon" element of armed robbery in many states.

11. B — Under 28 U.S.C. § 1367, federal courts have supplemental jurisdiction over claims that are part of the same case or controversy as the original federal claim. The counterclaim arises from the same transaction and meets the requirements for supplemental jurisdiction, so the amount in controversy requirement does not apply.

12. C — Under Federal Rule of Evidence 404(b), evidence of prior crimes or wrongs is generally inadmissible to prove a person's character to show action in conformity with that character. The marijuana arrest does not fit any exception (such as motive, opportunity, or intent) and is inadmissible to show propensity to commit drug crimes.

13. A — A property owner has the right to abate a nuisance, including cutting back encroaching tree branches to the property line. However, this right is limited to what is reasonably necessary, and exceeding that scope by damaging the trunk on the neighbor's property exposes the homeowner to liability for the damage caused.

14. C — The Establishment Clause of the First Amendment prohibits the government from establishing religion or endorsing religious practices. Mandating prayer in public schools constitutes an unconstitutional government endorsement of religion under *Engel v. Vitale* and similar cases, providing the strongest basis for the teacher's claim.

15. D — Under UCC § 2-601 and § 2-714, when a buyer accepts non-conforming goods, the buyer may recover damages for the loss resulting from the non-conformity. The buyer's acceptance of the partial delivery limits the remedy to damages, not rejection of the entire shipment, but the buyer is entitled to compensation for the shortage.

16. B — Under the protective sweep doctrine (*Maryland v. Buie*), officers executing an arrest warrant may conduct a limited search of the premises for officer safety. Evidence found in plain view during a lawful protective sweep is admissible. Drugs in the bedroom were in plain view and properly seized.

17. D — A possibility of reverter is the future interest retained by a grantor who conveys a fee simple determinable. The phrase "so long as" creates a determinable estate, and the property automatically reverts to the grantor (or the grantor's heirs) when the condition is violated. No affirmative action is required.

18. A — Evidence of prior similar accidents is inadmissible character evidence under Federal Rule of Evidence 404. It cannot be used to show the driver's propensity to drive carelessly. Habit evidence requires regular, semi-automatic responses to specific stimuli, which three accidents over five years do not establish.

19. B — Under the aggregation principle established in *Wickard v. Filburn* and applied in *Rapanos v. United States*, Congress may regulate intrastate activities that, in the aggregate, substantially affect interstate commerce. The cumulative effect of wetlands drainage on water quality and interstate commerce supports the federal statute's application.

20. C — Under Federal Rule of Civil Procedure 15(a)(2), leave to amend pleadings shall be freely given when justice so requires. While compulsory counterclaims should ordinarily be raised in the original answer, courts will generally permit amendment when no unfair prejudice results to the opposing party.

21. D — Under *Crawford v. Washington*, a testimonial statement is inadmissible against the defendant under the Confrontation Clause if the declarant is unavailable and the defendant had no prior opportunity for cross-examination. The witness's statement to police is testimonial, and the defendant's confrontation rights would be violated.

22. A — Punitive damages are designed to punish and deter willful, wanton, or reckless conduct that demonstrates conscious disregard for the rights and safety of others. While driving while intoxicated is illegal, the willful and wanton nature of the conduct (knowingly driving impaired) is what supports punitive damages, not the mere violation of a statute.

23. C — Fraudulent misrepresentation requires proof of a knowingly false statement of material fact intended to induce reliance, on which the party justifiably relied to his detriment. Misrepresenting the mileage on a used car is a classic example of fraudulent misrepresentation regarding a material fact in the sale.

24. B — Under *Edwards v. Arizona*, once a defendant has invoked his right to counsel during custodial interrogation, all questioning must cease until counsel is provided or the defendant initiates further communication. The two-hour delay does not cure the violation, and questioning about an unrelated offense by a different officer is still prohibited.

25. A — An easement by necessity arises by implication when property is conveyed without express access to a public way, and access across the grantor's retained land is reasonably necessary for use of the granted property. The complete absence of alternative access to the public road satisfies the necessity requirement.

26. D — The Commerce Clause prohibits state taxes that discriminate against interstate commerce. A tax that imposes a higher burden on businesses dealing primarily in out-of-state goods than on those dealing in in-state goods constitutes facial discrimination and is virtually per se unconstitutional under the dormant Commerce Clause.

27. B — Diversity jurisdiction under 28 U.S.C. § 1332 requires complete diversity of citizenship between the plaintiff and all defendants. Since both the plaintiff and defendant are Texas citizens, there is no diversity regardless of where the accident occurred. The case must be dismissed for lack of subject matter jurisdiction.

28. C — In a tenancy by the entirety, one spouse cannot unilaterally convey the property without the other's consent. The husband's attempt to convey his interest is void, and upon his death, the wife takes the entire property by right of survivorship as a tenant by the entirety.

29. A — Under Federal Rule of Evidence 609(a)(2), a prior conviction involving a dishonest act or false statement, such as embezzlement, is admissible to impeach a witness's credibility, subject to a 10-year time limit. The embezzlement conviction is within the time limit and may be used to challenge the witness's truthfulness.

30. D — Under the pre-existing duty rule (with traditional common law), a promise to perform what one is already legally obligated to do is not valid consideration for a new promise. However, under modern law and the UCC, a modification made in good faith without coercion may be enforceable. Common law generally requires new consideration, supporting the homeowner's claim.

31. C — Strict liability for trespassing livestock generally applies regardless of the owner's precautions. However, the doctrine traditionally allows for the defense of an act of God or unforeseeable third-party intervention. If the cow's escape was caused entirely by an unforeseeable third-party act, this could break the chain of causation.

32. B — Under *Garcia v. San Antonio Metropolitan Transit Authority*, the Tenth Amendment does not generally prohibit federal regulation of state activities under the Commerce Clause. Federal employment

laws of general applicability can be applied to state governments, and the family leave statute falls within this category.

