

PRACTICE EXAM 16: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

1. A mother witnessed her child being struck by a vehicle driven negligently by defendant while the child was crossing the street. The mother was standing on the curb 20 feet away and observed the entire collision. She did not suffer physical injury but developed severe anxiety, insomnia, and depression requiring psychiatric treatment. She sued the defendant for negligent infliction of emotional distress. Under *Thing v. La Chusa*, what must she prove as a bystander plaintiff?

A. She must prove a physical impact or physical injury caused by defendant's negligence in addition to any emotional distress suffered from observing the conduct from the curb.

B. She must prove she was closely related to the victim, present at the scene and aware that the event was causing injury to the victim, and suffered serious emotional distress beyond that of a disinterested witness.

C. She must prove the defendant's conduct was intentional or reckless toward the victim rather than merely negligent in the operation of the motor vehicle at the time of impact.

D. She must prove she was personally within the zone of physical danger created by the defendant's negligent conduct at the moment the child sustained injury at the curb.

2. Buyer and Seller executed a fully integrated written contract for the sale of a commercial property for \$2 million. Two months later, in a dispute over closing, Buyer sought to introduce evidence of an oral agreement made before contract signing under which Seller allegedly agreed to leave behind certain valuable office equipment as part of the purchase. The written contract was silent regarding the equipment. Under California's parol evidence rule (Code of Civil Procedure section 1856), the most likely ruling is:

A. The evidence is admissible because parol evidence is always freely admissible to add new substantive terms to a written real property contract under California law.

B. The evidence is admissible because California has abolished application of the parol evidence rule for all real property transactions handled in the state by licensed agents.

C. The evidence is admissible only if Buyer can prove independent grounds for fraud in the inducement on the part of Seller during pre-contract negotiations.

D. The evidence is generally inadmissible to add to or vary the terms of a fully integrated written agreement, though exceptions exist for collateral agreements, fraud, mistake, and ambiguity.

3. Defendant and an accomplice agreed to commit an armed robbery of a liquor store. During the robbery, the accomplice unexpectedly shot and killed the store clerk who had reached under the counter. Defendant had not personally fired any weapon and claimed she did not know her accomplice would shoot anyone. The prosecution charged defendant with first-degree felony murder under Penal Code section 189. Under Senate Bill 1437 reforms to felony murder, what must the prosecution now show?

A. The prosecution must prove defendant was the actual killer, aided and abetted the killing with intent to kill, or was a major participant in the underlying felony who acted with reckless indifference to human life.

B. The prosecution must prove only that the killing occurred during the commission of the armed robbery; no additional individualized mental state is required of any participant in the felony.

C. The prosecution must prove defendant personally fired the fatal shot or directly assisted the accomplice in pulling the trigger of the weapon used to kill the clerk during the robbery.

D. The prosecution must prove defendant and the accomplice expressly agreed in advance to kill any clerk or witness who resisted the robbery during its course of execution.

4. A landlocked parcel created by severance from a common grantor, with no other access to any public road, may acquire an _____ permitting access across the retained parcel, regardless of whether the deed addresses the matter of access.

A. easement by prescription based on continuous open use during the inspection period

B. express easement implicitly conveyed through the language of the deed of grant

C. easement by necessity arising at the time of severance from a common grantor

D. easement by estoppel based on the grantor's silence during the original sale negotiations

5. Following a multi-vehicle collision, a bystander ran up to a police officer at the scene shouting, "The red car blew through the red light at 60 miles per hour and slammed into the blue car!" The bystander then collapsed from a heart attack and died at the scene before the officer could even ask his name. At the civil

trial of the red car's driver, the plaintiff sought to introduce the bystander's statement through the police officer. Under California Evidence Code section 1240, the most likely ruling is:

- A. The statement is inadmissible because the bystander cannot now be cross-examined regarding the accuracy of his observations of the collision or his vantage point.
- B. The statement is admissible as a spontaneous declaration because it purported to narrate, describe, or explain an event the declarant perceived while still under the stress of excitement caused by the event.
- C. The statement is admissible only as a dying declaration because the bystander later died of a heart attack at the same scene where he made the statement to the officer.
- D. The statement is inadmissible because spontaneous declarations under section 1240 require the declarant to have suffered some physical injury in the underlying incident being reported.

6. Plaintiff, a California citizen, filed a state-law breach-of-contract action in California state court against Defendant, a New York citizen, seeking \$200,000 in damages. Defendant timely removed the case to the United States District Court for the Northern District of California, asserting diversity jurisdiction. Plaintiff moved to remand on grounds that California is Defendant's "home" jurisdiction because of substantial business activities there. Under 28 U.S.C. §§ 1441 and 1332, the proper ruling is:

- A. The motion to remand should be granted because California has a stronger interest in adjudicating disputes involving California plaintiffs in California state courts rather than in federal court.
- B. The motion to remand should be denied because complete diversity exists, the amount in controversy is satisfied, and the in-state defendant rule of § 1441(b)(2) is inapplicable because the defendant is not a California citizen.
- C. The motion to remand should be granted because state-law contract claims may not be removed to federal court regardless of any independent basis for federal jurisdiction over the parties.
- D. The motion to remand should be denied only if both the plaintiff and the defendant consent in writing to federal adjudication of the action under § 1441(c) procedures.

7. A testator validly executed a will leaving "\$50,000 to my brother John, and \$100,000 to my best friend Mary." John predeceased the testator, leaving two surviving adult children. Mary predeceased the testator with no surviving descendants. The will contained no alternate beneficiaries or contrary instructions regarding lapse. Under California's anti-lapse statute (Probate Code section 21110), what happens to the two bequests?

- A. Both bequests lapse and fall into the residue because California abolished the anti-lapse statute for all non-blood beneficiaries by recent legislative amendment.
- B. Both bequests pass to the testator's intestate heirs equally regardless of the original beneficiaries' degree of relationship to the testator at the time of the testator's death.
- C. John's bequest lapses but Mary's bequest passes to Mary's nearest surviving collateral relatives under California's general intestate succession provisions for friends.
- D. John's bequest passes to his two surviving children because he is within the protected class of "kindred" of the testator; Mary's bequest lapses because she was not kindred and had no surviving descendants.

8. An attorney received a \$50,000 settlement check from an insurance company on behalf of a client. The attorney deposited the check into her general business operating account rather than her client trust account, intending to write a check to the client later that day. Before the attorney could disburse the funds, the operating account was levied by one of the attorney's personal creditors, and the funds were lost to satisfy the creditor's judgment against the lawyer. The conduct:

- A. Violates CRPC 1.15 because settlement funds belonging to a client must be deposited promptly into a designated client trust account, separate from the lawyer's own property, and not commingled with operating funds.
- B. Violates CRPC 1.15 only because the funds were lost to a personal creditor; deposit of client funds into the operating account is otherwise permitted in California so long as same-day disbursement occurs.
- C. Does not violate any rule because the attorney intended to disburse the funds promptly and the loss was caused by an external third party rather than by intentional misappropriation of the funds.
- D. Violates CRPC 1.5 regarding excessive fees rather than any trust-accounting rule because the lawyer never claimed any portion of the settlement as her own fee in the matter.

9. A couple executed a written premarital agreement seven days before their wedding under which the wife waived all rights to spousal support in the event of dissolution. Wife was not represented by independent counsel and the agreement contained no provision advising her to seek counsel. The marriage lasted 12 years before dissolution. Husband seeks to enforce the spousal support waiver. Under Family Code sections 1612(c) and 1615, the result is:

- A. The waiver is automatically enforceable because the parties executed a valid written premarital agreement before the actual date of the wedding ceremony as required by California law.
- B. The waiver is enforceable only if Wife is shown to have consented again to the agreement after the wedding ceremony had taken place and the marriage had begun.

