

PRACTICE EXAM 14: MBE SIMULATION

(200 QUESTIONS)

Time allowed: 6 hours (two 3-hour sessions of 100 questions each)

Read each question carefully. Select the best answer of the four options provided. Apply the Federal Rules of Civil Procedure to Civil Procedure questions and the Federal Rules of Evidence to Evidence questions. Apply generally accepted fundamental legal principles unless the question specifies otherwise.

MORNING SESSION (Questions 1–100)

1. A plaintiff filed a complaint in federal district court asserting only a state-law negligence claim against a defendant. Both parties are citizens of the same state. The complaint demands \$1,500,000 in damages.

On the defendant's motion to dismiss, the court should:

- A. Deny the motion if the plaintiff can show diversity in the alternative.
- B. Grant the motion for lack of subject matter jurisdiction because the parties are not diverse and no federal question is presented.
- C. Deny the motion because the amount in controversy is substantial.
- D. Grant the motion only if the parties consent.

2. A defendant who is a citizen of State X was served process in State Y while traveling through that state for a vacation. The plaintiff filed suit in State Y.

On the defendant's motion challenging personal jurisdiction, the court should:

- A. Deny the motion because transient personal service on a defendant physically present in the forum state confers personal jurisdiction under *Burnham v. Superior Court*, regardless of the defendant's other contacts with the forum.
- B. Grant the motion for lack of minimum contacts.
- C. Deny the motion if the defendant consented.
- D. Grant the motion because the defendant lacked purposeful availment.

3. A plaintiff filed a federal action and served a corporate defendant by personal delivery to a security guard at the corporation's headquarters. The guard was not designated to accept service.

The court should:

- A. Find service proper because the corporation received notice.
- B. Find service proper because headquarters delivery satisfies Rule 4.
- C. Find service proper because guards are general agents.
- D. Dismiss for insufficient service under Rule 4(h)(1)(B), which requires service on an officer, managing or general agent, or any agent authorized by appointment or law; a security guard generally does not satisfy these requirements.

4. A federal court in State A sitting in diversity confronts a state-law issue on which the highest court of State A has not ruled, though intermediate appellate courts have addressed the issue.

The court should:

- A. Apply federal common law.
- B. Certify the question to the state supreme court automatically.
- C. Make an "Erie guess" by predicting how the state's highest court would rule, considering decisions of intermediate appellate courts, persuasive authority from sister states, and policy considerations underlying state law.
- D. Defer the case until the state supreme court rules.

5. A plaintiff sued multiple defendants in federal court alleging that each contributed to her injuries in a single accident. One defendant moved for summary judgment, supported by undisputed evidence.

The court should:

- A. Defer ruling until trial.
- B. Under Rule 56(c), grant partial summary judgment to the moving defendant if no genuine dispute of material fact exists as to that defendant's liability and the defendant is entitled to judgment as a matter of law; the case may continue as to remaining defendants.
- C. Deny the motion because multiple defendants are involved.
- D. Hold an evidentiary hearing.

6. A plaintiff in federal court served the defendant on June 1. The defendant filed an answer on June 25 without raising lack of personal jurisdiction. On August 1, the defendant filed an amended answer adding the defense.

The amended defense should be:

- A. Permitted because Rule 15 favors amendment.
- B. Permitted because personal jurisdiction may be raised at any time.
- C. Denied because lack of personal jurisdiction is waived under Rule 12(h)(1) if not raised in the first responsive pleading or pre-answer motion; the amendment cannot revive the waived defense.
- D. Permitted only with the plaintiff's consent.

7. A class action under Rule 23(b)(3) was filed in federal court. The proposed class consists of all persons who purchased a certain product over a 10-year period.

For certification, the court must find:

A. The Rule 23(a) prerequisites (numerosity, commonality, typicality, adequacy of representation) PLUS that common questions predominate over individual questions and that a class action is superior to other available methods of fair and efficient adjudication.

B. Only commonality.

C. Only that the class is large.

D. Only that the plaintiff is adequate.

8. A federal court issued a final judgment in favor of the plaintiff. The defendant's appeal was pending when the parties settled. The plaintiff moved to dismiss the appeal as moot.

The appellate court should:

A. Refuse to dismiss the appeal.

B. Remand to the district court.

C. Order the parties to continue litigating.

D. Generally dismiss the appeal as moot when the parties have settled and there is no live controversy; the settlement extinguishes the dispute, and the appellate court typically dismisses appeals once the underlying controversy is resolved, though the parties may need court approval to vacate the underlying judgment.

9. A federal district court denied the defendant's motion to dismiss for failure to state a claim. The defendant sought to appeal the denial immediately.

The proper analysis is:

A. The denial is immediately appealable under § 1292(a).

B. The denial of a Rule 12(b)(6) motion is generally not immediately appealable under the final judgment rule; the defendant must wait until final judgment to challenge the ruling, unless interlocutory appeal under § 1292(b) is certified or another exception applies.

C. The denial is appealable as of right.

D. The defendant must seek mandamus.

10. A plaintiff in federal court properly served interrogatories. The defendant served timely responses but objected to one interrogatory as irrelevant. The plaintiff moved to compel.

Under Rule 26, the standard for permissible discovery is:

- A. Any matter relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving issues, and whether the burden or expense outweighs the likely benefit.
- B. Any matter conceivably relevant.
- C. Any matter the plaintiff requests.
- D. Any matter not privileged.

11. A federal court issued a final judgment with prejudice for the defendant on the plaintiff's claim. The plaintiff later filed a new action against the same defendant asserting a different legal theory based on the same operative facts.

The defendant moved to dismiss based on:

- A. Issue preclusion (collateral estoppel).
- B. Compulsory counterclaim.
- C. Claim preclusion (res judicata), which bars relitigation of claims that were or could have been raised in a prior action between the same parties involving the same transaction or occurrence, after a final judgment on the merits.
- D. The statute of frauds.

12. A plaintiff in federal court obtained a default judgment against the defendant. The defendant moved to set aside the default judgment 18 months later under Rule 60(b), citing newly discovered evidence.

The motion is:

- A. Timely because Rule 60(b) has no time limits.
- B. Timely if filed within two years.
- C. Timely under most circumstances.
- D. Untimely under Rule 60(c)(1) for motions based on newly discovered evidence under Rule 60(b)(2), which must be filed within a reasonable time and no more than one year after entry of judgment; the 18-month motion is beyond the one-year cap.

13. A federal court issued an interlocutory order denying class certification. The plaintiff sought to appeal under Rule 23(f).

The plaintiff must file the petition within:

- A. 14 days after the order, with the court of appeals having discretion to grant or deny the petition.
- B. 30 days.
- C. 60 days.
- D. Any reasonable time.

14. A plaintiff in federal court moved for a preliminary injunction. The court issued the injunction. The defendant immediately appealed.

The standard of review on appeal is:

- A. De novo.
- B. Abuse of discretion as to the issuance of the injunction itself, though legal conclusions underlying the injunction are reviewed de novo; the appellate court generally accords substantial deference to the district court's assessment of the factors supporting injunctive relief.
- C. Substantial evidence.
- D. Clear error.

15. A defendant in federal court moved to dismiss for improper venue. The court denied the motion. The defendant did not seek to transfer venue under § 1404(a).

The defendant may:

- A. Raise venue at trial.
- B. Seek state-court review.
- C. Generally not raise improper venue again in the same action; the court's denial is final as to that motion, though the defendant may seek discretionary § 1292(b) certification for interlocutory appeal or raise the issue on direct appeal after final judgment.
- D. Raise venue at any time.

16. A plaintiff filed a federal action and the defendant moved for summary judgment. The plaintiff opposed the motion with affidavits showing genuine disputes of material fact.

The court should:

- A. Grant summary judgment.
- B. Hold an evidentiary hearing.
- C. Convert the motion to a Rule 12(b)(6) motion.
- D. Deny summary judgment because Rule 56(a) requires no genuine dispute of material fact and entitlement to judgment as a matter of law; properly supported factual disputes preclude summary judgment, and the court must view the evidence in the light most favorable to the non-movant.

17. A federal court certified a class under Rule 23(b)(3). The court approved a settlement. A class member objected to the settlement.

The objector may:

- A. Bind the class to reject the settlement.
- B. Be heard at the fairness hearing under Rule 23(e)(5), and may appeal the court's approval if the objection is not addressed; class members have the right to object and have their objections considered, but the ultimate decision rests with the court.
- C. Compel renegotiation.

D. Block the settlement entirely.

18. A federal court issued an order requiring the parties to engage in court-supervised settlement discussions. The defendant refused to participate meaningfully.

The court may:

A. Impose appropriate sanctions, including monetary sanctions, contempt, or other measures to compel participation; courts have inherent and statutory authority to manage cases and enforce settlement procedures, though parties cannot generally be forced to settle.

B. Force a settlement.

C. Strike the defendant's pleadings.

D. Refer the case to arbitration.

19. A plaintiff in federal court served the defendant with a request for admission. The defendant did not respond within 30 days. The request asked whether the defendant breached a contract.

The result is:

A. The matter is admitted automatically.

B. The defendant has additional time.

C. Under Rule 36(a)(3), a matter is deemed admitted if not denied within 30 days after service of the request, unless the party shows good cause for failure to respond; the deemed admission is conclusively established for purposes of the pending action unless withdrawn or amended.

D. The plaintiff must move to compel.

20. A federal court issued a subpoena to a non-party witness. The witness sought to quash the subpoena, arguing it was overbroad and burdensome.

Under Rule 45, the court must:

- A. Compel compliance.
- B. Allow modification only.
- C. Hold an evidentiary hearing.
- D. Quash or modify the subpoena that subjects the non-party to undue burden under Rule 45(d)(3)(A)(iv); the court balances the relevance of the requested materials and the requesting party's need against the burden on the non-party witness.

21. A plaintiff sued a defendant in federal court for a federal civil rights claim arising from an incident at the defendant's business. The defendant filed a counterclaim for unpaid debt arising from a separate transaction.

The counterclaim is:

- A. A permissive counterclaim under Rule 13(b), which generally requires an independent basis of subject matter jurisdiction; without diversity or federal question jurisdiction over the counterclaim, the court may not exercise jurisdiction over it; supplemental jurisdiction under § 1367 generally does not extend to claims lacking a common nucleus of operative fact.
- B. A compulsory counterclaim.
- C. A crossclaim.
- D. A third-party claim.

22. A federal court issued an order compelling the defendant to produce documents. The defendant refused and was held in civil contempt with a fine of \$1,000 per day until compliance.

The proper standard for civil contempt is:

- A. Beyond a reasonable doubt.
- B. Preponderance of the evidence.
- C. Clear and convincing evidence that the contemnor violated a clear and unambiguous court order with knowledge of the order; civil contempt is coercive in nature, with sanctions designed to compel compliance, and the contemnor may purge the contempt by complying.
- D. Preponderance with reliable evidence.

23. A federal court issued a TRO based on the plaintiff's ex parte application. The TRO was extended once for 14 additional days. The defendant moved to dissolve the TRO.

Under Rule 65(b):

- A. The TRO automatically expires.
- B. A TRO issued ex parte expires after 14 days unless extended for good cause for a like period (a single extension), or with the adverse party's consent; the maximum total duration is generally 28 days, after which a preliminary injunction hearing must be held if relief is to continue.
- C. The TRO must be dissolved.
- D. The TRO is permanent.

24. A plaintiff in federal court submitted to deposition. The defendant's counsel sought to ask about the plaintiff's prior litigation history.

Under Rule 26, the question is permissible if:

- A. The question is asked at trial.
- B. The plaintiff consents.
- C. The court approves in advance.
- D. The information sought is relevant to a claim or defense and proportional to the needs of the case; prior litigation history may be relevant to credibility (for impeachment) or to specific claims/defenses, subject to relevance balancing and any applicable privilege.

25. A federal court issued a permanent injunction. The defendant complied for several years. The defendant later moved to modify the injunction based on changed circumstances.

The court should:

- A. Grant modification automatically.
- B. Deny the motion.

C. Apply the standard set forth in **Rufo v. Inmates of Suffolk County Jail** and **Horne v. Flores**, considering whether changed circumstances justify modification; the moving party must show significant changes in factual conditions or law warranting modification of the injunction.

D. Refer the matter to a magistrate.

26. A plaintiff filed a federal action and properly served the defendant. The defendant filed an answer asserting general denials. The plaintiff later sought to amend the complaint to add a new claim.

Under Rule 15(a), the plaintiff may amend:

A. Once as a matter of course within 21 days after service of the answer, or with the defendant's written consent, or with the court's leave; after the period for amending as of right, leave should be freely given when justice so requires.

B. Only with court approval.

C. Only with the defendant's consent.

D. At any time without restriction.

27. A federal court issued an order dismissing the plaintiff's claim with prejudice. The plaintiff filed a Rule 59(e) motion within 28 days to alter the judgment.

The motion may be granted upon a showing of:

A. Defendant consent.

B. Substantial prejudice.

C. Public interest.

D. (1) An intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice; Rule 59(e) motions are not vehicles for relitigating issues or presenting new arguments that could have been raised earlier.

28. A plaintiff in federal court sought to take a deposition of the defendant's expert witness. The expert had not been listed in the defendant's Rule 26(a)(2) disclosures.

The plaintiff may:

- A. Take the deposition without restriction.
- B. Generally not take the deposition until the expert is properly disclosed under Rule 26(a)(2); experts must be identified through proper disclosure procedures, and discovery of expert opinions is governed by Rule 26(b)(4); undisclosed experts may not testify at trial except as provided by court order.
- C. File a motion to compel.
- D. Seek interlocutory appeal.

29. A plaintiff in federal court properly served the defendant. The defendant filed a Rule 12(b)(6) motion to dismiss based on a defense that depended on facts outside the complaint.

The court should:

- A. Grant the motion.
- B. Deny the motion automatically.
- C. Convert the motion to summary judgment under Rule 12(d) and provide the parties a reasonable opportunity to present all material pertinent to the motion; the court cannot consider materials outside the pleadings on a pure Rule 12(b)(6) motion without conversion.
- D. Hold an evidentiary hearing.

30. A federal court issued a final judgment for the plaintiff. The defendant timely appealed. The plaintiff moved to dismiss the appeal as frivolous.

Under Fed. R. App. P. 38, sanctions for frivolous appeals are:

- A. Available if the appellate court determines that the appeal is frivolous; the court may award damages including attorneys' fees and double costs against the appellant; the standard requires more than mere lack of merit — the appeal must be groundless or pursued in bad faith.
- B. Available for all appeals.
- C. Limited to monetary sanctions.

D. Unavailable in civil cases.

31. A defendant in a federal action filed a third-party complaint against a non-party seeking indemnification. The original plaintiff was not party to the third-party action.

Under Rule 14:

A. The third-party action is barred.

B. Impleader under Rule 14(a) permits a defendant to bring in a third party who may be liable to the defendant for all or part of the plaintiff's claim against the defendant, including claims for indemnification or contribution; the original plaintiff is not required to be party to the third-party claim.

C. The plaintiff must consent.

D. Third-party practice requires diversity.

32. A federal court certified a class action under Rule 23(b)(2), which permits certification for injunctive relief. The plaintiff also sought monetary damages.

The court should:

A. Grant certification.

B. Hold an evidentiary hearing.

C. Defer the damages claim.

D. Under **Wal-Mart Stores, Inc. v. Dukes**, Rule 23(b)(2) certification is generally improper for classes seeking individualized monetary damages that are not incidental to injunctive relief; such damages require certification under Rule 23(b)(3) with its predominance and superiority requirements.

33. A plaintiff in federal court filed a complaint alleging fraud. The complaint described the alleged false statement, the speaker, the time, the place, and the manner of the statement.

Under Rule 9(b):

A. The pleading satisfies the particularity requirement for fraud allegations; Rule 9(b) requires fraud to be pleaded with particularity, generally including the who, what, when, where, and how of the alleged fraudulent conduct; the complaint here satisfies these requirements.

B. The pleading is insufficient.

C. The pleading requires expert testimony.

D. The pleading must be verified.

34. A plaintiff filed a federal civil action and the defendant filed an answer. The defendant later realized he had failed to assert a counterclaim arising from the same transaction.

Under Rule 13(a):

A. The counterclaim is waived.

B. The counterclaim may be raised in a separate action.

C. The defendant may move to amend the answer under Rule 15 to add the compulsory counterclaim; failure to assert a compulsory counterclaim in the answer may result in waiver, but amendment may be permitted under appropriate circumstances; otherwise, the counterclaim may be lost.

D. The counterclaim must be filed as a separate action.

35. A federal court entered a money judgment against the defendant. The plaintiff sought to enforce the judgment by attaching the defendant's assets in another state.

Under 28 U.S.C. § 1963:

A. The plaintiff must file a new action.

B. The plaintiff must obtain consent.

C. The judgment cannot be enforced.

D. A federal judgment may be registered in any other federal district by filing a certified copy; upon registration, the judgment has the same effect as a judgment of the district court of the district in which it is registered, allowing enforcement across federal districts.

36. A plaintiff filed a federal action. The defendant's first responsive pleading included only the defense of failure to state a claim. The defendant later sought to add the defense of lack of personal jurisdiction.

Under Rule 12(h)(1):

- A. The defense may be added.
- B. The defense of lack of personal jurisdiction is waived if not raised in the first responsive pleading or pre-answer motion; the defendant cannot revive this waived defense by amendment.
- C. The defense may be added with leave.
- D. The defense requires the plaintiff's consent.

37. A plaintiff in federal court sought to depose the defendant's CEO. The CEO had no personal knowledge of the events at issue but had executive responsibility.

Under Rule 30:

- A. The deposition may proceed without restriction.
- B. The deposition is barred.
- C. The "apex doctrine" (as developed by some federal courts) may protect high-level executives from deposition where they lack personal knowledge and the deposing party has not exhausted less intrusive discovery; the court considers the executive's knowledge, alternatives for obtaining the information, and the harassment risk.
- D. The deposition requires consent.

38. A plaintiff in federal court moved for class certification under Rule 23(b)(3). The court found the class consisted of 30 members.

The numerosity requirement is:

- A. Satisfied if joinder of all members is "impracticable" under Rule 23(a)(1); the specific number depends on circumstances, but classes of 30 or more are sometimes considered sufficient depending on factors such as geographic dispersion of members, members' financial resources, and the size of individual claims.
- B. Unsatisfied because the class is small.
- C. Satisfied automatically.
- D. Unsatisfied without expert testimony.