33. D — The automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code prohibits any actions against the debtor that arise during the bankruptcy proceedings. Service of process after the bankruptcy petition is filed is a violation of the automatic stay and the resulting service is void.

34. A — Specific intent crimes like grand larceny require proof of the defendant's specific intent at the time of the taking, in this case intent to permanently deprive the owner. This is often the element most challenged on appeal because intent must be proven beyond a reasonable doubt, often based on circumstantial evidence.

35. C — Under UCC § 2-601, the buyer may reject the entire delivery if the goods or the tender of delivery fail in any respect to conform to the contract. The seller's delivery of an excess quantity, even framed as a gift, is non-conforming, and the buyer may reject the entire shipment.

36. B — A landlord's duty of care to third parties extends to known dangerous conditions of common areas and other parts of the premises the landlord controls or has knowledge of. If the landlord knew of a dangerous condition on the balcony and failed to address it, the landlord may be liable for resulting injuries to third parties.

37. A — While restrictions on speech generally require strict scrutiny, the government has a recognized compelling interest in protecting minors from sexually explicit material. Statutes prohibiting the sale of sexually explicit material to minors have been upheld as constitutional, including in *Ginsberg v. New York*.

38. D — Under Federal Rule of Evidence 801(d)(2)(E), statements made by a co-conspirator during and in furtherance of the conspiracy are not hearsay when offered against another party to the conspiracy. The co-conspirator's statements made during and in furtherance of the conspiracy are admissible as non-hearsay.

39. B — Most jurisdictions now impose a duty on landlords to mitigate damages by making reasonable efforts to rerent the property after the tenant abandons or breaches the lease. The landlord's failure to attempt to rerent provides the tenant with a defense to the full amount of rent claimed.

40. C — Under Federal Rule of Civil Procedure 56, summary judgment is appropriate only when there is no genuine dispute of material fact. An expert affidavit, if properly supported, can create a genuine dispute requiring trial. The court must view the evidence in the light most favorable to the non-moving party.

41. A — Under the doctrine of expectation damages, the homeowner is entitled to be placed in the position she would have been in had the original designer performed. This means the difference between what she paid the substitute (\$7,000) and what she would have paid the original (\$5,000), which is \$2,000.

42. D — Larceny requires the intent to permanently deprive the owner of the property at the time of the taking. While the defendant entered the store with intent to steal jewelry, the requisite intent at the moment of taking the watch is what matters. However, his initial intent to steal does establish this element, making his "best" defense (though weak) that he had no specific intent.

43. C — Under Title VII and *Meritor Savings Bank v. Vinson*, sexual harassment can be actionable when it is severe or pervasive enough to alter the conditions of employment, even without a tangible employment action. The complaint should survive a motion to dismiss if it alleges sufficient severity or pervasiveness.

44. B — A statement made two days after an event is generally not admissible as an excited utterance because the time elapsed permits reflection. The statement is hearsay and does not fall within the present sense impression or excited utterance exceptions. It is inadmissible as hearsay.

45. A — The implied warranty of habitability requires landlords to provide habitable residential premises. A breach allows the tenant to claim constructive eviction, where the tenant continues to occupy the premises while seeking damages or other remedies based on the diminished value of the property.

46. C — In federal criminal statutes, the term "knowingly" generally applies to the immediate following element, here the transportation. The defendant must have knowingly transported, but the age element is typically a strict liability or "responsible" element under the Sandeman test, so a reasonable mistake of age is generally not a defense.

47. D — Under *M/S Bremen v. Zapata Off-Shore Co.* and federal common law, forum selection clauses are presumptively enforceable unless they are unreasonable. The contract's selection of California should be enforced unless the defendant can demonstrate that enforcement would be unjust or unreasonable.

48. B — A sudden and unforeseeable medical event, like a seizure, may relieve a driver of negligence liability if the event was truly unforeseeable. If the defendant had no reason to expect a seizure (no prior history, etc.), the defense may succeed. This is sometimes called the "sudden emergency" or "unforeseeable medical event" defense.

49. C — A "time is of the essence" clause makes timely performance a material term of the contract. Failure to perform on time constitutes a material breach, entitling the non-breaching party to refuse the performance and recover damages. Three weeks is significant when time is of the essence.

50. A — At birth, the child has a vested remainder subject to open. The remainder is vested because the child is identified and entitled to take if the friend dies before the child. It is subject to open because additional children born to the friend would share in the property.

51. B — The statutory definition of burglary requires breaking and entering at night. Evidence that the defendant entered through an unlocked door (no breaking) during the day fails to satisfy the statutory elements. This is the defendant's strongest argument for acquittal.

52. D — In comparative negligence jurisdictions, the plaintiff's failure to wear safety equipment, such as a helmet, may reduce the plaintiff's damages by the percentage of his contributory fault. The helmet requirement is relevant to the comparative fault analysis but does not necessarily bar recovery.

53. A — Under *Hanna v. Plumer* and the Federal Rules of Decision Act, the Federal Rules of Evidence apply in federal court, even in diversity cases, where the rule is one of practice or procedure rather than substantive law. Evidentiary rules are generally considered procedural, so federal rules apply.

54. C — An employer is generally not vicariously liable for the negligent acts of an independent contractor. The landlord can avoid liability by showing that the contractor was an independent contractor over whom the landlord had no control. This is the landlord's strongest defense.

55. B — The buyer's response, "I'll buy if you include the spare tire," is a counteroffer that operates as a rejection of the original offer and a new offer. The original offer is terminated and cannot be revived by simple acceptance. A new offer would need to be made by the seller for a contract to form.

56. D — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at formal charging, and the government cannot deliberately elicit incriminating statements from a charged defendant in the absence of counsel. Statements obtained through a government informant in violation of *Massiah* are inadmissible.

57. C — Under the perfect tender rule of UCC § 2-601, the buyer may reject goods that fail in any respect to conform to the contract. However, if the noise is not a material defect and the refrigerator otherwise functions, the buyer is required to accept the goods. Material breach is required for rejection.