C. The waiver is presumed unenforceable because spousal support waivers require that the waiving party be represented by independent legal counsel at the time of signing, and the waiver must not be unconscionable at enforcement.

D. The waiver is enforceable in all written premarital agreements regardless of representation or any other procedural circumstances surrounding signing under controlling California law.

10. The state condemned a parcel of private commercial property under eminent domain for the purpose of transferring the land to a private developer who planned to construct an office complex projected to generate increased tax revenue and create jobs in the area. The property owner challenged the taking, arguing the transfer to a private party did not constitute a "public use." Under *Kelo v. City of New London* and California constitutional law, the most accurate analysis is:

A. The taking is per se unconstitutional under *Kelo* because transfers of property to private parties never satisfy the public use requirement of the federal Constitution's Fifth Amendment.

B. The taking is constitutional under federal law without any restriction because economic development is always a valid public use justifying the exercise of state eminent domain powers.

C. The taking is constitutional under federal law and binding on all states regardless of any state constitutional or statutory provisions to the contrary that purport to limit eminent domain.

D. The taking may be permitted under federal *Kelo* doctrine if rationally related to a conceivable public purpose, but California Constitution article I section 19 was amended by Proposition 99 (2008) to restrict eminent domain transfers of owner-occupied residences to private parties.

11. A suspect was arrested for armed robbery and read his Miranda rights. The suspect stated, "I think I want to talk to a lawyer." The officer responded, "Are you sure? It would really help your case to clear this up now." The suspect then said, "OK, I'll tell you what happened" and proceeded to confess. At trial, the defense moved to suppress the confession. Under *Davis v. United States*, the result is:

A. The confession is admissible only if the suspect's initial reference to a lawyer was so ambiguous that a reasonable officer could not understand it as an unequivocal invocation; "I think I want to talk to a lawyer" is generally treated as ambiguous and not a clear invocation.

B. The confession must be suppressed because any reference to a lawyer during custodial interrogation requires immediate cessation of all questioning regardless of the equivocal or unequivocal nature of the reference.

C. The confession must be suppressed because the officer's follow-up question was inherently coercive in nature and overrode the suspect's free will to remain silent under the Fifth Amendment.

D. The confession is admissible only if the suspect later signed a written waiver of his Miranda rights after personally consulting in private with retained or appointed counsel of his choosing.

12. A settlor established a charitable trust in 1985 directing income to "the Smithville Children's Hospital for support of pediatric cancer research." In 2024, the hospital permanently closed and was dissolved as a legal entity. The remaining trust corpus is approximately \$5 million. The settlor's heirs sought distribution of the corpus through resulting trust; the Attorney General opposed and sought application of cy pres. Under California Probate Code sections 15409 et seq., the likely outcome is:

A. The trust fails entirely and the corpus passes to the settlor's heirs through resulting trust because the named charitable beneficiary no longer exists and cannot be substituted by any court action.

B. The trust fails because California has abolished the cy pres doctrine in favor of strict adherence to the original named charitable purpose of every settlor regardless of changed circumstances over time.

C. Under cy pres, the court may modify the trust to direct income to another charitable beneficiary serving as nearly as possible the original purpose of pediatric cancer research, because the settlor had a general charitable intent.

D. The trust corpus reverts to the state of California as bona vacantia because no successor charitable beneficiary may be substituted by judicial action when the named beneficiary ceases to exist.

13. A grocery store customer slipped on a pool of cooking oil on the store floor and broke her hip. Surveillance video showed the oil had been on the floor for approximately 35 minutes before the customer's fall. No store employee had walked through that aisle during that time, although a store policy required hourly inspections of all aisles. The customer sued the store. Under California's modern premises liability analysis, what standard governs?

A. The customer must prove the store had actual subjective knowledge of the specific spill before the fall occurred to recover any damages whatsoever under California premises liability doctrine.

B. The customer must prove the store had actual or constructive notice of the dangerous condition, and the store breached its duty of reasonable care by failing to discover and remedy the spill within a reasonable time.

C. The customer must prove the store created the dangerous condition through affirmative conduct of its employees rather than mere passive presence of the substance on the floor of the premises.

D. The customer cannot recover because California has abolished common-law premises liability in favor of statutory strict commercial premises liability for all retail food and grocery establishments.

14. At a federal civil trial, the plaintiff sought to introduce expert testimony from an engineer concerning the cause of a mechanical failure that injured the plaintiff. The expert's methodology was a novel computer simulation that had not been published or peer-reviewed but was based on accepted underlying engineering principles. The defense moved to exclude the testimony as unreliable. Under *Daubert v. Merrell Dow Pharmaceuticals* and Federal Rule of Evidence 702, the trial court should consider:

- A. Only the expert's professional credentials and total years of experience in the relevant engineering specialty before reaching any decision on the admissibility of the underlying methodology used.
- B. Whether the expert is willing to testify under oath that his opinion is correct to a reasonable degree of engineering certainty as defined by his particular professional community.
- C. Whether the expert's opinion is consistent with the conclusions independently reached by the plaintiff's other witnesses and corroborating documents in the same litigation.
- D. Whether the methodology has been or can be tested, whether it has been subjected to peer review and publication, the known or potential error rate, the existence of operating standards, and general acceptance in the relevant scientific community.

15. Under California Code of Civil Procedure section 580b, a lender that financed the borrower's residential purchase through a purchase-money mortgage is _____ following a nonjudicial foreclosure of that mortgage.

- A. barred from obtaining a deficiency judgment against the borrower for any unpaid balance on the loan
- B. entitled to a full deficiency judgment against the borrower for the entire unpaid balance of the loan
- C. entitled to recover the deficiency only against junior lienholders by equitable subrogation principles
- D. permitted to recover a deficiency only if the borrower expressly waived antideficiency protection at closing

16. A state statute imposed a 5% income tax surcharge on married couples filing jointly but did not impose any equivalent surcharge on single filers or married couples filing separately. A married couple challenged the statute on equal protection grounds, arguing the law facially discriminated against married persons. Under federal equal protection doctrine, what level of scrutiny applies and what is the likely result?

- A. Rational basis review applies because marital status is not a suspect classification and the statute does not burden a fundamental right; the statute is likely constitutional if rationally related to any legitimate state interest such as administrative simplicity.

B. Strict scrutiny applies because the statute burdens the fundamental right to marry recognized under federal substantive due process, and the statute must be narrowly tailored to a compelling state interest to be upheld.

C. Intermediate scrutiny applies because married couples constitute a quasi-suspect class deserving of heightened constitutional protection from facial discrimination in state taxing statutes within California.

D. No scrutiny applies because federal courts lack jurisdiction to review state tax statutes under the Tax Injunction Act, which categorically precludes any equal protection challenge to state revenue measures.

17. A merchant ordered \$30,000 worth of custom-manufactured industrial equipment from a manufacturer over the telephone. The manufacturer began production immediately, ordering specialized parts unavailable from any other source and committing substantial labor before any writing was exchanged. The merchant later refused delivery, asserting the Statute of Frauds (Commercial Code section 2201). The manufacturer's strongest argument is:

A. The Statute of Frauds bars all oral contracts for the sale of goods exceeding \$500 in value regardless of any subsequent commercial circumstances under California law.

B. The Statute of Frauds is satisfied only by a writing actually signed by both parties to the agreement; the manufacturer's internal records cannot serve as such a writing under any circumstances.

C. Under § 2201(3)(a), the Statute of Frauds does not apply to specially manufactured goods not suitable for sale to others in the ordinary course of the seller's business if substantial production or procurement commitments have begun.

D. Under § 2201(3)(b), the contract is enforceable only to the extent the merchant has accepted and paid for some portion of the goods at the time of dispute, which has not occurred under these facts.

