

PRACTICE EXAM 4 — MBE SIMULATION (200 QUESTIONS)

Section 1 — Questions 1 through 100 (3 Hours)

1. A plaintiff sues a defendant in federal court for negligence under diversity jurisdiction, seeking \$120,000 in damages from a motor vehicle accident. The defendant fails to file an answer within 21 days after service. The clerk enters default. Three days later, before any default judgment is entered, the defendant moves to set aside the default, claiming his attorney misunderstood the deadline. Under FRCP 55(c), what standard applies?

- A. The court may set aside the default for "good cause," considering the reason for the default, prejudice to the plaintiff, and the defendant's meritorious defense
- B. The court must require the defendant to demonstrate excusable neglect by clear and convincing evidence
- C. The court must require the defendant to show the plaintiff committed fraud
- D. The default cannot be set aside without the plaintiff's consent

2. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant in a photo lineup. The defense argues the lineup was unduly suggestive because the defendant's photo was the only one with a hat. What is the proper analysis?

- A. The court must defer to the police officer's account
- B. The court must exclude all identification testimony if any defect is shown
- C. The court must require the lineup be photographed for jury review
- D. Under *Manson v. Brathwaite*, the court considers whether the procedure was unduly suggestive and, if so, whether the identification was reliable under the totality of the circumstances

3. A grantor conveys real property "to A for life, then to A's children equally, but if A has no surviving children, to B." A is currently childless and unmarried. Under the common law Rule Against Perpetuities, what is the status of the gift to B?

- A. The gift to B is invalid because future contingencies cannot be specified
- B. The gift to B is valid because both contingencies (A having no surviving children) must resolve at A's death
- C. The gift to B is invalid because the contingency might vest beyond the perpetuities period
- D. The gift to B is valid because B is alive at the time of the conveyance

4. A homeowner contracts with a contractor for a \$60,000 kitchen renovation, with payment due upon completion. The contractor completes the work, but the homeowner discovers that several minor specifications were not exactly followed, although the work is otherwise satisfactory. The deviations would cost about \$1,500 to remedy. The homeowner refuses to pay. May the contractor recover?

- A. The contractor recovers nothing because of the breach
- B. The contractor recovers the fair market value of the work performed
- C. Under the substantial performance doctrine, the contractor recovers the contract price (\$60,000) reduced by the cost of remedying the deviations (\$1,500), yielding approximately \$58,500
- D. The contractor recovers the full \$60,000 because the deviations are minor

5. A police officer arrests a suspect at his home pursuant to a valid arrest warrant. During the arrest, the officer notices an open container of suspected drugs on the kitchen counter in plain view. The officer seizes the container. The defendant moves to suppress, arguing the warrant only authorized arrest, not search. What result?

- A. The motion is granted because the warrant did not authorize a search
- B. The motion is granted because the drugs were not in the immediate area of the arrest
- C. The motion is granted unless the prosecution can show exigent circumstances
- D. The motion is denied because evidence in plain view in an area where the officer is lawfully present may be seized without a warrant

6. A defendant is on trial for fraud. The prosecution offers testimony from the defendant's former employee. On cross-examination, the defense asks whether the employee was terminated by the defendant for misconduct. The prosecution objects. Is the question allowed?

- A. The question is allowed because the employee's termination by a party-opponent is relevant to bias and motivation to testify against the defendant
- B. No, because the employee's employment history is irrelevant to credibility
- C. No, because the question seeks character evidence
- D. Yes, but only if the employee has filed a wrongful termination claim

7. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing that contract disputes must be heard within four years of the alleged breach. The plaintiff filed suit four years and two months after the alleged breach. The defendant moves to dismiss. What is the proper outcome?

- A. The federal court applies federal common law on statutes of limitations
- B. The federal court applies the state's four-year limitations period because limitations are substantive under Erie, requiring dismissal as time-barred
- C. The federal court applies federal procedural rules on limitations
- D. The federal court applies whichever rule produces uniformity

8. A defendant is convicted of murder. On appeal, the defendant argues that his confession was inadmissible because police failed to read Miranda warnings. The prosecution concedes Miranda was not given but argues the confession was voluntary. May the confession be used at trial?

- A. The confession is admissible in the case-in-chief because Miranda warnings are not constitutionally required
- B. The confession is admissible if voluntary
- C. Statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently
- D. The confession is inadmissible for any purpose, including impeachment

9. A property owner conveys her property "to A and her heirs, but if the property is ever used for non-residential purposes, then to B and his heirs." Under the common law Rule Against Perpetuities, what is the status of the gift to B?

- A. The gift to B is valid because both A and B are alive
- B. The gift to B is valid because residential use is ascertainable
- C. The gift to B creates a possibility of reverter exempt from RAP
- D. The gift to B creates a shifting executory interest that is void because the contingency might vest more than 21 years after lives in being

10. A pedestrian is struck by a vehicle and suffers serious injuries. Her health insurance pays \$50,000 of her \$75,000 in medical bills. She sues the driver for negligence. The defendant argues that her damages should be reduced because her insurance paid part of the bills. What is the most accurate statement?

- A. Under the collateral source rule, payments from independent sources such as private insurance do not reduce the plaintiff's recovery from the tortfeasor
- B. The damages are reduced because the plaintiff suffered no out-of-pocket loss for the insurance-paid portion
- C. The damages are recoverable only if the insurance company joins as a party
- D. The damages are reduced because allowing full recovery would constitute a windfall

11. A federal lawsuit involves a plaintiff and three defendants. After answering, two defendants assert cross-claims against the third defendant. Under FRCP 13(g), what is required for a cross-claim?

- A. Cross-claims may be asserted only with the court's permission
- B. A cross-claim may be asserted by one party against a co-party if it arises out of the same transaction or occurrence as the original action or relates to property that is the subject of the original action
- C. Cross-claims require the consent of all parties
- D. Cross-claims must be asserted by all defendants jointly

12. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation in the community for being non-violent. On cross-examination, the prosecution

asks whether the witness has heard that the defendant was previously arrested for assault. The defense objects. Is the question allowed?

- A. No, because the question seeks to introduce specific acts of conduct
- B. No, because arrests are unproven
- C. No, because the conviction is more probative than prejudicial
- D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony

13. A federal court is hearing a complex commercial case. The plaintiff seeks discovery of internal corporate emails. The defendant claims the emails are protected by the attorney-client privilege because they were sent to in-house counsel. The plaintiff argues the emails were sent for business purposes, not legal advice. What is the proper analysis?

- A. The attorney-client privilege protects emails sent for the purpose of seeking, obtaining, or providing legal advice, including communications with in-house counsel; emails for purely business purposes are not protected
- B. All emails to in-house counsel are protected
- C. Emails to in-house counsel are never protected
- D. The privilege applies only if the emails are marked "confidential"

14. A defendant is on trial for theft. The prosecution offers testimony from a witness who claims to have seen the defendant take the stolen items. On cross-examination, the defense asks the witness about prior convictions for crimes of dishonesty. The witness denies the convictions. The defense seeks to introduce the convictions as extrinsic evidence. May the evidence be introduced?

- A. The convictions are inadmissible because the witness denied them
- B. The convictions are admissible only with the witness's consent
- C. Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach and may be proven by extrinsic evidence if the witness denies them
- D. The convictions are admissible only if they are recent

15. A buyer enters into a written contract with a seller to purchase 500 widgets at \$20 each. The contract specifies delivery within 30 days. After 30 days, the seller has not delivered. The buyer purchases substitute widgets from another supplier at \$25 each within the same timeframe. May the buyer recover damages?

- A. No, because the buyer should have waited longer for the original seller
- B. Under UCC § 2-712, the aggrieved buyer who covers in good faith without unreasonable delay recovers the difference between cover price and contract price; the buyer recovers \$2,500 ($500 \times \5)
- C. The buyer recovers nothing because the seller's delay was reasonable
- D. The buyer recovers the full \$12,500 cover cost

16. A defendant is convicted of armed robbery. On appeal, the defendant argues the trial court erred by refusing to instruct the jury on the lesser included offense of theft. The trial court found insufficient evidence to support the lesser offense. What is the proper standard?

- A. The trial court must give the instruction whenever the defense requests it
- B. The trial court must give the instruction if the defense files a written motion
- C. The trial court must give the instruction if the prosecution agrees
- D. The trial court must give the lesser included offense instruction if the evidence, viewed in the light most favorable to the defense, would support a verdict on the lesser offense

17. A federal lawsuit is filed by a plaintiff against a corporation. The corporation moves to dismiss for lack of personal jurisdiction. The plaintiff opposes, arguing the corporation has minimum contacts with the forum state through targeted advertising. Under *International Shoe*, what is the proper analysis?

- A. The court considers only the corporation's principal place of business
- B. The court considers only the plaintiff's residence
- C. Specific personal jurisdiction requires the defendant to have purposefully directed activities at the forum state and the suit must arise out of or relate to those contacts
- D. The court considers only the corporation's state of incorporation

18. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in the heat of passion after discovering the wife in an affair. The prosecution argues that discovering an affair does not constitute adequate provocation. What is the proper standard?