39. A federal court issued a final judgment after a bench trial. The losing party sought to challenge specific findings of fact on appeal.

The standard of review for findings of fact is:

- A. De novo.
- B. Clearly erroneous under Rule 52(a)(6); the appellate court accords substantial deference to the trial court's findings, particularly regarding witness credibility; the standard reflects the trial judge's superior position to evaluate evidence.
- C. Substantial evidence.
- D. Abuse of discretion.

40. A plaintiff filed a federal action and properly served the defendant. The defendant filed an answer asserting various defenses. The plaintiff later sought to take the defendant's deposition.

Under Rule 30:

- A. The plaintiff must obtain court approval.
- B. The defendant must consent.
- C. The deposition requires advance notice.
- D. The deposition is generally a matter of right after the discovery conference; the plaintiff may notice the deposition under Rule 30, providing reasonable notice; the defendant may seek a protective order under Rule 26(c) if the deposition is unduly burdensome.

41. A plaintiff filed a federal action seeking injunctive relief. The defendant moved for a jury trial on the underlying factual issues.

Under **Beacon Theatres v. Westover** and the Seventh Amendment:

- A. The court has discretion.
- B. Equitable claims override.
- C. Where legal and equitable claims share common factual issues, the Seventh Amendment requires the legal claim to be tried first to a jury; the jury's factual findings on common issues then bind the court's equitable determination.
- D. The defendant must choose.

42. A federal court issued an order quashing a subpoena. The party seeking enforcement sought interlocutory appeal.

The proper procedure is:

- A. The denial is appealable as of right.
- B. The order quashing a subpoena is generally not immediately appealable under the final judgment rule; the party may seek mandamus relief under 28 U.S.C. § 1651 in extraordinary circumstances, or wait until final judgment for direct appeal; in some circumstances, contempt sanctions may create appellate jurisdiction.
- C. The order is automatic.
- D. The order requires consent.

43. A federal court certified a class of plaintiffs alleging consumer fraud. The plaintiff's expert proposed a damages methodology that estimated aggregate damages but not individual amounts.

Under **Comcast Corp. v. Behrend**:

- A. The methodology is automatically valid.

- B. Class certification is appropriate.
- C. The methodology requires expert validation.
- D. The damages methodology must be capable of measuring damages on a class-wide basis to satisfy predominance under Rule 23(b)(3); methodologies that do not measure damages attributable to the theory of liability may defeat certification.

44. A plaintiff filed a federal action and obtained a default judgment. The defendant moved to set aside the default under Rule 55(c).

The standard is:

- A. Good cause under Rule 55(c), with the court considering factors including whether the defendant's culpability for the default, prejudice to the plaintiff, and the existence of a meritorious defense; the standard is more lenient than that for setting aside a default judgment under Rule 60(b).
- B. Strict scrutiny.
- C. Compelling interest.
- D. Beyond a reasonable doubt.

45. A federal court certified a class action and approved a settlement. Several class members objected to the attorney fee award.

Under Rule 23(h):

- A. The court may not award fees.
- B. The court must defer to the parties.
- C. The fees are presumed reasonable.
- D. The court must approve attorney's fees through a separate motion and notice procedure; class members may object to the fee award, and the court must scrutinize the fees for reasonableness; objectors may also appeal the fee award if dissatisfied with the court's resolution.

46. A plaintiff in federal court sought to take a deposition of a witness located outside the United States. The witness was not a party.

Under Rule 28:

- A. The deposition is barred.
- B. The deposition requires consent.
- C. The deposition may be taken pursuant to Rule 28(b), which permits depositions in foreign countries through (1) the local consul, (2) a person commissioned by the court, (3) a letter of request issued by the court, or (4) other methods recognized under the foreign country's laws or treaty; the procedure depends on the foreign jurisdiction's rules.
- D. The deposition requires court approval.

47. A federal court issued an order denying the plaintiff's motion for class certification. The plaintiff sought to amend the complaint to address the certification issues.

Under Rule 23:

- A. The amendment is automatically denied.
- B. Under Rule 23(c)(1)(C), an order granting or denying class certification may be altered or amended before final judgment; the plaintiff may seek to amend the complaint or move to alter the certification ruling, and the court has discretion to permit amendment if warranted by changed circumstances or new evidence.
- C. The amendment requires consent.
- D. The amendment violates due process.

48. A plaintiff in federal court properly served the defendant. The defendant filed an answer raising the defense of statute of limitations. The plaintiff moved to strike the defense.

Under Rule 12(f):

- A. The court may strike from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter; the standard is generally limited to defenses that are insufficient as a matter of law, with the affirmative defense of statute of limitations being properly raised under Rule 8(c).
- B. The court must strike the defense.
- C. The court must hold a hearing.
- D. The plaintiff must wait for summary judgment.

49. A federal court conducted a jury trial. The jury returned a verdict for the plaintiff. The defendant moved for judgment as a matter of law under Rule 50(b).

The defendant must have:

- A. Filed a written motion.
- B. Obtained the court's permission.
- C. Notified all parties.
- D. Made a Rule 50(a) motion at the close of all the evidence (or made it at the close of the plaintiff's case and renewed it); the Rule 50(b) renewed motion must be based on the same grounds raised in the Rule 50(a) motion, with failure to make the Rule 50(a) motion barring the Rule 50(b) renewed motion.

50. A plaintiff filed a federal civil action. The court issued a scheduling order setting discovery deadlines. The plaintiff missed a deadline and sought an extension.

Under Rule 16(b)(4):

- A. The court may not extend.
- B. A scheduling order may be modified only for good cause and with the court's consent; the moving party must show that the deadline cannot reasonably be met despite the diligence of the party seeking the extension, and the focus is on the moving party's diligence rather than prejudice to the opposing party.
- C. The plaintiff has unlimited time.
- D. The plaintiff must seek interlocutory appeal.

51. A defendant in a federal action filed a notice of removal from state court. The removal was timely. The plaintiff sought to remand the case based on the defendant's failure to obtain consent of all defendants.

Under 28 U.S.C. § 1446(b)(2)(A):

- A. The plaintiff's motion is automatically denied.
- B. The unanimity requirement is satisfied.
- C. All defendants who have been properly joined and served must join in or consent to the removal of an action removed under § 1441(a); failure to obtain such consent is a procedural defect that may result in remand if raised within 30 days under § 1447(c).
- D. The defendant's removal is invalid.

52. A federal court issued a final judgment. The defendant filed a notice of appeal. The plaintiff filed a cross-appeal challenging the court's award of attorney's fees.

Under Fed. R. App. P. 4(a)(3):

- A. The cross-appeal may be filed within 14 days after the first notice of appeal is filed, or within the time otherwise allowed, whichever is later; the cross-appeal allows the appellee to challenge adverse rulings without filing a separate appeal.
- B. The cross-appeal is barred.
- C. The cross-appeal requires consent.
- D. The cross-appeal must be filed first.

53. A plaintiff filed a federal action seeking class action treatment. The complaint did not include a request for class certification. The defendant moved to dismiss the class allegations.

Under Rule 23:

- A. The motion is granted.
- B. The class allegations are valid.

C. The complaint must request class certification.

D. The class allegations may proceed; the plaintiff may seek class certification at the appropriate time, generally through a motion under Rule 23(c)(1); the complaint need not include a formal request for certification at the pleading stage, though it should plead sufficient facts to support certification.

54. A federal court issued a final judgment for the plaintiff in a diversity case. The defendant timely filed a notice of appeal. The defendant did not pay the filing fee.

The result is:

A. The appeal is automatically dismissed.

B. Under Fed. R. App. P. 3, a notice of appeal is generally effective when filed even if the filing fee is not paid; the appellate court may impose sanctions or take other action for non-payment, but the failure to pay the fee does not automatically dismiss the appeal.

C. The appeal proceeds.

D. The appeal is moot.

55. A plaintiff in federal court properly served the defendant. The defendant moved for summary judgment after the close of discovery. The plaintiff opposed with affidavits but failed to identify any genuine factual disputes.

Under Rule 56(c):

A. The court may grant summary judgment to the moving party if the moving party has shown no genuine dispute of material fact and entitlement to judgment as a matter of law; the non-moving party's failure to come forward with specific facts showing genuine disputes may justify summary judgment, even if the non-movant has filed affidavits, when those affidavits are insufficient.

B. The court must hold a trial.

C. The court must deny the motion.

D. The plaintiff has additional discovery.

56. A federal court issued a discovery order against a non-party. The non-party refused to comply, asserting attorney-client privilege.

Under Rule 26(b)(5):

- A. The non-party must comply.
- B. The privilege is automatic.
- C. The non-party must describe the withheld material in a privilege log sufficient to enable the requesting party to assess the privilege claim; failure to provide an adequate log may result in waiver of the privilege, though courts have discretion to permit correction.
- D. The non-party may refuse without justification.

57. A plaintiff in federal court sought to enforce a foreign judgment. The judgment was obtained in a foreign country with which the United States has no treaty.

The plaintiff may:

- A. Enforce automatically.
- B. Be unable to enforce.
- C. Seek diplomatic intervention.
- D. Generally enforce the foreign judgment under principles of comity, provided the foreign court had jurisdiction over the parties and the subject matter, the proceedings were fair, and recognition would not violate public policy of the forum state; the Uniform Foreign Money Judgments Recognition Act (adopted by many states) provides a framework for enforcement.

58. A federal court conducted a jury trial. After the verdict, the defendant moved for a new trial under Rule 59, citing alleged errors in jury instructions.

The court should:

- A. Grant the motion automatically.

B. Grant the new trial only if the alleged errors in jury instructions were prejudicial and affected the verdict; courts generally consider whether the instructions, taken as a whole, fairly and accurately stated the law and whether any error was likely to have influenced the verdict; harmless errors do not warrant a new trial.

C. Defer to the jury.

D. Hold an evidentiary hearing.

59. A plaintiff in federal court properly served the defendant. The defendant filed an answer and counterclaim. The plaintiff did not respond to the counterclaim within 21 days.

Under Rule 12(a)(1)(B):

A. The plaintiff is in default.

B. The counterclaim is invalid.

C. The plaintiff must respond to the counterclaim within 21 days after service of the counterclaim, or such other time as the court orders; failure to respond may result in default on the counterclaim, but the procedural consequences depend on the type of counterclaim and the court's discretion.

D. The counterclaim is automatically valid.

60. A federal court issued an order denying the defendant's motion to dismiss for lack of subject matter jurisdiction. The defendant proceeded to litigate the case.

Under Rule 12(h)(3):

A. Subject matter jurisdiction may be raised at any time, even after final judgment; the parties cannot waive subject matter jurisdiction, and the court has an independent duty to dismiss if jurisdiction is lacking; the defendant's continued litigation does not waive this defense.

B. The defense is waived.

C. The defense requires consent.

D. The defense is automatic.

61. A federal court issued a final judgment. The defendant filed a notice of appeal. The plaintiff filed a motion for attorney's fees within 14 days of the judgment.

Under Fed. R. App. P. 4(a)(4):

- A. The motion has no effect.
- B. The motion is moot.
- C. The motion is automatically denied.
- D. A timely motion under Rule 54 for attorney's fees may delay the time for filing a notice of appeal; if the appeal is filed before the motion is resolved, the appeal becomes effective when the order disposing of the motion is entered; the motion does not affect the validity of an already-filed notice of appeal.

62. A plaintiff in federal court properly served the defendant. The defendant filed an answer and asserted affirmative defenses. The plaintiff moved for summary judgment on the affirmative defenses.

The court should:

- A. Apply Rule 56(c) standards; the plaintiff may move for summary judgment on affirmative defenses, and the court evaluates whether the defendant has come forward with sufficient evidence to support the affirmative defense; if no genuine dispute of material fact exists, summary judgment may be granted.
- B. Defer the motion.
- C. Hold a trial.
- D. Reject the motion.

63. A federal court conducted a bench trial. The court issued findings of fact and conclusions of law under Rule 52. The losing party challenged the findings on appeal.

The proper standard of review is:

- A. De novo for all findings.

B. Findings of fact are reviewed under the clearly erroneous standard, while conclusions of law are reviewed de novo; mixed questions of fact and law may be reviewed under varying standards depending on whether they involve predominantly factual or legal determinations.

C. Substantial evidence for all findings.

D. Abuse of discretion.

64. A plaintiff filed a federal action against multiple defendants. One defendant moved for severance under Rule 20(b), arguing that joinder was improper.

Under Rule 20(a)(2):

A. Joinder is always proper.

B. The defendant's motion is automatic.

C. Joinder of defendants is proper if claims arise out of the same transaction or occurrence or series of transactions or occurrences and share common questions of law or fact; if these requirements are not satisfied, the court may sever the claims under Rule 21 or 42(b).

D. The motion must be denied.

65. A federal court denied class certification. The plaintiff sought to refile the action as a non-class action.

Under Rule 41(a):

A. The plaintiff may voluntarily dismiss without prejudice and refile as a non-class action, subject to the limitations of Rule 41(a) and any applicable statute of limitations; the dismissal and refiling restart the procedural posture, though the plaintiff bears the burden of demonstrating that the non-class action is viable.

B. The action is barred.

C. The plaintiff must seek state-court relief.

D. The action requires defendant consent.

66. A plaintiff in federal court served interrogatories. The defendant served timely responses with multiple objections. The plaintiff moved to compel.

The court must consider:

A. The amount in controversy alone.

B. The defendant's good faith.

C. The privilege log.

D. Under Rule 26(b)(1), whether the requested information is relevant to a claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to information, the parties' resources, and whether the burden or expense outweighs the likely benefit.

67. A federal court issued a final judgment. The defendant filed a motion for relief under Rule 60(b)(6), citing extraordinary circumstances. The motion was filed two years after the judgment.

Rule 60(c) provides:

A. The motion is timely if filed within five years.

B. Rule 60(b)(6) motions must be filed within a reasonable time; unlike Rule 60(b)(1)-(3), there is no specific one-year cap, but the motion must be filed within a reasonable time after the discovery of the extraordinary circumstances; what constitutes a reasonable time depends on the case-specific facts.

C. The motion is automatically denied.

D. The motion requires defendant consent.

68. A plaintiff in federal court properly served the defendant. The defendant filed a motion to dismiss for failure to state a claim. The court granted the motion with leave to amend.

The plaintiff:

A. May refile the action.

B. May appeal immediately.

C. Must file an amended complaint within the time set by the court, or the action may be dismissed with prejudice; the leave to amend gives the plaintiff a final opportunity to correct deficiencies, and failure to file an amended complaint within the specified time may result in dismissal.

D. Must seek state-court relief.

69. A federal court issued an order requiring the parties to engage in alternative dispute resolution. One party refused to participate.

The court may:

A. Impose appropriate sanctions for non-compliance with court orders, including monetary sanctions, contempt, or other measures consistent with the ADR program rules; the court has inherent authority and statutory authority to manage cases, though parties cannot generally be forced to settle.

B. Force a settlement.

C. Strike pleadings.

D. Dismiss the action.

70. A plaintiff in federal court filed a complaint alleging violations of federal securities laws. The defendant moved to dismiss, arguing the plaintiff lacked standing.

Under Article III and statutory requirements:

A. The plaintiff has automatic standing.

B. The plaintiff requires only injury.

C. The plaintiff requires only causation.

D. The plaintiff must show (1) injury in fact (concrete and particularized, actual or imminent), (2) causation (fairly traceable to the defendant's conduct), and (3) redressability (likely to be redressed by a favorable decision); additionally, federal securities laws may impose statutory standing requirements that must be satisfied.

71. A federal court conducted a jury trial. During deliberations, the jury sent a note asking for clarification on a legal instruction. The court provided additional instructions without consulting counsel.

The defendant moved for a mistrial. The court should:

- A. Deny the motion.
- B. Grant the motion.
- C. Grant the motion or order a new trial if the court's failure to consult counsel and provide notice to all parties before responding to a jury inquiry was prejudicial; under Rule 51 and due process principles, parties are entitled to participate in the formulation of jury instructions and responses to jury inquiries.
- D. Hold a hearing.

72. A plaintiff in federal court properly served the defendant. The defendant filed an answer and several affirmative defenses. The plaintiff later moved to dismiss the affirmative defenses for failure to state a claim.

The court should:

- A. Grant the motion.
- B. Apply Rule 12(f) standards (motion to strike) rather than Rule 12(b)(6); the court may strike insufficient defenses, but motion to strike standards are limited, and the court generally requires that the defense be insufficient as a matter of law to grant the motion.
- C. Defer ruling.
- D. Hold an evidentiary hearing.

73. A federal court certified a class under Rule 23(b)(3). The defendant settled with the named plaintiff for an amount sufficient to moot the named plaintiff's individual claim.

The class action:

A. Continues if the named plaintiff's claim becomes moot before class certification, but generally not after; once certified, the class action acquires a legal status separate from the named plaintiff's individual claim, and the case may proceed even if the named plaintiff's claim is moot; the certified class is the real party in interest.

B. Is dismissed.

C. Must be recertified.

D. Requires a new representative.

74. A plaintiff in federal court properly served the defendant. The defendant filed a Rule 12(b)(6) motion. The court denied the motion and the defendant filed an answer. The defendant later sought to assert lack of personal jurisdiction.

Under Rule 12(h)(1):

A. The defense may be asserted.

B. The defense requires court approval.

C. The defense is preserved.

D. The defense of lack of personal jurisdiction is waived if not raised in the first responsive pleading or pre-answer motion; the defendant's omission of the defense from the Rule 12(b)(6) motion or the answer waives it, and the defendant cannot revive the waived defense.

75. A federal court issued an order denying a motion to transfer venue under § 1404(a). The defendant sought to appeal.

The proper procedure is:

A. The denial is appealable as of right.

B. The defendant must seek mandamus.

C. The denial of a motion to transfer venue under § 1404(a) is generally not immediately appealable under the final judgment rule; the defendant may seek mandamus under 28 U.S.C. § 1651 in extraordinary circumstances, though this remedy is rarely available; the defendant may also raise the issue on direct appeal after final judgment.

D. The denial is final.

76. A plaintiff in federal court properly served the defendant. The defendant filed an answer and a counterclaim. The court ordered the parties to mediate.