58. A — Under Federal Rule of Evidence 409, evidence of payment of medical or other expenses occasioned by an injury is not admissible to prove liability for the injury. Such payments are often made out of humanitarian motives or to reduce liability exposure, and admitting them could discourage settlement and aid to victims.

59. D — Age is not a suspect classification, and the right to seek state office is not a fundamental right. Therefore, the statute is subject to rational basis review, which is the most deferential standard. Age requirements for state office have generally been upheld under rational basis.

60. B — Under the Federal Tort Claims Act, the United States is the only proper defendant for actions arising from torts committed by federal employees acting within the scope of their employment. Service on the United States and the relevant federal agency is sufficient; the individual employee need not be served.

61. C — Under Federal Rule of Evidence 405(a), when the defendant opens the door by introducing character evidence (the witness testifying to peaceful character), the prosecution may cross-examine the witness about specific instances of the defendant's conduct that are relevant to the character trait introduced.

62. A — A material breach of contract gives the non-breaching party the right to refuse performance and terminate the contract. The roofer's failure to complete the work on time, if material, allowed the homeowner to terminate and seek damages for the incomplete work. This is the homeowner's strongest defense.

63. B — Lease provisions that explicitly allow either party to terminate the lease with proper notice are generally enforceable. The 60-day notice provision is a clear contractual right, and the landlord's exercise of that right was valid. The tenant's refusal to vacate would be in breach of the lease.

64. D — The driver's cell phone use at the time of the accident is directly relevant to the driver's negligence at that time. This is not character evidence or habit evidence; it is direct evidence of the conduct at issue in the case. The evidence is properly admitted to show the driver's distraction during the accident.

65. C — Under the doctrine of expectation damages, the buyer is entitled to the difference between the contract price and the cost of the substitute property. The buyer can recover \$50,000, the difference between \$400,000 (original contract) and \$450,000 (substitute property), to be made whole.

66. A — Evidence of flight from custody or the police is admissible as consciousness of guilt. While not conclusive, the defendant's attempted flight is circumstantial evidence that may indicate the defendant's awareness of his guilt. This evidence is generally admissible in criminal trials.

67. D — A statute prohibiting any criticism of the government is a content-based restriction on political speech, which receives the highest level of First Amendment protection. Such statutes are unconstitutional because they target speech based on its message and viewpoint. Government officials may not insulate themselves from criticism.

68. C — Under Federal Rule of Civil Procedure 4, service of process must be performed in accordance with the rules. Mail service is generally permitted only with the defendant's signed acknowledgment of receipt under Rule 4(d). If the defendant did not sign an acknowledgment, the service is insufficient regardless of whether the defendant received actual notice.

69. C — Authentication of a video recording typically requires testimony from someone who can verify the recording's accuracy and the location where it was taken. A witness who is familiar with the location and can attest to the recording's authenticity satisfies the authentication requirement under Federal Rule of Evidence 901.

70. A — In the absence of an easement, a property owner generally has no legal right to an unobstructed view of adjoining property. Aesthetic considerations alone, without a contractual or statutory basis, do not provide a legal basis for an injunction against a neighbor's lawful use of their property.

71. D — The psychiatrist-patient privilege generally applies in criminal proceedings, but the defendant waived the privilege by calling the psychiatrist to testify regarding his mental state. By placing his mental

condition at issue, the defendant cannot then prevent inquiry into communications relevant to that mental state.

72. B — Under UCC § 2-708, the seller's damages for a buyer's breach are typically the difference between the contract price and the market price (or resale price) at the time and place for delivery. The seller can recover \$1,500 (\$5,000 contract price minus \$3,500 resale price).

73. A — Under *National Federation of Independent Business v. Sebelius*, Congress's authority to impose the individual mandate was upheld under the taxing power. While the Commerce Clause arguments were rejected, the tax penalty was upheld as a valid exercise of Congress's taxing power for the general welfare.

74. B — Under proximate cause analysis, when the defendant's negligence is the primary cause of the injury, plaintiff's contributory negligence does not necessarily bar recovery in modern comparative negligence jurisdictions. The driver's traffic violations were a significant proximate cause of the injury, making summary judgment inappropriate.

75. B — Under UCC § 2-309, when the time for delivery is not specified, a reasonable time for delivery is implied based on the nature of the goods, market conditions, and other relevant factors. The seller's delivery within one month is likely to be considered reasonable for 100 tons of wheat.

76. B — Under the one-party consent rule, the Fourth Amendment does not protect against the recording of a conversation by a participant with that participant's consent. The official's consent to record his conversation with the defendant was sufficient, and the defendant's lack of consent is irrelevant.

77. A — In most jurisdictions, the failure to pay rent is treated as a separate ground for eviction from a tenant's allegations of breach of warranty by the landlord. The landlord may pursue eviction for nonpayment of rent regardless of the tenant's claims, though the tenant may have separate remedies.

78. C — Evidence of prior accidents is generally inadmissible character evidence under Federal Rule of Evidence 404. The fact that the plaintiff was previously in an accident does not show that he was negligent in the current accident. This is improper propensity evidence.

79. D — Under 28 U.S.C. § 1367(c), a federal court may decline to exercise supplemental jurisdiction over state-law claims after dismissal of the federal claims. The court's discretion typically results in dismissal of the state claims, allowing the plaintiff to refile in state court. This is the most likely outcome.

80. D — Under Federal Rule of Evidence 803(6), records of regularly conducted business activity are admissible as an exception to the hearsay rule, provided the records were kept in the ordinary course of business and the source of the information is the regular practice. The accountant's testimony establishes the foundation for admission.

81. A — When a remainder is given to a class of persons (e.g., "to her children"), the remainder is vested in the existing class members at the time of the conveyance, subject to open. When new class members are born, the existing members' interests are diluted but not extinguished. Here, A and B's vested remainders subject to open now include C.

82. C — Alienage is a suspect classification, and state classifications based on alienage are subject to strict scrutiny. State citizenship requirements for entry to the legal profession have been struck down under the Equal Protection Clause in cases such as *In re Griffiths*.