- A. Under the common law heat of passion doctrine, adequate provocation requires conduct sufficient to cause a reasonable person to lose self-control; discovering one's spouse in an affair has historically been considered adequate provocation in many jurisdictions
- B. Adequate provocation requires the deceased to physically attack the defendant
- C. Adequate provocation requires the killing to occur during the provoking event
- D. Adequate provocation cannot include emotional discoveries

19. A grantor's deed conveys property "to A in fee simple, but if the property is ever used as a tavern, the property reverts to the grantor or her heirs." The grantor dies. A later opens a wine shop on the property. The grantor's heirs claim the property. What result?

- A. The grantor's heirs may reclaim the property because operating a wine shop is operating a tavern
- B. A wine shop is not generally considered a tavern under the ordinary meaning of the term; restrictions in deeds are construed strictly against the grantor
- C. The grantor's heirs may reclaim the property because the deed gave them the right
- D. The property has automatically reverted to the grantor's heirs

20. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for failure to state a claim under FRCP 12(b)(6). The plaintiff's complaint alleges that "the defendant's conduct caused damage to the plaintiff." Under Twombly and Iqbal, what result?

- A. The complaint is sufficient because it provides notice
- B. The complaint must be amended to add factual details
- C. The complaint fails to plead facts sufficient to render the claim plausible; conclusory allegations are insufficient under the plausibility standard
- D. The complaint is sufficient if the plaintiff can amend after discovery

21. A defendant is on trial for arson. The prosecution offers testimony from a witness who claims to have seen the defendant near the building shortly before the fire. The defense objects, arguing this is insufficient to prove arson. What is the proper analysis?

- A. Circumstantial evidence is inadmissible in criminal cases
- B. The presence at the scene alone is conclusive of guilt
- C. Circumstantial evidence requires corroboration by direct physical evidence
- D. Circumstantial evidence is admissible, and a conviction may rest on the totality of circumstantial evidence if a rational jury could find guilt beyond a reasonable doubt

22. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for joint and several liability among multiple tortfeasors. The defendant argues that the federal court should apply pure several liability. What is the proper outcome?

- A. Under Erie, the federal court applies the state's joint and several liability rule because liability allocation among tortfeasors is substantive law affecting the measure of recovery
- B. The federal court applies federal common law on liability
- C. The federal court applies pure several liability as the federal default
- D. The federal court applies whichever rule produces uniformity

23. A defendant is convicted of murder. On appeal, the defendant argues that his Sixth Amendment right to counsel was violated because police questioned him after he had been formally charged but before counsel was appointed. Under *Massiah v. United States*, what is the proper analysis?

- A. The Sixth Amendment right to counsel attaches at arrest
- B. The Sixth Amendment right to counsel attaches only at trial
- C. The Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings, such as formal charging, indictment, or arraignment; deliberate elicitation of statements from a charged defendant without counsel violates the right
- D. The Sixth Amendment right to counsel attaches at any point during custody

24. A homeowner enters into a contract with a real estate broker to sell her property. The contract provides for a 6% commission upon "the procurement of a ready, willing, and able buyer at the listing price." The broker finds a buyer who is ready, willing, and able to purchase at the listing price. The seller refuses to sell. Is the broker entitled to a commission?

- A. No, because no sale occurred
- B. Under the traditional brokerage rule, the broker has earned the commission upon procuring a ready, willing, and able buyer at the listing price; the seller cannot avoid the commission by refusing to sell
- C. The broker recovers only after the property is sold
- D. The broker recovers only if she actively pursues the sale

25. A defendant is on trial for the federal crime of mail fraud. At trial, the prosecution offers evidence of three similar fraudulent schemes by the defendant from the past two years. The defense objects under FRE 404(b). The prosecution argues the evidence shows a common scheme or plan. What is the proper analysis?

- A. Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, modus operandi, or absence of mistake, where the prior conduct shares distinctive features with the charged offense
- B. Prior crimes are always inadmissible to show character
- C. Prior crimes are inadmissible if they are too recent
- D. Prior crimes are inadmissible unless they were charged

26. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing that contract disputes must be in writing if the contract exceeds \$500. The defendant moves to dismiss because the contract was oral. What is the proper outcome?

- A. The federal court applies federal common law on contracts
- B. The federal court applies federal procedural rules
- C. The federal court applies whichever rule produces uniformity
- D. Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability

27. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'm going to kill that man" two weeks before the murder. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement; under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim
- D. No, because the statement is too remote in time

28. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff seeks to certify a class action. The plaintiffs satisfy the requirements of FRCP 23(a). For certification under FRCP 23(b)(3), what additional showing is required?

- A. The plaintiffs must show that all class members agree
- B. The plaintiffs must show that common questions of law or fact predominate over individual questions and that a class action is the superior method of fairly and efficiently adjudicating the controversy
- C. The plaintiffs must show that the defendant has acted on grounds applicable to the entire class
- D. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications

29. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense because the sister attacked him with a knife. The prosecution offers as rebuttal evidence the testimony of a witness that the sister was generally peaceful. The defense objects. Should the testimony be admitted?

- A. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- B. No, because the sister's character is irrelevant
- C. Yes, but only after the prosecution provides advance notice
- D. No, because hearsay rules bar the testimony

30. A property owner conveys her property "to A for life, then to A's children equally." A has two living children at the time of the conveyance. Three years later, A has a third child. A dies survived by all three children. Who takes the property?

- A. The first two children only, because they were alive at the time of the conveyance
- B. The grantor's heirs, because the class did not close at conveyance
- C. All three children equally, because the class closes at A's death; all members alive at that time take in equal shares
- D. The third child only, because she is the surviving issue

31. A federal lawsuit involves a plaintiff and a defendant. The plaintiff makes a settlement offer for \$50,000. The defendant rejects the offer. After trial, the jury awards the plaintiff \$40,000. Under FRCP 68, what is the consequence?

- A. Under FRCP 68, the cost-shifting consequence applies only when the defendant makes the offer to the plaintiff, the plaintiff rejects, and the plaintiff fails to obtain a better result; an offer by the plaintiff to the defendant does not trigger the rule
- B. The defendant is liable for the plaintiff's costs
- C. The plaintiff is liable for the defendant's costs
- D. The plaintiff's recovery is reduced

32. A defendant is on trial for armed robbery. The prosecution offers a videotape from a security camera at the bank. The defense objects, arguing the videotape was made without consent and lacks authentication. Should the videotape be admitted?

- A. The videotape is inadmissible because it was made without consent
- B. The videotape is inadmissible because security cameras require warrants
- C. The videotape is inadmissible because it is hearsay
- D. The videotape is admissible if relevant and properly authenticated under FRE 901; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted

33. A grantor conveys property "to A for life, then to A's surviving children." A has three children at the time of the conveyance. A dies survived by two of her three children. The third child predeceased A. Who takes the property?

- A. All three children equally, with the predeceased child's share passing to her heirs
- B. The grantor's heirs, because not all children survived
- C. The two surviving children take the property equally, because the class closes at A's death and only surviving children are included in the gift
- D. The grantor's estate, because the class gift failed

34. A defendant is on trial for theft. The defense calls a character witness who testifies that the defendant has a reputation for honesty. On cross-examination, the prosecution asks the witness whether she has heard that the defendant was previously sued for fraud. The defense objects. Is the question allowed?

- A. No, because civil lawsuits are not character evidence
- B. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior wrongdoing, to test the witness's basis for the reputation testimony
- C. No, because the lawsuit is unproven
- D. Yes, but only if the prosecution provides documentation

35. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for pure comparative negligence, reducing damages by the plaintiff's percentage of fault. The defendant argues that the federal court should apply contributory negligence. What is the proper outcome?

- A. Under Erie, the federal court applies the state's pure comparative negligence rule because it is substantive law affecting the measure of recovery
- B. The federal court applies federal common law on comparative negligence
- C. The federal court applies contributory negligence as the federal default
- D. The federal court applies whichever rule produces uniformity

36. A defendant is on trial for the murder of his business partner. The prosecution offers testimony from the defendant's former employee. The defense seeks to introduce evidence that the employee has been previously convicted of perjury. The prosecution objects. Should the evidence be admitted?

- A. No, because the conviction is too remote in time
- B. No, because perjury is not a felony in this jurisdiction
- C. Yes, but only if the conviction is also a felony
- D. Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as perjury) are automatically admissible to impeach, regardless of punishment, recency, or balancing

37. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs request court approval of a settlement. Under FRCP 23(e), what is the proper procedure?

- A. The court must approve the settlement unless objections are unanimous
- B. The court must defer to the parties' agreement
- C. Under FRCP 23(e), the court must direct notice to all class members who would be bound by the settlement and approve the settlement only after a fairness hearing finding it fair, reasonable, and adequate
- D. The court must obtain unanimous consent of all class members

38. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant in a photo lineup. The defense argues that the lineup was conducted under suggestive circumstances. The trial court must determine the admissibility of the identification. What is the proper standard?

- A. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including the witness's opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification
- B. The court must defer to the police officer's account
- C. The court must exclude all identification testimony
- D. The court must require the lineup be photographed for jury review

39. A buyer signs a contract to purchase a parcel of land from a seller for \$400,000. The contract specifies that the seller will deliver marketable title at closing. Before closing, the buyer discovers that an unrecorded easement allowing utility access encumbers the property. The buyer terminates the contract. May the buyer terminate?