The mediation:

A. Is binding.

B. Is generally non-binding unless the parties have agreed to binding mediation; mediation typically produces a non-binding recommendation, and parties retain the right to pursue litigation; courts cannot generally compel parties to settle, though they may compel participation.

C. Requires consent.

D. Replaces the trial.

77. A federal court issued a final judgment. The defendant filed a notice of appeal. The plaintiff sought to enforce the judgment pending appeal.

Under Rule 62(a):

A. The judgment is automatically stayed.

B. The plaintiff may enforce.

C. The judgment requires re-filing.

D. Rule 62(a) provides an automatic 30-day stay of execution after judgment; after the 30-day period, the plaintiff may enforce unless the defendant obtains a stay by posting a supersedeas bond under Rule 62(b); the bond protects the appellant pending appeal.

78. A federal court conducted a jury trial. The jury returned a verdict for the plaintiff. The defendant moved for a new trial under Rule 59, arguing the verdict was against the weight of the evidence.

The court should:

A. Grant a new trial if the verdict is against the great weight of the evidence; the standard is more lenient than the standard for judgment as a matter of law under Rule 50(b), which requires that no reasonable jury could have reached the verdict; the new trial motion permits the court to consider all the evidence and may grant relief even when the verdict has some support.

B. Defer to the jury.

C. Hold a hearing.

D. Deny automatically.

79. A plaintiff in federal court filed a complaint alleging various claims. The defendant moved to dismiss for failure to state a claim. The court granted the motion as to some claims but denied as to others.

The plaintiff:

A. Must accept the dismissal.

B. May file an interlocutory appeal.

C. May seek to amend the dismissed claims, may continue with the remaining claims, or may dismiss the entire action and refile; the partial dismissal does not preclude the plaintiff from proceeding with the case, though the dismissed claims are gone (unless re-pleaded).

D. Must seek state-court relief.

80. A federal court conducted a jury trial. During trial, the defendant moved to exclude expert testimony under Daubert. The court denied the motion.

The proper standard of review on appeal is:

A. De novo.

B. Abuse of discretion under *General Electric Co. v. Joiner* and *Kumho Tire Co. v. Carmichael*; the trial court has significant discretion in determining whether expert testimony satisfies Daubert standards, and the appellate court reviews for abuse of that discretion, with the standard being deferential to the trial court.

C. Substantial evidence.

D. Clear error.

81. A state legislature enacted a statute imposing a tax on goods imported into the state. The tax was applied uniformly to in-state and out-of-state goods.

How should the court rule on a constitutional challenge?

- A. Under cases such as **Complete Auto Transit v. Brady**, state taxes on interstate commerce are constitutional if (1) the activity has substantial nexus with the state, (2) the tax is fairly apportioned, (3) it does not discriminate against interstate commerce, and (4) it is fairly related to services provided by the state; a uniform tax applied equally to in-state and out-of-state goods generally satisfies the non-discrimination requirement.
- B. The tax is unconstitutional.
- C. The tax violates due process.
- D. The tax requires federal approval.

82. Congress enacted a statute prohibiting employment discrimination based on age in private sector employment. The statute applies to employers with 20 or more employees engaged in interstate commerce.

How should the court analyze the statute?

- A. The statute exceeds congressional authority.
- B. The statute violates the Tenth Amendment.
- C. The statute requires state consent.
- D. Congress has broad power under the Commerce Clause to regulate employment practices that substantially affect interstate commerce; the Age Discrimination in Employment Act has been upheld on this basis, with the 20-employee threshold ensuring connection to interstate commerce.

83. A federal statute required all federal contractors with contracts above a certain threshold to comply with environmental regulations. A contractor challenged the statute as exceeding congressional authority.

How should the court rule?

- A. The statute violates the Tenth Amendment.
- B. The statute requires state consent.
- C. Congress has broad authority under its spending and commerce powers to impose conditions on federal contractors and to regulate environmental matters affecting interstate commerce; such conditions on federal contracts have been routinely upheld.
- D. The statute is unconstitutional.

84. A state law prohibited any motor vehicle from being driven within the state without a state-issued license. The law applied uniformly to residents and non-residents.

How should the court analyze the law?

- A. The law violates the Privileges and Immunities Clause.
- B. The law is a valid exercise of the state's police power to regulate for public safety; vehicle licensing requirements applied uniformly to all persons are generally subject to rational basis review and have been routinely upheld; the law does not discriminate against out-of-state citizens in a constitutionally significant way.
- C. The law violates due process.
- D. The law violates equal protection.

85. The President negotiated and signed a treaty with a foreign nation. The Senate refused to ratify the treaty. The President sought to enforce the treaty's provisions through executive order.

How should the court analyze the President's action?

- A. The President cannot unilaterally enforce a non-ratified treaty; under Article II, treaties require Senate ratification by two-thirds vote to become legally binding; the President may, however, enter into executive agreements (which do not require Senate ratification) for matters within his constitutional authority, though these may have more limited legal effect.
- B. The President may enforce.
- C. The President has plenary authority.
- D. The President requires House approval.

86. A federal court determined that a state law violated the Fourteenth Amendment. The state argued that federal courts lacked jurisdiction to enforce the Fourteenth Amendment against states.

How should the court rule?

- A. The state's argument is automatically valid.
- B. Federal courts have broad authority under Section 5 of the Fourteenth Amendment and the Supremacy Clause to enforce constitutional rights against state actors; *Ex Parte Young* permits suits against state officials for prospective injunctive relief, and 42 U.S.C. § 1983 provides a damages remedy; sovereign immunity is not a defense to such enforcement.
- C. The federal courts have no jurisdiction.
- D. The federal courts require state consent.

87. A state law required all public-school students to be vaccinated against certain diseases. The law provided exemptions for medical reasons but not for religious objections.

How should the court analyze a constitutional challenge?

- A. The law violates the Establishment Clause.
- B. The law violates due process.
- C. Under cases such as **Jacobson v. Massachusetts** and **Employment Division v. Smith**, neutral, generally applicable laws (including vaccination requirements) do not violate the Free Exercise Clause merely because they incidentally burden religious practice; the absence of a religious exemption may be permissible if the law is neutral and applies generally.
- D. The law violates equal protection.

88. A federal statute required all individuals applying for federal employment to undergo a background check. The check included review of public records and limited inquiries into the applicant's background.

How should the court analyze a Fourth Amendment challenge?

- A. The background check requires a warrant.
- B. The background check violates the Fifth Amendment.
- C. The background check is unconstitutional.
- D. Routine background checks for federal employment are generally not considered unreasonable searches under the Fourth Amendment; the government has a legitimate interest in evaluating applicants, and the intrusion is minimal compared to the employment context; such checks have been routinely upheld.

89. A state law prohibited the wearing of certain religious garb in state-owned buildings. A religious adherent challenged the law as a violation of the Free Exercise Clause.

How should the court rule?

- A. The law is automatically unconstitutional.
- B. Under *Employment Division v. Smith*, a generally applicable, religiously neutral law that incidentally burdens religious practice need not provide religious exemptions; however, if the law specifically targets religious conduct or is not neutral and generally applicable, it is subject to strict scrutiny and likely unconstitutional; the analysis depends on the law's specific terms.
- C. The law violates Establishment.
- D. The law requires accommodation.

90. A federal statute granted standing to certain interest groups to challenge regulatory decisions. A group sued in federal court invoking the statutory standing.

How should the court analyze a standing challenge?

- A. The statute always grants standing.
- B. The group has no standing.
- C. Article III standing requires injury in fact, causation, and redressability under *Lujan v. Defenders of Wildlife*; Congress cannot grant standing beyond Article III's constitutional minima, and the group must demonstrate concrete injury to at least one member; statutory standing alone is insufficient if the constitutional requirements are not satisfied.
- D. The standing is automatic.

91. A state law required all candidates for state office to participate in mandatory candidate forums. The candidates were required to debate specific topics.

How should the court analyze a First Amendment challenge?

A. The law violates the First Amendment; compelled speech and forced participation in particular forums implicate the First Amendment's protection against compelled expression; under cases such as **Wooley v. Maynard**, the government cannot generally compel an individual to express particular views.

B. The law is constitutional.

C. The law violates due process.

D. The law violates equal protection.

92. A federal statute prohibited certain federal contractors from making political contributions during election cycles. A contractor challenged the statute on First Amendment grounds.

How should the court rule?

A. The statute violates the First Amendment.

B. The statute is unconstitutional on its face.

C. The statute violates equal protection.

D. Restrictions on political contributions by federal contractors have been upheld as serving the government's interest in preventing corruption and the appearance of corruption in the contracting process; the restriction is generally permissible if it is narrowly tailored to that interest, and the Supreme Court has consistently upheld contribution limits supported by anti-corruption interests.

93. A state law required that all public-school students recite a particular religious creed. A student challenged the law on First Amendment grounds.

How should the court rule?

A. The law is automatically constitutional.

B. The law violates the First Amendment under cases such as *Engel v. Vitale*, *Lee v. Weisman*, and *Santa Fe Independent School District v. Doe*; government-sponsored religious exercises in public schools, particularly those compelled or that may be perceived as compelled by students, violate the Establishment Clause.

C. The law requires rational basis.

D. The law violates due process.

94. A federal court determined that a state law violated the Equal Protection Clause. The state agency continued to enforce the law. The affected individuals sued under 42 U.S.C. § 1983.

How should the court rule?

A. The plaintiffs cannot recover from state actors.

B. The state has automatic immunity.

C. The plaintiffs may recover under 42 U.S.C. § 1983 for the deprivation of their constitutional rights by state actors acting under color of state law; § 1983 provides a federal remedy for constitutional violations regardless of the agency's continued reliance on the unconstitutional law; sovereign immunity may bar suits against the state itself for damages but does not bar § 1983 actions against state officials.

D. The plaintiffs require Congress to act.

95. A federal statute provided that certain federal officials would serve fixed terms removable only "for cause" by the President. The statute did not provide for at-will removal.

How should the court analyze the President's removal authority?

A. Under cases such as *Morrison v. Olson*, *Seila Law*, and subsequent decisions, Congress may impose for-cause removal restrictions on certain officials whose removal does not impede the President's constitutional duties; the constitutional permissibility depends on the office's nature and is the subject of ongoing constitutional litigation; single-headed agencies with substantial executive power face stricter scrutiny.

B. The President has plenary authority.

C. The President's authority is absolute.

D. The President cannot remove appointees.

96. A federal statute provided that the federal courts could hear suits between citizens of different states for any amount in controversy. The statute purported to expand diversity jurisdiction.

How should the court analyze the statute?

A. The statute violates Article III's case or controversy requirement.

B. The statute violates equal protection.

C. The statute violates state sovereignty.

D. Congress has the power to set the jurisdiction of the federal courts within constitutional limits; the diversity jurisdiction extends only to controversies between citizens of different states under Article III, but Congress may regulate the amount in controversy required and other jurisdictional details, and the statute is within congressional authority.

97. A state agency required all applicants for state employment to pass a written examination. The examination tested general skills relevant to government service.

How should the court analyze an equal protection challenge?

A. The agency must show compelling interest.

B. Facially neutral employment examinations that do not target a protected class are subject to rational basis review under the Equal Protection Clause; the agency need only show a rational relationship to a legitimate government interest in evaluating candidates; the same examination applied to all applicants further supports the law's validity.

C. The examination violates equal protection per se.

D. The examination requires strict scrutiny.

98. A federal court issued a preliminary injunction against a state law. The state sought to challenge the injunction on appeal.

The proper analysis is:

- A. The injunction is automatically valid.
- B. The state must accept the injunction.
- C. The injunction is immediately appealable under 28 U.S.C. § 1292(a)(1), which provides interlocutory appellate jurisdiction over orders granting or denying preliminary injunctions; the state may challenge the injunction on appeal, with the appellate court reviewing for abuse of discretion as to the issuance and de novo as to legal conclusions.
- D. The injunction requires final judgment.

99. A state law required all motor vehicles registered in the state to display the state motto. A driver who disagreed with the motto challenged the requirement.

How should the court rule?

- A. Under *Wooley v. Maynard*, the First Amendment protects against compelled speech, including being required to display the state's motto on private property; the driver cannot be forced to express disagreement with personal beliefs; the requirement is unconstitutional as applied.
- B. The requirement is constitutional.
- C. The requirement requires rational basis.
- D. The requirement violates due process.

100. A federal statute conditioned the receipt of federal funds on states adopting certain regulations. A state argued that the conditions were coercive and exceeded congressional spending power.

How should the court analyze the challenge?

- A. The conditions are automatically valid.
- B. The conditions violate the Tenth Amendment.
- C. The conditions require state consent.

D. Under *South Dakota v. Dole* and *NFIB v. Sebelius*, Congress's spending power permits conditions on federal funds if (1) unambiguous, (2) related to a federal interest, (3) not coercive, and (4) consistent with other constitutional provisions; *NFIB* clarified that excessive conditions amounting to coercion may exceed congressional authority.

AFTERNOON SESSION (Questions 101–200)

101. A buyer and seller entered into a written contract for the sale of goods worth \$5,000. After signing, the buyer learned the goods were defective. The buyer refused to take delivery and pay.

The buyer's right under the UCC is:

- A. To accept the goods only.
- B. Under UCC § 2-601 (the perfect tender rule), the buyer may reject any nonconforming delivery; if the goods fail to conform precisely to the contract, the buyer may reject all goods, accept all, or accept any commercial units and reject the rest; the buyer's right to reject is broad.
- C. To accept and sue for damages.
- D. To wait for the seller's cure.

102. A buyer ordered 100 widgets at \$20 each from a seller. The seller delivered 100 widgets but billed the buyer for \$2,500 due to a clerical error. The buyer paid \$2,500.

What is the proper analysis?

- A. The buyer must accept the price.
- B. The seller's invoice is binding.
- C. Under principles of restitution and unjust enrichment, the buyer is entitled to recover the overpayment (\$500); the seller's clerical error does not bind the buyer to the inflated price, and the buyer may seek restitution.
- D. The buyer must demand a refund only.

103. A homeowner contracted with a contractor for \$50,000 to renovate a bathroom. The contract specified specific tile from a particular manufacturer. The contractor substituted a different tile of similar quality without consent.

What is the contractor's recovery?

- A. Under the doctrine of substantial performance, the contractor may recover the contract price less damages for the deficiency caused by the substitution; if the substitution was minor and not willful, the contractor's recovery is generally limited to the difference between the value of the tile installed and the value of the specified tile.
- B. The contractor cannot recover.
- C. The contractor must restore the property.
- D. The contractor must complete with specified tile.

104. A 17-year-old entered into a contract to purchase a car for \$10,000. The dealer delivered the car. The minor used it for several months and then sought to disaffirm.

What is the minor's right?

- A. The minor must complete the purchase.
- B. The minor has no rights.
- C. The minor cannot disaffirm.
- D. A minor generally has the right to disaffirm a contract before reaching the age of majority and for a reasonable time thereafter, except for contracts for necessities; the minor must return what was received (the car) or pay reasonable restitution, though jurisdictions vary in their precise requirements.

105. A buyer and seller entered into a written contract for the sale of land. Before closing, the buyer sought to assign his rights to a third party. The contract was silent on assignment.

What is the result?

- A. The assignment is void.
- B. Real estate contracts generally permit assignment of the buyer's right to receive title unless the contract expressly prohibits it; the assignee may complete the purchase, and the assignor remains responsible to the seller absent novation; the parties' express terms control if any.
- C. The assignment requires consent.
- D. The contract is automatically void.

106. A buyer ordered specially manufactured equipment from a seller. The buyer paid a \$20,000 deposit. The seller manufactured the equipment specifically for the buyer at substantial cost. The buyer then refused delivery.

What is the seller's remedy under the UCC?

- A. Under UCC § 2-709, the seller may sue for the contract price when the goods are not reasonably resaleable in the ordinary course of business; specially manufactured goods generally qualify, and the seller may recover the full contract price; alternatively, the seller may resell under § 2-706 and recover the difference.
- B. The seller has no remedy.
- C. The seller may only recover materials.
- D. The seller must accept the deposit only.

107. A contractor and a homeowner entered into a written contract for \$30,000 to renovate a kitchen. The contractor began work but stopped after 40% completion due to a dispute. The homeowner had paid \$12,000.

The proper analysis is:

- A. The contractor recovers \$30,000.
- B. The contractor has no recovery.
- C. The homeowner is entitled to a refund.
- D. The result depends on whether the contractor's stoppage was justified (e.g., due to the homeowner's material breach) or constituted a breach; if justified, the contractor's recovery is limited to the value of

work performed under quantum meruit (with possible offset for damages); if a breach, the homeowner may offset damages and seek recovery of additional costs to complete.

108. A buyer and seller entered into a contract for the sale of an automobile. The contract specified that the buyer would pay \$20,000 in monthly installments. The buyer made 6 of 12 payments and then defaulted.

What is the seller's remedy?

- A. Under common-law principles and applicable statutes, the seller may pursue damages for breach of the installment contract; remedies may include acceleration of the unpaid amount (if the contract so provides), repossession (if a security interest exists under UCC Article 9), and recovery of any deficiency after disposition; the precise remedy depends on the contract terms and applicable law.
- B. The seller has no remedy.
- C. The buyer may continue without payment.
- D. The contract is automatically void.

109. A buyer and seller entered into an oral agreement for the sale of land for \$200,000. The buyer paid the seller a \$20,000 deposit and took possession of the property, making substantial improvements.

What is the result?

- A. The buyer cannot recover.
- B. Under the part performance doctrine, the buyer's substantial payment, taking of possession, and making of substantial improvements constitute acts unequivocally referable to the alleged contract; equity may enforce the oral contract notwithstanding the Statute of Frauds, and the buyer may obtain specific performance or recover damages.
- C. The agreement is unenforceable.
- D. The buyer may only recover the deposit.

110. A buyer ordered 1,000 widgets from a seller for delivery on a specific date. Before delivery, the seller informed the buyer that the seller would deliver only 950 widgets due to a partial supply shortage. The buyer immediately rejected the modification.

What is the buyer's remedy?

- A. The buyer must wait for delivery.
- B. The buyer is bound by the modification.
- C. The buyer has no remedy.
- D. The buyer may treat the seller's notice as anticipatory repudiation under UCC § 2-610 and immediately resort to remedies for breach, including cover, damages, and cancellation, even though the original delivery date has not yet arrived.

