

PRACTICE EXAM 15: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

1. The doctrine of _____ permits a party who has rendered most but not exactly all of contractual performance to recover the contract price minus damages caused by the deviation, rather than barring recovery entirely under a strict perfect-tender rule.

- A. perfect tender under Commercial Code section 2601
- B. economic waste in construction contract performance
- C. substantial performance with offset for measurable defects
- D. anticipatory repudiation excusing further performance

2. A local newspaper published an article asserting that a city council member had embezzled \$50,000 in public funds. The reporter based the story on an anonymous tip and a single unverified document; she made no effort to contact the council member, review official records, or consult a forensic accountant before publication. The council member sued for defamation. Which standard governs her claim against the newspaper, and what must she prove?

- A. As a public official, she must prove the newspaper published the statement with actual malice — knowledge of falsity or reckless disregard for whether it was true.
- B. As a public figure, she need only prove negligence by the newspaper in failing to verify the published information before going to press.
- C. As a private figure, she may recover presumed damages without proving any degree of fault on the newspaper's part at all.
- D. She cannot recover under any standard because the First Amendment provides absolute immunity to all newspaper publications.

3. Defendant entered a department store, picked up a \$3,000 handbag from a display, concealed it under her coat, and walked toward the exit without paying. Store security detained her three feet before the front doors. The prosecution charged her with grand theft. Defendant moved to dismiss, arguing she had not yet left the store with the merchandise. Under California law, what is the most likely outcome?

- A. The motion should be granted because grand theft requires the property be physically removed from the premises of the owner before the offense is completed.
- B. The motion should be denied because asportation is satisfied by even slight movement of the property with the requisite intent to permanently deprive the owner.
- C. The motion should be granted because intent to steal cannot be inferred from mere concealment of merchandise while the suspect remains on the premises.
- D. The motion should be denied only if defendant is also shown to have stolen merchandise from the same store on prior occasions.

4. Plaintiff filed an action in the United States District Court for the Central District of California alleging diversity jurisdiction. The complaint pleaded that plaintiff was a California citizen and defendant was incorporated in Delaware with its principal place of business in Texas. Plaintiff also alleged \$90,000 in damages from a vehicle collision. Defendant moved to dismiss for lack of subject matter jurisdiction. Under 28 U.S.C. § 1332, the motion should be:

- A. Denied because complete diversity is established between citizens of different states under § 1332(a)(1).
- B. Denied because federal courts have inherent jurisdiction over tort claims involving interstate motor vehicle accidents.
- C. Denied because diversity of citizenship is complete and both parties have selected a federal forum for adjudication.
- D. Granted because the alleged amount in controversy of \$90,000 fails to exceed \$75,000 only after subtracting reasonably foreseeable defense costs.

5. Spouses were married for 20 years and lived together in California throughout. During the marriage, Husband earned a defined-benefit pension through his employer, with 15 years of pensionable service accruing during marriage and 5 years before marriage. The couple now seeks dissolution. Under *In re Marriage of Brown* and Family Code section 2610, how should the pension be characterized and divided?

- A. The community has an interest equal to the proportion of years worked during marriage to total years of pensionable service, divisible at dissolution under the time rule.
- B. The pension is Husband's separate property in full because pension benefits are paid by a third party employer and based on his employment rather than community labor.
- C. The pension is community property in full because retirement benefits earned through any employment during marriage are presumed community without apportionment.
- D. The pension cannot be divided at dissolution and Wife must instead seek monthly spousal support increases once Husband elects to retire and benefits commence.

6. All of the following are accurate statements about the duty of confidentiality under CRPC 1.6 EXCEPT:

- A. The duty extends to all information a lawyer obtains relating to the representation, regardless of the source of that information.
- B. The duty generally survives the termination of the lawyer-client relationship and even the death of the client.
- C. A lawyer may reveal confidential information to prevent a criminal act the lawyer reasonably believes is likely to result in death or substantial bodily harm.
- D. A lawyer may freely reveal confidential client information whenever doing so would serve the lawyer's own reputational, financial, or pecuniary interests.

7. Owner conveyed Greenacre to Grantee by a written deed reciting consideration of "ten dollars and other valuable consideration." Owner signed the deed before a notary public and handed it to Grantee, who took possession of the property but never recorded the deed. Three years later, Owner died, and his heirs sued Grantee to quiet title, arguing the conveyance was void for failure to record. Under California law, which is correct?

- A. The heirs prevail because California Civil Code section 1213 requires recording as a condition of any deed's underlying validity between the original parties.
- B. The heirs prevail because deeds executed without genuine monetary consideration of at least \$100 are void on their face under longstanding California precedent.
- C. Grantee prevails because recording protects against subsequent purchasers but is not required to transfer title between the original parties to a properly delivered and accepted deed.
- D. Grantee prevails only if she can produce at least two disinterested witnesses to corroborate the original delivery of the deed by Owner.

8. At a civil trial for negligence, plaintiff sought to introduce a hospital admissions record indicating defendant had reported that he had been "drinking heavily for the past four hours" before the accident. Defendant objected on hearsay grounds. Plaintiff offered the record under California Evidence Code section 1271. Which best describes the admissibility of the record?

A. The record is inadmissible because hospital records always contain inadmissible hearsay statements made by third parties to medical staff during routine intake.

B. The record is admissible because section 1271 admits a business record made at or near the time by a person with knowledge, kept in the regular course of business, where trustworthiness is shown.

C. The record is admissible only if the hospital's custodian of records testifies in person at trial to authenticate every document contained in the patient file.

D. The record is admissible only if defendant first testifies in his case-in-chief and is then impeached on cross-examination with the prior inconsistent statement.

9. A state legislature enacted a statute requiring all private businesses with more than 25 employees to display a state flag on their premises during business hours, on pain of a \$500 daily fine. A bookstore challenged the statute on First Amendment grounds, arguing the requirement compelled it to express a political message it did not endorse. Under *Wooley v. Maynard*, what is the likely outcome?

A. The statute is constitutional because states have inherent authority to regulate the conduct of commercial businesses operating in interstate commerce within state borders.

B. The statute is constitutional because flag-display requirements are content-neutral regulations of conduct, not speech, and survive intermediate scrutiny.

C. The statute is constitutional because government may compel commercial entities to display patriotic symbols as a routine condition of doing business in the state.

D. The statute is likely unconstitutional because the government may not compel a private speaker to convey a particular ideological message without satisfying strict scrutiny.