- A. No, because unrecorded easements are not encumbrances
- B. Yes, because the unrecorded easement is an encumbrance that renders title unmarketable, and the buyer is entitled to terminate the contract
- C. Yes, but only if the easement substantially diminishes property value
- D. No, because the seller can cure by recording

40. A federal court hears a state-law claim for fraud. The state has a substantive law requiring fraud to be proven by clear and convincing evidence. The federal court is uncertain whether to apply this standard. What is the proper outcome?

- A. The federal court applies federal common law on burden of proof
- B. The federal court applies federal procedural rules
- C. The federal court applies the preponderance standard as the federal default
- D. Under Erie, the federal court applies the state's clear and convincing evidence standard because burdens of proof are substantive law affecting outcome

41. A defendant is on trial for assault. The prosecution offers a witness who claims to have seen the defendant attack the victim. On cross-examination, the defense asks whether the witness was wearing prescription eyeglasses at the time of the alleged assault. The witness says she was not. The prosecution objects to further inquiry. Is the question allowed?

- A. No, because eyeglasses use is irrelevant to credibility
- B. No, because the prosecution did not introduce evidence of eyeglasses
- C. The question is permissible because the witness's vision and her ability to perceive — including whether she was wearing her prescribed eyeglasses — directly affect the reliability of her observations
- D. Yes, but only if the witness has admitted to needing glasses

42. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for lack of subject matter jurisdiction, arguing that the parties are not diverse. The plaintiff alleges that the parties are from different states. The defendant counters that the plaintiff's principal place of residence is in the defendant's state. What is the proper analysis?

- A. Diversity jurisdiction is determined by the plaintiff's pleadings
- B. Under 28 U.S.C. § 1332, complete diversity requires that no plaintiff share citizenship with any defendant; citizenship is determined by domicile, which the court will determine based on residence, intent, and other factors
- C. Diversity jurisdiction is satisfied if the parties have different addresses
- D. Diversity jurisdiction requires only that the parties be from different states

43. A defendant is on trial for armed robbery. The defense argues that the defendant was acting under duress. Under traditional common law, what minimum showing is required to establish duress?

- A. The defendant must show actual harm occurred
- B. The defendant must show the threat was made by law enforcement
- C. The defendant must show the criminal act was a misdemeanor
- D. The defendant must show that he reasonably believed he or another was in imminent danger of serious bodily harm or death, that this threat motivated the criminal act, and that the harm threatened was greater than the harm caused — the defense is generally unavailable for homicide

44. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's net worth to support a claim for punitive damages. The defendant argues that net worth is irrelevant. What is the proper outcome?

- A. Evidence of the defendant's net worth may be admissible in connection with punitive damages under applicable state substantive law; under Erie, the federal court applies state law on the measure and propriety of punitive damages
- B. Net worth is inadmissible in all damages cases
- C. Net worth requires special permission from the court
- D. Net worth is admissible only with the defendant's consent

45. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I want him gone" the day before the murder. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, and under FRE 803(3) is also admissible as evidence of the defendant's then-existing state of mind toward the victim
- D. No, because the statement is too remote in time

46. A federal court is hearing a state-law contract case in diversity. The plaintiff seeks specific performance of a contract for the sale of a unique parcel of land. The defendant argues that monetary damages are an adequate remedy. What is the proper standard?

- A. Specific performance is automatic for all contract disputes
- B. Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate; this principle applies even when the buyer could obtain comparable land elsewhere
- C. Specific performance is denied because monetary damages are always adequate
- D. Specific performance is granted only with consent of both parties

47. A defendant is on trial for the murder of his wife. The defense seeks to introduce evidence that the wife had previously threatened the defendant. The prosecution objects, arguing this is character evidence. Should the evidence be admitted?

- A. Under FRE 404(a)(2)(B), when self-defense or related defenses are at issue, the defendant may offer evidence of the alleged victim's character for violence and prior threats; such evidence supports the reasonableness of the defendant's perception and response
- B. No, because the wife's character is irrelevant
- C. No, because reputation evidence is required
- D. Yes, but only with the prosecution's advance notice

48. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. The court considers only the cash payments
- B. The court considers only the attorney's fees
- C. The court considers only the named plaintiffs' preferences
- D. The court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties

49. A defendant is convicted of murder. On appeal, the defendant argues that the trial court should have suppressed his confession because police continued to interrogate him after he invoked his right to counsel. Under *Edwards v. Arizona*, what result?

- A. The confession is admissible if voluntary
- B. Under *Edwards v. Arizona*, once a suspect invokes the right to counsel during custodial interrogation, police may not initiate further interrogation until counsel is present; statements obtained in violation must be suppressed
- C. The confession is admissible because the suspect later spoke voluntarily
- D. The confession is admissible because *Edwards* has been overturned

50. A federal court is hearing a state-law fraud case in diversity. The state has a substantive law requiring fraud claims to be pled with heightened particularity. The defendant moves to dismiss because the complaint does not satisfy this state standard. The plaintiff argues that federal pleading standards apply. What is the proper outcome?

- A. The federal court applies notice pleading
- B. The federal court applies federal procedural rules on pleading
- C. Under *Hanna v. Plumer*, the federal court applies FRCP 9(b), which independently requires fraud to be pleaded with particularity; the state pleading requirement is incorporated into federal practice through 9(b) and the heightened standard applies
- D. The federal court applies whichever standard produces uniformity

51. A defendant is on trial for theft. The defense seeks to introduce evidence that the defendant has a reputation for honesty. The prosecution objects. Should the evidence be admitted?

- A. Under FRE 404(a)(2)(A), a criminal defendant may offer evidence of a pertinent character trait such as honesty; honesty is pertinent to theft charges
- B. No, because reputation evidence is generally inadmissible
- C. No, because character evidence is barred in criminal cases
- D. Yes, but only after the prosecution attacks the defendant's character

52. A federal court is hearing a complex commercial case. The plaintiff seeks to depose the CEO of the defendant corporation. The defendant moves for a protective order, arguing that the CEO has no unique knowledge. What is the proper standard?

- A. The court must allow the deposition unconditionally
- B. The court must grant the protective order automatically
- C. The court must defer to the defendant's preferences
- D. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the deposition proponent generally bears the burden of justifying it

53. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant in a photo lineup at the police station. The defense argues the lineup was suggestive because the defendant was the only person of his ethnicity in the lineup. What is the proper analysis?

- A. The court must exclude all identification testimony
- B. The court must defer to the police officer's account
- C. Under *Manson v. Brathwaite*, the court considers whether the lineup was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances
- D. The court must require the lineup be photographed

54. A homeowner enters into a contract to sell her property to a buyer for \$500,000. The contract specifies that the buyer must obtain financing within 60 days. The buyer applies for financing but is denied. The buyer requests an extension. The seller refuses to extend. May the buyer recover her earnest money?

- A. No, because the buyer breached by failing to obtain financing
- B. Yes, if the contract contains a financing contingency that the buyer satisfied through good faith efforts; the buyer is entitled to recover her earnest money upon timely cancellation under the contingency
- C. Yes, regardless of the contract terms
- D. No, because earnest money is forfeited upon any cancellation

55. A federal lawsuit is filed by a plaintiff against a defendant. The defendant counterclaims. The plaintiff fails to file a reply to the counterclaim. The defendant moves for default on the counterclaim. Under FRCP 12(a)(1)(B), what is the result?

- A. Under FRCP 12(a)(1)(B), the plaintiff has 21 days after service of a counterclaim to respond; failure to respond may result in default on the counterclaim, and the defendant may move for entry of default under FRCP 55
- B. The plaintiff is not in default because plaintiffs need not respond
- C. The plaintiff is not in default because the counterclaim is part of the original action
- D. The plaintiff has 60 days to respond

56. A defendant is on trial for armed robbery. The defense seeks to call a character witness who will testify that the defendant has a reputation for being non-violent. The prosecution objects. Should the testimony be allowed?

- A. No, because reputation evidence requires a foundation
- B. No, because character evidence is barred in criminal cases
- C. Under FRE 404(a)(2)(A) and FRE 405(a), a criminal defendant may offer reputation evidence of a pertinent character trait such as non-violence; the witness must lay foundation regarding her knowledge of the defendant's reputation
- D. Yes, but only after the prosecution attacks the defendant's character

57. A federal court is hearing a state-law contract case in diversity. The defendant moves for summary judgment. The plaintiff responds with conclusory denials and no affirmative evidence. Under FRCP 56 and *Celotex Corp. v. Catrett*, what is the proper outcome?

- A. The motion is denied because plaintiffs are entitled to trial
- B. The motion is denied because juries decide credibility
- C. The motion is denied unless the plaintiff stipulates
- D. Summary judgment is granted when the non-moving party fails to demonstrate a genuine dispute of material fact through affirmative evidence; conclusory denials and unsupported assertions are insufficient to defeat summary judgment

58. A defendant is on trial for assault. The defense argues that the defendant acted in self-defense because the alleged victim threatened him with a weapon. The prosecution offers as rebuttal evidence the testimony of a witness that the alleged victim was generally peaceful. The defense objects. Should the evidence be admitted?