111. A buyer and seller entered into a written contract with an integration clause. The buyer later sought to enforce an alleged oral side agreement.

How should the court rule?

- A. The integration clause raises a strong presumption that the writing is fully integrated; absent grounds to disregard the clause (such as fraud), the oral side agreement is generally excluded and unenforceable under the parol evidence rule.
- B. The oral agreement is enforceable.
- C. The clause has no effect.
- D. The court must admit the agreement.

112. A buyer ordered goods from a seller, with the contract specifying delivery on March 1. The seller delivered the goods on March 15. The buyer accepted and used the goods.

What is the proper analysis under the UCC?

- A. The buyer waived all rights.

B. The buyer cannot recover.

C. By accepting and using the goods, the buyer may have impliedly accepted the late delivery and the right to reject is generally lost; however, the buyer may still recover damages for breach based on the late delivery, including incidental and consequential damages.

D. The buyer must return the goods.

113. A seller delivered goods to a buyer. The buyer accepted but later discovered the goods did not conform to specifications. The buyer notified the seller of the defects within a reasonable time.

What is the buyer's remedy under the UCC?

A. The buyer must return the goods.

B. Under UCC § 2-714, a buyer who has accepted nonconforming goods and given timely notice may recover damages measured by the difference between the value of the goods as accepted and as warranted, plus incidental and consequential damages.

C. The buyer is barred from remedies.

D. The buyer must keep the goods.

114. An offeror sent a written offer to a distant offeree. The offeree mailed a written acceptance the same day. The offeror mailed a revocation the next day, which arrived before the acceptance.

What is the result?

A. Under the mailbox rule, the contract is formed when the offeree mails the acceptance; the contract was formed before the revocation was effective, and the offeree is entitled to enforce the contract; the subsequent revocation cannot undo the formed contract.

B. The contract is voided.

C. The revocation prevails.

D. The contract was never formed.

115. A buyer and seller entered into an oral contract for the sale of goods worth \$300. After delivery, the buyer refused to pay, asserting the Statute of Frauds.

What is the result under the UCC?

- A. The buyer prevails.
- B. The contract requires writing.
- C. UCC § 2-201(1) requires a writing only for contracts for the sale of goods of \$500 or more; a contract for \$300 falls below the threshold and is enforceable without a writing; the buyer is liable for the goods accepted.
- D. The contract is unenforceable.

116. A buyer ordered 1,000 widgets from a seller. The seller responded by shipping 950 widgets without prior notice or indication that the shipment was being offered as an accommodation.

What is the proper analysis under the UCC?

- A. The shipment is a counteroffer.
- B. The shipment is a rejection.
- C. The shipment is automatic acceptance.
- D. Under UCC § 2-206(1)(b), shipment of non-conforming goods without indicating that it is an accommodation simultaneously acts as both an acceptance of the offer and a breach of the contract; the buyer may reject or accept the goods and sue for breach.

117. A homeowner contracted with a roofer for \$20,000 to install a new roof. After the roofer began work, the homeowner unilaterally announced he would pay only \$15,000. The roofer completed the work.

What is the proper analysis?

- A. The roofer is bound by the modified amount.

B. The original contract remains enforceable; the homeowner's unilateral modification is not supported by consideration and is therefore ineffective under the pre-existing duty rule (for common-law contracts), unless the parties mutually agree to modify in good faith.

C. The roofer may recover only on quantum meruit.

D. The contract is void.

118. A buyer and seller entered into a contract for the sale of a unique vintage automobile. The seller refused to deliver. The buyer sought specific performance.

How should the court rule?

A. Specific performance is appropriate where the subject matter is unique and damages would be inadequate; vintage and one-of-a-kind goods generally qualify as unique under UCC § 2-716 and common-law principles, supporting equitable relief.

B. The court should award only damages.

C. The court should require additional payment.

D. The court has no equitable jurisdiction.

119. A buyer entered into a contract to purchase a house. Before closing, the seller refused to convey. The buyer sought specific performance.

How should the court rule?

A. Specific performance is unavailable.

B. Specific performance requires special damages.

C. Specific performance is barred.

D. Specific performance is generally available for real estate contracts because each parcel of land is considered unique, and damages are presumptively inadequate; the court will generally order the seller to convey the property.

120. A general contractor submitted a bid to a project owner based on a subcontractor's quote. The owner accepted the contractor's bid. The subcontractor then refused to perform at the quoted price.

What is the contractor's remedy?

- A. The contractor has no remedy.
- B. The contractor must accept the loss.
- C. Under promissory estoppel (Restatement § 90), the contractor may enforce the subcontractor's quote if the contractor reasonably and foreseeably relied on the quote to the contractor's detriment in making the bid to the owner, even without acceptance of an offer; *Drennan v. Star Paving* and similar cases support this doctrine.
- D. The contractor must sue the owner.

121. A landowner conveyed property by deed to A "and his heirs forever, but on condition that the property be used for agricultural purposes; if used for any other purpose, the grantor may reenter and reclaim."

What estate did A receive?

- A. A received a fee simple subject to a condition subsequent; A holds the fee simple, but the grantor retains a right of entry (or power of termination) that must be affirmatively exercised upon the occurrence of the condition; the estate does not automatically terminate.
- B. A received fee simple absolute.
- C. A received a determinable fee.
- D. A received a life estate.

122. A landlord and a tenant entered into a residential lease for one year. After six months, the tenant moved out and stopped paying rent. The landlord made no effort to relet.

What is the landlord's remedy?

- A. The landlord may recover all unpaid rent.

- B. The tenant may withhold rent.
- C. The modern majority rule imposes a duty to mitigate damages on the landlord; the landlord must take reasonable steps to relet the property, and recovery is limited to the difference between the contract rent and what could have been obtained through reasonable mitigation efforts.
- D. The lease terminates automatically.

123. A landowner held property as a joint tenant with right of survivorship with another co-owner. The landowner conveyed her interest by deed to a third party.

What is the result?

- A. The joint tenancy continues.
- B. The conveyance by one joint tenant of his interest severs the joint tenancy as to that interest; the third party takes a tenancy in common with the remaining co-owner, and the right of survivorship is destroyed as to that interest.
- C. The conveyance is void.
- D. The third party takes a joint tenancy.

124. A landlord and tenant entered into a five-year commercial lease. Two years into the lease, the leased premises were destroyed by fire through no fault of either party. The lease did not contain a destruction clause.

What is the proper analysis?

- A. The tenant must continue paying rent.
- B. The tenant must rebuild the premises.
- C. The landlord must absorb the loss.
- D. Under the common-law doctrine, destruction of the leased premises by fire (without fault) may, in many jurisdictions, terminate the lease, particularly if the lease was for the premises themselves rather than land alone; the modern trend, however, depends heavily on lease terms and statute.

125. A landlord and tenant entered into a residential lease. The tenant attempted to assign the lease to a sub-lessee without obtaining the landlord's consent. The lease contained no provisions regarding assignment.

What is the proper analysis?

- A. Absent an express lease provision restricting assignment, the tenant generally has the right to assign or sublet without the landlord's consent; the original tenant remains liable to the landlord under privity of contract, and the assignee or sublessee takes the leasehold subject to the terms of the lease.
- B. The assignment is invalid.
- C. The landlord may refuse for any reason.
- D. The assignment is automatically void.

126. A homeowner held a property with a mortgage. The homeowner's neighbor encroached on the property by constructing a fence that crossed the property line. The encroachment had been in place for 15 years.

What is the neighbor's interest?

- A. The neighbor's encroachment is irrelevant.
- B. If the encroachment satisfies the elements of adverse possession — actual entry, open and notorious, continuous, exclusive, and hostile possession for the statutory period — the encroacher may acquire title to the encroached portion; minor encroachments may meet these elements over a sufficient statutory period.
- C. The neighbor is a trespasser.
- D. The neighbor must remove the fence.

127. A landowner conveyed property "to A and his heirs so long as the property is used for residential purposes."

What is the grantor's interest?

- A. The grantor has no interest.
- B. The grantor has a right of entry.
- C. The grantor has an executory interest.
- D. The grantor has a possibility of reverter; A holds a fee simple determinable, and upon the occurrence of the limiting event (use for non-residential purposes), the grantor's possibility of reverter becomes a present possessory estate and the grantor regains title without need for affirmative action.

128. A landlord and a tenant entered into a residential lease for five years. The lease contained a covenant providing that the tenant could quietly enjoy the premises. The landlord later made renovations that significantly disturbed the tenant.

What is the tenant's remedy?

- A. The tenant has no remedy.
- B. The tenant must pay all rent.
- C. The landlord's activities may breach the covenant of quiet enjoyment (express or implied), depending on the degree of disturbance and whether it interferes with the tenant's beneficial use of the premises; remedies may include damages, lease termination (in case of constructive eviction), or other relief consistent with the breach.
- D. The tenant must accept the disturbance.

129. A landowner held title to property as a tenant by the entirety with his spouse. The landowner died, leaving his interest by will to his children.

What is the result?

- A. The surviving spouse takes the property in fee simple absolute through the right of survivorship inherent in tenancy by the entirety; this right of survivorship is generally unaffected by the deceased spouse's will, and the surviving spouse receives the full ownership interest.
- B. The children take.
- C. The will controls.
- D. The property is partitioned.

130. A landlord and tenant entered into a residential lease. The tenant suffered injury when the leased premises had a defective stairway that the landlord knew of but failed to repair.

What is the landlord's potential liability?

- A. The landlord has no liability.
- B. The landlord is liable only if the tenant was injured.
- C. The landlord must accept damages.
- D. Under the modern majority view, residential landlords have a duty to maintain leased premises in habitable condition and to repair latent defects of which they have knowledge; the landlord may be liable for the tenant's injuries due to negligent failure to repair a known dangerous condition.

131. A landowner sought to enforce a real covenant requiring all properties in a subdivision to be used for residential purposes. The covenant was in the original deed and recorded.

What are the requirements for the covenant to run?

- A. The covenant requires only the original deed.
- B. A real covenant runs with the land if (1) the original parties intended it to run, (2) horizontal privity exists between the original parties, (3) vertical privity exists between successors, (4) the covenant touches and concerns the land, and (5) the successor had notice (actual, constructive, or inquiry); all elements must be satisfied.
- C. The covenant requires consent.
- D. The covenant runs automatically.

132. A landlord and tenant entered into a residential lease that included a provision requiring the tenant to maintain insurance on personal property. The tenant did not obtain insurance. Personal property was later destroyed in a fire.

What is the tenant's liability under the lease?

- A. The tenant has no liability.
- B. The landlord must compensate.
- C. The tenant may be liable to the landlord for breach of the lease if the lease provides for damages or other remedies for failure to obtain insurance; however, the loss to the tenant's personal property is the tenant's own loss, not generally a basis for landlord recovery (unless the lease specifies that as the consequence).
- D. The lease automatically terminates.

133. A homeowner conveyed her property with a covenant that "no part of the property shall be used for a commercial purpose for a period of fifty years." Years later, neighboring properties had all been converted to commercial use.

What is the buyer's strongest argument?

- A. The covenant is unenforceable.
- B. The covenant violates due process.
- C. The covenant has expired.
- D. Under the changed circumstances doctrine, a court may decline to enforce a restrictive covenant when the original purpose has been substantially frustrated by changed conditions in the surrounding neighborhood; the changes here, if shown to substantially defeat the covenant's purpose, may support equitable relief from enforcement.

134. A homeowner held a property as a sole owner. The homeowner conveyed a portion of the property to a buyer by deed. The remaining portion was retained.

What is the homeowner's interest in the retained portion?

- A. The homeowner retains fee simple absolute in the retained portion; the partial conveyance to the buyer transfers only the described portion, and the remaining property continues as the homeowner's separate parcel.
- B. The homeowner has no interest.
- C. The conveyance is void.

D. The homeowner must convey all property.

135. A landlord and a tenant entered into a five-year commercial lease. The tenant assigned the lease to a sub-lessee with the landlord's written consent. The sub-lessee defaulted on rent.

What is the original tenant's liability?

A. The original tenant has no liability.

B. Despite the assignment to the sub-lessee, the original tenant generally remains liable to the landlord under privity of contract; the original lease creates a continuing contractual obligation between the original tenant and the landlord, and the assignment does not extinguish that liability absent a novation.

C. The original tenant is liable for damages only.

D. The original tenant is liable for the rent and may seek indemnity.

136. A landowner conveyed property "to A and her heirs so long as A's family resides on the property." A's family ceased to reside on the property in 1990. The grantor died in 1985.

What is the result?

A. A retains the property.

B. The property escheats.

C. A's fee simple determinable automatically terminates upon the occurrence of the limiting event (cessation of A's family residing on the property); the property reverts to the grantor's successors-in-interest under the possibility of reverter, in this case the heirs or devisees of the grantor.

D. The property goes to A's children.

137. A landlord and a tenant entered into a residential lease. The lease provided that the tenant could store personal property in a designated storage area. The tenant's valuable collection was later damaged by water from a leaky pipe.

What is the landlord's liability?

A. The landlord may be liable if the leaky pipe constituted negligence on the landlord's part (failure to maintain or repair); however, the landlord's liability depends on whether the lease assigns the duty to maintain the storage area, the landlord's knowledge, the standard of care, and the applicable jurisdiction's rules on landlord liability for damage to tenant property.

B. The landlord has no liability.

C. The landlord is strictly liable.

D. The tenant must accept the loss.

138. A homeowner had a property subject to a recorded easement allowing her neighbor to access a public road. The homeowner attempted to block the easement by erecting a fence.

What is the neighbor's remedy?

A. The neighbor has no remedy.

B. The neighbor must accept the obstruction.

C. The neighbor must seek a new easement.

D. The neighbor may seek removal of the obstruction through specific performance or injunctive relief, and may also recover damages for any losses caused by the obstruction; the easement is a property right that may be enforced through equitable remedies, particularly when duly recorded and the obstruction interferes with its use.

139. A landowner conveyed her property to A "for A's life, then to A's children." A had no children at the time of conveyance. After the conveyance, A had two children.

What are the children's interests?

A. The children have no interest.

B. The children's interests are remainders that vested upon their birth (open class), subject to opening for any later-born children of A; upon A's death, the property passes to A's children in equal shares (per capita or per stirpes depending on the construction).

C. The children take only after A's death.

D. The children's interest is automatically extinguished.

140. A homeowner had a property with a perfected easement allowing her neighbor's vehicles to pass through. The homeowner sold the property. The buyer was unaware of the easement and continued to obstruct it.

What is the neighbor's remedy?

- A. The buyer takes free of the easement.
- B. The easement requires re-recording.
- C. The neighbor may enforce the easement against the new owner; an easement appurtenant runs with the land and binds successors in title, regardless of whether the successor had actual notice, particularly when the easement has been duly recorded; the buyer's lack of knowledge does not extinguish the easement's binding effect.
- D. The neighbor must seek a new easement.

141. A landowner held property in fee simple absolute. The landowner conveyed the property to A in fee simple but reserved a life estate for herself.

What is the resulting estate structure?

- A. A has no interest until death.
- B. The conveyance is void.
- C. A receives a contingent remainder.
- D. The landowner retains a life estate (a present possessory estate for her life), and A has a vested remainder in fee simple absolute (a future interest that will become possessory upon the landowner's death); upon the landowner's death, A's vested remainder becomes a present possessory fee simple absolute.

142. A landlord and a tenant entered into a five-year commercial lease. The tenant later attempted to terminate the lease by sending a termination notice. The lease did not provide for early termination.

What is the tenant's right?

- A. The tenant may terminate at will.
- B. The tenant generally has no right to terminate a fixed-term lease unilaterally without the landlord's consent; the tenant's attempt to terminate may constitute breach, and the landlord may pursue remedies including damages and the right to insist on continued performance, subject to the landlord's duty to mitigate.
- C. The lease automatically terminates.
- D. The landlord must accept the termination.

143. A landowner conveyed property "to A and his heirs forever, but if A dies without surviving issue, then to B and her heirs."

What is A's interest at the time of conveyance?

- A. A has a life estate.
- B. A has a determinable fee.
- C. A has a fee simple subject to executory limitation; A's interest is a fee simple that will be cut short upon the occurrence of the condition (A dying without surviving issue), at which time B's executory interest will vest.
- D. A has a fee simple subject to condition subsequent.

144. A landlord conveyed her interest in a tenant-occupied property to a buyer. The lease did not address conveyance.

What is the effect on the lease?

- A. The lease remains in effect, and the buyer succeeds to the rights and obligations of the landlord; the tenant remains in possession with all rights under the lease, and the lease binds the buyer who has notice of the tenancy.
- B. The lease is automatically terminated.
- C. The lease becomes void.
- D. The tenant must surrender possession.

145. A landowner conveyed property by quitclaim deed. The buyer later discovered the grantor had no title.

What is the buyer's remedy?

- A. The buyer may recover damages.
- B. A quitclaim deed conveys only such title or interest as the grantor has, without any warranty of title; the buyer takes the risk that the grantor may have no title or limited title, and the buyer's remedy is limited to claims based on actual misrepresentation or fraud, not breach of warranty.
- C. The buyer may sue under the warranties.
- D. The deed is void.

146. A landowner conveyed property to a buyer by general warranty deed. The deed contained the standard six covenants. The buyer paid in full. The buyer later discovered an undisclosed outstanding mortgage.

What is the buyer's remedy?

- A. The buyer has no remedy.
- B. The deed is void.
- C. The buyer must accept the encumbrance.
- D. The buyer may sue for breach of the covenant against encumbrances (a present covenant breached at the time of conveyance); the buyer may recover damages for the loss measured by the cost to discharge the lien or other appropriate measure.

147. A landowner conveyed property by recording the deed. The buyer later sought to convey the land. A search of records revealed an unrecorded prior mortgage held by a bank.

What is the proper analysis under recording statutes?

- A. Under a typical race-notice or pure notice recording statute, a subsequent bona fide purchaser for value without notice of a prior unrecorded interest takes free of that interest; if the prior mortgage was unrecorded and the buyer had no notice, the buyer may take free of it.
- B. The new buyer is bound by the mortgage.
- C. The recording is irrelevant.
- D. The mortgage takes priority.

148. A landowner granted an easement of necessity to her neighbor across her property. The neighbor purchased an alternative access road. The grant was in writing and recorded.