10. A testator validly executed a will in 2018 leaving "\$100,000 to my niece Sarah." In 2022, the testator orally told his attorney he wanted to "increase Sarah's gift to \$200,000" but never signed any document reflecting the change. The testator died in 2024 with the 2018 will still in effect. Sarah seeks to enforce the oral modification. Under California law, what is the result?

- A. The oral modification is invalid because Probate Code section 6110 requires testamentary instruments to be in writing, signed, and witnessed; the 2018 will controls as originally executed.
- B. The oral modification is valid because California continues to recognize nuncupative wills for amendments to existing testamentary instruments under limited circumstances.
- C. The oral modification is valid if Sarah can produce two disinterested witnesses able to corroborate the testator's oral statement of intent to increase the gift.
- D. The oral modification is invalid as to the amount but valid to demonstrate the testator's intent to disinherit any beneficiaries not named in the original will.

11. A pleading filed under Federal Rule of Civil Procedure 11 represents to the court that, to the best of the signer's knowledge formed after a reasonable inquiry, the claims, defenses, and other legal contentions are _____.

- A. supported by direct evidence already in the signer's exclusive possession at the time of filing the document
- B. warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law
- C. consistent with positions previously asserted by the signer in any prior litigation involving similar legal issues
- D. accepted as meritorious by every federal court within the district where the pleading is to be filed

12. A pharmaceutical company manufactured a prescription drug it knew could cause severe liver toxicity in approximately 1 in 10,000 patients but did not warn prescribing physicians or patients of this risk. A patient developed irreversible liver failure after six months on the drug, requiring transplantation. The patient sued in California for failure to warn under strict liability. Which standard applies?

- A. The plaintiff must prove that the manufacturer acted with actual malice in deliberately withholding the warning in order to recover any damages at all.
- B. The plaintiff must prove the drug was unreasonably dangerous and must offer evidence of a reasonable alternative drug formulation that would have avoided the risk.
- C. Under California's learned intermediary doctrine, the plaintiff must prove the manufacturer knew or should have known of the risk and failed to provide an adequate warning to the prescribing physician.
- D. Strict liability does not apply to prescription drug warnings, and the plaintiff must proceed exclusively under a common-law negligence theory of liability.

13. A landlord leased a residential apartment to a tenant under a one-year written lease. Six months into the lease, mold infestation rendered the apartment uninhabitable, and the landlord refused to remediate. The tenant moved out and ceased paying rent. The landlord sued for breach. Under California law, what is the tenant's best defense?

A. The tenant has no available defense because residential lease terms must be performed in full once executed and accepted by both parties.

B. The tenant has a defense based on contract impossibility because the mold infestation rendered tenant's performance physically impossible to complete.

C. The tenant has a defense based on partial performance because tenant paid rent for six months before the mold conditions developed inside the unit.

D. The tenant has a defense under the implied warranty of habitability (Civil Code section 1941), which permits a tenant to vacate or withhold rent when the landlord fails to maintain habitable premises.

14. An attorney was approached by a longtime friend who asked him to represent her in a real estate transaction. The attorney had no experience in real estate law and had handled no transactional matters in his twelve years of criminal defense practice. Without disclosing his lack of experience, he accepted the representation. The transaction later collapsed due to errors in the documents he prepared. Which best describes the attorney's conduct?

A. The conduct violates CRPC 1.1 because a lawyer must provide competent representation requiring the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

B. The conduct is permitted because attorneys may accept matters outside their areas of practice as part of providing accessible and affordable legal services to friends and family.

C. The conduct violates CRPC 1.4 only because the attorney failed to disclose his lack of experience, but did not violate any underlying competence requirement.

D. The conduct is permitted because California permits attorneys to learn new practice areas through actual client representation without prior formal training or association.

15. Property acquired by either spouse during marriage by gift, devise, bequest, or inheritance is considered _____ under California Family Code section 770.

A. community property subject to equal division on dissolution of marriage

B. quasi-community property subject to division only upon the death of one spouse

- C. presumed community unless rebutted by clear written documentation of separate intent
- D. separate property of the spouse who acquires it during the marriage

16. A defendant invoked his right to counsel during custodial interrogation. After being placed in a holding cell, he was approached by an undercover officer posing as a fellow inmate. The defendant made incriminating statements about the charged offense to the supposed cellmate. The prosecution sought to introduce the statements. Under *Illinois v. Perkins* and the Fifth Amendment, what is the result?

- A. The statements are inadmissible because any post-invocation interrogation, overt or covert, violates the right to counsel previously asserted by the defendant.
- B. The statements are admissible because Miranda's compulsion concerns do not apply when the suspect is unaware he is speaking with a government agent.
- C. The statements are inadmissible because the Sixth Amendment right to counsel automatically attaches at any stage where the defendant is being detained.
- D. The statements are admissible only if the defendant later waived his Miranda rights during a subsequent stationhouse interrogation by uniformed officers.

17. Defendant in a federal criminal trial sought to introduce evidence of the alleged victim's prior conviction for filing a false police report, offered for the purpose of impeaching the victim's credibility. Under Federal Rule of Evidence 609, which best describes the admissibility of the conviction?

- A. The conviction is inadmissible because Rule 609 prohibits the use of any prior conviction to impeach a witness testifying in a criminal trial.
- B. The conviction is admissible only if the prior offense carried a sentence of more than ten years of imprisonment under the controlling statute.
- C. The conviction is admissible without balancing because a crime involving dishonesty or false statement must be admitted under Rule 609(a)(2) to attack character for truthfulness.
- D. The conviction is admissible only if the witness first denies the prior conduct on cross-examination, after which the judgment may be offered for impeachment.

18. Buyer entered into a written contract with Seller for 500 bushels of organic wheat at \$15 per bushel for delivery on May 1. On April 15, before any performance was due, Seller notified Buyer in writing that he had sold his entire crop to a different buyer and would not deliver. Buyer immediately sought a covering

contract with another supplier at \$18 per bushel. Under the California Commercial Code, what may Buyer recover?

- A. Buyer may recover nothing because Buyer did not wait until the May 1 contract delivery date before declaring Seller in breach of the agreement.
- B. Buyer may recover specific performance because organic wheat is a unique agricultural commodity not reasonably available elsewhere on the market.
- C. Under Commercial Code section 2712, Buyer may recover as damages the difference between the cover price and the contract price, plus any incidental and consequential damages.
- D. Buyer may recover only nominal damages because Buyer accepted an alternative source without first attempting to compel Seller's performance through suit.

19. Under the California Corporations Code, a _____ is owed by directors and officers to the corporation and its shareholders, requiring them to act in good faith, in a manner reasonably believed to be in the best interests of the corporation, and with the care of an ordinarily prudent person in similar circumstances.