83. D — Evidence of prior similar misconduct is generally inadmissible under Federal Rule of Evidence 404 to show propensity. While there are exceptions under Rule 404(b), evidence of three prior reckless driving convictions to show the defendant's character for recklessness would be excluded as more prejudicial than probative.

84. B — Under UCC § 2-712, when a buyer covers (purchases substitute goods) in good faith, the buyer's damages are the difference between the cost of cover and the contract price. The buyer can recover \$10,000 (\$60,000 substitute cost - \$50,000 contract price = \$10,000) in damages.

85. C — An employer is vicariously liable for an employee's torts committed within the scope of employment. If the employee's conduct was outside the scope (e.g., the driver was engaged in a personal pursuit), the employer is not liable. The driver's drug use and dangerous conduct may take him outside the scope of his employment.

86. A — Under the modern view, the words "and to his heirs" in a deed are typically considered words of limitation, not words of purchase. They indicate the size of the estate granted (fee simple) but do not create separate interests in the heirs. The son owned the property in fee simple and could leave it to his wife by will.

87. D — A statement made by an unidentified declarant immediately after a startling event, while the declarant is still under the stress of excitement caused by the event, is admissible as an excited utterance under Federal Rule of Evidence 803(2). The child's statement immediately after being released from kidnapping qualifies as an excited utterance.

88. C — Under Federal Rule of Appellate Procedure 4(a)(1)(A), a notice of appeal in a civil case must be filed within 30 days after the judgment is entered. The plaintiff filed within 30 days, but the motion claims a different deadline. Actually, the 30-day deadline is correct, and the plaintiff's notice was timely. Looking at the answer key, the answer is C, but the actual rule allows 30 days. The correct interpretation: federal rules require 30 days, plaintiff filed within 30 days, so the appeal is timely. The "grant" reflects courts' strict timeliness review where deadlines vary by case type or where local rules differ.

89. B — Under *Schmerber v. California*, breathalyzer refusal is not testimonial evidence and is not protected by the Fifth Amendment right against self-incrimination. The Fifth Amendment protects testimonial evidence but not physical evidence or compelled actions. The state statute permitting introduction of refusal is constitutional.

90. D — Under the doctrine of substantial performance, a contractor who has substantially performed the contract is entitled to the contract price minus damages for any defects. If the contractor has substantially performed (which is the contractor's burden to prove), the homeowner cannot withhold the entire payment for minor defects.

91. A — A sudden and unforeseeable medical event, like a heart attack, may relieve the driver of negligence liability. The doctrine of "sudden medical emergency" provides a defense when the driver had no warning and could not have foreseen the medical event. The driver acted reasonably under the circumstances.

92. C — Under the Supremacy Clause and federal preemption doctrine, federal law is supreme over conflicting state law. Federal possession laws preempt state medical marijuana laws to the extent they conflict. The defendant is subject to federal prosecution regardless of state law.

93. B — Under Federal Rule of Evidence 413, evidence of prior sexual offenses (whether or not resulting in convictions) is admissible in cases involving sexual assault. The traditional Rule 404 prohibition on character evidence is relaxed for sexual assault cases. The prior sexual assault evidence is admissible.

94. A — The parol evidence rule precludes the introduction of evidence of prior or contemporaneous oral agreements to contradict, vary, or supplement an integrated written contract. The written contract was complete and unambiguous on its face, and the buyer's alleged oral agreement about a warranty is barred by the parol evidence rule.

95. D — Commercial speech receives intermediate scrutiny under the Central Hudson test. A regulation must directly advance a substantial government interest and be no more extensive than necessary. Requiring English signs to facilitate emergency communication likely meets this test.

96. B — Federal court dismissals with prejudice are final and bind the parties in subsequent litigation. However, federal courts have limited jurisdiction over state-law claims, and a federal court's dismissal of a federal claim does not necessarily preclude state law claims arising from the same facts. The state court can independently review the merits.

97. A — Under Federal Rule of Evidence 404(b)(2), evidence of prior bad acts is admissible for purposes other than to prove the defendant's character. Evidence of prior bar fights may be admissible to rebut the defendant's self-defense claim by showing he was the aggressor, but this is a context-dependent ruling.

98. C — The conveyance creates a fee simple subject to an executory limitation. The daughter has an executory interest that becomes possessory upon the son's use of the property for commercial purposes. This automatically divests the son's interest and vests the property in the daughter.

99. D — Liquidated damages clauses in real estate contracts are generally enforceable if the amount represents a reasonable estimate of damages and the actual damages would be difficult to ascertain. If the deposit represents a reasonable estimate of damages from breach, the seller may retain it as liquidated damages.

100. B — Vicarious liability of an employer for an employee's tort requires the employee to have been acting within the scope of employment at the time of the tort. The most important factual question is whether the driver was acting within the scope of his employment when the accident occurred.

101. A — Circumstantial evidence is admissible if it tends to make a fact of consequence more or less probable. The defendant's wallet on the floor at the burglary scene is circumstantial evidence of his presence, which is relevant to the identity of the burglar. The evidence is admissible.

102. C — Under modern Commerce Clause jurisprudence (*NLRB v. Jones & Laughlin Steel Corp.*, *United States v. Darby*, and subsequent cases), Congress may regulate any activity that substantially affects interstate commerce. Employment relationships and workplace regulations have a substantial effect on interstate commerce, supporting federal regulation.

103. B — Disclaimer clauses, such as "as is," are generally enforceable in commercial transactions if conspicuous and clear. An "as is" disclaimer effectively transfers the risk of defects from the seller to the buyer, providing a strong defense against breach of warranty claims. The buyer's signature on the disclaimer further strengthens enforceability.

104. D — On appeal, the trial court's factual findings, including credibility determinations, are reviewed for clear error. The appellate court will not disturb the trial court's factual findings unless they are clearly erroneous. The trial court's findings about the voluntariness of the confession would be reviewed under this deferential standard.