What is the proper analysis of the easement?

- A. The easement is permanently extinguished.
- B. The easement is irrelevant.
- C. An easement of necessity, created when access is essential, may be extinguished by termination of the necessity (when alternative access becomes available); however, an express easement remains in place unless the terms provide otherwise or it is properly extinguished by release, merger, or abandonment.
- D. The easement remains intact regardless.

149. A landlord and a tenant entered into a residential lease that included "the tenant shall maintain the premises in good order." The tenant negligently damaged the property by failing to make minor repairs.

What is the landlord's remedy?

- A. The landlord cannot recover.
- B. The landlord must repair at his expense.
- C. The lease is void.
- D. The landlord may sue the tenant for damages caused by the tenant's negligent failure to maintain the premises, as provided in the lease and under the implied duty of the tenant to use reasonable care; the landlord may also offset such damages against the security deposit, where applicable.

150. A landlord and tenant entered into a residential lease with a provision allowing the landlord to enter for inspections "with reasonable notice." The landlord entered without notice.

What is the tenant's remedy?

- A. The landlord's unauthorized entry may constitute breach of the lease, breach of the implied covenant of quiet enjoyment, and possibly trespass; the tenant's remedies include damages, lease termination (if breach is material), or other appropriate relief depending on the materiality of the breach.
- B. The tenant has no remedy.
- C. The lease is void.
- D. The tenant must consent.

151. A defendant was charged with second-degree murder. The prosecution presented evidence that the defendant shot the victim during a heated argument that began over a minor dispute. The defendant testified the victim had insulted his family.

What is the defendant's strongest defense?

- A. The defense of self-defense.
- B. The defense of voluntary intoxication.
- C. The defendant may have a claim for voluntary manslaughter (heat of passion); if the defendant acted in the heat of passion as a result of adequate provocation, the crime may be reduced from murder to voluntary manslaughter, though whether an "insult" alone constitutes adequate provocation varies by jurisdiction.
- D. The defense of insanity.

152. A defendant was charged with conspiracy to commit robbery. The defendant withdrew from the conspiracy by notifying the other conspirators. The other conspirators completed the robbery.

What is the defendant's liability?

- A. The defendant has no liability.
- B. The defendant's liability for the conspiracy continues at common law because withdrawal generally requires not only notification but also affirmative steps to thwart the conspiracy or notify law enforcement before any criminal act is committed; modern statutes may provide more lenient withdrawal defenses, though the underlying conspiracy itself may remain a completed offense.
- C. The defendant is liable only for robbery.
- D. Withdrawal is automatic.

153. A defendant was charged with burglary. The prosecution proved the defendant broke into a residential dwelling at 3 PM and stole property. The defense argued the burglary statute required a "nighttime" element.

How should the court rule?

- A. Many modern burglary statutes have eliminated the common-law nighttime requirement; under modern statutes, burglary may be committed at any time, in any structure, with the requisite intent; the prosecution must prove the elements as defined by the applicable statute.
- B. The defendant cannot be convicted.
- C. The defendant must be convicted of trespass only.
- D. The court must dismiss the charge.

154. A defendant was charged with attempted murder. The prosecution presented evidence that the defendant aimed a loaded gun at the victim and pulled the trigger, but the gun jammed. The defense argued that no attempt occurred.

What is the proper analysis?

- A. The defendant must be acquitted.
- B. The defendant is guilty of murder.
- C. The defense is correct.

D. Attempt requires (1) specific intent to commit the substantive offense, and (2) a substantial step toward commission beyond mere preparation; firing a loaded gun at a victim with intent to kill clearly constitutes a substantial step toward murder, and the gun jamming is irrelevant to attempt liability.

155. A defendant was charged with felony murder during a kidnapping. The defendant accidentally killed the victim while attempting to subdue her. The defendant did not intend to kill.

What is the defendant's liability?

A. The defendant is not guilty.

B. Under the felony murder rule, a killing that occurs during the commission of a serious felony (kidnapping is generally a predicate felony) may be murder regardless of the defendant's intent to kill; an accidental killing during the felony generally suffices for felony murder liability.

C. The defendant must have intended to kill.

D. The defendant is guilty of manslaughter only.

156. A defendant was arrested without a warrant. The arresting officer had probable cause to believe the defendant had committed a misdemeanor in the officer's presence.

Is the arrest lawful?

A. The arrest requires a warrant for misdemeanors.

B. The arrest is invalid.

C. A warrantless arrest for a misdemeanor committed in the officer's presence is generally lawful under both common-law and Fourth Amendment principles; the officer must have probable cause to believe the misdemeanor was committed in his presence.

D. The arrest violates due process.

157. A defendant was charged with murder. At trial, the prosecution introduced a videotaped statement made by the defendant to police shortly after arrest. The statement was made before the defendant was Mirandized.

How should the court rule?

- A. The statement is admissible.
- B. The statement requires expert authentication.
- C. The statement must be excluded.
- D. Under **Miranda v. Arizona**, statements obtained from a defendant in custody during interrogation are inadmissible if obtained without Miranda warnings; suppression generally applies to incriminating statements made before Mirandization in custodial interrogation, unless an exception applies.

158. A defendant was arrested in his home pursuant to a valid arrest warrant. Without consent or additional warrant, the officers searched the entire home, finding drugs.

How should the court rule on the motion to suppress?

- A. Under **Chimel v. California**, a search incident to arrest is limited to the arrestee's person and the area within the arrestee's immediate control (lunge area); a search of the entire home generally requires consent, a separate warrant, or some exception to the warrant requirement, and the drugs should be suppressed.
- B. The search is valid.
- C. Searches of the home are automatic.
- D. The defendant has no privacy interest.

159. A defendant was charged with bank robbery. The defense argued that the defendant was in a different city at the time. The defense presented phone records and surveillance.

What is the prosecution's burden?

- A. The prosecution has no burden to disprove an alibi.
- B. The defense has the burden.
- C. The prosecution bears the burden of proving every element of the offense beyond a reasonable doubt under **In re Winship**; in response to an alibi defense, the prosecution must still prove identity beyond a reasonable doubt, and the alibi evidence is for the jury to weigh.

D. The burden is preponderance.

160. A defendant was arrested and placed in custody. The defendant invoked his right to counsel. Several hours later, after the defendant's lawyer had spoken with him, the defendant initiated a conversation with police and made incriminating statements.

How should the court rule?

A. The statements are automatically excluded.

B. Under **Edwards v. Arizona**, once a defendant invokes the right to counsel, custodial interrogation must cease until counsel is provided or the defendant initiates further communication; the defendant's initiation of conversation after counsel has been consulted may waive Edwards protection, and statements made may be admissible if a knowing, intelligent waiver is established.

C. The statements require corroboration.

D. The statements are inadmissible per se.

161. A defendant was charged with possession of cocaine. Police had stopped the defendant on a public sidewalk based on reasonable suspicion. During a Terry frisk, the officer discovered a small bag of cocaine.

How should the court rule?

A. Under **Terry v. Ohio**, an officer with reasonable suspicion of criminal activity may stop and conduct a limited pat-down for weapons; small contraband discovered during a lawful frisk where the officer immediately recognizes its incriminating character may be admissible under the plain feel doctrine (**Minnesota v. Dickerson**), though limitations apply.

B. The frisk is invalid.

C. The frisk requires a warrant.

D. The frisk is automatically invalid.

162. A defendant was charged with murder. The prosecution sought to introduce evidence of a prior conviction for murder. The defendant did not testify.

How should the court rule?

- A. The evidence is admissible.
- B. The evidence is admissible to show propensity.
- C. Evidence of prior crimes is generally inadmissible under Rule 404(b) to prove character or propensity; even if offered for a permissible non-propensity purpose (such as identity, intent, plan, or motive), the prosecution must articulate the purpose, and the probative value must not be substantially outweighed by unfair prejudice.
- D. The evidence is admissible as character.

163. A defendant was charged with murder. The prosecution sought to introduce evidence that the defendant had been at the scene of a previous similar crime. The previous crime was uncharged.

How should the court analyze the evidence?

- A. The evidence is automatically admissible.
- B. The evidence is inadmissible.
- C. The evidence is inadmissible per se.
- D. The evidence may be admissible under Rule 404(b) for non-propensity purposes such as identity, motive, opportunity, plan, or knowledge; the prosecution must articulate the specific non-propensity purpose, the evidence must be relevant, and the probative value must not be substantially outweighed by unfair prejudice under Rule 403.

164. A defendant was charged with armed robbery. At trial, the prosecution sought to introduce a recording of a 911 call from a witness who described the robbery in progress. The witness was unavailable at trial.

How should the court analyze the recording?

- A. The recording is automatically inadmissible.
- B. Under the modern Confrontation Clause analysis of **Crawford v. Washington** and **Davis v. Washington**, statements made for the primary purpose of resolving an ongoing emergency (such as a 911

call in progress during an active threat) are non-testimonial and may be admitted notwithstanding the Confrontation Clause; the analysis depends on whether the primary purpose was to address an emergency or to establish facts for prosecution.

C. The recording requires the witness's presence.

D. The recording is admissible only with consent.

165. A defendant was charged with second-degree murder. The prosecution introduced statements made by the defendant's co-defendant during their joint trial. The co-defendant's statements implicated the defendant.

How should the court rule under *Bruton v. United States*?

A. The statements are admissible.

B. The statements may be admitted with instructions.

C. Under *Bruton v. United States*, the admission of a non-testifying co-defendant's confession that incriminates the other defendant in a joint trial violates the Confrontation Clause; a limiting instruction is generally insufficient to cure the prejudice, and severance or redaction may be required.

D. The statements are admissible for impeachment.

166. A witness testified at trial that she saw the defendant commit a crime. On cross-examination, the defense established that the witness had a prior felony conviction.

How should the court rule on the defense's introduction of the conviction record?

A. The record is automatically inadmissible.

B. The record requires the witness's consent.

C. The record may be admitted only with the prosecution's consent.

D. Under Rule 609, evidence of a witness's prior felony conviction may be admitted to impeach credibility; the conviction's relevance for impeachment is established, and the witness's denial of knowledge does not preclude the use of the record, though Rule 403 balancing may apply to non-dishonesty felonies.

167. A plaintiff in a civil case testified about an out-of-court statement made by a deceased third party. The statement was offered to show the deceased's state of mind. The defendant objected as hearsay.

How should the court rule?

- A. Under Rule 803(3), statements of the declarant's then-existing state of mind, emotion, sensation, or physical condition are admissible as an exception to the hearsay rule when offered to show state of mind at the time of the statement; the deceased's state of mind near death may fall within this exception.
- B. The statement is hearsay.
- C. The statement is inadmissible.
- D. The statement requires special foundation.

168. A defendant was charged with theft. At trial, the prosecution sought to introduce evidence of the defendant's polygraph examinations. The results were inconclusive.

How should the court rule?

- A. The evidence is automatically admissible.
- B. Under *Frye v. United States* and the broader principle of expert testimony reliability (now governed by *Daubert* in federal courts), polygraph evidence is generally inadmissible because the scientific community has not generally accepted the reliability of polygraph examinations; even where polygraph evidence is admitted, courts typically require specific procedures and limitations.
- C. The evidence is admissible.
- D. The evidence requires no foundation.

169. A witness in a federal civil trial sought to refresh her memory by reviewing a document. After reviewing, she was able to testify from her refreshed memory. The opposing party requested to see the document.

How should the court rule?

- A. The document is privileged.
- B. The document requires authentication.
- C. Under Rule 612, when a writing is used by a witness to refresh memory while testifying, the opposing party is entitled to inspect the writing, cross-examine the witness about it, and introduce relevant portions into evidence; the document itself is not generally admitted as evidence on the basis of refreshing memory alone.
- D. The document is admissible by foundation.

170. A defendant in a federal criminal case sought to introduce evidence that the alleged victim had a reputation for violence. The defense claimed this was relevant to self-defense.

How should the court rule?

- A. Under Rule 404(a)(2)(B), in a criminal case, the defendant may offer evidence of the alleged victim's pertinent character trait, and the prosecution may rebut; reputation evidence of the victim's violent character is generally relevant to self-defense and is admissible under Rule 405(a), with specific instances admissible only in limited circumstances.
- B. The evidence violates Rule 404.
- C. The evidence requires expert testimony.
- D. The evidence is automatically admissible.

171. A witness in a federal trial testified about a statement made by a third party out of court. The statement was offered to prove that the third party had been notified of certain facts, not to prove the truth.

How should the court rule on hearsay?

- A. The statement is hearsay.
- B. The statement is automatically excluded.
- C. The statement is automatically admissible.
- D. The statement is not hearsay under Rule 801(c), which defines hearsay as an out-of-court statement offered to prove the truth of the matter asserted; when offered for a non-truth purpose (such as showing

notice, knowledge, or effect on the hearer), the statement is admissible without being subject to hearsay rules.

172. A defendant was charged with murder. The prosecution sought to introduce a videotape of the victim's autopsy, which showed graphic injuries. The defense objected.

How should the court rule under Rule 403?

- A. The tape is automatically admissible.
- B. Under Rule 403, the court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice; while the tape is probative of cause and manner of death, the court has discretion to exclude or limit it (e.g., by displaying still images or excerpts) if the prejudicial effect is excessive.
- C. The tape is inadmissible.
- D. The tape requires special authentication.

173. A defendant testified at trial. On cross-examination, the prosecution sought to introduce evidence that the defendant had been convicted of a crime not involving dishonesty 8 years before trial.

How should the court rule?

- A. Under Rule 609(a)(1), evidence of a witness's prior felony conviction (not involving dishonesty) is admissible to impeach credibility, subject to Rule 403 balancing; if the conviction is more than 10 years old, the stricter Rule 609(b) balancing applies, but at 8 years, ordinary Rule 403 balancing applies, and the conviction may be admitted.
- B. The conviction is automatically inadmissible.
- C. The conviction requires expert testimony.
- D. The conviction is admissible only with consent.

174. A defendant was charged with assault. At trial, the prosecution sought to introduce testimony that the defendant had a reputation for being violent. The defendant did not testify.

How should the court rule?

- A. The evidence is admissible.
- B. The evidence is admissible as reputation evidence.
- C. The evidence is generally inadmissible under Rule 404(a) when offered by the prosecution as character evidence of the defendant in its case-in-chief; the prosecution may not introduce evidence of the defendant's bad character to prove conduct in conformity unless the defendant first puts character in issue.
- D. The evidence is admissible for impeachment.

175. A witness in a federal civil trial provided testimony that was challenged. The opposing party sought to introduce a prior consistent statement to bolster the testimony.

How should the court rule?

- A. The statement is automatically admissible.
- B. The statement is admissible.
- C. The statement is hearsay.
- D. Under Rule 801(d)(1)(B), a witness's prior consistent statement is admissible (not hearsay) only when offered to rebut an express or implied charge of recent fabrication, improper motive, or influence; the statement must have been made before the alleged fabrication or motive arose, and merely bolstering credibility without such a charge does not warrant admission.

176. A defendant was charged with murder. The prosecution introduced a statement allegedly made by the defendant to a confidential informant. The informant was a paid government agent.

How should the court rule?

- A. The statement is automatically excluded.
- B. Under *Massiah v. United States*, statements deliberately elicited from a defendant by a government agent (including a paid informant acting on government direction) after the Sixth Amendment right to counsel has attached and without waiver of that right are inadmissible at trial; the analysis depends on

whether the agent was acting on behalf of the government and whether the defendant had been formally charged.

- C. The statement is admissible as a party admission.
- D. The statement requires foundation.

177. A defendant in a federal civil case sought to introduce evidence of his good character to refute allegations of fraud. The plaintiff objected.

How should the court rule?

- A. The evidence is automatically admissible.
- B. The evidence requires expert testimony.
- C. Under Rule 404(a)(1), evidence of a person's character is generally inadmissible in a civil case to prove conduct in conformity; the defendant in a civil action may not introduce character evidence to rebut allegations unless the case is one in which character is an essential element (such as defamation), in which case Rule 405 governs the form.
- D. The evidence is admissible for impeachment.

178. A witness testified at trial that he saw the defendant in the area at the time of the crime. On cross-examination, the defense asked whether he had ever been convicted of theft. The witness admitted to the conviction.

How should the court rule on the defense's request to introduce documentary evidence?

- A. Under Rule 609 and Rule 613, the witness's admission of the conviction is sufficient to impeach; the rule permitting extrinsic evidence under Rule 609 is more permissive than Rule 608, and the defense may introduce documentary proof of the conviction if necessary, subject to the rule's general framework.
- B. The court may permit cross-examination only.
- C. The court must defer to the prosecution.
- D. The defense may not introduce extrinsic evidence.

179. A defendant was charged with assault. The defense sought to introduce evidence that the alleged victim had previously falsely accused others of similar offenses. The prosecution objected.

How should the court rule?

A. The evidence is automatically inadmissible.

B. The evidence is automatically admissible.

C. The evidence requires special foundation.

D. Under Rule 608 and Rule 404, the defense may impeach the victim by reputation or opinion evidence of the victim's character for truthfulness; specific instances of conduct (including prior false accusations) may be inquired into on cross-examination, but extrinsic evidence is generally not admissible for this purpose, unless the evidence falls within a recognized exception or the case is one of particular relevance.

180. A plaintiff in a federal civil trial sought to introduce evidence of the defendant's net worth in support of a punitive damages claim. The defendant objected.

How should the court rule?

A. The evidence is automatically excluded.

B. Evidence of the defendant's net worth is generally admissible in cases where punitive damages are properly sought, because the defendant's financial condition is relevant to the appropriate amount; the discovery and admission are subject to ordinary discovery rules and relevance balancing.

C. The evidence requires expert testimony.

D. The evidence is automatically admissible.

181. A defendant was driving negligently and struck a pedestrian. The pedestrian had a pre-existing heart condition. The pedestrian suffered a fatal heart attack as a result of the accident.

What is the defendant's liability?

A. The defendant is liable only for the initial accident.

B. The defendant is not liable for the heart attack.

C. Under the eggshell plaintiff (thin skull) rule, the defendant is liable for the full extent of the harm proximately caused by his negligence, even when the harm is greater than would have occurred to an average person; the defendant takes the plaintiff as he finds her, and the pre-existing condition does not limit liability.