- A. fiduciary duty of care and loyalty
- B. statutory warranty of merchantable governance
- C. constructive trust over corporate assets
- D. unilateral covenant of express promise

20. All of the following are required elements of personal jurisdiction in a California court under Code of Civil Procedure section 410.10 and federal due process EXCEPT:

- A. The defendant must have purposefully availed himself of the privilege of conducting activities within the State of California.
- B. The claim must arise out of or relate to the defendant's contacts with California in the case of specific personal jurisdiction.
- C. The defendant must have been physically present within the State of California at the time the underlying lawsuit was filed.
- D. The exercise of jurisdiction must be reasonable and consistent with traditional notions of fair play and substantial justice.

21. A grantor conveyed Whiteacre "to my daughter Anna for life, then to such of Anna's children as survive her." At the time of the conveyance, Anna had two children, ages 8 and 12. Anna's children sought to compel a present sale of the property under California law, claiming a vested interest. What is the proper characterization?

- A. The children hold a vested remainder subject to open and may compel a present sale of the property under partition.
- B. The children hold a contingent remainder that fails completely because Anna may have additional children before her death.
- C. The children hold a fee simple subject to a condition subsequent and may bring an action for partition immediately.
- D. The children hold a contingent remainder subject to the condition of surviving Anna, and they cannot compel a present sale because their interests are not yet vested.

22. A trustee of an irrevocable California trust must perform each of the following duties EXCEPT:

- A. The duty of loyalty, requiring the trustee to administer the trust solely in the interest of the beneficiaries of the trust.
- B. The duty to administer the trust with reasonable care, skill, and caution under Probate Code section 16040.
- C. The duty to preserve trust property and to make it productive under Probate Code section 16007.
- D. The duty to maximize current income distributions by liquidating all long-term trust investments at any beneficiary's individual request.

23. A state enacted a statute requiring all out-of-state corporations doing business in the state to pay a special "out-of-state surcharge" tax that was 2% higher than the rate imposed on in-state corporations engaged in identical commercial activities. An out-of-state corporation challenged the statute under the Commerce Clause. What is the most likely outcome?

- A. The statute is unconstitutional because it facially discriminates against interstate commerce and cannot survive strict scrutiny absent a compelling interest narrowly tailored.
- B. The statute is constitutional because states have plenary authority to tax corporations doing business within their borders regardless of state of incorporation.

C. The statute is constitutional because the differential tax rate is rationally related to the state's legitimate interest in supporting in-state businesses.

D. The statute is unconstitutional only if the surcharge exceeds 10% of the standard corporate tax rate applied to domestic in-state corporations.

24. Consider the following statements about CRPC 1.7 (Concurrent Conflicts of Interest):

I. A lawyer may represent two clients with directly adverse interests if both clients provide informed written consent, regardless of the underlying circumstances of the conflict.

II. A lawyer must reasonably believe she can provide competent and diligent representation to each affected client before any conflict can be waived under rule 1.7.

Which statement(s) accurately describe California law?

A. I only

B. Neither I nor II

C. II only

D. Both I and II

25. A homeowner contracted with a contractor for the installation of a custom-designed marble fireplace surround for \$25,000. The fireplace was unique and tailored to specific dimensions and aesthetic choices the homeowner had made in collaboration with the contractor. After the homeowner paid a \$10,000 deposit, the contractor refused to perform. The homeowner sued for specific performance, arguing money damages would be inadequate. What is the result?

A. Specific performance is granted because all custom construction contracts are subject to equitable enforcement when one party refuses to begin or complete performance.

B. Specific performance is denied because contracts for personal services or construction generally are not specifically enforced; the homeowner is limited to damages including the cost to cover at a comparable price.

C. Specific performance is granted because the uniqueness of custom fixtures justifies equitable relief in California residential construction contracts as a matter of right.

D. Specific performance is denied only if the homeowner cannot prove the contractor possessed unique skills that were objectively unavailable from any other contractor.

26. A defendant approached the victim and stated, "I will kill your daughter tomorrow if you do not pay me \$10,000 by noon." The victim immediately reported the statement to police. The prosecution charged the defendant with making criminal threats under Penal Code section 422. To convict, the prosecution must establish each of the following elements EXCEPT:

A. The defendant actually possessed and visibly displayed a weapon capable of carrying out the threatened harm at the time of the communication.

B. The defendant willfully threatened to commit a crime that would result in death or great bodily injury to another person.

C. The threat was unequivocal, unconditional, immediate, and specific so as to convey a gravity of purpose and immediate prospect of execution.

D. The victim actually and reasonably sustained fear for her own safety or the safety of her immediate family members.

27. Under California Evidence Code section 1101, character evidence is generally inadmissible to prove conduct on a particular occasion. All of the following are recognized exceptions to that general rule EXCEPT:

A. Evidence of prior acts offered to prove motive, opportunity, intent, preparation, plan, or knowledge under Evidence Code section 1101(b).

B. Evidence of a homicide victim's character for violence offered by the defendant to support a self-defense claim under section 1103.

C. Evidence of a witness's character for honesty or veracity when introduced for purposes of impeachment or rehabilitation of credibility.

D. Evidence of a defendant's prior similar criminal conduct offered solely to demonstrate a propensity to commit crimes of the type now charged.

28. A will may be revoked by physical act or by subsequent written instrument. Under California Probate Code section 6120, revocation by physical act requires that the testator burn, tear, cancel, obliterate, or destroy the will with the simultaneous _____.

- A. consent of at least one of the named primary beneficiaries
- B. formal acknowledgment of the revocatory act before a notary public
- C. intent to revoke the will, performed by the testator or another in the testator's presence and at her direction
- D. filing of a notice of revocation with the county probate court clerk

29. A plaintiff filed a federal complaint asserting claims under both federal and state law against a single defendant. The federal claim was dismissed on summary judgment, and only the state-law claim remained. The defendant moved to dismiss the state-law claim for lack of subject matter jurisdiction. Under 28 U.S.C. § 1367, what is the court's discretion?

- A. The court must retain jurisdiction over the state-law claim because supplemental jurisdiction once exercised becomes mandatory throughout the case.
- B. Under § 1367(c), the court has discretion to decline supplemental jurisdiction over the state-law claim once all claims providing original federal jurisdiction have been dismissed.
- C. The court must dismiss the state-law claim because supplemental jurisdiction terminates automatically upon dismissal of the federal claim that anchored it.
- D. The court must transfer the state-law claim to a state court of competent jurisdiction within fifteen days of the federal claim's dismissal.

