

# PRACTICE EXAM 20: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)

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1. What is the appropriate approach when an essay question's call uses language such as "advise the client"?
  - A. Provide objective legal analysis culminating in a practical recommendation
  - B. Refuse to advise without further consultation with the client beforehand
  - C. Recite the rule of law without applying it to the specific facts given
  - D. Conclude with the client's preferred outcome without any legal analysis
  
2. A California essay involving the doctrine of integration of documents into a will requires analysis of:
  - A. Whether the testator has retained admitted California probate counsel for the will execution at issue at trial
  - B. Whether the testator has filed all required California state tax returns timely each year of life in California
  - C. Whether the testator has been previously involved in any prior probate matters of record at trial in court
  - D. Whether the documents were present and intended to be part of the will at the time of execution
  
3. When a California essay involves a question of the doctrine of pendent party jurisdiction, the examinee should analyze:
  - A. Whether the parties have paid all federal court filing fees in the underlying federal court action timely

- B. Whether the joinder of an additional party satisfies the requirements of supplemental jurisdiction
- C. Whether the parties have retained admitted federal counsel for the underlying federal court action at trial
- D. Whether the parties have been previously involved in any prior similar jurisdictional matters of record

4. A California essay involving the doctrine of fixtures requires analysis of:

- A. The objective intent of the parties as shown by attachment, adaptation, and the relationship of the parties
- B. Whether the property has been recorded with the county recorder's office timely at the conveyance in full
- C. Whether the property has been recently surveyed by a licensed California land surveyor at issue at trial
- D. Whether the property has been previously subject to similar fixture disputes in any prior matters filed

5. When a California essay involves a question of the doctrine of conversion, the examinee should analyze:

- A. Whether the plaintiff has filed parallel actions in any other state forums concurrently filed at trial in court
- B. Whether the plaintiff has retained licensed California tort counsel for the action at trial currently in court
- C. The defendant's substantial interference with the plaintiff's right of control over personal property
- D. Whether the plaintiff has paid any prior conversion judgments in similar tort actions filed at trial in court

6. A California essay involving the doctrine of procedural due process before termination of welfare benefits requires:

- A. Conclusion that all government benefits may be terminated without a prior hearing in every case
- B. Application of only the California Constitution to the federal due process question at issue at trial
- C. Conclusion that no procedural protections are required before termination of welfare benefits ever
- D. Application of *Goldberg v. Kelly* requiring a hearing before termination of welfare benefits

7. When a California essay involves a question of the duty of a trustee to inform and account, the examinee should analyze:

- A. Whether the trustee has filed all required California state tax returns timely each year of the trust at issue
- B. Whether the trustee provided beneficiaries with material information and regular accountings as required by statute
- C. Whether the trustee has retained admitted California trust counsel for the trust matter at issue currently in court
- D. Whether the trustee has been previously involved in any prior similar inform-and-account matters of record at trial

8. A California essay involving the doctrine of restitutionary recovery for a breaching party requires analysis of:

- A. Whether the breaching party conferred a benefit on the nonbreaching party in excess of damages caused by breach
- B. Whether the breaching party has retained licensed California contract counsel for the action at trial currently
- C. Whether the breaching party has paid all prior judgments in similar restitution matters filed at trial in court
- D. Whether the breaching party has been previously involved in any prior similar restitution matters of record at trial

9. When a California essay involves a question of the doctrine of speedy trial under the Sixth Amendment, the examinee should analyze:

- A. Whether the defendant has prior convictions for any felonies on record in California state currently at trial in court
- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial currently in court at trial
- C. Whether the defendant has been previously involved in any prior speedy trial matters of record at trial in court

D. The length and reason for delay, defendant's assertion of the right, and prejudice under *Barker v. Wingo*

10. A California essay involving the doctrine of the medical diagnosis or treatment hearsay exception requires analysis of:

A. Whether the declarant has been previously qualified as an expert in any prior cases before any court of record

B. Whether the declarant has retained admitted counsel for the proceeding at issue in the matter at trial in court

C. Whether the statement was made for and pertinent to medical diagnosis or treatment of the declarant

D. Whether the declarant has filed all required California state tax returns timely each year of practice in California

11. When a California essay involves a question of the doctrine of constructive eviction, the examinee should analyze:

A. Whether the tenant has paid all rent owed under the lease through the date of vacating the premises in full

B. Whether the landlord's conduct substantially deprived the tenant of use and enjoyment, and the tenant vacated

C. Whether the tenant has retained counsel licensed in landlord-tenant matters within California currently practicing

D. Whether the tenant has been previously involved in any prior similar constructive eviction matters of record

12. A California essay involving the doctrine of dependent relative revocation requires analysis of:

A. Whether the testator has filed all required California state tax returns timely each year of life in California currently

B. Whether the testator has retained admitted California probate counsel for the will execution at issue at trial in court

C. Whether the revocation of the prior will was based on a mistaken belief about a new will or testamentary plan

D. Whether the testator has been previously involved in any prior similar revocation matters of record at trial in court

13. When a California essay involves a question of the doctrine of efficient breach, the examinee should analyze:

A. Whether the breaching party has paid any prior contract damages in similar prior actions filed at trial in court

B. Whether the breaching party has retained licensed California contract counsel for the action at trial currently

C. Whether the breaching party has been previously involved in any prior similar efficient breach matters of record

D. Whether the breaching party may breach and pay damages without facing additional punitive remedies

14. A California essay involving the doctrine of executive privilege requires analysis of:

A. Whether the privilege applies and whether it yields to a sufficiently important countervailing interest

B. Whether the plaintiff has paid all federal court filing fees in the underlying federal court action in full at start

C. Whether the plaintiff has retained admitted federal counsel for the executive privilege case at trial in court

D. Whether the plaintiff has been previously involved in any prior similar executive privilege matters at trial

15. When a California essay involves a question of the doctrine of compulsory joinder of parties, the examinee should analyze:

A. Whether the joined parties have paid all required filing fees in the underlying action timely filed at trial in court

- B. Whether the absent party is necessary or indispensable and whether the action may proceed without them
- C. Whether the joined parties have retained licensed California counsel for the action at trial currently in court
- D. Whether the joined parties have been previously involved in any prior joinder matters of record at trial in court

16. A California essay involving the doctrine of the rescue doctrine in negligence requires analysis of:

- A. Whether the rescuer has paid any prior negligence judgments in similar rescue matters filed at trial in court
- B. Whether the rescuer has retained licensed California tort counsel for the action at trial currently in court
- C. Whether the defendant's negligence created the danger that prompted the rescuer's intervention and injury
- D. Whether the rescuer has been previously involved in any prior similar rescue matters of record at trial in court

17. When a California essay involves a question of the doctrine of burglary, the examinee should analyze:

- A. Whether the defendant has prior convictions for any property crimes on record in California state currently at trial
- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial currently in court at trial
- C. Whether the defendant has been previously involved in any prior burglary matters of record at trial in court at trial
- D. Whether the defendant entered a structure with the intent to commit a felony or theft within the structure

18. A California essay involving a lawyer's duty to report misconduct of another lawyer requires:

- A. Conclusion that all lawyer misconduct must be reported to the State Bar without any analysis required
- B. Analysis of whether the misconduct raises a substantial question as to the other lawyer's honesty or fitness

C. Application of only the federal rules on reporting misconduct without any California-specific provisions applied

D. Conclusion that no duty to report misconduct exists in California state under any circumstance

19. When a California essay involves a question of the doctrine of subjacent and lateral support, the examinee should analyze:

A. The landowner's duty to provide lateral support to neighboring land in its natural condition

B. Whether the property has been recorded with the county recorder's office timely at the conveyance in full

C. Whether the property has been recently surveyed by a licensed California land surveyor at issue at trial in court

D. Whether the property has been previously subject to similar support matters in any prior conveyances filed

20. A California essay involving the business records exception to hearsay requires analysis of:

A. Whether the declarant has been previously qualified as an expert in any prior cases before any court of record

B. Whether the declarant has retained admitted counsel for the proceeding at issue in the matter at trial in court

C. Whether the record was made at or near the time by someone with knowledge in the regular course of business

D. Whether the declarant has filed all required California state tax returns timely each year of operation in California

21. When a California essay involves a question of jail searches incident to arrest, the examinee should analyze:

A. Whether the defendant has prior convictions for any felonies on record in California state currently at trial in court

- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial currently in court at trial
- C. Whether the defendant has been previously involved in any prior jail search matters of record at trial in court at trial
- D. Whether the search occurred during the booking process and was reasonable under inventory or arrest exceptions

22. A California essay involving removal jurisdiction based on diversity requires analysis of:

- A. Whether the parties have paid all required filing fees in the underlying state court action timely filed at trial
- B. Whether the parties have retained admitted federal counsel for the removal proceeding at trial in court at trial
- C. Whether the parties have been previously involved in any prior similar removal matters of record at trial in court
- D. Complete diversity of citizenship, the amount in controversy exceeding \$75,000, and the forum-defendant rule

23. When a California essay involves a question of equal protection and public school funding, the examinee should analyze:

- A. Whether the plaintiff has paid all federal court filing fees in the underlying federal court action in full at the start
- B. Whether the classification implicates a fundamental right or suspect class triggering heightened scrutiny
- C. Whether the plaintiff has retained admitted federal counsel for the equal protection claim at trial in court at the time
- D. Whether the plaintiff has filed parallel state actions before bringing the federal equal protection claim of record

24. A California essay involving the trustee's duty to defend the trust requires analysis of:

- A. Whether the trustee has filed all required California state tax returns timely each year of the trust at issue at trial
- B. Whether the trustee has retained admitted California trust counsel for the trust matter at issue currently in court
- C. Whether the trustee has been previously involved in any prior similar trust defense matters of record at trial in court
- D. Whether the trustee acted reasonably in defending the trust against claims and used trust assets appropriately

25. When a California essay involves a question of the doctrine of unilateral contracts, the examinee should analyze:

- A. Whether the parties signed the contract in front of a California licensed notary public at signing in California
- B. Whether the contract was reviewed by an attorney before being signed by both parties timely at issue at trial
- C. Whether the offeror invited acceptance only by performance and whether part performance has been rendered
- D. Whether the parties had transacted business together in any prior similar contracts before this matter at issue

26. A California essay involving the doctrine of negligence per se requires analysis of:

- A. Whether the defendant violated a statute designed to protect the class of persons including the plaintiff
- B. Whether the defendant has paid any prior tort judgments in similar negligence per se matters filed at trial
- C. Whether the defendant has retained licensed California tort counsel for the action at trial currently in court
- D. Whether the defendant has been previously involved in any prior similar negligence per se matters of record

27. When a California essay involves a question of the doctrine of profit a prendre, the examinee should analyze:

- A. Whether the property has been recorded with the county recorder's office timely at the conveyance in full at start
- B. Whether the right to enter another's land to remove substances (timber, minerals, game) was properly granted
- C. Whether the property has been recently surveyed by a licensed California land surveyor at issue at trial in court
- D. Whether the property has been previously subject to similar profit a prendre matters in prior conveyances filed

28. A California essay involving the doctrine of survivorship requirements requires analysis of:

- A. Whether the testator has filed all required California state tax returns timely each year of life in California currently
- B. Whether the testator has retained admitted California probate counsel for the will execution at issue at trial in court
- C. Whether the testator has been previously involved in any prior survivorship matters of record at trial in court at trial
- D. Whether the beneficiary survived the testator by 120 hours under the California Uniform Simultaneous Death Act

29. When a California essay involves a question of substantive due process and fundamental rights, the examinee should analyze:

- A. Whether the law infringes a fundamental right and is narrowly tailored to a compelling government interest
- B. Whether the plaintiff has paid all federal court filing fees in the underlying federal court action in full at the start
- C. Whether the plaintiff has retained admitted federal counsel for the fundamental rights claim at trial in court at trial
- D. Whether the plaintiff has been previously involved in any prior similar fundamental rights matters at trial in court

30. A California essay involving the doctrine of stare decisis in California state courts requires analysis of:

- A. Whether the parties have paid all required filing fees in the underlying action timely filed at trial in court at trial
- B. Whether the parties have retained licensed California counsel admitted for the matter at issue at trial in court at trial
- C. Whether the prior decision is binding precedent on the lower court and the scope of the holding to be applied
- D. Whether the parties have been previously involved in any prior stare decisis matters of record at trial in court at trial

31. When a California essay involves a question of declarations against interest as a hearsay exception, the examinee should analyze:

- A. Whether the declarant has been previously qualified as an expert in any prior cases before any court of record at trial
- B. Whether the statement was so contrary to the declarant's interest that a reasonable person would not make it unless true
- C. Whether the declarant has retained admitted counsel for the proceeding at issue in the matter at trial in court at trial
- D. Whether the declarant has filed all required California state tax returns timely each year of practice in California state

32. A California essay involving the implied easement by prior use requires analysis of:

- A. Whether the property has been recorded with the county recorder's office timely at the conveyance in full at start
- B. Whether the property has been recently surveyed by a licensed California land surveyor at issue at trial in court at trial
- C. Whether the prior use was apparent, continuous, and reasonably necessary at the time of severance of common ownership

D. Whether the property has been previously subject to similar easements in any prior conveyances filed at trial in court

33. When a California essay involves a question of the doctrine of accomplice withdrawal, the examinee should analyze:

A. Whether the accomplice took affirmative steps to neutralize their assistance before the principal committed the offense

B. Whether the accomplice has prior convictions for any felonies on record in California state currently at trial in court

C. Whether the accomplice has retained admitted criminal defense counsel for the action at trial currently in court at trial

D. Whether the accomplice has been previously involved in any prior similar withdrawal matters of record at trial in court

34. A California essay involving the doctrine of the revival of a previously revoked will requires analysis of:

A. Whether the testator's intent to revive the prior will is shown by republication, reexecution, or codicil

B. Whether the testator has filed all required California state tax returns timely each year of life in California currently

C. Whether the testator has retained admitted California probate counsel for the will execution at issue at trial in court

D. Whether the testator has been previously involved in any prior similar will revival matters of record at trial in court

35. When a California essay involves a question of the doctrine of conditions concurrent in performance, the examinee should analyze:

A. Whether the parties signed the contract in front of a California licensed notary public at signing in California

B. Whether each party's performance is due simultaneously and whether tender of performance has been made

C. Whether the contract was reviewed by an attorney before being signed by both parties timely at issue at trial in court

D. Whether the parties had transacted business together in any prior similar contracts before this matter at issue at trial

36. A California essay involving the doctrine of qualified immunity for government officials requires analysis of:

A. Whether the plaintiff has paid all federal court filing fees in the underlying federal court action in full at the start

B. Whether the plaintiff has retained admitted federal counsel for the qualified immunity case at trial in court at trial

C. Whether the right violated was clearly established at the time of the conduct so a reasonable official would know

D. Whether the plaintiff has been previously involved in any prior similar qualified immunity matters of record at trial

37. When a California essay involves a question of the rule against accumulations in a trust, the examinee should analyze:

A. Whether the accumulation of income is within the trust's purposes and complies with applicable California statutes

B. Whether the trustee has filed all required California state tax returns timely each year of the trust at issue at trial

C. Whether the trustee has retained admitted California trust counsel for the trust matter at issue currently in court

D. Whether the trustee has been previously involved in any prior similar accumulation matters of record at trial in court

38. A California essay involving the doctrine of the right to confront witnesses requires analysis of:

A. Whether the defendant has prior convictions for any felonies on record in California state currently at trial in court

B. Whether the defendant has retained admitted criminal defense counsel for the action at trial currently in court at trial

C. Whether the out-of-court testimonial statement is offered against the defendant without an opportunity to cross-examine

D. Whether the defendant has been previously involved in any prior confrontation matters of record at trial in court at trial

39. When a California essay involves a question of equitable tolling of the statute of limitations, the examinee should analyze:

A. Whether the plaintiff has paid all required filing fees in the underlying action timely filed at trial in court at trial

B. Whether the plaintiff pursued an alternate remedy in good faith and the defendant suffered no prejudice from the delay

C. Whether the plaintiff has retained licensed California counsel for the action at trial currently in court at trial in court

D. Whether the plaintiff has been previously involved in any prior tolling matters of record at trial in court at trial in court

40. A California essay involving the doctrine of intentional interference with prospective economic relations requires analysis of:

A. Whether the interfering party has paid any prior tort judgments in similar prior actions filed at trial in court at trial

B. Whether the interfering party has retained licensed California tort counsel for the action at trial currently in court