18. Three individuals agreed to rob a bank. After the agreement, one of them, A, purchased ski masks and a getaway vehicle in furtherance of the plan. Before the robbery could be executed, A had a change of heart, called the police, and disclosed the entire scheme; police arrested the other two conspirators while they were en route to the bank. A was charged with conspiracy to commit robbery. Under California Penal Code section 184, the result is:

A. Conspiracy charges cannot be sustained against any participant in this case because the planned underlying robbery never actually occurred and no property was ultimately taken from the bank.

B. Under section 184, conspiracy requires agreement plus an overt act in furtherance of the conspiracy; A's purchase of masks and getaway vehicle satisfies the overt act, and A's later renunciation does not negate the completed conspiracy crime.

C. A's withdrawal and disclosure to police constitutes a complete and absolute defense to conspiracy charges under California law regardless of any prior overt acts already performed in furtherance.

D. The other two conspirators are guilty of conspiracy but A is not, because his timely disclosure to the police prevented the underlying substantive crime from occurring as originally planned.

19. A settlor created an irrevocable trust for the benefit of his adult son, with a spendthrift provision prohibiting the son from assigning his interest and protecting the trust from the claims of his creditors. The son later incurred substantial gambling debts to a private creditor, then incurred a separate debt for unpaid child support owed to his ex-spouse. Both creditors sought to reach the trust assets. Under California Probate Code section 15305 and related provisions, the result is:

A. Both creditors are completely barred from reaching trust assets by operation of the spendthrift provision regardless of the underlying nature or character of the debt owed by the beneficiary.

B. Both creditors may reach trust assets to the extent the trustee has discretion to make distributions to the beneficiary son, without regard to the nature of the underlying debt to be satisfied.

C. Only the gambling creditor is barred, and the spendthrift provision is unenforceable against the ex-spouse based on general public policy grounds independent of any specific statutory exception.

D. The gambling creditor is generally barred by the spendthrift provision, but the ex-spouse may reach trust assets for child support obligations because California recognizes statutory exceptions for child and spousal support claims.

20. Plaintiff sued Defendant A in federal court for breach of contract arising from a construction project. Defendant A believed that Defendant B, a subcontractor, was responsible for the alleged breach and would be liable to Defendant A if Defendant A were held liable to Plaintiff. Defendant A wished to bring B into the action. Under Federal Rule of Civil Procedure 14(a), Defendant A may:

A. File a counterclaim against Plaintiff that names B as an additional counter-defendant in the same action without the need for any independent jurisdictional basis over B.

B. File a motion to dismiss the original complaint and require Plaintiff to add B as a primary defendant in any refiled action before the case may continue against any party.

C. Implead Defendant B as a third-party defendant by serving a summons and third-party complaint asserting that B is or may be liable to Defendant A for all or part of the claim against Defendant A.

D. File a separate lawsuit against B in the same federal district and seek consolidation only after both cases proceed independently to trial on their individual merits.

21. All of the following are accurate statements about the doctrine of ademption by extinction under California Probate Code section 21133 EXCEPT:

- A. A specific bequest of property no longer in the testator's estate at death automatically passes to the named beneficiary as a substitute monetary equivalent of the original asset's date-of-death value.
- B. Where specifically bequeathed property has been sold by a conservator during the testator's lifetime, the beneficiary may be entitled to recover proceeds traceable to the original asset under limited statutory exceptions.
- C. The doctrine generally extinguishes specific bequests where the identifiable property is no longer in the estate at death, even if a similar replacement asset was acquired by the testator in its place.
- D. Specific bequests differ from general bequests, which are not subject to ademption because they direct payment from the estate generally rather than from particular property identified in the will.

22. In a contested custody dispute between Mother and Father, both parents sought primary physical custody of their 8-year-old child. The trial court found both parents to be loving, capable, and free from any history of abuse or neglect, but determined that the child had a stronger emotional bond with Mother and had spent more time in Mother's care during the marriage. Under California Family Code sections 3011 and 3020, what governs the court's custody decision?

- A. The court must award custody to the parent who earned more income during the marriage to ensure financial stability and economic continuity for the child throughout the post-divorce period.
- B. The court must determine custody according to the best interest of the child, considering factors including the child's health, safety, welfare, history of abuse, and the nature and amount of contact with both parents.
- C. The court must award equal joint physical custody to both parents in all cases where neither parent is shown to be unfit under California family law standards, regardless of the child's emotional bonds.
- D. The court must defer entirely to the child's expressed preference if the child is age 7 or older as a matter of mandatory California family law procedure in all custody disputes.

23. A shareholder of a California corporation discovered that several directors had approved a series of self-dealing transactions that allegedly damaged the corporation. The shareholder wished to bring a derivative action to recover damages on behalf of the corporation. Before filing suit, the shareholder did not make any written demand on the board of directors to address the alleged wrongdoing. Under Corporations Code section 800, the result is:

- A. The shareholder may proceed directly with the derivative action because demand on the board of directors is never required as a precondition in California derivative litigation under any circumstances.
- B. The shareholder may proceed only if she personally owns more than 10% of the corporation's outstanding voting shares at the time the derivative action is filed in California state court.
- C. Under section 800(b), the shareholder must allege with particularity her efforts to secure board action and the reasons for any failure to do so, or facts excusing demand as futile due to the directors' inability to exercise independent judgment.
- D. The shareholder may proceed only after first exhausting all administrative remedies before the California Secretary of State and obtaining a certificate of permission to pursue the derivative claim.

24. A child was injured in an automobile accident and taken to the hospital. While being examined by the emergency room physician, the child stated, "My daddy was driving really fast and ran into the other car. My chest hurts where the seatbelt held me." The treating physician documented the statements in the medical record. At a later civil trial against the father for negligence, the plaintiff sought to introduce the child's statements. Under Federal Rule of Evidence 803(4), the result is:

- A. The entire statement is inadmissible because hearsay exceptions under federal rules do not apply to statements made by minors who would themselves be incompetent to testify under the rules.
- B. The entire statement is admissible without limitation because all statements made by patients to a treating physician during an examination are exempt from hearsay restrictions under federal law.
- C. The statement identifying the father as the driver is admissible but the description of physical symptoms is itself inadmissible hearsay because the child cannot be cross-examined regarding her sensations.
- D. Under FRE 803(4), the description of physical symptoms is admissible as a statement made for medical diagnosis or treatment; the identification of the driver is generally not reasonably pertinent to diagnosis and would typically be excluded.

25. An attorney representing a criminal defendant learned, mid-trial, that her client intended to take the stand and testify falsely about his whereabouts on the night of the alleged offense. The attorney attempted to dissuade her client, but the client insisted on testifying as planned. Under CRPC 3.3, the attorney should:

- A. Refuse to assist the false testimony and, if the client insists, may seek to withdraw; if withdrawal is denied and the client testifies falsely, the attorney must take reasonable remedial measures including, if necessary, disclosure to the tribunal.
- B. Immediately assist the client in presenting the false testimony as part of effective constitutional representation under the Sixth Amendment right to counsel guaranteed in all criminal proceedings.

C. Allow the client to testify and remain silent regarding the falsehood because attorney-client confidentiality is absolute under California law and overrides any candor obligation owed to a tribunal.

D. Has no obligation to address the falsity at all because CRPC 3.3 applies only to civil proceedings and not to criminal prosecutions where defendant testimonial rights are constitutionally protected.

26. A developer subdivided 100 lots and recorded a declaration of restrictions providing that all lots were to be used "solely for single-family residential purposes." Each lot deed expressly referenced the recorded declaration. Two decades later, a current owner sought to operate a small daycare business out of her home on one of the lots. Neighbors sought to enjoin the use. Which doctrine best supports enforcement?