30. Consider the following statements about adverse possession in California:

I. Adverse possession of real property requires hostile and exclusive possession that is open, notorious, and continuous for the full statutory period.

II. Under Code of Civil Procedure section 325, an adverse possessor in California must pay all state, county, and municipal taxes assessed against the property during the period of possession.

Which statement(s) accurately describe California law?

- A. I only
- B. Both I and II
- C. II only
- D. Neither I nor II

31. A driver, while texting on her phone, ran a red light and collided with a motorcyclist who was lawfully proceeding through the intersection on a green light. The motorcyclist sustained serious injuries. At trial, the jury found the driver 80% at fault and the motorcyclist 20% at fault for failing to wear an approved helmet. The motorcyclist's total damages were \$500,000. Under California's pure comparative fault rule, the recoverable amount is:

- A. Nothing, because any contributory fault by the plaintiff completely bars recovery in California negligence actions.
- B. The full \$500,000, because California rejects all reductions based on plaintiff fault in motor vehicle accident cases.
- C. \$250,000, because California limits comparative fault recoveries to no more than 50% of total damages assessed.
- D. \$400,000, calculated as the total damages reduced by the percentage of plaintiff's fault under *Li v. Yellow Cab*.

32. A California limited partnership had two general partners and ten limited partners. One limited partner, frustrated with management decisions, sent a detailed memorandum to several customers and vendors of the partnership advising them of internal disputes and recommending they reconsider their business relationships. The general partners sought to characterize the limited partner as having actively participated in management, thereby converting her into a general partner liable for partnership debts. Under California's Revised Uniform Limited Partnership Act, what is the result?

- A. The limited partner retains her limited liability protection because RULPA generally protects limited partners from full general partner liability even when their conduct may influence partnership affairs.
- B. The limited partner becomes liable as a general partner for all partnership debts because any contact with third parties concerning partnership matters constitutes management of the entity.

C. The limited partner becomes liable as a general partner only for the specific partnership debts arising from the transactions she discussed in the memorandum sent to vendors.

D. The limited partner forfeits all distributions for the current year but retains her limited liability protection for outstanding partnership debts owed to creditors.

33. A settlor created an inter vivos trust during her lifetime, naming herself as trustee and her two children as beneficiaries. The trust held a residence and a securities portfolio. The settlor later transferred title to the residence into her own name personally without making any corresponding amendment to the trust. After the settlor's death, the children disputed whether the residence remained a trust asset. What is the result?

A. The residence is no longer a trust asset because the trustee-settlor effectively removed it from the trust by transferring legal title back into her personal name during her lifetime.

B. The residence remains a trust asset because once placed in trust, real property cannot be removed without unanimous written consent of all named trust beneficiaries.

C. The residence remains a trust asset because California presumes any title change during the settlor's lifetime is presumptively void unless documented in a court order.

D. The residence is divided equally between the trust and the settlor's probate estate as a matter of California equitable distribution between competing claimants.

34. The mental state of _____ is satisfied when a person is aware that her conduct is of a particular nature or that a particular circumstance exists; awareness of a high probability of the existence of a fact is the equivalent of awareness of that fact for criminal liability purposes in California.

A. ordinary negligence and inattention

B. general or specific intent to commit

C. knowledge of conduct or circumstance

D. strict liability without any mens rea

35. An attorney represented a corporate client in negotiations with a third-party supplier. During the negotiations, the attorney learned that the corporation's CEO intended to provide false financial statements to the supplier to induce favorable contract terms. The attorney warned the CEO of the impropriety, but the CEO insisted on proceeding. Under CRPC 1.6 and 1.13, the attorney's options are:

A. The attorney must immediately disclose the planned fraud directly to the supplier to prevent the harm, regardless of any countervailing confidentiality concerns under rule 1.6.

B. Under rule 1.13, the attorney should report the matter up the corporate ladder to the board and, if not addressed, may withdraw and may reveal information necessary to prevent the fraud from injuring the corporation.

C. The attorney has no available remedy and must remain silent because attorney-client confidentiality is treated as absolute and inviolable under controlling California law and ethics rules.

D. The attorney must terminate the representation immediately and may not communicate further with the CEO or any other corporate officer under any circumstances going forward.

36. A state legislature enacted a statute requiring every public school to begin each day with a moment of silent prayer led by the teacher, who would direct students to "reflect on the Almighty's blessings" before the start of instruction. Parents of a child attending the school challenged the statute under the Establishment Clause. Under controlling federal doctrine, what is the likely outcome?

A. The statute is constitutional because moments of silent reflection generally serve a secular purpose and do not endorse any particular religious denomination.

B. The statute is constitutional because public schools may incorporate religious elements into the school day as part of long-standing American cultural tradition.

C. The statute is constitutional because the moment of silence has no coercive effect on individual students who choose not to participate in the activity.

D. The statute is likely unconstitutional because directing students to reflect on "the Almighty's blessings" lacks a secular purpose and amounts to government endorsement of religion.

37. A homeowner contracted with a roofer to install a new roof for \$20,000, with payment due on completion. The roofer installed the roof using shingles of a slightly different color than specified in the contract, though the shingles were of equivalent quality and the variation was largely imperceptible from ground level. The homeowner refused to pay, claiming non-conformance. Under California contract law, what is the most likely result?

A. The roofer is entitled to the contract price minus any damages caused by the immaterial deviation, because under the substantial performance doctrine immaterial deviations do not bar recovery in service contracts.

B. The roofer is entitled to nothing because any deviation from contract specifications constitutes a material breach excusing the homeowner's payment obligation under the agreement.

C. The roofer is entitled only to the reasonable value of services rendered in restitution, because the underlying contract was breached by the non-conforming installation work.

D. The roofer is entitled to the full contract price reduced by 50% as a statutory penalty for failing to deliver the specifically bargained-for shingle color to the homeowner.

38. A witness in a federal civil trial testified on direct examination that she observed the defendant driving "around 35 miles per hour" when the collision occurred. On cross-examination, defendant's counsel sought to introduce a written statement the witness had given police shortly after the accident in which she estimated the defendant's speed at "about 50 miles per hour." Under Federal Rule of Evidence 613, the prior inconsistent statement is:

A. Inadmissible because hearsay exceptions do not extend to witness statements given to police officers during routine field interviews about accidents.

B. Admissible only as substantive evidence of the defendant's actual speed at the time of the collision, and not for impeachment purposes against the witness.

C. Admissible to impeach the witness's credibility, and the witness must be given an opportunity to explain or deny the inconsistency at some point during the trial.

D. Admissible only if the police officer who took the statement appears at trial in person to authenticate the document as a true and accurate copy.