C. Whether the interfering party has been previously involved in any prior similar interference matters of record at trial

D. An economic relationship with probable future economic benefit, defendant's knowledge, intentional wrongful act, and damages

41. When a California essay involves a question of the chain of title in recording, the examinee should analyze:

- A. Whether the property has been recorded with the county recorder's office timely at the conveyance in full at start
- B. Whether the property has been recently surveyed by a licensed California land surveyor at issue at trial in court at trial
- C. Whether the recorded instruments form a continuous and complete chain from a source of title to the present owner
- D. Whether the property has been previously subject to similar chain of title matters in any prior conveyances filed at trial

42. A California essay involving the doctrine of probable intent in will construction requires analysis of:

- A. Whether the testator has filed all required California state tax returns timely each year of life in California currently
- B. Whether the testator has retained admitted California probate counsel for the will execution at issue at trial in court
- C. Whether the testator has been previously involved in any prior similar will construction matters of record at trial in court
- D. The testator's probable intent at the time of execution as shown by the will and admissible extrinsic evidence

43. When a California essay involves a question of the perfect tender rule under the UCC, the examinee should analyze:

- A. Whether the goods and tender conformed in every respect and whether the buyer rightfully rejected nonconforming goods
- B. Whether the parties signed the contract in front of a California licensed notary public at signing in California at the time
- C. Whether the parties had transacted business together in any prior similar contracts before this matter at issue at trial in court
- D. Whether the parties had retained legal counsel during the contractual negotiations originally signed timely on the deal

44. A California essay involving the doctrine of the lesser included offense in criminal law requires analysis of:

- A. Whether the defendant has prior convictions for any felonies on record in California state currently at trial in court at trial
- B. Whether the defendant has retained admitted criminal defense counsel for the action at trial currently in court at trial in court
- C. Whether the lesser offense includes all elements of the greater offense and the jury could find the defendant guilty of either
- D. Whether the defendant has been previously involved in any prior similar lesser included offense matters of record at trial

45. When a California essay involves a question of suspect classifications under equal protection, the examinee should analyze:

- A. Whether the plaintiff has paid all federal court filing fees in the underlying federal court action in full at the start
- B. Whether the plaintiff has retained admitted federal counsel for the equal protection claim at trial in court at the time
- C. Whether the plaintiff has been previously involved in any prior similar suspect classification matters of record at trial
- D. Whether the classification involves race, national origin, or alienage triggering strict scrutiny review

46. A California essay involving the present sense impression hearsay exception requires analysis of:

- A. Whether the declarant has been previously qualified as an expert in any prior cases before any court of record at trial
- B. Whether the statement describing an event was made while or immediately after the declarant perceived the event
- C. Whether the declarant has retained admitted counsel for the proceeding at issue in the matter at trial in court at trial
- D. Whether the declarant has filed all required California state tax returns timely each year of practice in California state

47. When a California essay involves a question of judgment notwithstanding the verdict, the examinee should analyze:

- A. Whether the verdict is not supported by substantial evidence and a reasonable jury could not have reached the same result
- B. Whether the parties have paid all required filing fees in the underlying action timely filed at trial in court at trial in court
- C. Whether the parties have retained licensed California counsel for the action at trial currently in court at trial in court
- D. Whether the parties have been previously involved in any prior JNOV matters of record at trial in court at trial in court

48. A California essay involving equitable conversion at the death of a buyer requires analysis of:

- A. Whether the buyer has paid all property taxes on the disputed property timely each year of ownership in full at trial
- B. Whether the buyer has retained counsel licensed in real estate matters in California currently practicing actively at trial
- C. Whether the buyer has been previously involved in any prior similar equitable conversion matters of record at trial in court
- D. Whether the buyer's equitable interest in the property passes as realty rather than personalty at death of the buyer

49. When a California essay involves a question of the slayer rule and joint tenancy with the decedent, the examinee should analyze:

- A. Whether the killer has filed all required California state tax returns timely each year of life in California currently in California
- B. Whether the killer has retained admitted California probate counsel for the action at trial currently in court at trial in court
- C. Whether the killer feloniously and intentionally caused the decedent's death and is barred from taking by survivorship

D. Whether the killer has been previously involved in any prior similar slayer rule matters of record at trial in court at trial