- A. No, because the victim's character is irrelevant
- B. Once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony under FRE 404(a)(2)(B)
- C. Yes, but only after the prosecution provides advance notice
- D. No, because hearsay rules bar the testimony

59. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff serves the defendants by various methods. One defendant moves to dismiss for insufficient service, arguing that service was made by ordinary mail without a signed waiver. Under FRCP 4, what is the result?

- A. The motion is granted because mail service alone, without a signed waiver or other valid mechanism, does not satisfy federal service requirements
- B. The motion is denied because the defendant received actual notice
- C. The motion is denied because mail service is sufficient
- D. The motion is granted only if the defendant can prove harm

60. A defendant is on trial for armed robbery. The prosecution offers a confession given by the defendant during interrogation. The defense argues the confession was obtained in violation of Miranda. The trial court must determine the admissibility of the confession. Under *Colorado v. Connelly*, what standard applies?

- A. The court must find by clear and convincing evidence
- B. The court must find by beyond a reasonable doubt
- C. The court defers to the police officer's account
- D. The court must find by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent

61. A federal court is hearing a state-law tort case in diversity. The plaintiff has filed claims under both federal and state law. The federal claim is dismissed. The court must decide whether to retain jurisdiction over the state-law claim. Under 28 U.S.C. § 1367(c), what is the proper analysis?

- A. The court must retain jurisdiction over all related claims
- B. Under 28 U.S.C. § 1367(c), when all federal claims are dismissed, the court has discretion to decline supplemental jurisdiction over state-law claims; the court considers judicial economy, convenience, fairness, and comity in exercising this discretion
- C. The court must dismiss the state-law claim automatically
- D. The court must transfer the case to state court

62. A defendant is on trial for the murder of his sister. The prosecution offers as evidence the testimony of a witness who states that, three weeks before the killing, the defendant said, "She is making my life miserable." The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception
- D. No, because the statement is too remote in time

63. A federal court is hearing a complex commercial case. The plaintiff seeks to amend the complaint to add a new defendant after the statute of limitations has expired. Under FRCP 15(c), what is required?

A. Under FRCP 15(c)(1)(C), the amendment relates back if (1) the claim arose from the same conduct as the original pleading, (2) the new defendant received notice within the time for service such that no prejudice results, and (3) the new defendant knew or should have known the action would have been brought against him absent a mistake

B. The new defendant must consent to the amendment

C. The new defendant must be a successor to an existing defendant

D. The plaintiff must demonstrate excusable neglect

64. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation for peacefulness. On cross-examination, the prosecution asks whether the witness has heard that the defendant was previously arrested for assault. The defense objects. Is the question allowed?

A. No, because arrests are unproven by reputation

B. No, because reputation evidence does not open the door to specific acts

C. No, because the question is more prejudicial than probative

D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including arrests, to test the basis for the reputation testimony; extrinsic proof is barred but the inquiry is permitted

65. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The court must determine whether the settlement is fair, reasonable, and adequate. Under FRCP 23(e), what is required?

A. The court must defer to the parties' agreement

B. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate

C. The court must obtain unanimous consent of all class members

D. The court must approve the settlement unless objections are unanimous

66. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by refusing to instruct the jury on the lesser included offense of manslaughter. The trial court refused the instruction because there was insufficient evidence of provocation. What is the proper standard?

- A. The trial court must give the instruction whenever the defense requests it
- B. The trial court must give the instruction only if the prosecution agrees
- C. The trial court must give a lesser included offense instruction if the evidence, viewed in the light most favorable to the defense, would support a verdict on the lesser offense
- D. The trial court has unlimited discretion to refuse the instruction

67. A buyer enters into a contract with a seller to purchase 200 widgets at \$25 each. The contract requires delivery within 14 days. The seller delivers 180 widgets, all conforming to specifications, but is 20 short. The buyer rejects the entire shipment. Under UCC § 2-601, what is the buyer's strongest argument that the rejection is valid?

- A. The buyer's general right to refuse any goods
- B. Industry custom of perfect deliveries
- C. The buyer's preference for full shipments
- D. Under UCC § 2-601, the perfect tender rule allows the buyer to reject goods that "fail in any respect" to conform to the contract, including quantity shortfalls; a 10% quantity shortage is a non-conformity that justifies rejection of the entire shipment

68. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for punitive damages in cases of fraudulent breach. The defendant argues that the federal court should not award punitive damages. What is the proper outcome?

- A. Under Erie, the federal court applies state law on punitive damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action
- B. The federal court applies federal common law on punitive damages
- C. The federal court denies punitive damages
- D. The federal court applies federal procedural rules

69. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense because the neighbor attacked him with a weapon. The prosecution offers as rebuttal evidence the testimony of a neighbor's friend that the neighbor was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the neighbor's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- D. No, because reputation evidence is barred

70. A federal court is hearing a complex commercial case. The plaintiff seeks discovery of certain corporate emails. The defendant claims the emails are protected by the work product doctrine. The plaintiff argues the emails were prepared in the ordinary course of business. Under FRCP 26(b)(3), what is the proper analysis?

- A. The emails are protected if they were prepared by lawyers
- B. Work product protection applies only to documents prepared by an attorney or another representative of a party in anticipation of litigation; documents created in the ordinary course of business — even if they may later become relevant to litigation — are not protected
- C. The emails are protected if they involve confidential corporate information
- D. The emails are not protected because work product applies only to documents prepared after litigation has commenced

71. A defendant is on trial for the federal crime of mail fraud. The prosecution offers evidence of three similar fraudulent schemes by the defendant from the past two years. The defense objects under FRE 404(b). The prosecution argues the evidence shows a common scheme or modus operandi. What is the proper analysis?

- A. Prior crimes are always inadmissible to show character
- B. Prior crimes are inadmissible if too remote
- C. Prior crimes are admissible only if charged

D. Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including modus operandi or common scheme, where the prior conduct shares distinctive features with the charged offense that warrant inference of common authorship

72. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing for prejudgment interest. The defendant argues that prejudgment interest is procedural and the federal court should deny it. What is the proper outcome?

A. Under Erie, the federal court applies state substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action

B. The federal court applies federal procedural rules denying prejudgment interest

C. The federal court denies prejudgment interest under the American Rule

D. The federal court applies whichever rule produces uniformity

73. A defendant is on trial for theft. The prosecution offers a witness who claims to have seen the defendant take the wallet. On cross-examination, the defense asks the witness about her ability to see in the relevant lighting conditions. The prosecution objects. Is the question allowed?

A. No, because the witness's vision is irrelevant

B. No, because the prosecution did not introduce evidence of lighting

C. The question is permissible because the witness's perceptual abilities — including vision in the relevant lighting conditions — are directly relevant to the reliability of her identification and observations

D. Yes, but only if the witness admits to needing glasses

74. A federal lawsuit is filed by a plaintiff. The defendant timely answers and asserts a counterclaim. The plaintiff fails to file a reply. The defendant moves for default on the counterclaim. Under FRCP 12(a)(1)(B), what is the result?

A. The plaintiff is not in default because plaintiffs need not respond

B. Under FRCP 12(a)(1)(B), the plaintiff must respond to a counterclaim within 21 days; failure to respond may result in default on the counterclaim, and the defendant may move for entry of default under FRCP 55

- C. The plaintiff is not in default because the counterclaim is part of the original action
- D. The plaintiff has 30 days to respond

75. A defendant is on trial for the murder of his business partner. The prosecution offers a witness who claims the defendant said, "I want him gone for good" two weeks before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. No, because the statement is too remote in time
- D. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement; it is also admissible under FRE 404(b) as evidence of motive and intent

76. A federal court has jurisdiction over a case under federal question jurisdiction. The plaintiff has also asserted state-law claims arising from the same nucleus of operative facts. The defendant moves to dismiss the state-law claims for lack of subject matter jurisdiction. What is the proper outcome?

- A. Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim; the court may exercise supplemental jurisdiction subject to the considerations in § 1367(c)
- B. The court must dismiss the state-law claims because they raise issues of state law
- C. The court must transfer the state-law claims to state court
- D. The court must dismiss the state-law claims because they are not within federal jurisdiction

77. A defendant is on trial for armed robbery. The defense seeks to introduce evidence that the alleged victim has a reputation for being aggressive and violent. The prosecution objects, arguing this is character evidence. Should the evidence be admitted?

- A. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue; such evidence supports the defendant's claim that the victim was the initial aggressor
- B. No, because the victim's character is irrelevant

- C. No, because reputation evidence is barred
- D. Yes, but only after the prosecution opens the door

78. A federal lawsuit involves multiple plaintiffs alleging various claims against a single defendant. The plaintiffs seek to certify a class action under FRCP 23(b)(2). What standard applies?

- A. The plaintiffs must show that all class members agree to certification
- B. The plaintiffs must show that damages are certain
- C. Under FRCP 23(b)(2), the plaintiffs must show that the defendant has acted on grounds generally applicable to the class, making final injunctive or declaratory relief (not primarily monetary damages) appropriate for the class as a whole
- D. The plaintiffs must show that common questions predominate over individual questions

79. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting a confession obtained in violation of *Edwards v. Arizona*. The prosecution argues that the defendant later voluntarily waived his right to counsel. What is the proper analysis?