39. A married couple lived in California throughout their 15-year marriage. During the marriage, Wife founded a software company using \$5,000 of community funds for incorporation costs and her labor as the sole executive. The company is now valued at \$3 million at dissolution. Husband contributed no labor or capital. Under California's apportionment rules, the likely characterization is:

A. The business is Wife's separate property because she alone created and operated it; Husband holds no community interest in the company at dissolution.

B. The community has an interest under either Pereira (favoring community when growth is attributable to spouse's labor) or Van Camp (favoring separate when growth is attributable to capital), depending on the court's allocation.

C. The business is community property in full because Wife used community funds for incorporation costs and operated the company throughout the marriage as the sole executive.

D. Husband may claim only the \$5,000 community investment plus a reasonable rate of interest, because his contribution to the business was de minimis as a matter of law.

40. A testator validly executed a will leaving her entire estate "to my best friend Emma." Five years later, the testator and Emma had a serious falling out, and the testator drafted a handwritten note saying "I revoke my will and want my estate to go to my brother Ben." The note was unsigned and undated. The testator died with the original will still intact. Under California Probate Code section 6111, the most likely outcome is:

- A. The handwritten note fails to revoke the will because a holographic will requires both the testator's signature and material provisions in the testator's handwriting, neither of which the note satisfies.
- B. The handwritten note effectively revokes the will because California broadly recognizes any expression of revocatory intent that the testator places in writing at any time.
- C. The handwritten note partially revokes the will, leaving the residue to pass by intestate succession to Ben as the testator's surviving brother and next of kin.
- D. The handwritten note is enforceable as evidence of the testator's testamentary intent to revoke, regardless of the formal signature and dating requirements of the Probate Code.

41. A police officer obtained a search warrant for the defendant's residence based on an affidavit that, although containing some inaccuracies, was supported by other corroborated evidence and was found by a neutral magistrate to establish probable cause. After execution of the warrant, the defendant moved to suppress evidence on the ground that the affidavit was deficient. Under *United States v. Leon*, what is the proper analysis?

- A. The evidence must be suppressed regardless of officer good faith because Fourth Amendment violations always result in exclusion of evidence in criminal prosecutions of this kind.
- B. The evidence must be suppressed because affidavits containing any inaccuracies are insufficient as a matter of law to support probable cause under the warrant requirement.
- C. The evidence is admissible only if the prosecution can affirmatively prove the supporting affidavit was completely accurate in every material particular at the time the warrant issued.
- D. Under *Leon*, evidence obtained in good-faith reliance on a facially valid warrant issued by a neutral magistrate is admissible even if the warrant is later found defective, unless reliance was objectively unreasonable.

42. Three siblings inherited a vacation home from their mother as tenants in common. One sibling moved into the home and used it exclusively for two years without paying any rent or contributing to property taxes. The other two siblings later demanded an accounting of the rental value during the period of exclusive use. Under California law, the result is:

- A. The occupying sibling owes no rent because tenants in common have an equal right to possess the entire property, regardless of whether each chooses to exercise that right of possession.
- B. The occupying sibling must immediately purchase the other siblings' shares at fair market value or vacate the property to allow joint possession by all three siblings.
- C. The occupying sibling generally owes no rent for personal use of jointly owned property absent ouster of the co-tenants, though she must contribute to taxes and necessary expenses; an accounting for rent typically requires proof of ouster.
- D. The occupying sibling owes rent calculated as the fair rental value of the entire property divided by three for each month of exclusive personal occupancy.

43. A surgeon performed an appendectomy on a patient who had signed a general consent form. During the procedure, the surgeon discovered a precancerous mass on the patient's ovary and, without authorization, removed it as well. The patient later sued for battery. Under California law, the most likely outcome is:

- A. The patient cannot recover because surgeons may freely extend procedures during surgery if they discover related conditions that may medically benefit the patient on the operating table.
- B. The patient may recover for battery because consent must be specific to the procedure performed; extending unauthorized treatment, even for the patient's benefit, exceeds the scope of consent and constitutes an unlawful touching.
- C. The patient may recover only if she can affirmatively prove the removal of the mass caused her actual measurable physical harm beyond the original consented-to procedure.
- D. The patient may recover only for medical malpractice in negligence and not in battery, because surgeon-patient relationships are governed exclusively by professional standards of care.

44. An attorney was approached by two parties in a business dispute who jointly asked her to draft a settlement agreement resolving their differences. Both parties expressed a desire to avoid hiring separate counsel and stated they trusted the attorney's neutral judgment. The attorney prepared the document without independently advising either party. Under CRPC 1.7, the result is:

- A. The conduct likely violates rule 1.7 because the attorney undertook representation of two parties with potentially conflicting interests without obtaining informed written consent from each after providing necessary disclosures regarding the conflict.

B. The conduct is permitted because settlement agreements may be drafted by neutral attorneys without violating any conflict-of-interest rule under the California Rules of Professional Conduct or any successor provision.

C. The conduct violates rule 1.7 only if one of the two parties later disputes the terms of the settlement and seeks legal recourse against the drafting attorney for negligent advice.

D. The conduct is permitted in full because both parties effectively waived any potential conflict of interest simply by jointly seeking the attorney's services for the drafting work.

45. All of the following are accurate statements about the business judgment rule in California EXCEPT:

A. The rule generally protects directors from personal liability for good-faith business decisions made on an informed basis after reasonable inquiry.

B. Under Corporations Code section 309, directors must act with the care of an ordinarily prudent person in similar circumstances.

C. The rule does not protect directors from liability for self-dealing transactions absent compliance with statutory disclosure and approval procedures.

D. The rule provides absolute immunity to directors for any business decision they make, regardless of bad faith, gross negligence, or undisclosed conflicts.

46. Consider the following statements about service of process in California state court actions:

I. Under Code of Civil Procedure section 415.10, personal service may be effected by delivering a copy of the summons and complaint to the person to be served.

II. Service of process must be personally completed by the named plaintiff in the litigation; service performed by a third-party process server is invalid in California state court.

Which statement(s) accurately describe California law?

A. II only

B. I only

C. Both I and II

D. Neither I nor II

47. A buyer ordered \$30,000 worth of industrial machinery from a seller under a written purchase order. The seller acknowledged the order in writing but stated that delivery would occur on June 15 rather than the buyer's specified date of May 15. The seller's acknowledgment also included a new arbitration clause not in the original purchase order. Both parties are merchants. Under California Commercial Code section 2207, the likely result is:

A. No contract was formed because the seller's response materially altered the buyer's offer, making the response a counteroffer rather than a binding contractual acceptance.