50. A California essay involving the doctrine of accord and satisfaction requires analysis of:

A. Whether the parties signed the contract in front of a California licensed notary public at signing in California at the time

B. Whether a disputed claim was discharged by an accord agreement and satisfaction of the new performance

C. Whether the parties had transacted business together in any prior similar contracts before this matter at issue at trial in court

D. Whether the parties had retained legal counsel during the contractual negotiations originally signed timely on the deal at issue

## **PRACTICE EXAM 20: CALIFORNIA ESSAY EXAM SIMULATION – ANSWER KEY**

**1. A** — An "advise the client" call requires objective legal analysis culminating in a practical recommendation. The examinee must analyze the controlling law as applied to the facts and then provide strategic guidance the client can act on, combining IRAC analysis with practical counseling.

**2. D** — Integration of documents into a will requires the documents to have been present at execution and intended by the testator to be part of the will. California Probate Code §6131 codifies the integration doctrine, requiring physical presence and the testator's intent at the moment of execution.

**3. B** — Pendent party jurisdiction asks whether the joinder of an additional party satisfies the requirements of supplemental jurisdiction. Under 28 U.S.C. §1367, supplemental jurisdiction extends to claims forming part of the same case or controversy, including additional parties when statutory requirements are met.

**4. A** — Fixture analysis examines the objective intent of the parties as shown by attachment, adaptation, and the relationship of the parties. California courts apply the MARIA factors (Manner of annexation, Adaptation, Relationship, Intent, Agreement) to determine whether personal property has become a fixture.

**5. C** — Conversion requires the defendant's substantial interference with the plaintiff's right of control over personal property. The interference must be so substantial that justice requires payment of the property's full value, distinguishing conversion from the lesser tort of trespass to chattels.

**6. D** — *Goldberg v. Kelly* requires a hearing before termination of welfare benefits. The Supreme Court held that procedural due process requires an evidentiary hearing before termination of welfare benefits because of the recipient's brutal need and the seriousness of the deprivation.

**7. B** — The trustee's duty to inform and account requires providing beneficiaries with material information and regular accountings as required by statute. California Probate Code §§16060–16064 codify these duties, including keeping beneficiaries reasonably informed about trust administration and material developments.

**8. A** — Restitution for a breaching party permits recovery when the breaching party conferred a benefit on the nonbreaching party in excess of damages caused by the breach. The remedy prevents unjust enrichment of the nonbreaching party, with recovery limited to the net benefit conferred above damages.

**9. D** — Sixth Amendment speedy trial analysis applies the *Barker v. Wingo* four-factor test: length of delay, reason for delay, defendant's assertion of the right, and prejudice. All four factors are weighed together to determine whether the constitutional right was violated.

**10. C** — The medical diagnosis or treatment hearsay exception applies to statements made for and pertinent to medical diagnosis or treatment of the declarant. FRE 803(4) and California Evidence Code §1253 permit such statements based on the declarant's self-interested motivation to tell the truth to treating professionals.

**11. B** — Constructive eviction requires the landlord's conduct to have substantially deprived the tenant of use and enjoyment of the premises, and the tenant must have vacated. Both elements are required; the tenant must vacate within a reasonable time after the deprivation to assert the doctrine.

**12. C** — Dependent relative revocation applies when the revocation of the prior will was based on a mistaken belief about a new will or testamentary plan. The doctrine preserves the original will when the testator's revocation was conditioned on a mistaken belief, typically about the validity or contents of a new will.

**13. D** — Efficient breach allows a party to breach and pay damages without facing additional punitive remedies. The doctrine is justified by economic theory: when breach plus damages leaves both parties better off than performance, the breach is efficient and punitive remedies would be inappropriate.

**14. A** — Executive privilege analysis asks whether the privilege applies and whether it yields to a sufficiently important countervailing interest. *United States v. Nixon* recognized executive privilege as having constitutional grounding but held it yields to specific need for evidence in criminal proceedings.

**15. B** — Compulsory joinder analysis asks whether the absent party is necessary or indispensable and whether the action may proceed without them. FRCP 19 and California CCP §389 provide the framework: necessary parties should be joined if feasible; indispensable parties without whom equity requires dismissal.