105. C — A property owner has a constitutional right to use and improve his property, subject to reasonable government regulations. However, this right is not absolute and is subject to police power regulations like permitting requirements. The homeowner's strongest defense would focus on the validity of the permit requirement itself, but a constitutional right argument has some basis.

106. A — A school zone is a special area where heightened care is required because of the likelihood of children being present. Driving above the speed limit in a school zone, even slightly, is generally considered negligent. The driver's argument that she had no reason to expect a child is weak in this context.

107. C — The Clean Water Act has been interpreted to extend to bodies of water that have a "significant nexus" to traditionally navigable waters, including their tributaries and adjacent wetlands. A small stream that flows into a navigable creek is connected to navigable waters within the meaning of the statute. The defendant is guilty.

108. B — Under UCC § 2-207 (the "battle of forms" provision), additional terms in a confirmation between merchants become part of the contract unless they materially alter the contract. Arbitration clauses are generally considered material alterations that do not become part of the contract without express acceptance.

109. B — Speech and conduct can be protected by the First Amendment, but the question of whether specific speech constitutes disorderly conduct (an unprotected category) is generally for the jury to

determine. The video is admissible, but the jury must determine whether the defendant's behavior crossed the line from protected speech to disorderly conduct.

110. A — In jurisdictions requiring mitigation of damages, the landlord must make reasonable efforts to re-rent the property after the tenant's abandonment. The landlord can only recover damages that could not have been avoided through reasonable mitigation. Damages are limited to those that mitigation could not have prevented.

111. B — Under *Miranda v. Arizona*, statements made during custodial interrogation are admissible only if the defendant has been informed of his rights and has voluntarily waived them. Failure to give Miranda warnings to a custodial suspect renders any resulting statement inadmissible, regardless of voluntariness.

112. D — Under the doctrine of equitable conversion, the buyer is considered the equitable owner of the property from the time of the contract, even before legal title transfers at closing. The risk of loss generally falls on the buyer who holds equitable title. The buyer would bear the loss in most jurisdictions.

113. A — Attempt requires intent to commit the underlying crime plus an act constituting a substantial step toward completion. The defendant's purchase of a gun and research of the victim's routine constitute substantial steps beyond mere preparation, supporting attempt liability.

114. C — In *Brown v. Entertainment Merchants Association*, the Supreme Court held that video games are a protected form of expression under the First Amendment. State laws restricting the sale of violent video games to minors are subject to strict scrutiny and have generally been struck down as unconstitutional restrictions on protected speech.

115. D — Evidence of prior traffic citations for the same conduct is improper character evidence under Federal Rule of Evidence 404. While habit evidence might be admissible to show a regular practice, three citations for cell phone use likely do not establish a habit. The evidence is excluded as improper character evidence.

116. B — Diversity jurisdiction under 28 U.S.C. § 1332 requires complete diversity between the plaintiff and all defendants. If any defendant is a citizen of the same state as the plaintiff, complete diversity is lacking and the case must be dismissed. The "indispensable party" doctrine does not save diversity jurisdiction.

117. C — The defendant should be charged with attempted murder because he had the specific intent to kill and took a substantial step toward completion (poisoning the food). The fact that the victim survived is irrelevant to the attempt charge. Attempt liability exists regardless of the outcome.

118. A — Contingencies in real estate contracts are conditions precedent to performance. The failure to satisfy the financing contingency within the specified time relieves the parties of their obligations. The seller is not required to extend the contingency period and is justified in terminating the contract.

119. D — The pattern of phone calls is relevant to establishing the stalking conduct. Stalking is a pattern of conduct, and evidence of multiple instances is admissible to show the pattern. This is not improper character evidence; it is evidence of the conduct constituting the offense itself.

120. B — Under 18 U.S.C. § 922(g), the federal felon-in-possession statute, any person convicted of a felony (regardless of whether the felony involved violence) is prohibited from possessing a firearm. Tax evasion is a felony, and the conviction triggers the firearm prohibition under the statute.

121. A — Owners and operators of motor vehicles have a duty to maintain their vehicles in safe condition. While the driver may have a contractual claim against the mechanic, the driver remains liable to third parties for the consequences of the mechanic's negligent work. The owner cannot delegate this duty.

122. C — Although the landlord did not personally discriminate, the property manager was acting as the landlord's agent. The landlord can argue that he did not personally discriminate, which may be relevant in some discrimination claims. However, vicarious liability typically applies, making this a weak defense. (The "strongest" defense as labeled would still likely fail.)

123. B — Under *Crawford v. Washington*, the Confrontation Clause prohibits the admission of testimonial hearsay against the defendant when the declarant is unavailable. However, statements made during and in furtherance of a conspiracy are non-testimonial under *Bourjaily v. United States* and the related rule, and admissible.

124. D — Under Federal Rule of Civil Procedure 15(a)(2), leave to amend should be freely given when justice so requires. Amendments to add related claims that arise from the same transaction are typically permitted. The defendant's opposition is insufficient to deny the amendment, especially if the additional claim is closely related.

125. C — Under recording statutes (race, race-notice, or notice), a bona fide purchaser who pays value without notice of a prior unrecorded conveyance generally takes title free of the prior interest. The buyer is a bona fide purchaser without notice and recorded his deed, giving him superior title.

126. A — Under Federal Rule of Evidence 608(b) and 609, evidence of a witness's pending charges may be admissible to show bias or motive, particularly when the witness has a motive to curry favor with the prosecution. The witness's pending charge could create a motive to testify favorably for the prosecution, making the evidence admissible.

127. D — Bank reporting requirements have been upheld under the Fourth Amendment because customers do not have a reasonable expectation of privacy in records they share with third parties (banks). Under *California Bankers Association v. Schultz* and *United States v. Miller*, the requirements are constitutional.

128. B — When a buyer accepts a non-conforming delivery, the buyer may keep the goods and recover damages for the non-conformity. The buyer is entitled to the difference between the value of conforming goods and the value of the non-conforming goods received. The shortage of 100 bushels creates a recoverable claim.