B. A contract was formed exactly on the buyer's terms, and any new terms in the seller's acknowledgment are stricken entirely from the resulting agreement between the merchants.

C. A contract was formed under section 2207, and additional terms (such as the arbitration clause) become part of the contract between merchants unless they materially alter the contract or were objected to within a reasonable time.

D. A contract was formed under common-law mirror-image principles only if the seller's terms exactly mirrored the buyer's original purchase order in every material respect.

48. At a California civil trial, plaintiff sought to introduce as evidence a photograph of the scene of an automobile accident taken by a bystander shortly after the collision. The bystander was unavailable to testify at trial. Under California Evidence Code section 1400, what is required for the photograph to be admitted?

A. The photograph must be authenticated through testimony establishing that it is a fair and accurate representation of the scene at the relevant time, which may be provided by any witness with personal knowledge of the scene.

B. The photograph must be authenticated solely by the photographer's live testimony given in person at trial, and no other witness or document may authenticate the image regardless of personal knowledge.

C. The photograph must be authenticated by sworn affidavit from the original bystander photographer, which must be filed with the trial court at least 30 days before the start of trial.

D. The photograph must be authenticated through expert testimony from a forensic photographer, who must analyze the digital metadata of the image and provide written conclusions.

49. All of the following are protected forms of expression under the First Amendment EXCEPT:

- A. Symbolic political speech such as burning an American flag in protest of government policy on public streets and sidewalks.
- B. Speech that is integral to criminal conduct, such as solicitation of murder for hire or true threats of imminent violence directed at a specific person.
- C. Commercial speech that is truthful and not misleading regarding lawful commercial activity, subject to reasonable regulation of time, place, and manner.
- D. Anonymous political pamphleteering on matters of public concern, distributed without identifying the author or publisher of the literature.

50. A testator died leaving a validly executed will dated 2020. The will gave his entire estate to his wife. The will, however, made no mention of a child born to the testator and his wife in 2023 — three years after the will's execution. The 2023 child seeks to take a share of the estate as an omitted child. The result is:

- A. The child takes no share because the will was validly executed and the parents had the opportunity to amend the instrument during the pregnancy and after the child's birth.
- B. The child takes a share equal to one-half of the estate because California requires equal division between the surviving spouse and any surviving child of the testator at death.
- C. The child takes a one-third share of the estate as the statutory minimum elective share available to any pretermitted child of a California testator under the Probate Code.
- D. Under Probate Code sections 21620–21623, a child born after execution of the testator's will who is not provided for in the will is generally entitled to a share equal to what the child would have received had the testator died intestate, unless statutory exceptions apply.

PRACTICE EXAM 15: ANSWERS AND EXPLANATION

1. C — Substantial performance permits recovery of the contract price less an offset for damages caused by immaterial deviations, rather than complete forfeiture for any imperfection. The doctrine applies primarily to service and construction contracts where the perfect-tender rule does not govern. It prevents disproportionate forfeiture when a party has rendered nearly complete performance in good faith.

2. A — A city council member is a public official, and under *New York Times v. Sullivan* she must prove actual malice — knowledge of falsity or reckless disregard for whether the statement was true. Negligent failure to verify, even gross negligence, is insufficient against a public official suing over official conduct.

The constitutional standard insulates robust commentary on public corruption from defamation liability absent subjective awareness of probable falsity.

3. B — Asportation in California is satisfied by any movement of the property, however slight, when coupled with the intent to permanently deprive. The taking is complete the moment the defendant exercises dominion over the property; she need not leave the store premises. *People v. Tijerina* and related authority confirm that concealment plus brief movement satisfies the actus reus.

4. D — Diversity jurisdiction under 28 U.S.C. § 1332(a) requires complete diversity of citizenship AND an amount in controversy exceeding \$75,000, exclusive of interest and costs. Where the jurisdictional minimum is not satisfied, the federal court must dismiss for lack of subject matter jurisdiction regardless of complete diversity. The plaintiff bears the burden of pleading the threshold with reasonable certainty.

5. A — Under *In re Marriage of Brown* and Family Code section 2610, retirement benefits earned during marriage are community property subject to division. The "time rule" apportions the pension by the ratio of years of pensionable service during marriage (15) to total years of pensionable service (20), giving the community a 75% interest. This equitably allocates between pre-marital separate and marital community contributions.

6. D — Self-interested disclosure to advance the lawyer's own reputational or pecuniary interests is squarely prohibited under CRPC 1.6. The duty extends to all information related to the representation, survives termination of the relationship and the client's death, and admits only the narrow permissive exceptions in 1.6(b) (e.g., to prevent death or substantial bodily harm). Option D is the false statement and is correct in this EXCEPT question.

7. C — A properly executed and delivered deed transfers title between the original grantor and grantee at the moment of delivery and acceptance; recording is a notice device, not a validity requirement. Civil Code section 1217 confirms that unrecorded conveyances bind the original parties and their heirs. The recording acts protect only subsequent bona fide purchasers who lack notice.

8. B — Evidence Code section 1271 admits writings made in the regular course of business at or near the time of the recorded event, by a person with knowledge, where trustworthiness is established. Hospital admission records meet these criteria when authenticated through a custodian's declaration or testimony; the patient's own statements come in as party admissions independently. The unavailability of the patient does not defeat admissibility.

9. D — *Wooley v. Maynard* prohibits the government from compelling a private speaker to convey a particular ideological message. A mandatory state-flag display imposes content-based compelled speech subject to strict scrutiny, which a fine-backed display mandate cannot survive without a compelling, narrowly tailored interest. The bookstore is constitutionally protected from being conscripted as a state messenger.

10. A — Probate Code section 6110 requires that a will or any amendment be in writing, signed by the testator (or by another in the testator's presence and at the testator's direction), and witnessed by two persons present at the same time. California does not recognize nuncupative (oral) wills. The unwritten statement to the attorney has no testamentary effect, and the 2018 will controls as executed.

11. B — Federal Rule of Civil Procedure 11(b)(2) requires that legal contentions be warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law (or for establishing new law). The rule does not require already-completed evidence; Rule 11(b)(3) addresses factual contentions separately and permits allegations likely to have evidentiary support after reasonable opportunity for discovery. Rule 11 enforces minimum standards of inquiry, not certainty.

12. C — California follows the learned intermediary doctrine for prescription drugs: the manufacturer's duty to warn runs to the prescribing physician rather than directly to the patient. The plaintiff must show the manufacturer knew or should have known of the risk and failed to provide an adequate warning to the prescriber. The physician serves as the informed gatekeeper who tailors risks to the individual patient.