- A. The confession is admissible if the defendant later spoke voluntarily
- B. The confession is admissible because *Edwards* has been overturned
- C. The confession is admissible if voluntary
- D. Under *Edwards v. Arizona*, once a suspect invokes the right to counsel during custodial interrogation, police may not initiate further interrogation until counsel is present; statements obtained in violation must be suppressed regardless of subsequent waiver

80. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for joint and several liability among multiple tortfeasors. The defendant argues that the federal court should apply pure several liability instead. What is the proper outcome?

- A. Under *Erie*, the federal court applies the state's joint and several liability rule because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery
- B. The federal court applies federal common law on liability
- C. The federal court applies pure several liability as the federal default

D. The federal court applies whichever rule produces uniformity

81. A defendant is on trial for armed robbery. The prosecution offers testimony from a witness who claims the defendant fled the scene of the robbery. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

A. Flight evidence is inadmissible

B. Flight evidence is conclusive of guilt

C. Flight evidence is admissible as circumstantial evidence of consciousness of guilt; the jury may consider flight, along with other evidence, in determining whether the defendant committed the offense beyond a reasonable doubt

D. Flight evidence requires corroboration by direct evidence

82. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for pure comparative negligence. The defendant argues that the federal court should apply contributory negligence. What is the proper outcome?

A. The federal court applies federal common law on comparative negligence

B. Under Erie, the federal court applies the state's pure comparative negligence rule because it is substantive law affecting the measure of recovery

C. The federal court applies contributory negligence as the federal default

D. The federal court applies whichever rule produces uniformity

83. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation for honesty. On cross-examination, the prosecution asks whether the witness has heard that the defendant was previously convicted of theft. The defense objects. Is the question allowed?

A. No, because the question seeks specific acts

B. No, because the conviction is too remote in time

C. No, because the conviction is unproven by reputation

D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the basis of the witness's reputation testimony

84. A federal court is asked to issue a preliminary injunction. The plaintiff demonstrates a likelihood of success on the merits and irreparable injury. The defendant argues that the balance of hardships favors him. Under the traditional four-factor test, what is required?

- A. The court considers (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest; all factors must be evaluated before injunctive relief is granted
- B. The court considers only the plaintiff's likelihood of success
- C. The court considers only the defendant's hardship
- D. The court considers only the public interest

85. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'll get rid of him" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. Under FRE 801(d)(2)(A), the defendant's own statement is admissible as an opposing party's statement, and is also relevant to motive and intent under FRE 404(b)
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

86. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. The court considers only the cash payments
- B. The court considers only the attorney's fees
- C. The court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties

D. The court considers only the named plaintiffs' preferences

87. A defendant is on trial for theft. The defense seeks to introduce evidence that the alleged victim has a reputation for being dishonest. The prosecution objects. Should the evidence be admitted?

A. Evidence of the alleged victim's character for dishonesty is generally inadmissible in a theft prosecution because dishonesty character is not pertinent under FRE 404(a)(2)(B) — only character traits relevant to the disputed issues are admissible

B. Yes, because the victim's character is always admissible

C. Yes, if the victim testifies

D. No, because reputation evidence requires foundation

88. A federal lawsuit involves a plaintiff and a defendant. The defendant makes a settlement offer for \$30,000. The plaintiff rejects the offer. After trial, the jury awards the plaintiff \$25,000. Under FRCP 68, what is the consequence?

A. The defendant has no obligation

B. The plaintiff's recovery is reduced

C. The defendant is liable for the plaintiff's costs and attorney's fees

D. Under FRCP 68, the plaintiff is liable for the defendant's costs incurred after the offer was made, because the plaintiff failed to obtain a better result than the offer

89. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense because the sister attacked him with a weapon. The prosecution offers as rebuttal evidence the testimony of a witness that the sister was generally peaceful. The defense objects. Should the testimony be admitted?

A. No, because the sister's character is irrelevant

B. Yes, but only after the prosecution provides advance notice

C. Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony

D. No, because hearsay rules bar the testimony

90. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing for treble damages in cases of bad-faith breach. The defendant argues that the federal court should not award treble damages. What is the proper outcome?

A. The federal court applies federal common law on damages

B. Under Erie, the federal court applies state law on treble damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action

C. The federal court applies federal procedural rules

D. The federal court denies treble damages

91. A defendant is on trial for armed robbery. The prosecution offers a videotape from a security camera at the bank. The defense objects, arguing the videotape was made without consent. Should the videotape be admitted?

A. The videotape is inadmissible because it was made without consent

B. The videotape is inadmissible because security cameras require warrants

C. The videotape is admissible if relevant and properly authenticated under FRE 901; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted

D. The videotape is inadmissible because it is hearsay

92. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery from the defendant. The defendant claims the documents are protected by the attorney-client privilege. What is the proper procedure?

A. Under FRCP 26(b)(5), the defendant must produce a privilege log identifying the documents withheld and the nature of the privilege claimed; the court may then assess the validity of the privilege claim, potentially through in-camera review

B. The defendant must produce all documents

C. The defendant may refuse all production

D. The court must order in-camera review of all documents

93. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense because the neighbor attacked him with a knife. The prosecution offers as rebuttal evidence the testimony of a witness that the neighbor was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the neighbor's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. No, because hearsay rules bar the testimony
- D. Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony

94. A federal lawsuit is filed by a plaintiff. The defendant moves to dismiss for failure to state a claim. The court grants the motion with leave to amend. The plaintiff files an amended complaint with additional factual allegations. The defendant moves to dismiss the amended complaint. Under *Twombly* and *Iqbal*, what is the proper analysis?

- A. The court must dismiss the amended complaint as repetitive
- B. Under *Twombly* and *Iqbal*, the court considers whether the amended complaint states a plausible claim based on factual allegations rather than conclusory assertions; the additional facts must move the claim from conceivable to plausible
- C. The court must grant summary judgment
- D. The court must allow the amended complaint without scrutiny

95. A defendant is on trial for armed robbery. The prosecution offers a videotape of the defendant making transactions consistent with the robbery. The defense objects, arguing the videotape has not been authenticated. May the videotape be admitted?

- A. No, because all videotapes must be authenticated by the person who recorded them
- B. No, because videotapes are inadmissible character evidence

C. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the prosecution claims it to be; testimony establishing the recording system, time, and chain of custody satisfies this standard

D. Yes, because videotapes are self-authenticating

96. A federal court is hearing a state-law fraud case in diversity. The state has a substantive law providing that fraud claims must be proven by clear and convincing evidence. The defendant moves to dismiss the case because the plaintiff has not pled facts sufficient to satisfy this standard. What is the proper outcome?

A. The federal court applies notice pleading

B. The federal court applies federal common law on burden of proof

C. The federal court applies federal procedural rules

D. Under Erie, the federal court applies the state's clear and convincing evidence standard because burdens of proof are substantive law affecting outcome under Erie

97. A defendant is on trial for the murder of his wife. The prosecution offers testimony from a forensic expert who concludes that the defendant's DNA matches DNA found at the crime scene. The defense argues the expert's methodology is unreliable. What is the proper procedure?

A. Under Daubert v. Merrell Dow Pharmaceuticals and FRE 702, the trial court conducts a hearing as gatekeeper to determine whether the expert's methodology is reliable, considering factors including testability, peer review, error rate, and general acceptance

B. The court must defer to the expert's qualifications

C. The court must exclude all forensic expert testimony

D. The court must allow the jury to decide reliability

98. A defendant is on trial for armed robbery. The defense seeks to introduce evidence of the defendant's good character through opinion testimony. The prosecution objects. Should the evidence be admitted?

A. No, because opinion testimony is inadmissible

B. Under FRE 405(a), a criminal defendant may offer evidence of a pertinent character trait through reputation or opinion testimony; non-violence and honesty are pertinent traits to armed robbery charges

- C. No, because reputation evidence is required
- D. Yes, only after the prosecution attacks the defendant's character

99. A federal court is hearing a case under diversity jurisdiction. The defendant moves to dismiss for lack of subject matter jurisdiction. The plaintiff opposes, arguing the parties are diverse and the amount in controversy exceeds \$75,000. What is the proper analysis?

- A. The court determines jurisdiction based on the plaintiff's pleadings
- B. The court determines jurisdiction based on the defendant's pleadings
- C. Under 28 U.S.C. § 1332, diversity jurisdiction requires complete diversity (no plaintiff sharing citizenship with any defendant) and an amount in controversy exceeding \$75,000, exclusive of interest and costs; the court must independently determine these elements
- D. The court determines jurisdiction by mutual consent

100. A defendant is on trial for armed robbery. The defense seeks to call a character witness who will testify that the defendant has a reputation for being honest. The prosecution objects. Should the witness be allowed to testify?