- 16. C** — The rescue doctrine requires the defendant's negligence to have created the danger that prompted the rescuer's intervention and injury. The doctrine treats the rescue as foreseeable, allowing the rescuer to recover from the original tortfeasor whose negligence imperiled another and prompted the rescue.
- 17. D** — Burglary requires entry into a structure with the intent to commit a felony or theft within the structure. California Penal Code §459 defines burglary broadly, including entry without breaking and entry into various structures (not limited to dwellings at night, as at common law).
- 18. B** — The duty to report another lawyer's misconduct turns on whether the misconduct raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness. ABA Model Rule 8.3 requires reporting in such circumstances; California Rule 8.3 was adopted with provisions consistent with this standard.
- 19. A** — The landowner has a duty to provide lateral support to neighboring land in its natural condition. Strict liability attaches for excavation that removes support for land in its natural state; for improved land, negligence is required. California Civil Code §832 codifies the lateral support obligation.
- 20. C** — The business records exception requires the record to have been made at or near the time by someone with knowledge in the regular course of business. FRE 803(6) and California Evidence Code §1271 impose these requirements plus regular practice and trustworthy circumstances.
- 21. D** — Jail searches at booking are reasonable under inventory or arrest exceptions to the warrant requirement. *Illinois v. Lafayette* and *Florence v. Board of Chosen Freeholders* permit inventory searches at booking; search incident to arrest also authorizes the search at intake processing.
- 22. D** — Diversity removal requires complete diversity of citizenship, amount in controversy exceeding \$75,000, and compliance with the forum-defendant rule. 28 U.S.C. §1441(b)(2) prohibits removal based solely on diversity when any properly joined defendant is a citizen of the state where the action was brought.
- 23. B** — Equal protection challenges to school funding require analysis of whether the classification implicates a fundamental right or suspect class triggering heightened scrutiny. *San Antonio Independent School District v. Rodriguez* held that wealth is not a suspect class and education is not a fundamental right under federal equal protection.
- 24. D** — The trustee's duty to defend the trust requires reasonable defense against claims and appropriate use of trust assets. California Probate Code §16011 imposes the duty; trust assets may be used for reasonable defense expenses when the trustee acts in good faith and within the scope of trustee responsibilities.
- 25. C** — Unilateral contract analysis asks whether the offeror invited acceptance only by performance and whether part performance has been rendered. Modern doctrine prevents revocation once substantial performance has begun, protecting the offeree's reliance investment under Restatement (Second) of Contracts §45.

- 26. A** — Negligence per se requires the defendant's violation of a statute designed to protect the class of persons including the plaintiff. The doctrine establishes duty and breach automatically when the statute was designed to protect the plaintiff's class against the type of harm suffered.
- 27. B** — Profit a prendre is the right to enter another's land to remove substances such as timber, minerals, or game. The right must be properly granted (typically in writing satisfying the Statute of Frauds) and may exist as either appurtenant to other land or in gross.
- 28. D** — The California Uniform Simultaneous Death Act requires the beneficiary to survive the testator by 120 hours. California Probate Code §220 imposes the 120-hour survival requirement absent contrary will provision, with §6403 providing related rules for spousal succession.
- 29. A** — Substantive due process for fundamental rights requires the law to be narrowly tailored to a compelling government interest. Strict scrutiny applies when a fundamental right (privacy, marriage, voting, parental rights) is infringed by the challenged law, with most such laws failing the demanding test.
- 30. C** — Stare decisis analysis asks whether the prior decision is binding precedent on the lower court and the scope of the holding to be applied. California intermediate appellate decisions bind all California superior courts; California Supreme Court decisions bind all California courts under *Auto Equity Sales v. Superior Court*.
- 31. B** — Declarations against interest require the statement to be so contrary to the declarant's interest that a reasonable person would not have made it unless true. FRE 804(b)(3) and California Evidence Code §1230 require declarant unavailability and the statement to be against penal, pecuniary, or proprietary interest.
- 32. C** — Implied easement by prior use requires the prior use to have been apparent, continuous, and reasonably necessary at the time of severance of common ownership. All three elements plus prior unity of title now severed must be established for the easement to be implied.
- 33. A** — Accomplice withdrawal requires affirmative steps to neutralize the accomplice's assistance before the principal commits the offense. Mere mental change of heart is insufficient; the accomplice must take effective action to undo their contribution to the planned crime to escape accomplice liability.
- 34. A** — Will revival requires the testator's intent to revive shown by republication, reexecution, or codicil. California Probate Code §6123 permits revival of a previously revoked will only when these methods evidence the testator's intent to give effect to the prior will.
- 35. B** — Conditions concurrent require each party's performance to be due simultaneously and tender of performance to have been made. Under common law and UCC §2-507, simultaneous exchange is the default for sale contracts; either party must tender to put the other in breach.
- 36. C** — Qualified immunity requires that the right violated was clearly established at the time of the conduct such that a reasonable official would know the conduct was unlawful. *Saucier v. Katz* and *Pearson v. Callahan* established the framework, with the clearly-established analysis as the immunity gateway.