A. The neighbors can enforce only through a real covenant action requiring strict vertical and horizontal privity of estate, which they cannot satisfy as remote successors to the original subdivision parties.

B. The neighbors must rely on local zoning ordinances because equitable servitudes are no longer enforceable in California subdivisions after recent appellate court limitations on the doctrine.

C. The neighbors must prove actual measurable financial damage to their individual lots and homes before any restriction recorded in the declaration becomes legally enforceable in a private action.

D. The neighbors may enforce the restriction as an equitable servitude — a use restriction binding successors with notice (constructive notice through recording) where the original parties intended the burden and benefit to run with the land.

27. The defendant was attacked without provocation by an aggressor wielding a knife. The defendant grabbed the nearest object — a metal pipe — and struck the aggressor on the head, killing him. The defendant was charged with murder. Under California self-defense doctrine (Penal Code sections 197 and 198), the defendant must show:

A. He first attempted to retreat to a place of safety before using any force whatsoever against the aggressor and that retreat was reasonably attempted in good faith under the circumstances.

B. He honestly and reasonably believed in the need to use deadly force to prevent imminent death or great bodily injury, and that the force used was not excessive in light of the threat faced.

C. He gave the aggressor a verbal warning before resorting to any form of physical force, including the use of an object found in the immediate vicinity of the encounter.

D. He held a valid concealed-carry weapons permit at the time of the encounter to claim self-defense involving any object used as a defensive weapon under California law.

28. A woman believed in good faith that her marriage to her husband was valid, although in fact her husband had never legally divorced his previous wife and the second marriage was bigamous and void. The woman and her husband lived together for 15 years, during which they acquired substantial real and personal property and the woman bore two children. After learning of the bigamy, the woman petitioned for dissolution and division of property. Under California Family Code section 2251, the result is:

- A. The woman has no rights to any property acquired during the void marriage because the marriage was legally invalid from its very inception as a matter of California law and public policy.
- B. The woman may only seek restitution for any direct financial contributions she personally made to the household but holds no community-property-like interest in jointly acquired assets.
- C. As a putative spouse acting in good faith, the woman is entitled to division of "quasi-marital property" — property that would have been community or quasi-community had the marriage been valid — under the same rules as community property division.
- D. The woman must wait until the first wife has died before any property division can occur, and only then may community-property principles potentially be applied to the void marriage by a court.

29. A plaintiff suffered injuries on January 1, 2022, from a defective product. She filed suit against the manufacturer on June 1, 2024 — approximately two years and five months after the injury. The applicable California statute of limitations for personal injury actions under Code of Civil Procedure section 335.1 is two years. The plaintiff argued the statute should be tolled because she did not discover the defective nature of the product until December 2023. Under California's discovery rule (*Norgart v. Upjohn*), the result is:

- A. The action may be timely under the discovery rule, which delays accrual until the plaintiff knew or should have known of the injury, its cause, and its potential wrongfulness; the plaintiff must plead the date of discovery and her reasonable diligence in discovering the claim.
- B. The action is automatically barred because California strictly enforces the two-year limitation period from the date of injury regardless of any discovery considerations or reasonable diligence shown by the plaintiff in pursuing the claim.
- C. The action is timely without any further showing because product liability actions in California are subject to a special ten-year limitation period independent of the general personal injury statute of limitations.
- D. The action is timely only if the manufacturer concealed the defect through affirmative fraudulent acts at the time of the original sale to the plaintiff and not merely through ordinary commercial silence about known risks.

30. A state university expelled a tenured professor for alleged research misconduct after a brief closed-door meeting between the dean and the provost, with no opportunity for the professor to respond to the charges, present evidence, or appeal the determination. The professor sued, claiming a violation of procedural due process. Under *Mathews v. Eldridge*, the analysis requires:

- A. No due process is required because employment with the state, including tenured academic positions, is a privilege rather than a property right and is not subject to constitutional procedural protections.
- B. Only minimal post-deprivation process is constitutionally required when professional misconduct is at issue, because the state's interest in immediate removal outweighs all individual interests at stake.
- C. The court must balance the private interest affected, the risk of erroneous deprivation under existing procedures and the probable value of additional safeguards, and the government's interest including administrative burdens; tenured employment generally requires pre-deprivation notice and a meaningful opportunity to respond.
- D. The professor is entitled to a full criminal-style trial with right to counsel, jury, and proof beyond a reasonable doubt before any expulsion may be effected by the university under federal due process requirements.

31. Plaintiff was injured in a multi-vehicle collision involving Defendants A and B, both found negligent. The jury awarded plaintiff \$1 million in economic damages and \$500,000 in non-economic damages. The jury allocated fault as Defendant A: 70%, Defendant B: 30%. Defendant B has minimal assets and is functionally judgment-proof. Under Proposition 51 (Civil Code section 1431.2), Plaintiff may recover from Defendant A:

- A. The full \$1.5 million from Defendant A under traditional joint and several liability for all damages regardless of the jury's percentage allocation of fault between the two defendants.
- B. All \$1 million in economic damages (joint and several liability) but only \$350,000 (Defendant A's 70% share) of the \$500,000 in non-economic damages, because Proposition 51 imposes several-only liability on non-economic damages.
- C. \$700,000 from Defendant A representing 70% of the total combined damages, because all damages are subject to several-only liability under California's comparative fault regime as modified by Proposition 51.
- D. Nothing from Defendant A because Plaintiff must first exhaust all collection efforts against Defendant B before pursuing recovery from any other defendant under California joint tortfeasor law.

32. A settlor created an irrevocable trust in 1995 with three beneficiaries — two children and one grandchild. The trust directs distribution of corpus when the youngest beneficiary reaches age 35. All

three beneficiaries are now adults, and all unanimously wish to terminate the trust and distribute the corpus immediately rather than wait an additional six years for the youngest grandchild to reach 35. Under California Probate Code sections 15403 and 15409, the result is:

- A. The trust cannot be modified or terminated before its stated termination date under any circumstances, regardless of the unanimous consent of all currently identified trust beneficiaries.
- B. The trust may be modified or terminated only by the original settlor of the trust, who in this case is deceased and unable to authorize any change.
- C. The trust may be modified or terminated by simple majority vote of the named beneficiaries without further procedural requirements or any need for court approval of the change.
- D. Under section 15403, all beneficiaries may agree to modify or terminate an irrevocable trust by petition to the court if continuance is not necessary to carry out a material purpose of the settlor; the court has discretion to permit modification or termination under specified standards.

33. Consider the following statements about future interests in California real property:

I. A conveyance "to A and her heirs, but if alcohol is ever consumed on the premises, then to B and her heirs" creates a fee simple subject to executory limitation in A and an executory interest in B.

II. California Probate Code section 21205 (the Uniform Statutory Rule Against Perpetuities) provides that a non-vested property interest is invalid unless it must vest, if at all, within 21 years after the death of a life in being or within 90 years after its creation.

Which statement(s) accurately describe California law?

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

34. An attorney previously represented Company X in patent litigation against Company Y. Two years after that litigation concluded, Company Y approached the same attorney seeking representation in a new

patent infringement action against Company X involving the same patents and technology at issue in the prior litigation. Company X has not consented to the new representation. Under CRPC 1.9, the result is:

- A. The attorney is generally prohibited from representing Company Y in the new matter because rule 1.9 prohibits a lawyer from representing a new client whose interests are materially adverse to a former client in the same or a substantially related matter, absent the former client's informed written consent.
- B. The attorney may freely represent Company Y because the prior representation has fully concluded and the lawyer's confidentiality obligations to former clients are extinguished after the conclusion of any prior matter.
- C. The attorney may represent Company Y if Company X is sent written notice and does not formally object within 30 days of receiving the notice of intended representation in the new patent matter.
- D. The attorney may represent Company Y if the new patent litigation involves any different patent claims than the prior litigation, regardless of subject-matter overlap or related technology between the matters.