13. D — The implied warranty of habitability under Civil Code section 1941 and *Green v. Superior Court* requires residential landlords to maintain premises fit for human occupancy. A tenant facing severe mold infestation and landlord refusal to remediate may withhold rent or vacate the premises without liability for the unexpired term. The warranty cannot be waived in a residential lease and supplies a complete defense to breach.

14. A — CRPC 1.1 requires competent representation defined as the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the matter. Accepting a transactional real estate matter wholly outside one's twelve years of criminal practice — without associating competent counsel or acquiring the needed expertise — breaches the rule. Friendship does not waive the competence obligation and undisclosed inexperience compounds the violation.

15. D — Family Code section 770 defines as separate property any asset acquired during marriage by gift, devise, bequest, or descent, plus the rents, issues, and profits of separate property and pre-marital assets. The character is statutorily fixed at acquisition regardless of donor intent regarding community treatment. The acquiring spouse retains exclusive management and control over such property.

16. B — *Illinois v. Perkins* holds that Miranda's protections do not apply when a suspect speaks voluntarily to an undercover officer he believes to be a fellow inmate, because the coercive atmosphere underlying Miranda is absent. Even where the suspect has previously invoked the right to counsel for Fifth Amendment purposes, the undisclosed identity removes the compulsion that triggers exclusion. The statements are admissible substantively against the defendant.

17. C — Federal Rule of Evidence 609(a)(2) provides for automatic admission of any conviction whose elements required proof of a dishonest act or false statement, regardless of penalty or Rule 403 balancing. Filing a false police report squarely qualifies as a crime of dishonesty. The court has no discretion to exclude — admission is mandatory once the foundational element is established.

18. C — Commercial Code section 2712 permits a buyer who has covered in good faith to recover as damages the difference between the cover price and the contract price, plus incidental and consequential damages, less expenses saved. Seller's clear anticipatory repudiation under section 2610 excused waiting until the original delivery date. Cover damages here equal \$3 per bushel times 500 bushels, or \$1,500.

19. A — Corporations Code section 309 codifies the directors' fiduciary duties of care and loyalty, requiring them to act in good faith, in a manner reasonably believed to be in the best interests of the

corporation, and with the care of an ordinarily prudent person in similar circumstances. Breach exposes directors to personal liability, subject to the business judgment rule's protections. The fiduciary duty is the cornerstone of director and officer accountability.

20. C — Personal jurisdiction requires purposeful availment, a sufficient relationship between the contacts and the claim (for specific jurisdiction), and reasonableness under the fair play factors. Physical presence at the time of filing is not required; jurisdiction may rest on minimum contacts even when the defendant is no longer in the state. Option C is the false statement and is the correct answer in this EXCEPT question.

21. D — A remainder is contingent when subject to a condition precedent — here, surviving the life tenant Anna. Until Anna's death, no child can be identified with certainty as a taker, so no child holds a presently transferable or partitionable interest. California courts will not order partition of unvested contingent future interests, which lack the present possessory right partition requires.

22. D — A trustee has no duty to maximize current income distributions on demand of a single beneficiary; doing so would breach the trustee's duty to balance income and remainder interests and to preserve trust principal. Probate Code sections 16002, 16003, and 16040 require impartiality and prudent administration. The other listed duties (loyalty, care, productivity) are core trustee obligations, making D the false statement and correct EXCEPT answer.

23. A — A state tax that on its face imposes a higher rate on out-of-state economic actors engaged in identical commercial activity facially discriminates against interstate commerce. Under the dormant Commerce Clause, facial discrimination triggers strict scrutiny: the state must show the law serves a legitimate local purpose unattainable by reasonable nondiscriminatory alternatives. A naked 2% surcharge designed to protect in-state competitors cannot survive.

24. C — CRPC 1.7(b) imposes multiple cumulative requirements for valid conflict waiver: the lawyer must reasonably believe she can provide competent and diligent representation to each client, the representation must not be prohibited by law, it must not involve directly adverse claims in the same litigation, and each client must give informed written consent. Statement I overstates by suggesting consent alone always suffices; II accurately captures the threshold belief requirement.

25. B — Specific performance is generally unavailable for personal-service and construction contracts because of supervisory difficulties and the historic concern with compelled labor. The homeowner's remedy is to cover with another contractor and recover the difference in cost plus consequential damages. Equitable enforcement is reserved for contracts involving truly unique subject matter such as real property.

26. A — Penal Code section 422 requires a willful threat to cause death or great bodily injury, intent that the statement be taken as a threat, an unequivocal/unconditional/immediate/specific threat conveying gravity and immediacy, actual sustained fear by the victim, and that the fear be reasonable. Actual possession or display of a weapon is NOT an element — the threat itself is the offense. Option A is the false element and is the correct EXCEPT answer.

27. D — Evidence Code section 1101(a) categorically prohibits the use of character evidence to prove a propensity to commit crimes of the type charged. The other listed uses — section 1101(b) non-character purposes (motive, intent, etc.), section 1103 victim-character in self-defense cases, and impeachment

under sections 780 and 1101(c) — are statutorily recognized exceptions. Pure propensity remains the prohibited use, making D the correct EXCEPT answer.

28. C — Probate Code section 6120 requires both a revocatory act (burning, tearing, canceling, obliterating, or destroying) AND the testator's contemporaneous intent to revoke. The act may be performed by the testator personally or by another in the testator's presence and at her direction. Either element without the other is insufficient for revocation by physical act.

29. B — Under 28 U.S.C. § 1367(c)(3), a federal court may decline to exercise supplemental jurisdiction over state-law claims when it has dismissed all claims providing original jurisdiction. The decision is discretionary and turns on judicial economy, convenience, fairness, and comity. Dismissal of the anchoring federal claim does not automatically extinguish supplemental jurisdiction; the court retains authority to keep or release the state claim.

30. B — Adverse possession in California requires hostile, exclusive, open, notorious, and continuous possession for five years. Code of Civil Procedure section 325 imposes the additional requirement that the adverse possessor pay all state, county, and municipal taxes assessed and levied against the property during the five-year period. Both statements accurately describe California law, making "Both I and II" correct.

31. D — California follows pure comparative fault under *Li v. Yellow Cab*, reducing the plaintiff's recovery by the percentage of plaintiff's fault regardless of how high that percentage is. The motorcyclist's 20% fault reduces his \$500,000 total damages by \$100,000, leaving a recovery of \$400,000. Contributory negligence (total bar) and modified comparative fault (50% cap) are both rejected in California.