- A. Under FRE 404(a)(2)(A) and FRE 405(a), a criminal defendant may offer reputation evidence of a pertinent character trait such as honesty; honesty is pertinent to robbery charges, which involve unlawful taking
- B. No, because honesty is not pertinent to robbery
- C. No, because reputation evidence is barred
- D. Yes, only if the witness has a prior relationship with the defendant

Section 2 — Questions 101 through 200 (3 Hours)

101. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for forum non conveniens, arguing that an alternative forum is more convenient. The plaintiff objects. Under *Gulf Oil v. Gilbert*, what factors should the court consider?

- A. Only the plaintiff's preference

B. Only the defendant's convenience

C. Only the location of relevant documents

D. The court considers (1) the private interests of the parties (ease of access to evidence, witness availability, costs), and (2) the public interests of the forum (judicial efficiency, local interest, applicable law, court congestion)

102. A defendant is on trial for the federal crime of bank robbery. At trial, the prosecution must prove the defendant entered a federally insured bank with intent to rob. The defendant testifies he had no intent to rob; he was lost and looking for directions. What burden does the prosecution bear?

A. The prosecution must show the defendant entered the bank

B. The prosecution must prove all elements of the crime beyond a reasonable doubt, including intent

C. The prosecution must show the defendant possessed a weapon

D. The prosecution must show the defendant fled the scene

103. A homeowner enters into a contract with a real estate broker for a 6% commission upon "the sale of the property within the listing period." The broker procures a buyer who is ready, willing, and able to purchase. The seller refuses to sell. Is the broker entitled to a commission?

A. Yes, because the broker fulfilled her duties

B. The broker recovers only after the property is sold

C. Under the traditional brokerage rule, the broker has earned the commission upon procuring a ready, willing, and able buyer at the listing price during the listing period; the seller cannot avoid the commission by refusing to sell

D. No, because no sale was consummated

104. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's general financial condition to support a claim for punitive damages. The defendant argues that the evidence is improper. What is the proper outcome?

- A. Evidence of the defendant's net worth or financial condition may be admissible in connection with punitive damages under applicable state substantive law; under Erie, the federal court applies state law on the measure and propriety of punitive damages
- B. Evidence of net worth is automatically inadmissible
- C. Evidence of net worth requires special permission
- D. Evidence of net worth is admissible only with the defendant's consent

105. A defendant is convicted of armed robbery. The trial court imposes a sentence of 25 years. The defendant appeals, arguing the sentence is grossly disproportionate. What is the proper standard?

- A. The sentence is reviewed de novo
- B. The sentence must be reversed if the defendant has no prior record
- C. The sentence must be reversed if it exceeds the average for the offense
- D. Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense; the defendant bears the burden to overcome the presumption of validity

106. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff seeks to certify a class action. The plaintiffs satisfy the requirements of FRCP 23(a). For certification under FRCP 23(b)(3), what is the standard?

- A. The plaintiffs must show that all class members agree
- B. The plaintiffs must show that common questions of law or fact predominate over individual questions and that a class action is the superior method of fairly and efficiently adjudicating the controversy
- C. The plaintiffs must show that the defendant has acted on grounds applicable to the entire class
- D. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications

107. A defendant is on trial for fraud. The defense seeks to introduce evidence of the defendant's good character through reputation testimony. The prosecution objects. Should the evidence be admitted?

- A. Under FRE 404(a)(2)(A), a criminal defendant may offer evidence of a pertinent character trait such as honesty through reputation testimony; honesty is pertinent to fraud charges

- B. No, because reputation evidence is generally inadmissible
- C. No, because character evidence is barred under FRE 404
- D. Yes, only after the prosecution attacks the defendant's character

108. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law requiring all contracts for the sale of land to be in writing. The defendant moves to dismiss because the alleged contract was oral. What is the proper outcome?

- A. The federal court applies federal common law on contracts
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability
- D. The federal court applies whichever rule produces uniformity

109. A defendant is on trial for assault. The prosecution offers eyewitness testimony from a victim who claims the defendant attacked her. On cross-examination, the defense asks whether the witness was wearing prescription glasses at the time of the assault. The witness says she was not. The prosecution objects. Is the question allowed?

- A. No, because the witness's vision is irrelevant
- B. No, because the prosecution did not introduce evidence of vision
- C. No, because the question seeks character evidence
- D. The question is permissible because the witness's vision and her ability to perceive — including whether she was wearing her prescribed eyeglasses — directly affect the reliability of her observations

110. A federal court is asked to issue an injunction restraining a corporation from engaging in certain business practices. The plaintiff demonstrates likelihood of success on the merits and irreparable injury. The defendant argues that the injunction would impose hardship. What other factors should the court consider?

- A. Only the plaintiff's likelihood of success

- B. The court considers the four-factor test: (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest; all factors must be evaluated
- C. Only the defendant's hardship
- D. Only the public interest

111. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant in a photo lineup at the police station. The defense argues the lineup was unduly suggestive because the defendant was the only person depicted with a beard. What is the proper analysis?

- A. The court must defer to the police officer's account
- B. The court must exclude all identification testimony
- C. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances, including the witness's opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification
- D. The court must require the lineup be photographed

112. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for joint and several liability among multiple tortfeasors. The defendant argues that the federal court should apply pure several liability. What is the proper outcome?

- A. Under *Erie*, the federal court applies the state's joint and several liability rule because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery
- B. The federal court applies federal common law on liability
- C. The federal court applies pure several liability as the federal default
- D. The federal court applies whichever rule produces uniformity

113. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'm going to take care of him once and for all" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. No, because the statement is too remote in time
- D. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, and is also relevant to motive and intent under FRE 404(b)

114. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery from the defendant. The defendant claims the documents are protected by the work product doctrine. The plaintiff argues the documents were prepared in the ordinary course of business. What is the proper standard?

- A. The documents are protected if they were prepared by lawyers
- B. Under FRCP 26(b)(3), work product protection applies only to documents prepared by an attorney or another representative of a party in anticipation of litigation; documents created in the ordinary course of business — even if they may later become relevant to litigation — are not protected
- C. The documents are protected if they involve confidential corporate information
- D. The documents are not protected because work product applies only to documents prepared after litigation has commenced

115. A defendant is convicted of murder. On appeal, the defendant argues that his confession was inadmissible because police failed to read Miranda warnings. The prosecution concedes Miranda was not given but argues the confession was voluntary. May the confession be used?

- A. The confession is admissible in the prosecution's case-in-chief
- B. The confession is admissible if voluntary
- C. Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently
- D. The confession is inadmissible for any purpose

116. A federal court is hearing a state-law fraud case in diversity. The state has a substantive law requiring fraud claims to be proven by clear and convincing evidence. The defendant moves to dismiss the case because the plaintiff has not pled facts sufficient to satisfy this standard. What is the proper outcome?

- A. Under Erie, the federal court applies the state's clear and convincing evidence standard because burdens of proof are substantive law affecting outcome
- B. The federal court applies federal common law on burden of proof
- C. The federal court applies federal procedural rules
- D. The federal court applies whichever standard produces uniformity

117. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a witness who claims to have seen the defendant fleeing the scene. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

- A. Flight evidence is inadmissible
- B. Flight evidence is admissible as circumstantial evidence of consciousness of guilt; the jury may consider flight, along with other evidence, in determining whether the defendant committed the offense beyond a reasonable doubt
- C. Flight evidence is conclusive of guilt
- D. Flight evidence requires corroboration by direct evidence

118. A federal court is hearing a complex commercial case. The plaintiff seeks to amend the complaint to add a new defendant after the statute of limitations has expired. Under FRCP 15(c), what is required for the amendment to relate back?

- A. The new defendant must consent to the amendment
- B. The new defendant must be a successor in interest to an existing defendant
- C. The plaintiff must demonstrate excusable neglect
- D. Under FRCP 15(c)(1)(C), the amendment relates back if (1) the claim arose from the same conduct as the original pleading, (2) the new defendant received notice within the time for service such that no prejudice results, and (3) the new defendant knew or should have known the action would have been brought against him absent a mistake

119. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation for peacefulness. The prosecution then seeks to introduce evidence of a prior assault conviction the defendant has from two years ago. May the evidence be admitted?

- A. No, because reputation evidence does not open the door
- B. No, because the conviction is too remote in time
- C. The prior conviction is admissible to rebut the defendant's claim of peaceful character; once the defendant places character in issue, the prosecution may rebut with evidence of contrary conduct under FRE 404(a)(2)(A)
- D. Yes, only if the conviction is also a felony

120. A federal court has jurisdiction over a case under diversity jurisdiction. The plaintiff seeks discovery from a non-party. The non-party objects to the discovery, arguing it is unduly burdensome. What is the proper standard under FRCP 45?

- A. Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege; the court must quash or modify a subpoena that subjects a person to undue burden
- B. Non-parties must comply with all discovery requests
- C. Non-parties may refuse all discovery
- D. Non-parties must obtain consent of all parties before objecting

121. A defendant is on trial for armed robbery. The defense seeks to introduce evidence that the alleged victim has a reputation for being violent and aggressive. The prosecution objects. Should the evidence be admitted?

- A. No, because the victim's character is irrelevant
- B. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue; such evidence supports the defendant's claim that the victim was the initial aggressor
- C. No, because reputation evidence is barred
- D. Yes, but only after the prosecution opens the door

122. A federal lawsuit involves a plaintiff and a defendant. The defendant makes a settlement offer for \$40,000. The plaintiff rejects the offer. After trial, the jury awards the plaintiff \$35,000. Under FRCP 68, what is the consequence?