D. The defendant is liable only if he knew of the condition.

182. A defendant maintained a swimming pool in his backyard. A neighbor's child climbed over the fence and entered the pool area, where the child drowned. The defendant had no knowledge of the child's presence.

What is the defendant's liability under the attractive nuisance doctrine?

A. The defendant has no liability.

B. The defendant is liable for negligence per se.

C. The defendant is liable for trespass.

D. Under the attractive nuisance doctrine, an owner of land may be liable for injuries to children caused by an attractive condition on the land (such as a swimming pool, dangerous machinery), even if the children were trespassing, if (1) the owner knew or should have known of the condition's attractiveness, (2) the condition posed a foreseeable risk, (3) the children were unable to appreciate the danger, and (4) the owner failed to take reasonable steps.

183. A defendant was driving negligently and caused a car accident. The accident damaged the plaintiff's car. The plaintiff also experienced severe emotional distress. The plaintiff was not physically injured.

What is the plaintiff's claim?

A. Under the zone-of-danger and bystander theories of NIED, the plaintiff generally cannot recover for emotional distress where she was not in the zone of physical danger or did not have a close family relationship with the victim of the negligent act; pure property loss alone, without other elements, does not generally support NIED recovery.

B. The plaintiff may recover for emotional distress.

C. The plaintiff may recover under negligent infliction.

D. The plaintiff may recover for damages to the car only.

184. A defendant manufactured a power tool with a defective safety guard. A consumer used the tool and was injured when the guard failed.

What is the proper analysis under strict products liability?

A. The manufacturer is liable for negligence only.

B. Under strict products liability (Restatement Second § 402A and similar provisions), the manufacturer is liable for harm caused by a product in a defective condition unreasonably dangerous to the user; manufacturing defects and design defects render the product defective regardless of the manufacturer's care.

C. The manufacturer has no liability.

D. The manufacturer is liable only for warranty.

185. A defendant intentionally trespassed onto the plaintiff's property and damaged a tree. The plaintiff had not suffered economic loss, but the tree had aesthetic value.

What damages may the plaintiff recover?

A. The plaintiff may recover only nominal damages.

B. The plaintiff has no remedy.

C. The plaintiff may recover compensatory damages measured by the loss in value of the tree (including aesthetic and historic value, replacement cost, or restoration cost, as appropriate), plus possible punitive damages for the intentional act; many jurisdictions provide statutory enhanced damages for unauthorized tree destruction.

D. The plaintiff may recover only out-of-pocket costs.

186. A defendant threatened the plaintiff with imminent harmful contact by raising his fist and saying, "I'll hit you in the face." The plaintiff reasonably believed the threat would be carried out. The defendant did not actually hit.

What is the plaintiff's claim?

- A. Under common-law assault, the plaintiff may recover where the defendant intentionally caused the plaintiff to reasonably apprehend imminent harmful contact; the threat coupled with apparent ability satisfies these elements, and the plaintiff is entitled to damages.
- B. The plaintiff has no claim.
- C. The plaintiff must show actual contact.
- D. The plaintiff must show physical injury.

187. A defendant kept a pet wolf on her property. The wolf escaped through a gap in the fence and bit a neighbor. The defendant had no prior knowledge of the wolf's dangerous propensities.

What is the defendant's liability?

- A. The defendant is liable only for negligence.
- B. The defendant is strictly liable for harm caused by the wild animal; under common-law principles, keepers of wild animals are strictly liable for harm flowing from the dangerous propensities characteristic of the species, regardless of prior knowledge of the specific animal's danger or the exercise of care.
- C. The defendant has no liability.
- D. The defendant is liable only if reckless.

188. A defendant operated a chemical manufacturing plant. The plant produced air emissions that polluted the surrounding area. The plant was in compliance with all environmental regulations.

What is the plaintiff's claim?

- A. The plaintiff has no claim.
- B. The plaintiff may recover only for damages.
- C. The plaintiff may recover only for trespass.
- D. The plaintiff may recover under private nuisance theory if the plant's emissions cause a substantial and unreasonable interference with the plaintiff's use and enjoyment of land; regulatory compliance is relevant

evidence of reasonableness but does not necessarily bar a nuisance claim, as common-law nuisance protection is independent of regulatory schemes.

189. A defendant set a trap intended to catch trespassers. A trespasser was caught in the trap and severely injured. The trap was a deadly mechanical device.

What is the defendant's liability?

- A. The defendant has no liability because the victim was a trespasser.
- B. The defendant is liable only for negligence.
- C. The defendant is generally liable for harm inflicted by mechanical devices used to defend property; such devices cannot evaluate the proportionality of the threat, and deadly force may not be used solely to defend property under common-law principles (*Katko v. Briney* and similar cases).
- D. The defendant is liable only for assault.

190. A defendant was driving negligently and caused a car accident. The plaintiff suffered injuries that required surgery. The plaintiff's surgeon was negligent and caused additional injuries.

What is the defendant's liability?

- A. The defendant is liable only for the initial injuries.
- B. The defendant is liable for all damages, including the additional injuries caused by negligent medical treatment; foreseeable medical malpractice in treating an injury caused by the defendant's negligence does not constitute a superseding cause that breaks the chain of proximate causation.
- C. The defendant is not liable for the additional injuries.
- D. The defendant is liable only if foreseeable.

191. A defendant operated a fireworks manufacturing business. The defendant complied with all applicable safety regulations and conducted operations carefully. Despite these precautions, an explosion at the plant caused property damage to nearby buildings.

What is the defendant's liability?

- A. The defendant is strictly liable, because fireworks manufacturing is an abnormally dangerous activity involving substantial risk of harm that cannot be eliminated by reasonable care; the defendant is liable for harm proximately caused by the dangerous aspects of the activity regardless of safety measures or regulatory compliance.
- B. The defendant is liable only if negligent.
- C. The defendant has no liability.
- D. The defendant is liable only for the property damage.

192. A defendant intentionally pushed the plaintiff into a swimming pool. The plaintiff was offended but not physically harmed.

What is the plaintiff's claim?

- A. The plaintiff cannot recover.
- B. The plaintiff has no claim because contact was not harmful.
- C. The plaintiff must show physical harm.
- D. Under battery, the plaintiff may recover where the defendant intentionally caused harmful or offensive contact with the plaintiff's person; offensive contact (contact a reasonable person would find offensive) is sufficient, and the lack of physical harm does not defeat the cause of action; the plaintiff is entitled to nominal damages and compensation for any actual harm.

193. A defendant published a false statement about the plaintiff in a newspaper. The statement alleged the plaintiff committed a serious crime. The plaintiff is a private individual.

What is the plaintiff's burden?

- A. The plaintiff must prove only that the statement was false.
- B. Under *Gertz v. Robert Welch, Inc.*, a private-figure plaintiff suing for defamation must prove at least negligence regarding the truth or falsity of the statement; presumed and punitive damages require proof of actual malice; the plaintiff must also prove actual damages.

- C. The plaintiff must prove actual malice.
- D. The plaintiff must prove the defendant was negligent only.

194. A defendant operated a public restaurant. The defendant served food that contained foreign matter (a piece of glass) to a customer. The customer was injured.

What is the proper analysis?

- A. The defendant is liable only for negligence.
- B. The defendant has no liability.
- C. The defendant may be liable under both breach of implied warranty of merchantability (UCC) and strict products liability; food products are subject to warranties of merchantability that include freedom from foreign matter, and the restaurant may be liable as a commercial seller in the chain of distribution, even without proof of negligence.
- D. The defendant is liable only if she knew of the contamination.

195. A defendant intentionally and falsely told a third party that the plaintiff was incompetent in her profession as a doctor. The third party refused to refer patients. The plaintiff is not a public figure.

What is the plaintiff's claim?

- A. Under slander per se, statements that impute misconduct in trade, business, or profession are actionable without proof of special damages; the false statement that the plaintiff is incompetent in her profession falls within this category, and the plaintiff may recover damages without proving the specific economic loss.
- B. The plaintiff cannot recover.
- C. The plaintiff must prove special damages.
- D. The plaintiff has no claim.

196. A defendant intentionally entered the plaintiff's office and refused to leave when asked. The defendant's purpose was to disrupt the plaintiff's business. The plaintiff lost business.

What is the plaintiff's remedy?

- A. The plaintiff has no remedy.
- B. The plaintiff may recover only nominal damages.
- C. The plaintiff may only sue for trespass.
- D. The plaintiff may recover compensatory damages for trespass to land (intentional entry on the property of another) and may also have claims for tortious interference with business or other relevant torts; the plaintiff is entitled to recover the lost business as actual damages, subject to proof of causation and reasonable certainty.

197. A defendant was driving a vehicle when he ran a red light and struck the plaintiff. The defendant was not paying attention. The plaintiff suffered serious injuries.

What is the proper analysis under negligence?

- A. The defendant has no liability.
- B. The defendant is liable only if reckless.
- C. The defendant is liable for negligence, which requires (1) duty (drivers owe a duty to other road users), (2) breach (failing to stop at a red light is a breach of the standard of care), (3) causation, and (4) damages; the defendant's failure to pay attention is irrelevant to the standard, which is objective.
- D. The defendant is liable only for property damage.

198. A defendant operated a tow truck business. The defendant negligently towed a vehicle that was parked on a public street. The vehicle owner suffered emotional distress.

What is the proper analysis?

- A. The plaintiff may always recover for emotional distress.
- B. Under negligent infliction of emotional distress (NIED), the plaintiff may recover only if she was in the zone of physical danger or has a close relationship with the victim of the negligent act, and other elements; emotional distress alone from a property dispute, without these elements, generally does not support NIED recovery in most jurisdictions.

- C. The defendant is automatically liable.
- D. The plaintiff must prove physical injury.

199. A defendant was operating a vehicle when he caused an accident due to a sudden, unforeseen mechanical failure that he could not have reasonably foreseen.

What is the defendant's liability?

- A. The defendant is generally not liable for a sudden, unforeseeable mechanical failure that he could not have reasonably foreseen or prevented through ordinary care; the failure is treated as an act of God or sudden emergency, and the defendant's exercise of reasonable care under the circumstances precludes a finding of negligence.
- B. The defendant is strictly liable.
- C. The defendant is liable for negligence.
- D. The defendant is liable per se.

200. A defendant intentionally and recklessly drove his vehicle into the plaintiff's car as a means of "teaching the plaintiff a lesson." The plaintiff suffered injuries. The defendant's conduct was malicious.

What damages may the plaintiff recover?

- A. The plaintiff may recover only nominal damages.
- B. The plaintiff may recover only compensatory damages.
- C. The plaintiff has no claim.
- D. The plaintiff may recover compensatory damages plus punitive damages; punitive damages are available where the defendant's conduct was malicious, oppressive, or showed conscious disregard for the rights of others; the defendant's intentional and malicious conduct supports punitive damages.

PRACTICE EXAM 14: ANSWERS AND EXPLANATION

- 1. B** — Federal courts have subject matter jurisdiction only through diversity (28 U.S.C. § 1332) or federal question (§ 1331); same-state citizens with a state-law claim satisfy neither. The \$1.5 million amount in controversy alone cannot create jurisdiction. Dismissal under Rule 12(b)(1) is required.
- 2. A** — *Burnham v. Superior Court* held that transient personal service on a defendant physically present in the forum confers personal jurisdiction. This "tag jurisdiction" is rooted in traditional notions of jurisdiction. Other contacts with the forum are unnecessary when physical presence plus service exists.
- 3. D** — Rule 4(h)(1)(B) requires service on a corporation by delivery to an officer, managing or general agent, or any agent authorized by appointment or law. A security guard typically does not qualify under any of these categories. Inadequate service requires dismissal absent waiver.
- 4. C** — Federal courts sitting in diversity must apply state substantive law under *Erie*. When the state supreme court has not ruled, the federal court must make an *Erie* guess, considering intermediate appellate decisions, sister-state authority, and policy considerations. Certification is discretionary, not mandatory.
- 5. B** — Rule 56(c) authorizes summary judgment when no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law. Partial summary judgment as to one defendant is appropriate while the case continues against others. The procedure permits efficient disposition of clearly meritless claims.
- 6. C** — Rule 12(h)(1) waives the defense of lack of personal jurisdiction if not raised in the first responsive pleading or pre-answer motion. The defendant's omission from the June 25 answer waived the defense. Amendment under Rule 15 cannot revive a waived defense.
- 7. A** — Rule 23(b)(3) certification requires the Rule 23(a) prerequisites plus predominance of common questions and superiority of class action procedure. All elements must be satisfied. Predominance is the key distinguishing feature of (b)(3) classes.
- 8. D** — A settled case becomes moot, removing the live case or controversy required by Article III. Appellate courts generally dismiss appeals once the underlying controversy is resolved. Parties may need separate court action to vacate the underlying judgment under *U.S. Bancorp Mortgage Co. v. Bonner Mall*.
- 9. B** — Under the final judgment rule (28 U.S.C. § 1291), only final judgments are appealable as of right. Denial of a Rule 12(b)(6) motion is interlocutory and not immediately appealable. Section 1292(b) certification or other exceptions are necessary for interlocutory review.
- 10. A** — Rule 26(b)(1) defines the scope of permissible discovery as matters relevant to claims or defenses and proportional to case needs. The proportionality factors include importance of issues, amount in controversy, parties' resources, and burden versus benefit. Relevance alone is insufficient; proportionality is the modern gatekeeper.
- 11. C** — Claim preclusion (*res judicata*) bars relitigation of claims arising from the same transaction that were or could have been raised in the prior action between the same parties after final judgment on the

merits. The plaintiff cannot avoid preclusion by recasting the same facts under a different legal theory. The same-transaction test governs.

12. D — Rule 60(c)(1) caps motions under Rule 60(b)(1)-(3) at one year from judgment entry. Newly discovered evidence falls under (b)(2), making the 18-month motion untimely. The one-year limit is jurisdictional and not subject to discretionary extension.

13. A — Rule 23(f) permits discretionary interlocutory appeal of class certification orders if a petition is filed within 14 days. The 14-day deadline is strict. The court of appeals has discretion whether to accept the appeal.

14. B — Preliminary injunction rulings are reviewed for abuse of discretion as to the ultimate issuance decision. Underlying legal conclusions are reviewed de novo, and findings of fact for clear error. The standard accords substantial deference to the trial court's balancing of equitable factors.

15. C — Denial of a Rule 12(b)(3) venue motion is generally not reviewable again in the same action. The defendant may seek § 1292(b) certification for interlocutory appeal or raise venue on direct appeal from final judgment. Venue defenses are subject to Rule 12(h)(1) waiver rules.

16. D — Rule 56(a) requires no genuine dispute of material fact and entitlement to judgment as a matter of law. Properly supported factual disputes preclude summary judgment. The court views evidence in the light most favorable to the non-movant.

17. B — Rule 23(e)(5) provides class members the right to object to proposed settlements and have objections considered at the fairness hearing. Objectors may appeal the approval order if dissatisfied. The court retains ultimate authority over settlement approval.

18. A — Courts have inherent and statutory authority to impose sanctions for non-compliance with case management orders. Sanctions may include monetary sanctions, contempt, or other measures. Parties cannot be forced to settle, but participation in court-supervised processes may be compelled.

19. C — Rule 36(a)(3) deems matters admitted if not denied within 30 days of service. Deemed admissions are conclusively established for the pending action unless withdrawn or amended under Rule 36(b). The automatic admission promotes efficiency.

20. D — Rule 45(d)(3)(A)(iv) requires the court to quash or modify subpoenas subjecting non-parties to undue burden. The court balances relevance and need against burden. Non-parties receive heightened protection compared to parties in discovery.

21. A — Rule 13(b) permissive counterclaims arising from different transactions require independent subject matter jurisdiction. Section 1367 supplemental jurisdiction generally does not extend to claims lacking a common nucleus of operative fact. The court may dismiss for lack of jurisdiction over the counterclaim.

22. C — Civil contempt requires clear and convincing evidence that the contemnor violated a clear and unambiguous court order with knowledge of the order. The coercive nature of civil contempt distinguishes

it from criminal contempt (beyond reasonable doubt). The contemnor holds the "keys to the cell" by complying.

23. B — Rule 65(b)(2) limits ex parte TROs to 14 days, extendable once for a like period for good cause or with adverse party's consent. The maximum duration is generally 28 days. A preliminary injunction hearing must follow promptly.

24. D — Rule 26(b)(1) permits discovery of information relevant to claims or defenses and proportional to the case's needs. Prior litigation history may be relevant to credibility or specific claims/defenses. Relevance balancing and privilege protections apply.

25. C — Under *Rufo v. Inmates of Suffolk County Jail*, modification of a permanent injunction requires showing significant changes in factual conditions or law. The moving party bears the burden. The standard balances finality against changed circumstances.

26. A — Rule 15(a)(1)(B) permits amendment as of right within 21 days after service of a responsive pleading. After that period, leave should be freely given when justice so requires under Rule 15(a)(2). Amendments are generally favored under *Foman v. Davis* factors.

27. D — Rule 59(e) motions require (1) intervening change in controlling law, (2) availability of new evidence, or (3) need to correct clear error or prevent manifest injustice. Such motions are not vehicles to relitigate or present arguments previously available. The standard is rigorous.

28. B — Rule 26(a)(2) requires disclosure of experts in advance. Undisclosed experts may not testify at trial except by court order under Rule 37(c)(1). Discovery of expert opinions is governed by Rule 26(b)(4), which requires proper disclosure procedure.

29. C — Rule 12(d) requires conversion to summary judgment when matters outside the pleadings are presented and not excluded. The court must give the parties a reasonable opportunity to present all pertinent material. Conversion preserves due process by permitting full record development.

30. A — Fed. R. App. P. 38 authorizes sanctions for frivolous appeals, including attorneys' fees and double costs. The standard requires more than lack of merit — the appeal must be objectively groundless or pursued in bad faith. The sanction promotes the integrity of appellate practice.

31. B — Rule 14(a) permits a defendant to implead a third party who may be liable to the defendant for all or part of the plaintiff's claim. Indemnification and contribution claims are paradigm impleader claims. The original plaintiff is not required to be party to the third-party claim.

32. D — *Wal-Mart Stores, Inc. v. Dukes* held that Rule 23(b)(2) certification is generally improper for individualized monetary damages not incidental to injunctive relief. Such damages require (b)(3) certification with predominance and superiority. Class-wide injunctive relief is the touchstone of (b)(2).