35. A buyer contracted to lease a hotel ballroom for \$25,000 to host a large wedding reception on a specific weekend. Two weeks before the wedding, a state public health order prohibited all indoor gatherings exceeding 10 persons due to a pandemic. The wedding was canceled. The hotel insisted on full payment of the contract price. The buyer asserted frustration of purpose as a defense. The most likely outcome is:

- A. The buyer remains liable for the full contract price because contracts must always be performed regardless of post-formation events affecting the buyer's purpose in entering the original agreement to lease.
- B. The buyer is liable only for actual damages the hotel can prove resulted from the cancellation, calculated as the difference between the contract price and any substitute booking obtained for the same date.
- C. The buyer is liable for half the contract price under principles of mutual mistake regarding the ability of the parties to gather safely under public health regulations in effect at the time.
- D. The buyer may have a frustration of purpose defense if the principal purpose of the contract (hosting the wedding reception) was substantially frustrated by an unforeseeable supervening event not the buyer's fault, eliminating the value of the bargained-for performance.

36. Police officers conducted an illegal warrantless search of the defendant's apartment that turned up a stolen laptop. The serial number on the laptop led officers to a database query that identified additional crimes the defendant was suspected of committing. Police then obtained a warrant for the defendant's car based partly on the database information. The search of the car yielded narcotics. The defendant moved to suppress both. Under *Wong Sun v. United States*, the likely ruling is:

A. Only the laptop must be suppressed; evidence derived indirectly from illegal searches is always admissible regardless of the causal chain involved or the temporal proximity to the initial illegality.

B. Neither the laptop nor the narcotics must be suppressed because the warrant for the car was based at least in part on information that could have been available from independent legal sources.

C. Both the laptop and the narcotics may be suppressed as fruit of the poisonous tree, unless the prosecution can show that the narcotics were obtained through an independent source, by inevitable discovery, or that the taint was attenuated.

D. Only the narcotics must be suppressed because the laptop was directly seized in the original illegal search rather than indirectly derived from the constitutional violation that occurred at the time.

37. A decedent died intestate in California, survived by a spouse, two children from the current marriage, and one child from a prior marriage. The decedent owned \$600,000 in community property and \$300,000 in separate property. Under California Probate Code sections 6401 and 6402, the estate is distributed as follows:

A. The spouse takes all \$600,000 of community property; the separate property is divided with the spouse receiving one-third (\$100,000) and the three children sharing two-thirds (\$200,000) equally because the decedent left more than one child.

B. The spouse takes all community property and all separate property because the spouse is the primary heir of any intestate California decedent regardless of the number of surviving children of the decedent.

C. The estate is divided equally among the spouse and three children, with each receiving an equal one-fourth share regardless of community/separate characterization or any other consideration.

D. The community property is divided equally between the spouse and three children, and the separate property passes entirely to the three children with the spouse taking nothing under California intestacy rules.

38. A couple married for 22 years sought dissolution. During the marriage, Husband was the primary earner, and Wife stayed home raising their three children. At dissolution, Husband earned \$200,000 annually; Wife had not worked outside the home in 18 years and lacked recent professional credentials. The trial court considered spousal support. Under California Family Code section 4320, the court must consider:

A. The income of the highest earner alone, because spousal support in California is calculated as a fixed statutory percentage of the higher-earning party's annual gross earnings at the time of dissolution.

B. A range of factors including the marketable skills and employability of the supported party, the extent to which the supported party's earning capacity was impaired by domestic duties, contributions to the supporting party's education, the supporting party's ability to pay, the marital standard of living, obligations and assets, duration of marriage, age and health, and the goal of self-support within a reasonable period.

C. Only the duration of the marriage; a 22-year marriage automatically results in permanent lifetime support to the lesser earner under California family law rules applicable to long-duration marriages.

D. Only the supported party's claimed needs without considering the supporting party's ability to pay or any of the other circumstances surrounding the marriage and the parties at the time of dissolution.

39. At a federal civil trial, a plaintiff's longtime neighbor was called to testify regarding the plaintiff's mental state in the days following an alleged tortious act. The neighbor stated, "Sarah seemed deeply depressed — she stopped eating regular meals, slept all day, and stopped answering her phone." The defense objected. Under Federal Rule of Evidence 701, the proper analysis is:

A. The testimony is inadmissible because lay witnesses may never offer opinions about another person's mental or emotional state in any federal proceeding regardless of the foundation for the opinion testimony.

B. The testimony is inadmissible because mental state determinations require expert psychological testimony under FRE 702 in all federal courts addressing such claims by lay individuals.

C. The testimony is admissible only if the neighbor first authenticates each specific behavior referenced through independent documentary evidence such as a diary, calendar, or phone records.

D. The testimony is admissible if it is rationally based on the witness's perception, helpful to determining a fact in issue, and not based on specialized knowledge within the scope of FRE 702; observations of changes in mood, behavior, eating, and sleep patterns are traditional examples of permissible lay opinion testimony.

40. A grantor conveyed Blueacre "to A and her heirs, so long as the premises are used for educational purposes." A used the property as a school for 20 years before converting it to a commercial office building. The grantor died and her heirs sued to recover possession of the property. Under California law, what interests existed and what is the result?

A. A held a life estate that terminated automatically upon A's death; the grantor's heirs take by reversion regardless of the educational use restriction in the original conveyance of the property to A.

B. A held a fee simple absolute and the use restriction is unenforceable as an invalid restraint on alienation of real property under the strong California public policy favoring free alienation of land.

C. A held a fee simple determinable; the estate terminated automatically upon breach of the limiting condition (cessation of educational use), and the grantor's heirs now own the property by virtue of the possibility of reverter, subject to applicable statutes of limitation.

D. A held a fee tail; the property automatically descended to A's bodily heirs upon any breach of condition and the grantor's heirs have no remaining claim against the present possessor of the property.

41. Consider the following statements about the Free Exercise Clause under federal constitutional law:

I. Under *Employment Division v. Smith*, a neutral, generally applicable law that incidentally burdens religious practice is generally subject only to rational basis review under the Free Exercise Clause.

II. The federal Religious Freedom Restoration Act (RFRA) overrides *Smith*'s deferential standard with mandatory strict scrutiny for all state laws affecting religious exercise within state borders.

Which statement(s) accurately describe federal law?

A. I only

B. Both I and II

C. II only

D. Neither I nor II

42. Under California's Revised Uniform Partnership Act (Corporations Code sections 16101 et seq.), a partner in an at-will partnership _____.

A. cannot withdraw under any circumstances; partners are bound for the term of the partnership which California presumes to be perpetual

B. may withdraw but forfeits all capital contributions and accumulated profits as a penalty for unilateral dissociation from the partnership

C. has the power to dissociate at will from the partnership, triggering a buyout of her interest under section 16701 absent any contrary agreement

D. always triggers automatic dissolution and liquidation of all partnership assets when withdrawing, regardless of the wishes of the remaining partners

43. A general contractor entered into a construction contract with a homeowner to build a custom residence. The contract specifically provided that the contractor would purchase liability insurance "for the benefit and protection of the homeowner and all subcontractors working on the project." A subcontractor was injured on the job when the contractor's negligence caused a partial structural collapse. The subcontractor sought to enforce the insurance provision against the contractor as a third-party beneficiary. The result is:

A. The subcontractor has no standing to enforce the contract because privity is required for any contract enforcement under California law and the subcontractor is not in privity with the contractor.