- A. The defendant has no obligation
- B. The plaintiff's recovery is reduced
- C. The defendant is liable for the plaintiff's costs and attorney's fees
- D. Under FRCP 68, the plaintiff is liable for the defendant's costs incurred after the offer was made, because the plaintiff failed to obtain a more favorable result than the offer

123. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "She is destroying my life" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception
- B. No, because the statement is hearsay
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

124. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing for specific performance as the standard remedy for breach of real estate sales contracts. The defendant argues that monetary damages are adequate. What is the proper outcome?

- A. Specific performance is automatic for all contract disputes
- B. The federal court applies federal common law on contracts
- C. Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate; this principle is well-established in equity and applies in federal court
- D. The federal court applies federal procedural rules

125. A defendant is on trial for armed robbery. The prosecution offers a confession given by the defendant during interrogation. The defense argues the confession was obtained in violation of Miranda. The trial court must determine the admissibility of the confession. Under *Colorado v. Connelly*, what standard applies?

- A. The court must find by clear and convincing evidence
- B. The court must find by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent
- C. The court must find by beyond a reasonable doubt
- D. The court defers to the police officer's account

126. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. The court considers only the cash payments
- B. The court considers only the attorney's fees
- C. The court considers only the named plaintiffs' preferences
- D. The court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties

127. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense because the neighbor attacked him with a weapon. The prosecution offers as rebuttal evidence the testimony of a witness that the neighbor was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the neighbor's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- D. No, because hearsay rules bar the testimony

128. A federal lawsuit is filed by a plaintiff. The defendant moves to dismiss for lack of subject matter jurisdiction. The court grants the motion. The plaintiff appeals. The court of appeals reviews the dismissal. What is the standard?

- A. Under *Hall v. Hilbun* and similar precedent, dismissal for lack of subject matter jurisdiction is reviewed de novo because the issue is a pure legal question
- B. The dismissal is reviewed for abuse of discretion
- C. The dismissal is presumed valid; the plaintiff must show clear error
- D. The dismissal is reviewed for substantial evidence

129. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a witness who claims to have seen the defendant near the scene shortly before the robbery. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

- A. Circumstantial evidence is inadmissible in criminal cases
- B. Circumstantial evidence is admissible, and a conviction may rest on the totality of circumstantial evidence if a rational jury could find guilt beyond a reasonable doubt under *Jackson v. Virginia*
- C. Circumstantial evidence requires corroboration by direct evidence
- D. Circumstantial evidence is conclusive of guilt

130. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks specific performance of a contract for the sale of a unique parcel of land. The defendant argues that monetary damages are an adequate remedy. What is the proper standard?

- A. Specific performance is automatic for all contract disputes
- B. The federal court applies federal common law on contracts
- C. Specific performance is denied because monetary damages are always available
- D. Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate

131. A defendant is on trial for assault. The prosecution offers testimony from a witness who claims to have seen the defendant attack the victim. On cross-examination, the defense asks whether the witness has been previously convicted of a misdemeanor crime of moral turpitude. The witness denies the conviction. The defense seeks to introduce the conviction as extrinsic evidence. Is the evidence admissible?

- A. No, because misdemeanors are inadmissible
- B. No, because the witness denied the conviction
- C. Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach, regardless of punishment, and may be proven by extrinsic evidence when the witness denies them
- D. The conviction is admissible only with the witness's consent

132. A federal court has jurisdiction over a case under federal question jurisdiction. The plaintiff has also asserted state-law claims arising from the same nucleus of operative facts. The defendant moves to dismiss the state-law claims for lack of subject matter jurisdiction. What is the proper outcome?

- A. Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim; the court may exercise supplemental jurisdiction subject to the considerations in § 1367(c)
- B. The court must dismiss the state-law claims because they raise issues of state law
- C. The court must transfer the state-law claims to state court
- D. The court must dismiss the state-law claims because they are not within federal jurisdiction

133. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation for honesty. On cross-examination, the prosecution asks whether the witness has heard that the defendant was previously arrested for theft. The defense objects. Is the question allowed?

- A. No, because arrests are unproven
- B. No, because the question seeks specific acts
- C. No, because the conviction is more prejudicial than probative
- D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony

134. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing for treble damages in cases of fraudulent breach. The defendant argues that the federal court should not award treble damages. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. Under Erie, the federal court applies state law on treble damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action
- C. The federal court applies federal procedural rules
- D. The federal court denies treble damages

135. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a witness who claims to have seen the defendant at the scene. The defense argues that the witness's identification is unreliable because the witness was elderly. What is the proper analysis?

- A. The witness's age makes the testimony per se unreliable
- B. The witness's identification is excluded automatically
- C. The witness's age is one factor relevant to the weight of her identification; the jury evaluates credibility, and the witness's perceptual and memory capacities are subject to cross-examination
- D. The court must require additional witnesses to corroborate

136. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The settlement provides for cash payments and substantial attorney's fees. The court must determine whether the settlement is fair, reasonable, and adequate. Under FRCP 23(e), what is required?

- A. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering relevant factors
- B. The court must approve the settlement unless objections are unanimous
- C. The court must defer to the parties' agreement
- D. The court must obtain unanimous consent of all class members

137. A defendant is on trial for the murder of his wife. The defense argues that the defendant suffered from severe mental illness at the time of the killing. The jurisdiction applies the M'Naghten test for insanity. What must the defense show?

- A. The defendant must show that he acted in the heat of passion

B. Under the M'Naghten test, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect such that he did not know the nature and quality of his actions or did not know that his actions were wrong

C. The defendant must show that he had emotional distress

D. The defendant must show he had a learning disability

138. A federal court is hearing a complex commercial case. The plaintiff seeks discovery of internal corporate documents. The defendant claims the documents are protected by the attorney-client privilege. The plaintiff argues the documents were sent to non-lawyers within the company. Under *Upjohn Co. v. United States*, what is the proper analysis?

A. The privilege applies only to communications with outside counsel

B. The privilege applies only to documents prepared by lawyers

C. The privilege does not apply because the documents were sent internally

D. Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and counsel made for the purpose of seeking, obtaining, or providing legal services, even when communicated to other corporate personnel as part of the legal advisory process, provided confidentiality is maintained

139. A defendant is on trial for armed robbery. The prosecution offers a videotape from a security camera at the bank. The defense objects, arguing the videotape was made without consent. Should the videotape be admitted?

A. The videotape is inadmissible because it was made without consent

B. The videotape is inadmissible because security cameras require warrants

C. The videotape is admissible if relevant and properly authenticated under FRE 901; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted

D. The videotape is inadmissible because it is hearsay

140. A federal court is hearing a state-law contract case in diversity. The plaintiff seeks specific performance of a contract for the sale of a unique antique. The defendant argues that monetary damages are adequate. What is the proper standard?

- A. Specific performance is the remedy of choice for breach of a contract for a unique chattel (such as antiques, art, or one-of-a-kind goods) because monetary damages are inadequate; uniqueness of the subject matter justifies equitable relief
- B. Specific performance is denied because monetary damages are always available
- C. Specific performance requires consent of both parties
- D. Specific performance is automatic for all contracts

141. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I want him to suffer" two days before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

142. A federal court has jurisdiction over a case under diversity jurisdiction. The plaintiff seeks to introduce evidence of the defendant's net worth to support a claim for punitive damages. The defendant argues that net worth is irrelevant. What is the proper outcome?

- A. Evidence of net worth is automatically inadmissible
- B. Evidence of net worth requires special permission from the court
- C. Evidence of net worth is admissible only with the defendant's consent
- D. Evidence of the defendant's net worth or financial condition may be admissible in connection with punitive damages under applicable state substantive law; under Erie, the federal court applies state law on the measure and propriety of punitive damages

143. A defendant is on trial for armed robbery. The defense argues that the defendant was acting in self-defense because the alleged victim was reaching for a weapon. The prosecution argues that the defendant's response was excessive. What is the proper analysis?

- A. Self-defense requires actual danger
- B. Self-defense requires the defendant to retreat first
- C. Self-defense requires that the defendant reasonably believed he was in imminent danger of harm and used reasonable, proportionate force in response; the force used must not exceed what a reasonable person would have used under the circumstances
- D. Self-defense is unavailable if the defendant used any force

144. A federal lawsuit is filed by a plaintiff. The defendant moves to dismiss for failure to state a claim. The plaintiff seeks discovery to support the complaint. The defendant argues discovery should be stayed pending the motion. What is the proper standard?

- A. A federal court may stay discovery pending resolution of a motion to dismiss, balancing the burden on the moving party against the need for discovery; the moving party generally bears the burden of showing that a stay is warranted
- B. Discovery is automatic
- C. Discovery must be deferred until the court rules on the motion
- D. Discovery requires the consent of all parties

145. A defendant is on trial for the murder of his business partner. The prosecution offers testimony from a forensic expert who concludes that the defendant's DNA matches DNA found at the crime scene. The defense argues the expert's methodology is unreliable. What is the proper procedure?