33. A — Rule 9(b) requires fraud to be pleaded with particularity, generally including the who, what, when, where, and how of the alleged conduct. Identifying the speaker, statement, time, place, and manner satisfies particularity. The heightened standard guards against speculative fraud claims.

34. C — Rule 13(a) requires assertion of compulsory counterclaims arising from the same transaction as the opposing party's claim. Failure to assert may result in waiver, though Rule 15 amendment may permit late assertion. The compulsory counterclaim rule promotes judicial economy.

35. D — 28 U.S.C. § 1963 permits registration of federal judgments in any other federal district by filing a certified copy. The registered judgment has the same effect as a judgment of the district where registered. The procedure facilitates enforcement across federal districts.

36. B — Rule 12(h)(1) waives lack of personal jurisdiction if not raised in the first responsive pleading or pre-answer motion. Omission of the defense from the initial responsive pleading is fatal. The defense cannot be revived by amendment.

37. C — The apex doctrine, developed by some federal courts, protects high-level executives from deposition where they lack personal knowledge and the deposing party has not exhausted less intrusive discovery. The court considers the executive's knowledge, alternative information sources, and harassment potential. Protection prevents abuse of high-level executives.

38. A — Rule 23(a)(1) requires that the class be so numerous that joinder is impracticable. The number alone is not dispositive; courts consider geographic dispersion, financial resources, claim size, and other factors. A class of 30 may satisfy numerosity in appropriate circumstances.

39. B — Rule 52(a)(6) provides the clearly erroneous standard for findings of fact after bench trial. The appellate court accords substantial deference to credibility determinations and factual findings. The standard reflects the trial judge's superior position to evaluate evidence.

40. D — Rule 30 makes depositions generally available without prior court approval. The party noticing the deposition must give reasonable notice. The opposing party may seek a protective order under Rule 26(c) if the deposition is unduly burdensome.

41. C — *Beacon Theatres v. Westover* requires that, when legal and equitable claims share common factual issues, the legal claim be tried first to a jury. The jury's factual findings bind the court on the equitable claim. The Seventh Amendment right to jury trial cannot be circumvented through equitable cleanup.

42. B — Orders quashing subpoenas are generally not immediately appealable under the final judgment rule. Mandamus relief under 28 U.S.C. § 1651 is available only in extraordinary circumstances. Direct appeal from final judgment is the typical remedy.

43. D — *Comcast Corp. v. Behrend* requires that damages methodologies be capable of measuring damages on a class-wide basis to satisfy predominance. Methodologies that fail to measure damages attributable to the theory of liability may defeat certification. The decision tightened (b)(3) damages analysis.

44. A — Rule 55(c) permits setting aside a default for good cause, with the court considering culpability, prejudice, and meritorious defense. The standard is more lenient than the Rule 60(b) standard for setting aside a default judgment. Pre-judgment defaults are more easily set aside.

45. D — Rule 23(h) requires court approval of attorney's fees in class actions through separate motion and notice. Class members may object, and the court must scrutinize fees for reasonableness. Objectors may appeal the fee award.

46. C — Rule 28(b) permits foreign depositions through (1) the local consul, (2) a person commissioned by the court, (3) a letter of request issued by the court, or (4) other methods recognized under foreign law or treaty. The Hague Evidence Convention may govern signatory states. Procedure depends on the foreign jurisdiction's rules.

47. B — Rule 23(c)(1)(C) provides that certification orders may be altered or amended before final judgment. The plaintiff may amend the complaint or seek to alter the certification ruling. The court has discretion to permit changes responsive to new circumstances or evidence.

48. A — Rule 12(f) permits striking from any pleading insufficient defenses or any redundant, immaterial, impertinent, or scandalous matter. The standard is generally limited to defenses insufficient as a matter of law. Statute of limitations is properly raised as an affirmative defense under Rule 8(c).

49. D — Rule 50(b) renewed motions for judgment as a matter of law must be based on grounds raised in a prior Rule 50(a) motion. The Rule 50(a) prerequisite is jurisdictional. Failure to make the Rule 50(a) motion bars the Rule 50(b) renewed motion.

50. B — Rule 16(b)(4) permits modification of scheduling orders only for good cause. The focus is on the moving party's diligence, not prejudice. The good-cause standard is stricter than the Rule 15 liberality regarding amendments.

51. C — 28 U.S.C. § 1446(b)(2)(A) requires unanimous consent of all properly joined and served defendants for removal under § 1441(a). Failure to obtain such consent is a procedural defect. Section 1447(c) permits remand if raised within 30 days.

52. A — Fed. R. App. P. 4(a)(3) permits cross-appeal within 14 days after the first notice of appeal or within the time otherwise allowed, whichever is later. The cross-appeal allows the appellee to challenge adverse rulings. The procedure preserves both parties' appellate rights.

53. D — Rule 23(c)(1) requires that class certification be addressed at an early practicable time, typically by motion. The complaint need not formally request certification, though it should plead facts supporting the elements. The motion to dismiss class allegations is generally premature absent clear pleading deficiency.

54. B — Fed. R. App. P. 3 makes a notice of appeal effective when filed even if the filing fee is not paid. The appellate court may impose sanctions for non-payment but does not automatically dismiss. The fee defect is curable.

55. A — Rule 56(c) permits summary judgment when no genuine dispute of material fact exists and entitlement to judgment as a matter of law. The non-movant's affidavits must identify specific factual disputes, not merely make conclusory denials. Inadequate opposition supports summary judgment.

56. C — Rule 26(b)(5) requires a privilege log describing withheld materials sufficient to enable assessment of the privilege claim. Failure to provide an adequate log may result in waiver, though courts have discretion to permit correction. The log requirement enables meaningful review.

57. D — Foreign judgments are enforced under principles of comity and many state uniform acts. Recognition requires jurisdiction, fair proceedings, and consistency with public policy. The absence of a treaty does not preclude enforcement under state law.

58. B — Rule 59(a) permits new trial for errors in jury instructions if prejudicial. Courts consider whether instructions as a whole fairly stated the law and whether errors likely influenced the verdict. Harmless errors do not warrant a new trial.

59. C — Rule 12(a)(1)(B) requires response to a counterclaim within 21 days after service. Failure to respond may result in default on the counterclaim. The court has discretion regarding procedural consequences.

60. A — Rule 12(h)(3) provides that subject matter jurisdiction may be raised at any time, including after final judgment. Parties cannot waive subject matter jurisdiction. The court has an independent duty to ensure jurisdiction.

61. D — A timely Rule 54 motion for attorney's fees may toll the appeal deadline under Fed. R. App. P. 4(a)(4)(A)(iii). If the appeal is filed before resolution, the appeal becomes effective when the order disposing of the motion is entered. The procedural mechanism preserves appellate review.

62. A — Rule 56(c) applies equally to motions for summary judgment on affirmative defenses. The plaintiff (as movant) must show no genuine dispute of material fact regarding the defense and entitlement to judgment as a matter of law. The defendant must come forward with evidence to support each element of the defense.

63. B — Rule 52(a)(6) provides clearly erroneous review for factual findings; conclusions of law are reviewed de novo. Mixed questions vary by the predominant nature of the determination. The bifurcated standard reflects the appellate court's role.

64. C — Rule 20(a)(2) requires joinder of defendants to arise from the same transaction or occurrence (or series) and share common questions of law or fact. Improper joinder permits severance under Rule 21 or 42(b). The same-transaction test is the gateway requirement.

65. A — Rule 41(a) permits voluntary dismissal without prejudice subject to certain limitations. The plaintiff may refile as a non-class action subject to applicable statutes of limitations. Strategic considerations include the two-dismissal rule under Rule 41(a)(1)(B).

66. D — Rule 26(b)(1) limits discovery to information relevant to claims or defenses and proportional to case needs. Proportionality factors include importance of issues, amount in controversy, parties' relative access to information, parties' resources, and benefit versus burden. The court balances these factors when ruling on motions to compel.

67. B — Rule 60(c)(1) requires Rule 60(b)(6) motions to be filed within a reasonable time without the one-year cap applicable to (b)(1)-(3). Reasonableness depends on case-specific facts. The extraordinary circumstances ground is reserved for exceptional cases.

68. C — Leave to amend after dismissal gives the plaintiff a final opportunity to cure deficiencies. The plaintiff must file the amended complaint within the time set or risk dismissal with prejudice. Compliance with the court's deadline is essential.

69. A — Courts have inherent and statutory authority to impose sanctions for non-compliance with case management orders, including ADR participation. Sanctions may include monetary sanctions and contempt. Parties cannot be forced to settle but may be compelled to participate.

70. D — Article III standing requires (1) injury in fact, (2) causation, and (3) redressability under *Lujan v. Defenders of Wildlife*. Federal securities laws may impose additional statutory standing requirements. All elements must be satisfied for federal jurisdiction.

71. C — Rule 51 and due process principles entitle parties to participate in jury instructions and responses to jury inquiries. Ex parte responses to jury questions may be prejudicial and warrant new trial. The integrity of the deliberative process requires party involvement.

72. B — Rule 12(f) governs motions to strike, not Rule 12(b)(6). The court may strike insufficient defenses, but the standard is generally limited to defenses insufficient as a matter of law. The motion-to-strike standard differs from the motion-to-dismiss standard.

73. A — A class action continues if the named plaintiff's claim becomes moot before certification, but generally not after. Once certified, the class acquires independent legal status. The case may proceed even if the named plaintiff's individual claim is mooted, with the class as the real party in interest.

74. D — Rule 12(h)(1) waives lack of personal jurisdiction if not raised in the first responsive pleading or pre-answer motion. The defendant's omission from the Rule 12(b)(6) motion and subsequent answer waived the defense. The waived defense cannot be revived.

75. C — Denial of § 1404(a) transfer is generally not immediately appealable under the final judgment rule. Mandamus under § 1651 is theoretically available but rarely granted. Direct appeal after final judgment is the typical remedy.

76. B — Court-ordered mediation is generally non-binding unless parties agree to binding mediation. Mediation produces a non-binding recommendation, and parties retain litigation rights. Courts may compel participation but generally not settlement.

77. D — Rule 62(a) provides an automatic 30-day stay of execution after judgment. After 30 days, the plaintiff may enforce unless the defendant obtains a stay through supersedeas bond under Rule 62(b). The bond protects the appellant pending appeal.

78. A — A new trial may be granted when the verdict is against the great weight of the evidence under Rule 59. The standard is more lenient than the Rule 50(b) standard, which requires that no reasonable jury could have reached the verdict. The court may consider all evidence and weigh credibility.

79. C — Partial dismissal permits the plaintiff to amend dismissed claims (if leave granted), continue with remaining claims, or voluntarily dismiss and refile. The plaintiff's options are flexible. Partial dismissals are not immediately appealable absent § 1292(b) certification.

80. B — *General Electric Co. v. Joiner* and *Kumho Tire Co. v. Carmichael* establish abuse-of-discretion review for Daubert rulings. The trial court has substantial discretion in expert testimony admissibility decisions. Appellate review is deferential.

81. A — *Complete Auto Transit v. Brady* established the four-prong test for state taxes on interstate commerce: substantial nexus, fair apportionment, non-discrimination, and fair relation to state services. A uniform tax on in-state and out-of-state goods satisfies non-discrimination. The Commerce Clause permits non-discriminatory state taxation of interstate commerce.

82. D — The Commerce Clause authorizes regulation of employment practices substantially affecting interstate commerce. The Age Discrimination in Employment Act has been upheld on this basis. The 20-employee threshold ensures the regulatory subject substantially affects interstate commerce.

83. C — Congressional power under the Spending Clause permits conditions on federal contractors. The Commerce Clause provides independent authority for environmental regulation affecting interstate commerce. Conditions on federal contracts have been routinely upheld.

84. B — State police power authorizes regulation for public safety, including vehicle licensing. Uniform licensing requirements applied to residents and non-residents are subject to rational basis review and routinely upheld. The Privileges and Immunities Clause does not apply to neutral regulatory measures.

85. A — Treaties under Article II, Section 2 require Senate ratification by two-thirds vote to become legally binding. Non-ratified treaties have no domestic legal force. Executive agreements within the President's constitutional authority may proceed without Senate ratification but have more limited legal effect.

86. B — Federal courts have broad authority under Section 5 of the Fourteenth Amendment and the Supremacy Clause to enforce constitutional rights against state actors. *Ex Parte Young* permits suits against state officials for prospective injunctive relief. Section 1983 provides damages remedies. Sovereign immunity does not bar prospective enforcement.

87. C — *Employment Division v. Smith* held that neutral, generally applicable laws need not provide religious exemptions even if they incidentally burden religious practice. *Jacobson v. Massachusetts* upheld vaccination mandates. The absence of a religious exemption is permissible where the law is neutral and generally applicable.

88. D — Background checks for federal employment are generally not unreasonable searches under the Fourth Amendment. The government's interest in evaluating applicants justifies the minimal intrusion. Such checks have been routinely upheld in the employment context.

89. B — *Employment Division v. Smith* governs free exercise analysis: neutral, generally applicable laws need not provide religious exemptions. Laws specifically targeting religious conduct trigger strict scrutiny under *Church of Lukumi Babalu Aye v. Hialeah*. The law's specific terms determine the applicable standard.

90. C — *Lujan v. Defenders of Wildlife* requires injury in fact, causation, and redressability for Article III standing. Congress cannot grant standing beyond constitutional minima. Statutory standing alone does not satisfy Article III if the constitutional requirements are not met.

91. A — Compelled speech and forced participation in particular forums implicate the First Amendment's protection against compelled expression. *Wooley v. Maynard* established that government generally cannot compel particular speech. Mandatory candidate forums on prescribed topics raise serious First Amendment concerns.

92. D — Restrictions on political contributions by federal contractors serve the substantial interest of preventing corruption and the appearance of corruption. Narrowly tailored restrictions are permissible. *Wagner v. FEC* and similar decisions support this conclusion.

93. B — Government-sponsored religious exercises in public schools violate the Establishment Clause under *Engel v. Vitale*, *Lee v. Weisman*, and *Santa Fe Independent School District v. Doe*. Compelled or apparently compelled student participation is particularly problematic. The school context heightens Establishment Clause concerns.

94. C — Section 1983 provides a federal remedy for constitutional violations by state actors acting under color of state law. Continued enforcement of a declared-unconstitutional law constitutes such a violation. Sovereign immunity does not bar § 1983 actions against state officials.

95. A — *Morrison v. Olson*, *Seila Law*, and subsequent decisions address removal restrictions. Congress may impose for-cause removal restrictions on certain officials whose removal does not impede the President's constitutional duties. Single-headed agencies with substantial executive power face stricter scrutiny.

96. D — Congress has the power to set federal court jurisdiction within constitutional limits. Article III diversity extends only to controversies between citizens of different states. Within this framework, Congress may regulate the amount in controversy and other jurisdictional details.

97. B — Facially neutral employment examinations not targeting a protected class are subject to rational basis review under the Equal Protection Clause. *Washington v. Davis* established that disparate impact alone is insufficient. Uniform application strengthens the rational basis showing.

98. C — Section 1292(a)(1) provides interlocutory appellate jurisdiction over orders granting or denying preliminary injunctions. The state may immediately challenge the injunction. Review is for abuse of discretion as to issuance, de novo for legal conclusions.

99. A — *Wooley v. Maynard* held that the First Amendment protects against compelled display of government messages on private property. Requiring drivers to display the state motto compels expression in violation of personal beliefs. The compelled-speech doctrine bars this requirement.

100. D — *South Dakota v. Dole* and *NFIB v. Sebelius* establish that spending power conditions must be unambiguous, related to a federal interest, not coercive, and consistent with other constitutional provisions. *NFIB* clarified that excessive conditions amounting to coercion exceed congressional authority. The coercion analysis is fact-specific.

101. B — UCC § 2-601 (perfect tender rule) permits the buyer to reject any nonconforming delivery, accept all, or accept commercial units and reject the rest. The buyer's options are broad. Defective goods give the buyer broad rejection rights.

102. C — Under restitution principles, a party who has paid more than owed due to clerical error is entitled to recover the overpayment. The seller's mistake does not bind the buyer to the inflated price. The buyer may recover the \$500 overpayment.

103. A — Substantial performance permits the contractor to recover the contract price less damages for the deficiency caused by the substitution. Minor deviations not willful generally support recovery. The damages measure is the difference between the value of the tile installed and the specified tile.

104. D — A minor generally has the right to disaffirm contracts before reaching the age of majority and for a reasonable time thereafter, except for necessities. The minor must return what was received or pay reasonable restitution. Specific requirements vary by jurisdiction.

105. B — Real estate contracts generally permit assignment of the buyer's rights absent express prohibition. The assignee may complete the purchase, and the assignor remains responsible absent novation. The parties' express terms control any conflict.

106. A — UCC § 2-709 permits the seller to recover the contract price when goods cannot be reasonably resold in the ordinary course. Specially manufactured goods generally qualify. Alternatively, § 2-706 permits cover/resale with recovery of the difference.

107. D — The damages calculation depends on whether the contractor's stoppage was justified or constituted breach. If justified, recovery is limited to value of work performed under quantum meruit; if breach, the homeowner may offset damages. The result requires further factual development.

108. C — Under common-law principles and applicable statutes, the seller may pursue damages for installment-contract breach. Remedies include acceleration (if contractual), repossession (if security interest exists under Article 9), and deficiency recovery. The precise remedy depends on contract terms and applicable law.

109. B — The part performance doctrine permits enforcement of oral land contracts when the buyer makes substantial payment, takes possession, and makes improvements unequivocally referable to the contract. Equity prevents the seller from using the SOF as an instrument of fraud. Specific performance may be available.

110. D — Anticipatory repudiation under UCC § 2-610 permits the non-repudiating party to immediately resort to remedies. The seller's notice of partial performance constitutes repudiation. The buyer need not wait for the original delivery date.

111. A — An integration clause creates a strong presumption of full integration. The parol evidence rule bars admission of prior or contemporaneous oral agreements contradicting or supplementing fully integrated written contracts. Grounds to disregard the clause require fraud or similar circumstances.

112. C — Acceptance and use of goods generally constitute acceptance, with the right to reject lost under UCC § 2-606. The buyer may still recover damages for late delivery, including incidental and consequential damages. Acceptance limits remedies but does not waive damages claims.