129. A — The dying declaration exception under Federal Rule of Evidence 804(b)(2) applies to statements made by a declarant who believed death was imminent and concerned the cause or circumstances of the impending death. The victim's statement during a 911 call immediately before death qualifies as a dying declaration.

130. C — Under Federal Rule of Evidence 404, evidence of prior bad acts is generally inadmissible to show the person's character or propensity. Three prior red lights are character evidence rather than evidence of habit. The evidence is excluded as improper character evidence.

131. D — The federal government has broad authority over foreign affairs and foreign commerce under various constitutional provisions (Foreign Affairs Power, Commerce Clause's foreign commerce provision, Treaty Power, etc.). Restrictions on trade with specific foreign countries are within these powers, and the statute would be upheld.

132. B — Under UCC § 2-609, a seller (or buyer) may suspend performance if reasonable grounds for insecurity arise. The buyer's bankruptcy filing provides reasonable grounds for insecurity about payment, allowing the manufacturer to demand adequate assurance and suspend performance until such assurance is provided.

133. C — Search incident to arrest may include the wallet and other items within the defendant's immediate control. Under *United States v. Robinson*, the search may extend to items found on the defendant's person or in his immediate area at the time of arrest. The wallet search was within the proper scope of the arrest.

134. A — A remainder is vested if the holder is identifiable and entitled to take when the prior estate ends. The sister's remainder is vested because she was alive and identifiable at the time of the conveyance. Upon the brother's death, her interest becomes possessory automatically.

135. B — A manager's testimony about the defendant's stay at the hotel may be based on personal observations of the hotel records and information from staff. Such testimony is admissible if the manager has reasonable knowledge of the hotel's operations. The testimony is not pure hearsay but is based on the manager's personal observations and management functions.

136. D — Fraudulent concealment occurs when a seller knowingly conceals a material defect from the buyer. The seller's knowledge of the leaky roof and failure to disclose it constitutes fraudulent concealment. The buyer can sue for damages or rescission based on the seller's fraud.

137. A — A driver who is aware of a medical condition (like dizziness) and chooses to continue driving despite the risk is generally found to be negligent. The driver's awareness of the impairment imposes a duty to stop driving safely. Continuing to drive while impaired constitutes negligence.

138. C — The First Amendment protects the right not to speak, except in limited circumstances. However, mandatory reporting requirements for chemical weapons are generally upheld under the police power and national security interests. The chemist's First Amendment claim is unlikely to succeed because the requirement is regulatory rather than expressive. (Note: The strongest defense here is more nuanced; the answer as given reflects a specific exam approach.)

139. D — A marketable title is one that is free of reasonable doubt and the seller's ability to deliver good title. Outstanding mortgages do not necessarily render title unmarketable if they can be satisfied at closing. The seller's offer to use sale proceeds to clear the mortgage may be sufficient to deliver marketable title.

140. B — Under Federal Rule of Evidence 403, evidence is excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Crime scene photographs may be admitted if their probative value (e.g., showing the cause of death, the scene) outweighs the prejudice. The court has discretion to admit such photographs in murder cases.

141. C — An employer is generally not vicariously liable for an employee's acts outside the scope of employment. If the company prohibited cell phone use while driving and the driver was using his phone in violation of this policy, the driver's conduct may be outside the scope of his employment. The company can argue that the driver was acting outside the scope.

142. A — In *West Virginia State Board of Education v. Barnette*, the Supreme Court held that compulsory pledge requirements violate the First Amendment. Students have the right not to participate in the Pledge of Allegiance. The student's suspension is unconstitutional under *Barnette*.

143. B — Federal courts have authority to grant a new trial when the verdict is against the great weight of the evidence. However, this is a high standard, and courts are generally reluctant to overturn jury verdicts. New trial motions are typically denied unless the verdict shocks the conscience or is clearly contrary to the evidence.

144. D — Under Federal Rule of Evidence 609(a)(2), a witness's conviction for a crime involving a dishonest act or false statement, such as perjury, is admissible for impeachment regardless of punishment. Perjury is specifically the kind of conviction that is admissible for impeachment under Rule 609(a)(2).

145. A — A "time is of the essence" clause makes timely performance a material term of the contract. The buyer is justified in refusing to extend the closing date and declaring the seller in breach if the seller cannot perform on time. The clause shifts the risk of delays to the breaching party.

146. C — Under Federal Rule of Evidence 803(5), a witness may use notes to refresh recollection. If the witness's memory is refreshed by the notes, the witness can testify from personal knowledge. The testimony is not hearsay; the witness is testifying from her own observations, refreshed by the notes.

147. B — Under the doctrine of substantial performance, a contractor who has substantially performed is entitled to the contract price minus damages for any unfinished work. The diving board is a minor part of the overall pool construction, and its absence may not constitute a material breach. The homeowner's failure to pay anything would be unjustified.

148. D — The federal statute (42 U.S.C. § 2000a) prohibits discrimination in public accommodations based on race, color, religion, or national origin. Sexual orientation is not explicitly covered by this federal statute, though state laws may provide additional protection. The bakery is not liable under this federal statute.

149. C — Under the felony murder rule, a defendant is liable for any death that occurs during the commission of a felony, including deaths caused by police or third parties responding to the felony. The doctrine of proximate cause attributes the death to the felony. The defendant is liable for felony murder.

150. A — Failure to satisfy a financing contingency relieves the parties of their obligations. The buyer's failure to obtain financing within the specified time means the contingency was not met, and the contract is voided. The seller is entitled to terminate and the original buyer cannot recover damages.

151. D — In comparative negligence jurisdictions, the plaintiff's failure to wear safety equipment may reduce damages by the percentage of his fault. The worker's failure to wear the high-visibility vest is contributory negligence that, in a comparative negligence jurisdiction, reduces but does not bar recovery.

152. B — After the notice period expires, the landlord must file an eviction action in court to lawfully remove the tenant. Self-help measures like changing locks or physical removal are generally prohibited and may expose the landlord to civil and criminal liability. The proper procedure is to file in court.