32. A — California's RULPA significantly relaxes the older "control rule" and protects limited partners from full general-partner liability for partnership debts in most circumstances. Communicating with vendors or expressing internal disagreements does not amount to active management sufficient to strip limited liability under Corporations Code section 15903.03. Limited liability is the default protection a limited partner retains by virtue of organizational form.

33. A — A trustee-settlor of a revocable inter vivos trust may freely deal with trust property during her lifetime, including effectively removing assets by retitling them into her personal name. Such a transfer operates as a partial revocation as to the affected asset, removing it from the trust corpus. The residence therefore passes through the settlor's probate estate, not under the trust's distributive provisions.

34. C — Penal Code section 7(5) defines "knowingly" as awareness of the fact, circumstance, or nature of conduct; awareness of a high probability of a fact is the equivalent of actual knowledge of that fact. This standard underpins the willful-blindness doctrine and is distinct from negligence (a should-have-known standard) and specific intent (purpose to bring about a particular result). Knowledge is satisfied by subjective awareness, not objective reasonableness.

35. B — CRPC 1.13 governs representation of an organizational client. When the lawyer learns that an officer intends to act in a manner likely to injure the corporation, the lawyer should proceed in the corporation's best interest, which generally requires reporting up the chain to higher authority such as the

board. If the conduct is not addressed, withdrawal is permitted, and limited disclosure may be authorized under rule 1.6 to prevent injury to the corporation itself.

36. D — A statute lacking a secular purpose, or one directing students to acknowledge a religious deity in a mandatory school activity, violates the Establishment Clause. Instructing students to "reflect on the Almighty's blessings" embeds an unmistakably religious directive into the public school day and amounts to government endorsement of religion. The compulsion concern is heightened in the school setting where students are a captive audience.

37. A — Under the substantial performance doctrine, the roofer is entitled to the contract price minus damages caused by the immaterial deviation. A nearly imperceptible color variation in shingles of equivalent quality is not a material breach and does not justify forfeiture of the entire contract price. The homeowner's remedy is an offset for any diminished value, not refusal to pay.

38. C — Federal Rule of Evidence 613 governs impeachment by prior inconsistent statement. The statement may be used to impeach without first showing it to the witness, but on request the witness must be afforded an opportunity to explain or deny the inconsistency at some point during the trial. Substantive use of the statement is governed separately by Rule 801(d)(1)(A); for impeachment alone the foundation under 613 suffices.

39. B — California courts apportion appreciation of a separate-property business operated during marriage using either Pereira (when growth is primarily attributable to the spouse's labor, the community receives a fair return on the labor) or Van Camp (when growth is primarily attributable to the underlying capital asset, the community receives reasonable compensation for the labor only). The choice depends on the dominant cause of growth in the particular case.

40. A — Probate Code section 6111 requires that a holographic will bear the testator's signature and that the material provisions be in the testator's handwriting. An unsigned note satisfies neither the signature requirement nor the formal execution requirements for an attested will under section 6110. The note cannot operate as a will, codicil, or revocation, and the 2018 will remains in effect at death.

41. D — *United States v. Leon* establishes the good-faith exception to the exclusionary rule for evidence seized in objectively reasonable reliance on a facially valid warrant issued by a neutral magistrate. Mere inaccuracies in the supporting affidavit do not trigger suppression where the warrant on its face appears valid and the officer's reliance was reasonable. Exceptions exist only for affidavits so deficient as to render reliance unreasonable, magistrate misconduct, or knowingly false statements.

42. C — California co-tenants share an equal right of possession; a co-tenant in sole occupancy generally owes no rent absent ouster of the other co-tenants or actual rental to third parties. The occupying co-tenant must, however, contribute proportionately to property taxes, mortgage payments, insurance, and necessary maintenance expenses. Mere exclusive personal use does not, by itself, support an accounting for rental value absent ouster.

43. B — Consent to one surgical procedure does not extend to a different procedure, even when the additional procedure may medically benefit the patient. Battery requires only an intentional, unconsented harmful or offensive touching; the unauthorized removal of the ovarian mass exceeded the scope of

consent and constitutes the tort. The patient need not prove additional harm beyond the touching itself to recover for battery.

44. A — CRPC 1.7(a)(2) recognizes a conflict whenever there is a significant risk that representation of one client will be materially limited by responsibilities to another. Joint representation requires informed written consent from each affected client, after the lawyer provides necessary disclosures regarding the implications of common representation and the reasonably available alternatives. A bare statement of trust by the parties does not substitute for formal informed written consent under the rule.

45. D — The business judgment rule does not confer absolute immunity. It protects directors only when they act in good faith, on an informed basis after reasonable inquiry, and without an undisclosed conflict of interest. Bad faith, gross negligence, self-dealing, or failure to inform oneself strips the rule's protection and exposes directors to personal liability — making D the false statement and the correct EXCEPT answer.

46. B — Code of Civil Procedure section 415.10 authorizes personal service by delivering a copy of the summons and complaint to the person to be served. Section 414.10 confirms that service may be made by any non-party over the age of 18, including a registered process server — not personally by the named plaintiff. Statement II is incorrect, so only Statement I accurately describes California service law.

47. C — Commercial Code section 2207(2) provides that between merchants, additional terms in a definite expression of acceptance become part of the contract unless (a) the offer expressly limits acceptance to its terms, (b) the new terms materially alter the contract, or (c) objection is made within a reasonable time. A contract forms even with non-identical terms; the disputed terms are then analyzed under the "knock-out" or material-alteration framework.

48. A — Evidence Code section 1400 requires authentication by evidence sufficient to support a finding that the writing or photograph is what its proponent claims. Any witness with personal knowledge of the depicted scene may testify that the photograph fairly and accurately represents the scene at the relevant time; the photographer need not be the authenticating witness. Bystander unavailability does not defeat admission so long as another competent witness can authenticate.

49. B — Speech integral to criminal conduct, true threats, incitement to imminent lawless action, fighting words, obscenity, and child pornography are categorically unprotected under the First Amendment. The other listed categories — symbolic political speech (*Texas v. Johnson*), truthful commercial speech (*Central Hudson*), and anonymous political pamphleteering (*McIntyre v. Ohio Elections Commission*) — all enjoy First Amendment protection. Option B is the unprotected category and the correct EXCEPT answer.

50. D — Probate Code sections 21620–21623 provide that a child born or adopted after execution of the testator's will who is not provided for in the instrument receives a share equal in value to what the child would have received had the testator died intestate, unless a statutory exception applies (intentional omission appearing on the face of the will, substantial provision by other transfer with intent that it pass outside the will, or substantially all of the estate left to the other parent of the omitted child). The omitted child here is presumptively entitled to a statutory share.