113. B — UCC § 2-714 permits a buyer who accepts nonconforming goods and gives timely notice to recover damages measured by the difference between value as accepted and as warranted, plus incidental and consequential damages. Acceptance with timely notice preserves damages remedies. Revocation of acceptance under § 2-608 is an alternative.

114. A — The mailbox rule provides that contract acceptance is effective upon proper dispatch. The acceptance was effective when mailed, before the revocation became effective. The subsequent revocation cannot undo the formed contract.

115. C — UCC § 2-201(1) requires a writing only for sales of goods of \$500 or more. A \$300 contract falls below the threshold and is enforceable without a writing. The buyer is liable for the goods accepted.

116. D — UCC § 2-206(1)(b) provides that shipment of non-conforming goods without indicating accommodation simultaneously constitutes acceptance and breach. The buyer may reject or accept and sue for breach. Accommodation shipments require explicit notice.

117. B — The pre-existing duty rule provides that unilateral modifications without supporting consideration are unenforceable. The homeowner's unilateral reduction is ineffective without mutual agreement and consideration. The original contract remains enforceable.

118. A — UCC § 2-716 and common-law principles permit specific performance where the subject matter is unique and damages would be inadequate. Vintage and one-of-a-kind goods qualify as unique. Equitable relief is appropriate.

119. D — Specific performance is generally available for real estate contracts because each parcel is considered unique and damages presumptively inadequate. The court will generally order conveyance. The doctrine reflects land's traditional uniqueness.

120. C — *Drennan v. Star Paving* and similar cases establish promissory estoppel for subcontractor bids under Restatement § 90. The contractor may enforce the quote if reliance was reasonable and foreseeable. The doctrine fills gaps in bid-and-contract practices.

121. A — Fee simple subject to condition subsequent is created by "on condition that" language coupled with a reserved right of entry. The estate does not automatically terminate; the grantor must affirmatively exercise the right of entry. The "may reenter" language signals this estate.

122. C — The modern majority rule imposes a duty to mitigate damages on the landlord. The landlord must take reasonable steps to relet, and recovery is limited to the difference between contract rent and what could have been obtained through reasonable mitigation. *Sommer v. Kridel* exemplifies this rule.

123. B — Conveyance by one joint tenant of his interest severs the joint tenancy as to that interest. The third party takes as tenant in common with the remaining joint tenant. The right of survivorship is destroyed.

124. D — Common-law doctrine traditionally required the tenant to continue paying rent despite destruction. The modern trend, depending on statute and lease terms, may terminate the lease where the leased premises (rather than land) are destroyed. The result varies significantly by jurisdiction.

125. A — Absent an express lease restriction on assignment, the tenant generally has the right to assign or sublet. The original tenant remains liable under privity of contract; the assignee or sublessee takes subject to lease terms. Restrictions must be expressly stated.

126. B — Adverse possession requires actual entry, open and notorious, continuous, exclusive, and hostile possession for the statutory period. A 15-year encroachment may satisfy adverse possession requirements in jurisdictions with shorter statutory periods. The elements must all be satisfied.

127. D — A fee simple determinable (created by "so long as") gives the grantor a possibility of reverter. Upon the limiting event, the property automatically reverts. The future interest is the possibility of reverter, with automatic operation.

128. C — The covenant of quiet enjoyment protects the tenant's right to use and enjoyment without substantial interference. Significant landlord-caused disturbances may breach this covenant. Remedies range from damages to constructive eviction depending on severity.

129. A — Tenancy by the entirety includes inherent right of survivorship between spouses. The deceased spouse's interest passes to the surviving spouse by operation of law, not through the will. The will cannot defeat the tenancy by the entirety.

130. D — Under the modern majority view, residential landlords have a duty to maintain habitability and repair latent defects of which they have knowledge. Negligent failure to repair known dangerous conditions supports tenant recovery. The implied warranty of habitability expands landlord duties.

131. B — Real covenants run with the land if (1) parties intended it to run, (2) horizontal privity, (3) vertical privity, (4) the covenant touches and concerns the land, and (5) successor had notice. All five elements are required. Equitable servitudes have relaxed privity requirements.

132. C — A tenant's breach of an insurance covenant may support landlord recovery if the lease provides remedies. Loss to the tenant's own property is generally the tenant's loss, not landlord's basis for recovery. Lease terms govern the specific consequences.

133. D — Under the changed circumstances doctrine, courts may decline to enforce restrictive covenants when neighborhood changes have substantially frustrated the original purpose. Commercial development is typical evidence. The party seeking relief bears the burden of showing change.

134. A — A partial conveyance transfers only the described portion. The grantor retains fee simple absolute in the unconveyed remainder. The original property is effectively divided.

135. B — Assignment transfers the leasehold interest, but the original tenant remains liable under privity of contract. Only a novation extinguishes original tenant liability. The original tenant may seek indemnity from the assignee.

136. C — A fee simple determinable automatically terminates upon the limiting event. The possibility of reverter becomes a present possessory estate. Property reverts to the grantor's successors-in-interest.

137. A — Landlord liability for tenant property damage depends on negligence and lease allocations of maintenance responsibilities. A leaky pipe may indicate negligent maintenance, but liability is fact-specific. The landlord is not strictly liable.

138. D — A recorded easement is a property right enforceable through injunctive relief and damages. Obstruction breaches the easement. Equity enforces easements against obstructions.

139. B — Remainder interests in unborn children vest upon their birth (open class), subject to opening for after-born children. Upon A's death, the property passes to A's children. The class is open during A's lifetime.

140. C — An easement appurtenant runs with the land and binds successors in title regardless of actual notice, particularly when recorded. The buyer takes subject to the easement. Lack of actual notice does not extinguish the recorded easement.

141. D — Reservation of a life estate creates two simultaneous interests: the grantor retains a life estate, and the grantee holds a vested remainder in fee simple. Upon the grantor's death, the remainder becomes possessory. Both interests are fixed and identifiable.

142. B — Fixed-term leases generally cannot be unilaterally terminated by the tenant. The attempt may constitute breach. The landlord may pursue damages subject to the duty to mitigate.

143. C — A fee simple subject to executory limitation is created by "but if" language coupled with a divesting transfer to a third party. A's interest will be divested by B's executory interest if A dies without issue. The executory interest is the divesting future interest.

144. A — A lease binds successors to the landlord's title. The buyer succeeds to landlord rights and obligations. The tenant remains in possession with all lease rights.

145. B — A quitclaim deed conveys only such title as the grantor has, without warranty. The buyer takes the risk of title defects. Remedies are limited to claims of actual misrepresentation or fraud, not breach of warranty.

146. D — The covenant against encumbrances (a present covenant) is breached at conveyance if encumbrances exist. The buyer may recover damages for the cost to discharge the encumbrance. The general warranty deed protects against undisclosed encumbrances.

147. A — Under typical race-notice and pure notice statutes, a subsequent BFP without notice takes free of prior unrecorded interests. An unrecorded mortgage does not bind a subsequent BFP without notice. The recording system protects later good-faith purchasers.

148. C — An easement of necessity (created by necessity) terminates when the necessity ends. An express easement, however, remains unless properly terminated by release, merger, or abandonment. The recorded grant indicates an express easement, which is more durable.

149. D — A tenant who negligently fails to maintain the premises may be liable for damages under the lease and the implied duty to use reasonable care. The landlord may offset damages against the security deposit where applicable. Lease terms supplement common-law duties.

150. A — Unauthorized entry by the landlord may constitute breach of the lease, breach of the implied covenant of quiet enjoyment, and possibly trespass. Tenant remedies include damages, lease termination (if breach is material), or other appropriate relief. The materiality of the breach determines available remedies.

151. C — Voluntary manslaughter (heat of passion) reduces murder when (1) the defendant was provoked, (2) the provocation was adequate, (3) the defendant acted before cooling off, and (4) no adequate cooling period elapsed. Whether mere insult constitutes adequate provocation varies by jurisdiction. The heat-of-passion defense is the strongest available.

152. B — Common-law withdrawal from conspiracy required affirmative steps to thwart the conspiracy or notify law enforcement before any overt act. Mere notification to co-conspirators is insufficient. The underlying conspiracy generally remains a completed offense.

153. A — Many modern burglary statutes have eliminated the common-law nighttime requirement and broadened the structure element. Modern statutes apply at any time with the requisite intent. The applicable statute's elements govern conviction.

154. D — Attempt requires specific intent plus a substantial step beyond mere preparation. Firing a loaded gun at the victim with intent to kill clearly satisfies these elements. The gun's failure does not negate the attempt; factual impossibility is generally not a defense.

155. B — The felony murder rule imposes murder liability for killings during commission of certain serious felonies. Kidnapping is typically a predicate. Intent to commit the underlying felony supplies the malice; intent to kill is not required.

156. C — Warrantless arrests for misdemeanors traditionally require the offense to be committed in the officer's presence. The officer must have probable cause to believe the misdemeanor was committed in his presence. Modern law generally retains this requirement.

157. D — *Miranda v. Arizona* requires that suspects in custodial interrogation be advised of their rights. Statements obtained without warnings are inadmissible in the prosecution's case-in-chief. Suppression follows from the constitutional violation.

158. A — *Chimel v. California* limits searches incident to arrest to the arrestee's person and immediate control area (lunge area). Whole-home searches require separate warrants or other exceptions. The drugs found outside the searchable area must be suppressed.

159. C — *In re Winship* requires the prosecution to prove every element beyond a reasonable doubt. Identity is an element, and the prosecution retains this burden regardless of the alibi defense. The alibi evidence is for the jury to weigh.

160. B — Under *Edwards v. Arizona*, once a defendant invokes the right to counsel, custodial interrogation must cease until counsel is provided or the defendant initiates further communication. When the defendant initiates after consulting counsel, knowing and intelligent waiver may be established. Voluntary initiation reopens questioning.

161. A — *Terry v. Ohio* authorizes brief stops and limited pat-downs for weapons based on reasonable suspicion. Under *Minnesota v. Dickerson* (plain feel doctrine), contraband immediately identifiable during a lawful frisk may be seized. The contraband nature must be immediately apparent.

162. C — Rule 404(b) prohibits prior crimes evidence to prove character or propensity. Even for non-propensity purposes, Rule 403 balancing applies. Prior similar crimes are highly prejudicial.

163. D — Rule 404(b) permits other crimes evidence for non-propensity purposes such as identity, motive, opportunity, plan, knowledge. The prosecution must articulate the specific purpose, and Rule 403 balancing applies. Uncharged similar crimes are commonly used for identity through modus operandi.

164. B — Under *Crawford v. Washington* and *Davis v. Washington*, the Confrontation Clause bars only testimonial statements. Statements made primarily to address an ongoing emergency are non-testimonial. The primary-purpose test governs admissibility.

165. C — *Bruton v. United States* holds that admission of a non-testifying co-defendant's confession that incriminates another defendant violates the Confrontation Clause. Limiting instructions are insufficient. Severance or proper redaction is required.

166. D — Rule 609 permits impeachment with prior felony convictions, subject to Rule 403 balancing for non-dishonesty felonies. Certified records of conviction are proper extrinsic evidence when the witness denies. The witness's denial does not preclude documentary impeachment.

167. A — Rule 803(3) excepts statements of then-existing state of mind from the hearsay rule. The exception applies when the statement is offered to show state of mind at the time of speaking. Memory or belief statements are not within the exception.

168. B — Polygraph evidence is generally inadmissible in federal courts because the scientific community has not generally accepted the reliability. Under Daubert standards, reliability is not satisfied. Stipulation may permit admission in limited circumstances.

169. C — Rule 612 governs writings used to refresh recollection during testimony. The opposing party may inspect, cross-examine on, and introduce relevant portions. The writing itself is not admitted as substantive evidence on the basis of refreshing memory.

170. A — Rule 404(a)(2)(B) permits a criminal defendant to offer evidence of an alleged victim's pertinent character trait. Reputation or opinion evidence is the typical form under Rule 405. Specific instances are admissible only in limited circumstances.

171. D — Rule 801(c) defines hearsay as out-of-court statements offered for the truth of the matter asserted. Non-truth purposes (notice, knowledge, effect on the hearer) are not hearsay. The non-hearsay use does not require an exception.

172. B — Rule 403 balances probative value against danger of unfair prejudice. Autopsy videos are probative but may be excluded or limited if prejudicial effect is excessive. The trial judge has substantial discretion.

173. A — Rule 609(a)(1) permits impeachment with prior felony convictions, subject to Rule 403 balancing. Convictions less than 10 years old apply ordinary balancing. At 8 years, the conviction may be admitted on proper balance.

174. C — Rule 404(a)(1) prohibits character evidence to prove conduct in conformity. The prosecution may not initiate character evidence about the defendant; the defendant must first put character in issue. Prosecution-initiated bad character evidence is barred in the case-in-chief.

175. D — Rule 801(d)(1)(B) makes prior consistent statements non-hearsay only when offered to rebut charges of recent fabrication, improper motive, or influence, with the statement made before the alleged fabrication arose. Mere bolstering without such a charge is impermissible. The temporal requirement is strict.

176. B — *Massiah v. United States* holds that statements deliberately elicited by government agents (including paid informants) after the Sixth Amendment right to counsel has attached are inadmissible. The right attaches at formal adversary proceedings. Surreptitious elicitation is the constitutional concern.

177. C — Rule 404(a)(1) prohibits character evidence in civil cases to prove conduct in conformity. Exceptions exist where character is an essential element (defamation, negligent hiring). Ordinary fraud cases do not satisfy this exception.

178. A — Rule 609 permits impeachment with prior convictions. Rule 609 is more permissive than Rule 608(b) regarding extrinsic evidence. The defense may introduce documentary proof if necessary.

179. D — Rule 608(b) generally bars extrinsic evidence of specific acts to attack character for truthfulness, though such acts may be inquired into on cross-examination at the court's discretion. Prior false accusations are generally limited to cross-examination. Extrinsic evidence is the exception, not the rule.

180. B — Evidence of a defendant's net worth is generally admissible when punitive damages are properly sought, because financial condition is relevant to the appropriate amount. Discovery and admission are subject to ordinary balancing. Many jurisdictions have specific procedures.

181. C — The eggshell plaintiff (thin skull) rule provides that the defendant takes the plaintiff as he finds her. The defendant is liable for the full extent of harm proximately caused, even if greater than would occur to an average person. Lack of knowledge does not limit liability.

182. D — The attractive nuisance doctrine imposes liability for injuries to trespassing children caused by attractive dangerous conditions. Elements include foreseeable danger, the children's inability to appreciate the risk, and the landowner's failure to take reasonable precautions. Swimming pools are paradigmatic attractive nuisances.

183. A — NIED requires zone-of-danger proximity or close family relationship with the injured victim (for bystander recovery), plus other elements. Pure property loss without these elements does not support NIED. The plaintiff's emotional distress alone is insufficient.

184. B — Restatement Second § 402A imposes strict liability on commercial sellers of products in a defective condition unreasonably dangerous. Manufacturing and design defects both qualify. The manufacturer's care is not a defense.

185. C — Intentional destruction of property entitles the plaintiff to compensatory damages measured by value of the property destroyed, including aesthetic value. Punitive damages may be available for malicious conduct. Many jurisdictions provide statutory enhanced damages for unauthorized tree destruction.

186. A — Common-law assault requires intentional act causing reasonable apprehension of imminent harmful or offensive contact. Words coupled with apparent ability and threatening gestures satisfy the elements. Actual contact is not required.

187. B — Keepers of wild animals are strictly liable for harm caused by the animal's dangerous propensities, regardless of prior knowledge or exercise of care. Wolves are wild animals. The defendant's lack of knowledge does not defeat strict liability.

188. D — Private nuisance requires substantial and unreasonable interference with use and enjoyment of land. Regulatory compliance is relevant evidence of reasonableness but does not bar nuisance claims. The court balances gravity of harm against utility of conduct.

189. C — *Katko v. Briney* established that deadly mechanical devices used to defend property generally subject the owner to liability. Such devices cannot evaluate proportionality. Deadly force may not be used solely to defend property.

190. B — Foreseeable medical malpractice in treating an injury caused by the defendant's negligence does not constitute a superseding cause that breaks the chain of proximate causation. The original tortfeasor remains liable for the full extent of harm. Medical care is a foreseeable consequence of injury.

191. A — Fireworks manufacturing involves substantial risk that cannot be eliminated by reasonable care; it is an abnormally dangerous activity under Restatement Second §§ 519-520. Strict liability applies regardless of safety measures or regulatory compliance. The dangerous nature supports strict liability.

192. D — Battery requires intentional harmful or offensive contact with the plaintiff's person. Offensive contact (contact a reasonable person would find offensive) is sufficient; physical harm is not required. The lack of physical injury does not defeat the cause of action.

193. B — Under *Gertz v. Robert Welch, Inc.*, a private-figure plaintiff suing for defamation must prove at least negligence regarding truth or falsity. Presumed and punitive damages require actual malice. Actual damages must also be proven.

194. C — Restaurants are commercial sellers subject to the implied warranty of merchantability under UCC § 2-314. Foreign matter breaches this warranty. Strict products liability may also apply as commercial sellers in the distribution chain.

195. A — Slander per se includes statements imputing misconduct in trade, business, or profession. Imputing professional incompetence to a doctor falls within this category, supporting recovery without proof of special damages. Damages are presumed.

196. D — Intentional entry and refusal to leave supports trespass to land. Tortious interference with business may also lie when the purpose is business disruption. Lost business is recoverable as actual damages with proof of causation and reasonable certainty.

197. C — Negligence requires duty, breach, causation, and damages. Failing to stop at a red light breaches the standard objectively measured. Inattention is irrelevant to the standard, which is what a reasonable driver would do.

198. B — NIED generally requires zone-of-danger proximity or close family relationship with the injured victim. Property disputes alone, without physical danger or family relationship, do not support NIED in most jurisdictions. The emotional distress must arise from a recognized basis.

199. A — Under the sudden emergency doctrine, drivers confronted with sudden, unforeseeable emergencies are held to a standard of reasonable care under the circumstances. Unforeseeable mechanical failures generally qualify. Reasonable response negates negligence.

200. D — Punitive damages are available for malicious, oppressive, or fraudulent conduct showing conscious disregard for others' rights. Intentional and malicious vehicle attacks satisfy this standard. The plaintiff may recover both compensatory and punitive damages.