B. The subcontractor may enforce the contract only if the homeowner first assigns rights to the subcontractor in writing under a formal assignment of contractual rights signed by both the contractor and homeowner.

C. The subcontractor may enforce the insurance provision only after the homeowner sues the contractor and recovers damages first, providing a basis for the subcontractor to claim derivative rights to the insurance proceeds.

D. The subcontractor may enforce the insurance provision as an intended third-party beneficiary because the contract expressly identifies subcontractors as a class to be benefited by the insurance.

44. Defendant drove the getaway car for an armed robbery, knowing the robbery was planned and intending to facilitate the escape. The principal robber, during the course of the robbery, shot and killed a store clerk. Defendant was not present inside the store and did not personally cause or directly contribute to the killing. Under California's natural and probable consequences doctrine as modified by recent legislation, Defendant's liability for the homicide is:

A. Defendant has no liability for the homicide because she was not physically present at the location where the killing occurred and could not have prevented the principal's spontaneous act during the robbery.

B. Under amendments to Penal Code section 188 made by SB 1437, Defendant cannot be convicted of murder under a pure natural-and-probable-consequences theory; she may be liable for the underlying robbery and for murder only if she was the actual killer, aided and abetted the killing with intent to kill, or was a major participant acting with reckless indifference to human life.

C. Defendant is automatically guilty of first-degree murder because she knowingly facilitated the underlying armed robbery during which the killing occurred under California law applicable to all serious felonies.

D. Defendant's liability depends solely on her physical proximity to the killing and not on her mental state at the time of the offense under modern California criminal law principles.

45. Plaintiff filed a personal injury action in California against Defendant in the Los Angeles Superior Court. The accident occurred in San Francisco, the plaintiff resides in Sacramento, and the defendant resides in San Diego. Defendant moved for change of venue. Under California Code of Civil Procedure sections 392 through 395, the proper analysis is:

A. The general venue rule for tort actions is the county of defendant's residence (here, San Diego) under CCP § 395; alternative venue may lie in the county where the injury occurred (San Francisco), but Los Angeles has no proper basis under the standard venue statutes for this action.

B. Venue is proper in any California county the plaintiff selects because California is treated as a single-venue state for all personal injury actions arising within the borders of the state regardless of the locations involved.

C. Venue is proper only in the county where the plaintiff currently resides because plaintiffs in tort cases hold the absolute right to select the most convenient forum for the conduct of any personal injury action.

D. Venue is proper only in the county where the action was originally filed because the filing of a civil action irrevocably fixes venue regardless of any subsequent motion to transfer venue by any defendant.

46. A patient consulted her psychotherapist regarding feelings of severe anger toward her business partner, including statements that she had detailed fantasies of harming the partner. The therapist later was subpoenaed to testify about the statements in a related criminal proceeding against the patient. Under California Evidence Code sections 1010 et seq., the result is:

A. The privilege does not apply in any criminal proceeding regardless of the nature of the underlying communication or threat made by the patient to the therapist during the consultation period.

B. The privilege is absolute and the therapist may never testify about any communication with the patient regardless of any circumstance arising in subsequent civil or criminal proceedings against the patient.

C. The psychotherapist-patient privilege protects most communications, but California recognizes important exceptions — including threats to identifiable third parties (Tarasoff doctrine) and the patient putting her mental condition at issue — under which the privilege may yield to disclosure obligations.

D. The privilege applies only to communications relating to physical health conditions and does not extend to mental health treatment of any kind in California criminal proceedings under the Evidence Code.

47. All of the following are accurate statements about the Uniform Simultaneous Death Act as adopted in California (Probate Code section 220 et seq.) EXCEPT:

A. When sufficient evidence exists to establish that one person survived the other by 120 hours, that person is treated as having survived for purposes of intestate succession under California probate law.

B. A beneficiary under a will or trust generally must survive the testator or settlor by 120 hours to take any interest under that instrument, unless the instrument itself expressly addresses simultaneous death.

C. When the order of deaths cannot be established by clear and convincing evidence, each decedent is treated as having predeceased the other for purposes of his or her own estate and any related instruments.

D. California law mandates that the surviving spouse is presumed to have died first in all cases of simultaneous spousal death involving a motor vehicle accident as a matter of statutory probate priority.

48. A property owner excavated heavily on his land near the property line, causing the neighboring property to subside and damaging the neighbor's residence. The neighbor sued for damage from loss of lateral support. The excavating owner argued that the neighbor's house contributed to the subsidence because the soil could have supported its natural weight without the structure. Under California common law of lateral support, the result is:

A. The neighbor has no claim because lateral support rights have been abrogated entirely by California zoning statutes and modern land use regulations imposed at the state and local levels.

B. Under common law, a landowner has an absolute right to lateral support of land in its natural state from adjoining land; if the neighbor's land would have subsided even without the structure, strict liability applies; if the structure caused or contributed to the subsidence, liability requires proof of negligence.

C. The excavator is automatically and absolutely liable regardless of whether the neighbor's house caused or contributed to any subsidence on the neighboring land, on the theory that excavators bear all risk of cross-boundary harm.

D. The neighbor cannot recover unless the structure on her property was less than five years old at the time of the excavation, because older structures are conclusively presumed to have contributed materially to any subsidence.

49. A plaintiff filed a federal lawsuit against a federal agency alleging that its regulatory practices contributed to global climate change, which the plaintiff alleged would harm her family's beach property over the next several decades through rising sea levels and increased storm surge. The agency moved to dismiss for lack of standing. Under *Lujan v. Defenders of Wildlife* and federal standing doctrine, the analysis is:

A. The plaintiff must establish (1) an injury-in-fact that is concrete, particularized, and actual or imminent; (2) causation traceable to the defendant's challenged conduct; and (3) redressability through a favorable

court decision — the plaintiff's generalized future harm from climate change may face redressability and traceability challenges.

B. The plaintiff has automatic standing because all federal environmental statutes confer citizen-suit standing on any concerned plaintiff regardless of any individual showing of personal injury caused by the conduct challenged in the lawsuit before the federal court.

C. The plaintiff's standing depends solely on her residence in a coastal area without any further required showing of particularized injury or causal connection to the agency's regulatory conduct in administering relevant environmental statutes.

D. The plaintiff has no standing under any circumstances because climate change claims are categorically nonjusticiable political questions reserved exclusively to Congress and the executive branch under the Constitution.

50. A party seeking a preliminary injunction in federal court must show _____, a likelihood of irreparable harm absent the injunction, that the balance of equities tips in the moving party's favor, and that the injunction is in the public interest.