**37. A** — The rule against trust accumulations requires the accumulation of income to be within the trust's purposes and to comply with applicable California statutes. California Probate Code §16007 imposes the duty to administer according to trust terms; accumulations must serve identified trust purposes.

**38. C** — Confrontation Clause analysis asks whether the out-of-court testimonial statement is offered against the defendant without an opportunity to cross-examine. Crawford v. Washington redefined the analysis around testimonial statements and the cross-examination opportunity, replacing the prior reliability-based framework.

**39. B** — Equitable tolling requires the plaintiff to have pursued an alternate remedy in good faith and the defendant to have suffered no prejudice from the delay. California recognizes equitable tolling under three conditions: timely notice to defendant, lack of prejudice to defendant, and reasonable good-faith conduct by plaintiff.

**40. D** — Intentional interference with prospective economic relations requires an economic relationship with probable future economic benefit, defendant's knowledge, an intentional wrongful act, and damages. Della Penna v. Toyota Motor Sales added the "wrongful act" requirement beyond mere interference in California.

**41. C** — Chain of title analysis asks whether the recorded instruments form a continuous and complete chain from a source of title to the present owner. Without a complete chain, recordation may not provide constructive notice to subsequent purchasers, who are charged only with what a record search would reveal.

**42. D** — Probable intent in will construction examines the testator's probable intent at the time of execution as shown by the will and admissible extrinsic evidence. California Probate Code §21102 directs courts to give effect to the testator's intent, with extrinsic evidence admissible to resolve ambiguity in the will.

**43. A** — The perfect tender rule under UCC §2-601 permits the buyer to reject goods if the tender fails to conform in every respect. The buyer may reject the whole, accept the whole, or accept part and reject part; the perfect-conformity standard is stricter than common-law substantial performance.

**44. C** — Lesser included offense analysis requires the lesser offense to include all elements of the greater offense, with the jury able to find the defendant guilty of either. The doctrine permits jury instructions on the lesser offense when the evidence would support conviction on it but not on the greater.

**45. D** — Suspect classifications under equal protection — race, national origin, and alienage — trigger strict scrutiny review. The classification must be narrowly tailored to a compelling government interest, a demanding standard that virtually all racial classifications fail to survive.

**46. B** — Present sense impression requires the statement describing an event to have been made while or immediately after the declarant perceived the event. The contemporaneity reduces fabrication risk; FRE 803(1) and California Evidence Code §1241 codify the exception with the same contemporaneity requirement.

**47. A** — Judgment notwithstanding the verdict requires the verdict to be unsupported by substantial evidence such that a reasonable jury could not have reached the same result. California CCP §629 and FRCP 50 apply this standard; the motion functions as a directed verdict made after the verdict is returned.

**48. D** — At the death of a buyer under a real estate contract, the buyer's equitable interest in the property passes as realty rather than personalty. Under equitable conversion, the buyer holds equitable title from the moment of contract, and that title passes to heirs as realty rather than to personal representatives as personalty.

**49. C** — The slayer rule applied to joint tenancy requires the killer to have feloniously and intentionally caused the decedent's death, barring the killer from taking by survivorship. California Probate Code §251 severs the joint tenancy, converting the killer's interest to a tenancy in common share without survivorship rights to the decedent's portion.

**50. B** — Accord and satisfaction discharges a disputed claim through an accord agreement and satisfaction of the new performance. The accord is the new agreement; satisfaction is performance of the new agreement; together they discharge the original obligation. Both elements must be established.