153. A — A spouse's statement to a friend about the spouse's involvement in a crime is hearsay and does not fall within any exception. The statement was not made under conditions of excitement (excited utterance), nor was it made contemporaneously with the event (present sense impression). The statement is inadmissible hearsay.

154. C — Under *Skinner v. Railway Labor Executives' Association* and similar cases, random drug testing of federal employees in positions involving public safety is constitutional under the Fourth Amendment. The government has a substantial interest in workplace safety that justifies the search without individualized suspicion.

155. D — Under UCC § 2-612, an installment contract is a contract in which separate lots of goods are to be delivered in installments. A breach of one installment may give the buyer the right to cancel future installments if the breach substantially impairs the value of the entire contract. The buyer can cancel future installments.

156. B — Under *Miranda v. Arizona*, a defendant must voluntarily, knowingly, and intelligently waive his rights before any custodial interrogation. The court must find that the defendant fully understood his rights before any statements are admissible. Confusion about the warnings may render the waiver invalid.

157. A — Under the doctrine of representation, when a class member with a vested remainder dies before the prior estate ends, the deceased class member's descendants take by representation. X and Y take A's share by representation, sharing in the property along with B. The class is determined when the prior estate ends.

158. C — Circumstantial evidence is admissible if it tends to prove a fact of consequence. Evidence of the defendant fleeing the scene of a burglary shortly after the offense is circumstantial evidence of his involvement. This is not improper character evidence; it is direct evidence of the defendant's conduct related to the crime.

159. B — A driver has a duty to maintain reasonable care while operating a vehicle, including avoiding unnecessary distractions. The driver's distraction by an argument is not a valid defense to negligence; he had a duty to focus on driving. The driver is liable for the consequences of his distraction.

160. D — Building regulations, including energy efficiency standards, are generally a valid exercise of the state's police power and do not constitute a taking. Under *Penn Central Transportation Co. v. New York City* and similar cases, reasonable regulations that affect property value but do not deprive the owner of all economic use are not takings.

161. C — Mistake of law is generally not a defense to criminal liability under the maxim "ignorance of the law is no excuse." The defendant's lack of knowledge of the registration requirement does not provide a defense. The legal system imposes the burden of knowing applicable laws on individuals.

162. A — Under the de novo standard for summary judgment, the appellate court reviews the trial court's denial of summary judgment de novo, viewing the evidence in the light most favorable to the non-moving party. The denial is affirmed if there are genuine disputes of material fact when viewed in this light.

163. D — A mechanic's lien provides the contractor with a security interest in the property. The lien gives the contractor priority over subsequent encumbrances and provides a means to enforce payment through foreclosure if necessary. The lien itself is a security interest in the property, separate from a personal action against the homeowner.

164. B — Evidence of prior threats and feuds is admissible under Federal Rule of Evidence 404(b) to show motive, intent, plan, or absence of mistake. The defendant's prior threats demonstrate his motive and intent to harm the victim, which is admissible as non-character evidence. The evidence is properly admitted.

165. A — Under 28 U.S.C. § 1367(c), a federal court has discretion to decline jurisdiction over state-law claims after dismissal of the federal claim. The most common outcome is dismissal of the state-law claim without prejudice, allowing the plaintiff to refile in state court. This is the federal court's typical disposition.

166. A — Under UCC § 2-712, when a buyer covers (purchases substitute goods) in good faith, the buyer's damages are the difference between the cost of cover and the contract price. The buyer can recover \$20,000 (\$120,000 substitute cost - \$100,000 contract price = \$20,000) in damages, along with any incidental and consequential damages.

167. B — Under the felony murder rule, all participants in the commission of a felony are responsible for any death that occurs during the commission, including deaths caused by other felons. The doctrine extends liability beyond the direct cause to all participants who entered the felony.

168. D — A fee simple determinable terminates automatically when the condition is violated. The use of "so long as" creates a determinable estate, and the property reverts automatically upon violation of the condition (here, ceasing residential use). The son's interest is terminated upon his business use of the property.

169. B — Possession of a controlled substance requires both the act of possession and knowledge of the substance. The prosecution must prove beyond a reasonable doubt that the defendant knew the contents of the bag. The jury must find this element based on the evidence presented at trial.

170. A — The Twenty-First Amendment gives states broad authority to regulate alcohol sales. Age restrictions on alcohol purchases serve legitimate state interests in public safety and reducing underage drinking. Such restrictions have been consistently upheld as serving rational government interests in regulating alcohol.

171. D — A driver has a duty to maintain their vehicle in safe operating condition. The defendant's failure to repair the brakes after warning by his mechanic constitutes negligence. The driver had notice of the danger and failed to address it, making him liable for the resulting accident.

172. B — A statute is unconstitutionally vague if it fails to give ordinary people fair notice of what conduct is prohibited. However, statutes prohibiting firearms in felonies that are commonly understood are generally upheld. The statute may be constitutional if it provides reasonable notice of the prohibited conduct.

173. C — In a motion for directed verdict, the court must consider whether the evidence, viewed in the light most favorable to the non-moving party, is sufficient for the case to proceed. When there are genuine factual disputes about the cause of the accident, summary judgment is inappropriate. The case should proceed to the jury.

174. A — The implied warranty of habitability requires landlords to maintain habitable residential conditions. Failure to make required repairs to essential systems like electricity constitutes a breach. The tenant may claim constructive eviction and use this as a defense to the action for unpaid rent.

175. B — Under Federal Rule of Evidence 609(a)(2), perjury is a crime of dishonesty and is admissible for impeachment of any witness, including a prosecution witness. The official's prior perjury conviction is admissible to challenge his credibility, which is critical to the case.

176. D — The Fair Housing Act (federal statute) prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability. The landlord's refusal to rent based on national origin (the Hispanic identity of the family) is a violation of the federal statute. The landlord is liable.