A. that all collateral remedies at law have been exhausted to no avail before any equitable relief may issue

B. a likelihood of success on the merits of the underlying claim brought by the moving party

C. that the opposing party has filed a counterclaim of significant value justifying an interim restraint

D. that monetary damages are exactly equivalent to specific equitable relief in the controversy at hand

PRACTICE EXAM 16: ANSWERS AND EXPLANATION

- 1. B** — Bystander NIED under *Thing v. La Chusa* requires (1) close relationship to the victim, (2) presence at the scene with contemporaneous sensory awareness that the event was causing injury, and (3) serious emotional distress beyond that of a disinterested witness. California rejected the zone-of-danger limitation and does not require physical impact. The mother on the curb, observing her child struck, meets each element.
- 2. D** — Code of Civil Procedure section 1856 bars parol evidence to add to or vary the terms of a fully integrated written agreement. Recognized exceptions include collateral agreements not contradicting the writing, fraud in the inducement, mistake, ambiguity, and conditions precedent to formation. Without a triggering exception, the office-equipment evidence is barred.
- 3. A** — Senate Bill 1437 amended Penal Code sections 188 and 189 to require that a non-killer participant in felony murder either be the actual killer, aid and abet the killing with intent to kill, or be a major participant who acted with reckless indifference to human life. Pure imputation of malice from participation in the underlying felony is no longer sufficient. The reform narrowed accomplice felony-murder liability dramatically.
- 4. C** — An easement by necessity arises when a parcel is severed from a common grantor leaving the grantee landlocked with no other access to a public road. The necessity must exist at the moment of severance, not develop later. Prescription requires five years of adverse use, no express grant exists, and estoppel requires affirmative reliance — necessity is the only fit.
- 5. B** — Evidence Code section 1240 admits spontaneous declarations describing or explaining an event the declarant perceived while still under the stress of excitement caused by the event. The bystander's excited shout immediately after observing the collision falls squarely within the exception. The unreflective stress is the indicia of trustworthiness that substitutes for cross-examination.
- 6. B** — 28 U.S.C. § 1441(b)(2)'s forum-defendant rule bars removal only when a properly joined defendant is a citizen of the state where the action was filed. Defendant is a New York citizen, not California, so the rule is inapplicable regardless of his business activities in California. Complete diversity and the \$200,000 amount in controversy support removal.
- 7. D** — California Probate Code section 21110 (anti-lapse) preserves gifts to a predeceased beneficiary who is "kindred" of the testator (or kindred of a surviving, deceased, or former spouse), passing the gift to the predeceased beneficiary's issue. John is the testator's brother with surviving children, so his gift passes to those children. Mary is unrelated and left no issue, so her gift lapses to the residue.
- 8. A** — CRPC 1.15 requires client funds, including settlement proceeds, to be deposited promptly into a designated client trust account, separate from the lawyer's own property, with no commingling. Direct deposit into the operating account violates this rule regardless of same-day disbursement intent. The exposure to a personal creditor's levy is the foreseeable harm the rule exists to prevent.
- 9. C** — Family Code section 1612(c) provides that a spousal support waiver in a premarital agreement is unenforceable unless the waiving party was represented by independent counsel at the time of signing,

and the waiver must not be unconscionable at the time of enforcement. Wife had no independent counsel and the agreement gave no advisement to seek counsel. The seven-day signing also implicates the section 1615(c) procedural fairness review.

10. D — *Kelo v. City of New London* held that economic development satisfies the federal Constitution's public use requirement under rational basis review. California responded by adopting Proposition 99 (2008), which amended article I section 19 of the California Constitution to restrict eminent domain takings of owner-occupied residences for transfer to private parties. The dual federal-state framework is essential to a complete California answer.

11. A — *Davis v. United States* requires an unambiguous invocation of the right to counsel; police need not cease questioning or seek clarification when a reference is equivocal. Statements qualified by "I think" are generally treated as ambiguous and not a clear invocation. The subsequent confession was therefore not the product of a violated invocation.

12. C — *Cy pres* permits a court to modify a charitable trust whose specific purpose has become impossible or impracticable, redirecting funds to a similar charitable purpose, provided the settlor had a general charitable intent. Probate Code section 15409 codifies the doctrine. Funds here are redirected to other pediatric cancer research rather than reverting to the settlor's heirs.

13. B — California premises liability requires the plaintiff to prove the owner had actual or constructive notice of the dangerous condition and breached its duty of reasonable care to discover and remedy it. A 35-minute spill plus a violated hourly-inspection policy supports constructive notice. The store's failure to discover and remedy is the breach.

14. D — *Daubert* and the codified FRE 702 task the trial judge as gatekeeper to assess reliability through factors including testability, peer review and publication, known or potential error rate, existence of operating standards, and general acceptance in the relevant community. No single factor is dispositive; novelty alone does not bar admission, but the methodology must show indicia of reliability.

15. A — Code of Civil Procedure section 580b bars a deficiency judgment on a purchase-money mortgage securing the borrower's residential property, regardless of the method of foreclosure used. The statute exists to prevent overlending by forcing the lender to look solely to the secured property. Bank A is barred from collecting the \$20,000 shortfall from the homeowner.

16. A — Marital status is not a suspect classification, and tax classifications burdening married couples financially do not implicate the fundamental right to marry in the *Loving/Obergefell* sense. Rational basis review applies, and the surcharge will likely be upheld if rationally related to any conceivable legitimate end such as administrative simplicity or revenue generation.

17. C — Commercial Code section 2201(3)(a) excepts from the Statute of Frauds specially manufactured goods not suitable for sale to others in the ordinary course of the seller's business, when the seller has made a substantial beginning of manufacture or commitments for procurement before repudiation. The custom equipment plus specialized parts and committed labor squarely satisfies the exception. No writing is required.

18. B — California conspiracy under Penal Code section 184 requires an agreement plus an overt act in furtherance by at least one conspirator. A's purchase of the masks and getaway vehicle is the overt act, completing the offense at that moment. Withdrawal after the conspiracy is complete may limit liability for subsequent substantive acts but does not retroactively negate the completed conspiracy.

19. D — Probate Code section 15305 carves a specific exception to spendthrift protection for child and spousal support obligations, allowing the obligee to reach distributions made or due to the beneficiary. General creditors like the gambling creditor remain barred by the spendthrift clause. Support claims receive favored statutory status reflecting strong public policy.

20. C — Federal Rule of Civil Procedure 14(a)(1) permits a defending party to serve a summons and third-party complaint on a nonparty who is or may be liable to the third-party plaintiff for all or part of the claim against it. Impleader brings B in as a third-party defendant for derivative liability. The court has supplemental jurisdiction over the impleaded claim under 28 U.S.C. § 1367.

21. A — Ademption by extinction is a near-mechanical doctrine: if the specifically devised property is no longer in the estate at death, the gift fails — there is no automatic monetary substitution. Limited statutory exceptions (conservator sales under section 21134, traceable proceeds, certain insurance proceeds) exist but do not produce an automatic substitute. Option A overstates the doctrine, making it the false statement and correct EXCEPT answer.

22. B — Family Code sections 3011 and 3020 anchor custody on the best interest of the child, requiring consideration of the child's health, safety, welfare, history of abuse, and the nature and amount of contact with both parents. Parental income, equal-time presumptions, and child preference (considered but not dispositive) are subsidiary. The best-interest standard governs all custody dispositions.

23. C — Corporations Code section 800(b)(2) requires a derivative plaintiff to plead with particularity her efforts to secure board action and the reasons for failure to do so, or facts establishing demand futility because the directors cannot impartially consider the demand. Self-dealing by a majority of the board can support futility. Demand is the default; futility is the exception requiring particularized pleading.

24. D — Federal Rule of Evidence 803(4) admits statements made for and reasonably pertinent to medical diagnosis or treatment, describing symptoms, sensations, pain, or their general cause. The child's chest-pain description is admissible because pertinent to treatment. Identification of the driver is generally not pertinent to medical diagnosis and would typically be excluded outside the Renville domestic-abuse extension.

25. A — CRPC 3.3(a)(3) prohibits a lawyer from offering evidence she knows to be false. When the client insists on testifying falsely, the lawyer should attempt to dissuade, may seek to withdraw, and — if false testimony is given — must take reasonable remedial measures, including disclosure to the tribunal if necessary. The duty of candor overrides confidentiality in this narrow context.

26. D — Equitable servitudes are use restrictions enforceable in equity that bind successors with actual or constructive notice, when the original parties intended the burden and benefit to run with the land. A recorded declaration of restrictions provides constructive notice to all successors. The doctrine exists precisely to enforce use restrictions where the strict privity required for real covenants is absent.

27. B — California self-defense under Penal Code sections 197–198 requires an honest and reasonable belief in the imminent threat of death or great bodily injury, and the use of no more force than reasonably necessary. There is no general duty to retreat in California, no warning requirement, and no permit condition. Honest and reasonable belief plus proportionality of force govern.