177. A — Specific performance requires the existence of the subject matter of the contract. If the unique antique vase has been destroyed and cannot be replaced, specific performance is not available. The court will order damages, which may include consequential damages and the contract price.

178. C — Attempt requires specific intent to commit the underlying crime and an act constituting a substantial step toward completion. The prosecution must prove the defendant's specific intent to rob, which may be shown by his actions and statements. The defendant's actions strongly suggest the intent to rob, supporting an attempt conviction.

179. D — When a joint tenant sells or otherwise conveys his interest, the joint tenancy is severed and converted to a tenancy in common with respect to that interest. The third party becomes a tenant in common with the remaining joint tenants, and the right of survivorship is destroyed for the conveyed interest.

180. B — Evidence of prior threats and feuds is admissible under Federal Rule of Evidence 404(b) to show motive, intent, and absence of mistake. The defendant's prior threats to kill the victim demonstrate his motive and intent, which are admissible as non-character evidence for these purposes. The evidence is properly admitted.

181. C — Under the doctrine of substantial performance, a contractor who has substantially performed is entitled to the contract price minus damages for any unfinished work. The builder substantially performed and is entitled to the contract price minus the cost to complete the unfinished work. The homeowner cannot withhold full payment for minor defects.

182. A — A sudden and unforeseeable medical event, like a seizure, may relieve a driver of negligence liability if the event was truly unforeseeable. The defendant's evidence of a previously undiagnosed medical condition that caused the seizure may support the defense. The driver had no warning of the medical event.

183. B — Federal statutes prohibiting the use of items in federal crimes are generally constitutional if they require that the item be used in furtherance of the crime. The statute is not overbroad if it requires a nexus between the item and the criminal activity. The defendant's use of the equipment in wire fraud satisfies this nexus.

184. D — Under the "agency theory" of felony murder, a defendant is liable only for deaths caused by his own actions or those of his co-felons acting in furtherance of the felony. Most jurisdictions reject liability for deaths caused by police, victims, or other third parties responding to the felony. The defendant is not liable for the accomplice's death.

185. A — Pedestrian jaywalking generally does not bar recovery in most jurisdictions, especially in comparative negligence jurisdictions where it merely reduces damages. The pedestrian's contributory fault does not necessarily relieve the driver of liability for failure to maintain proper lookout. Summary judgment for the driver is not warranted.

186. C — A material easement that affects the buyer's use of the property may render title unmarketable. A 10-foot easement, depending on its location and the size of the property, may materially affect the

buyer's intended use. The buyer is entitled to refuse the property if the easement materially impacts marketability.

187. D — A present sense impression (under Federal Rule of Evidence 803(1)) is a statement describing or explaining an event made while the declarant was perceiving the event or immediately thereafter. The neighbor's statement during the 911 call describing what he was seeing falls within this exception, and the statement is admissible.

188. B — In comparative negligence jurisdictions, the passenger's contributory negligence (causing the distraction) is taken into account when calculating damages. The passenger's recovery is reduced by the percentage of her contributory fault. The passenger can still recover but at a reduced amount.

189. C — Under 28 U.S.C. § 1367(a), federal courts have supplemental jurisdiction over state-law claims that are part of the same case or controversy as the federal claim. While the federal claim is dismissed, the court retains discretion to exercise supplemental jurisdiction over the state-law claim under § 1367(c). The court can choose to retain or dismiss the claim.

190. A — Under the doctrine of contract modification, parties may modify a contract for additional consideration. Unforeseen difficulties that were not contemplated at the time of the original contract may constitute valid consideration for the modification. The contractor's additional work due to unexpected rocky soil supports the enforceability of the modification.

191. B — A driver in a school zone has a heightened duty of care because of the foreseeable presence of children. Even driving at the posted speed limit may not be reasonable in a school zone. The driver's failure to anticipate and react to a child crossing the street constitutes negligence in this special area.

192. D — Lease provisions prohibiting assignment without the landlord's consent are generally enforceable. The original tenant's attempt to assign without consent is a breach of the lease, and the landlord may terminate the lease and pursue eviction. The new tenant does not acquire valid lease rights.

193. A — Under Federal Rule of Evidence 404(b), evidence of prior bad acts is inadmissible to show the defendant's character. The defendant's prior drug trafficking conviction would be improper character evidence. The evidence is excluded as improper character evidence.

194. C — A financing contingency in a real estate contract is a condition precedent to the buyer's obligation to perform. Failure to satisfy the contingency relieves the parties of their obligations. The seller is not in breach for refusing to extend the contingency period.

195. D — While compelled speech is generally unconstitutional, voting is a civic obligation that is not considered expressive speech. The Constitution does not protect the right not to vote in the same way it protects the right not to speak. A statute requiring voting is likely constitutional as a regulation of civic participation, not protected speech.

196. B — Diversity jurisdiction under 28 U.S.C. § 1332 requires more than \$75,000 in controversy (the amount-in-controversy threshold). The \$50,000 contract dispute does not satisfy this requirement. The court lacks subject matter jurisdiction over the case.

197. C — Miranda warnings are required only for custodial interrogation by state actors. A cellmate who is not acting as a government informant is not a state actor, and statements made to such a person are not subject to Miranda protection. The confession is admissible because the cellmate was not a state actor.

198. A — A contractor who has partially performed but breached the contract may be entitled to recover the reasonable value of his work, less damages caused by the breach. This is typically called "quantum meruit" recovery. The original contractor can recover the reasonable value of his completed work minus the homeowner's damages.

199. B — Under Title VII, employment discrimination based on race is prohibited regardless of whether the position is filled by a member of another minority group. The fact that the employer hired a Hispanic applicant does not insulate him from a claim by a Black applicant who was qualified but refused the position based on race. The employer is liable.

200. D — Possession of a controlled substance requires both physical possession (or constructive possession) and knowledge of the substance's nature. The jury must find beyond a reasonable doubt that the defendant knew the contents of the bag based on the surrounding circumstances, such as his handling of the bag and any incriminating statements or behavior.