28. C — Family Code section 2251 codifies the putative spouse doctrine: a party who in good faith believed the marriage to be valid is treated as having acquired "quasi-marital property" subject to the same division rules as community property. The doctrine protects innocent participants in void or voidable marriages. The wife receives the same protective division she would have received in a valid community-property marriage.

29. A — California's discovery rule under *Norgart v. Upjohn* delays accrual of a cause of action until the plaintiff has, or reasonably should have, suspected the injury, its cause, and wrongdoing. The plaintiff bears the burden to plead the discovery date and her reasonable diligence in discovering the claim. Pleadings properly, December 2023 discovery makes the June 2024 filing timely under the two-year limitations period.

30. C — *Mathews v. Eldridge* balances (1) the private interest at stake, (2) the risk of erroneous deprivation under existing procedures and the probable value of additional safeguards, and (3) the government's interest including administrative burdens. Tenured public employment is a protected property interest under *Cleveland Board of Education v. Loudermill*, requiring pre-deprivation notice and a meaningful opportunity to respond. The closed-door process fails this standard.

31. B — Proposition 51 (Civil Code section 1431.2) imposes several-only liability for non-economic damages, calculated by each defendant's percentage of fault; joint and several liability remains for economic damages. Defendant A is fully liable for the \$1 million economic damages but only for 70% of the \$500,000 in non-economic damages, equaling \$350,000. Total exposure: \$1.35 million.

32. D — Probate Code section 15403 permits all beneficiaries to petition the court to modify or terminate an irrevocable trust if continuance is not necessary to carry out a material purpose of the settlor. The court has discretion to grant the petition under specified standards. Unanimous beneficiary consent without court approval is insufficient under California's *Clafin*-derived rule.

33. B — Statement I is correct: "to A, but if X then to B" creates a fee simple subject to executory limitation in A with a shifting executory interest in B (because the future interest goes to a third party, not back to the grantor). Statement II accurately states Probate Code section 21205, which codifies USRAP with both the traditional life-in-being-plus-21 rule and the 90-year wait-and-see alternative. Both statements correctly describe California law.

34. A — CRPC 1.9(a) prohibits a lawyer who formerly represented a client from representing another person in the same or a substantially related matter where the new client's interests are materially adverse, absent the former client's informed written consent. The new infringement action involves the same patents and technology — squarely "substantially related." Without Company X's informed written consent, the representation is prohibited.

35. D — Frustration of purpose excuses performance where the principal purpose of the contract is substantially frustrated by an unforeseeable supervening event not the promisor's fault, eliminating the value of the bargained-for performance. The pandemic gathering ban destroys the wedding-reception purpose entirely. Both parties understood the ballroom was being leased for that specific event.

36. C — *Wong Sun v. United States* excludes evidence derived from prior unconstitutional conduct unless one of three exceptions applies: independent source, inevitable discovery, or attenuation of the taint. Both the directly seized laptop and the warrant-derived narcotics flow from the unlawful apartment search. Suppression of both is likely absent prosecution proof of an applicable exception.

37. A — Under Probate Code sections 6401(a) and 6401(c), the surviving spouse takes all community property and, where the decedent leaves more than one child, the spouse takes one-third of the separate property with the remaining two-thirds shared equally by the children. The spouse receives \$600,000 community plus \$100,000 separate (one-third of \$300,000); the three children share \$200,000 equally.

38. B — Family Code section 4320 enumerates approximately fourteen factors the court must consider in setting spousal support, including marketable skills, impaired earning capacity from domestic duties, contributions to the supporting party's career, ability to pay, marital standard of living, assets, obligations, duration of marriage, age, health, and the goal of self-support within a reasonable period. The analysis is multi-factor, not formulaic.

39. D — Federal Rule of Evidence 701 admits lay opinion if rationally based on the witness's perception, helpful to the trier of fact, and not based on specialized knowledge within FRE 702. Observable changes in mood, behavior, eating, and sleep are classic permissible lay opinion subjects, especially for a longtime neighbor with sustained observational opportunity. Expert psychiatric credentials are not required for these observations.

40. C — "To A and her heirs, so long as the premises are used for educational purposes" is the classic fee simple determinable, signaled by durational language. The grantor retains a possibility of reverter, which passes to her heirs. Title automatically reverts on breach of the limiting condition, subject to the five-year statute of limitations under CCP section 320 for entry on the breached estate.

41. A — Statement I correctly states *Employment Division v. Smith*: a neutral, generally applicable law that incidentally burdens religion is generally subject only to rational basis review. Statement II is incorrect — RFRA was held unconstitutional as applied to the states in *City of Boerne v. Flores* (1997) and now applies only to federal laws. The federal Free Exercise framework for state laws still rests on *Smith*.

42. C — Under California's RUPA (Corporations Code section 16602), a partner in an at-will partnership has the power to dissociate at any time by express will. Dissociation triggers a buyout of the dissociated partner's interest under section 16701 at the value calculated under that statute, absent contrary agreement. Dissociation does not necessarily cause dissolution — the partnership typically continues.

43. D — California recognizes intended third-party beneficiary enforcement under Civil Code section 1559 when the contract reflects the parties' intent to benefit a specific person or class. The contract here expressly names subcontractors as protected beneficiaries of the insurance provision, making the injured

subcontractor an intended beneficiary entitled to enforce the provision directly. Privity in the strict sense is not required.

44. B — Senate Bill 1437 amended Penal Code section 188 to abolish murder liability based purely on the natural-and-probable-consequences doctrine. A non-killer accomplice can be convicted of murder only if she was the actual killer, aided and abetted the killing with intent to kill, or was a major participant acting with reckless indifference to human life. Defendant remains liable for the underlying robbery but not automatically for the homicide.

45. A — California's general venue statute, CCP section 395(a), establishes the county of the defendant's residence as proper venue for tort actions, and additionally permits venue in the county where the injury was sustained. San Diego (defendant's residence) and San Francisco (place of injury) are proper venues for this action; Los Angeles has no statutory basis for venue here.

46. C — California's psychotherapist-patient privilege under Evidence Code section 1014 is robust but admits important exceptions, including the Tarasoff duty when the patient threatens identifiable third parties, communications when the patient places her mental condition in issue, and certain dangerous-patient situations. The privilege is qualified rather than absolute, and the exceptions reflect competing public safety and adjudicative interests.

47. D — California's USDA imposes a 120-hour survival rule for intestate succession (Probate Code section 6403) and most testamentary instruments (section 21109); when survival by clear and convincing evidence cannot be shown, each decedent is treated as having predeceased the other under section 220. No sex-, age-, or accident-specific presumption exists, making D the false statement and the correct EXCEPT answer.

48. B — At common law, a landowner enjoys an absolute right to lateral support of land in its natural state from adjoining land. If the neighboring land would have subsided from the excavation even without the weight of the structure, strict liability applies; if the artificial structure caused or contributed to the subsidence, the excavator's liability requires proof of negligence. The bifurcated rule is the California common-law standard.

49. A — *Lujan v. Defenders of Wildlife* sets the constitutional standing test: (1) injury-in-fact that is concrete, particularized, and actual or imminent; (2) causation traceable to the defendant's challenged conduct; and (3) redressability through a favorable court decision. Diffuse climate-change harms commonly founder on the traceability and redressability prongs because no single agency's conduct produces individualized, redressable injury.

50. B — The four-factor preliminary injunction test (*Winter v. NRDC* for federal; California closely tracks) requires a likelihood of success on the merits, a likelihood of irreparable harm absent the injunction, that the balance of equities favors the moving party, and that the public interest supports the injunction. "Likelihood of success on the merits" is the missing first element completing the cloze.