- A. The court must defer to the expert's qualifications
- B. Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court conducts a hearing as gatekeeper to determine whether the expert's methodology is reliable, considering factors including testability, peer review, error rate, and general acceptance
- C. The court must exclude all forensic expert testimony
- D. The court must allow the jury to decide reliability

146. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to depose the CEO of the defendant corporation. The defendant moves for a protective order. What is the proper standard?

- A. The court must allow the deposition unconditionally
- B. The court must grant the protective order automatically
- C. The court must defer to the defendant's preferences
- D. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the deposition proponent generally bears the burden of justifying it

147. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant from a photo lineup. The defense argues the lineup was unduly suggestive. What is the proper analysis?

- A. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including the witness's opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification
- B. The court must defer to the police officer's account
- C. The court must exclude all identification testimony
- D. The court must require the lineup be photographed

148. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's general financial condition to support a claim for punitive damages. The defendant argues that the evidence is improper. What is the proper outcome?

- A. Evidence of net worth is automatically inadmissible
- B. Evidence of net worth requires special permission
- C. Evidence of the defendant's net worth or financial condition may be admissible in connection with punitive damages under applicable state substantive law; under *Erie*, the federal court applies state law on the measure and propriety of punitive damages
- D. Evidence of net worth is admissible only with the defendant's consent

149. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "She's making me miserable" three weeks before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

150. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The settlement provides for cash payments and attorney's fees. The court must determine whether the settlement is fair, reasonable, and adequate. Under FRCP 23(e), what is the proper procedure?

- A. The court must defer to the parties' agreement
- B. The court must obtain unanimous consent of all class members
- C. The court must approve the settlement unless objections are unanimous
- D. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate

151. A defendant is on trial for armed robbery. The defense seeks to introduce evidence that the alleged victim has a reputation for being violent and aggressive. The prosecution objects, arguing this is character evidence. Should the evidence be admitted?

- A. No, because the victim's character is irrelevant
- B. No, because reputation evidence is barred
- C. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue; such evidence supports the defendant's claim that the victim was the initial aggressor
- D. Yes, but only after the prosecution opens the door

152. A federal court is hearing a complex commercial case. The plaintiff moves to amend the complaint to add additional parties. The defendant argues that the amendment is improper. Under FRCP 15(a), what is the standard?

- A. Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires"; the court considers factors including undue delay, prejudice, futility, and bad faith
- B. Leave is granted as a matter of right
- C. Leave is denied unless the new parties consent
- D. Leave requires consent of all defendants

153. A defendant is on trial for armed robbery. The prosecution offers a witness who claims to have seen the defendant fleeing the scene. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

- A. Flight evidence is inadmissible
- B. Flight evidence is conclusive of guilt
- C. Flight evidence requires corroboration by direct evidence
- D. Flight evidence is admissible as circumstantial evidence of consciousness of guilt; the jury may consider flight, along with other evidence, in determining whether the defendant committed the offense beyond a reasonable doubt

154. A federal court has jurisdiction over a case under federal question jurisdiction. The plaintiff has also asserted state-law claims arising from the same nucleus of operative facts. The defendant moves to dismiss the state-law claims for lack of subject matter jurisdiction. What is the proper outcome?

- A. The court must dismiss the state-law claims because they raise issues of state law
- B. Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim; the court may exercise supplemental jurisdiction subject to the considerations in § 1367(c)
- C. The court must transfer the state-law claims to state court
- D. The court must dismiss the state-law claims because they are not within federal jurisdiction

155. A defendant is on trial for the murder of his wife. The prosecution offers testimony from a witness who claims the defendant said, "I wish my wife would just disappear" several months before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception
- D. No, because the statement is too remote in time

156. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's net worth to support a claim for punitive damages. The defendant argues that the evidence is improper. What is the proper outcome?

- A. Evidence of the defendant's net worth or financial condition may be admissible in connection with punitive damages under applicable state substantive law; under Erie, the federal court applies state law on the measure and propriety of punitive damages
- B. Evidence of net worth is automatically inadmissible
- C. Evidence of net worth requires special permission
- D. Evidence of net worth is admissible only with the defendant's consent

157. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation for honesty. On cross-examination, the prosecution asks whether the witness has heard that the defendant was previously sued for fraud. The defense objects. Is the question allowed?

- A. No, because civil lawsuits are not character evidence
- B. No, because the lawsuit is unproven
- C. No, because the question seeks specific acts
- D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including civil lawsuits reflecting dishonesty, to test the basis of the witness's reputation testimony

158. A federal court has jurisdiction over a case under diversity jurisdiction. The plaintiff seeks discovery from a non-party. The non-party objects to the discovery, arguing it is unduly burdensome. Under FRCP 45, what is the proper standard?

- A. Non-parties must comply with all discovery requests
- B. Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege; the court must quash or modify a subpoena that subjects a person to undue burden
- C. Non-parties may refuse all discovery
- D. Non-parties must obtain consent of all parties before objecting

159. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'll deal with him soon" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. Under FRE 801(d)(2)(A), the defendant's own statement is admissible as an opposing party's statement, and is also relevant to motive and intent under FRE 404(b)
- B. No, because the statement is hearsay
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

160. A federal court is hearing a state-law fraud case in diversity. The state has a substantive law requiring fraud claims to be pled with heightened particularity. The defendant moves to dismiss because the complaint does not satisfy this state standard. What is the proper outcome?

- A. The federal court applies notice pleading
- B. The federal court applies federal procedural rules on pleading
- C. Under *Hanna v. Plumer*, the federal court applies FRCP 9(b), which independently requires fraud to be pleaded with particularity; this satisfies the requirements for federal pleading
- D. The federal court applies whichever standard produces uniformity

161. A defendant is on trial for the murder of his wife. The defense argues that the defendant suffered from severe mental illness at the time of the killing. The jurisdiction applies the M'Naghten test for insanity. What must the defense show?

- A. The defendant must show that he acted in the heat of passion

- B. The defendant must show that he had emotional distress
- C. The defendant must show he had a learning disability
- D. Under the M'Naghten test, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect such that he did not know the nature and quality of his actions or did not know that his actions were wrong

162. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to depose the CEO of the defendant corporation. The defendant moves for a protective order. What is the proper standard?

- A. The court must allow the deposition unconditionally
- B. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the deposition proponent generally bears the burden of justifying it
- C. The court must grant the protective order automatically
- D. The court must defer to the defendant's preferences

163. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from a victim who identified the defendant in a photo lineup. The defense argues the lineup was unduly suggestive. What is the proper analysis?

- A. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including the witness's opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification
- B. The court must defer to the police officer's account
- C. The court must exclude all identification testimony
- D. The court must require the lineup be photographed

164. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's net worth to support a claim for punitive damages. The defendant argues that the evidence is improper. What is the proper outcome?

- A. Evidence of net worth is automatically inadmissible
- B. Evidence of net worth requires special permission
- C. Evidence of the defendant's net worth or financial condition may be admissible in connection with punitive damages under applicable state substantive law; under Erie, the federal court applies state law on the measure and propriety of punitive damages
- D. Evidence of net worth is admissible only with the defendant's consent

165. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "She has to go" a week before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. No, because the statement is too remote in time
- D. Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception

166. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. The court considers only the cash payments
- B. The court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties
- C. The court considers only the attorney's fees
- D. The court considers only the named plaintiffs' preferences

167. A defendant is on trial for armed robbery. The prosecution offers a videotape from a security camera at the bank. The defense objects, arguing the videotape was made without consent. Should the videotape be admitted?

- A. The videotape is inadmissible because it was made without consent
- B. The videotape is inadmissible because security cameras require warrants
- C. The videotape is admissible if relevant and properly authenticated under FRE 901; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted
- D. The videotape is inadmissible because it is hearsay

168. A federal court is hearing a complex commercial case. The plaintiff seeks to amend the complaint to add a new claim. The defendant argues that the amendment is improper. Under FRCP 15(a), what is the proper standard?

- A. Leave is granted as a matter of right
- B. Leave is denied unless the new claim consents
- C. Leave requires consent of all defendants
- D. Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires"; the court considers factors including undue delay, prejudice, futility, and bad faith

169. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense because the neighbor attacked him with a knife. The prosecution offers as rebuttal evidence the testimony of a witness that the neighbor was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the neighbor's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. No, because hearsay rules bar the testimony
- D. Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony

170. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law requiring all contracts for the sale of goods over \$500 to be in writing. The defendant moves to dismiss because the contract is not in writing. What is the proper outcome?

- A. The federal court applies federal common law on contracts
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability
- D. The federal court applies whichever rule produces uniformity

171. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation for being non-violent. The prosecution then seeks to introduce evidence of a prior assault conviction the defendant has. May the evidence be admitted?

- A. No, because reputation evidence does not open the door
- B. The prior conviction is admissible to rebut the defendant's claim of non-violent character; once the defendant places character in issue, the prosecution may rebut with evidence of contrary conduct including prior convictions under FRE 404(a)(2)(A)
- C. No, because the conviction is too remote in time
- D. Yes, only if the conviction is also a felony

172. A federal court has jurisdiction over a case under diversity jurisdiction. The plaintiff seeks discovery from a non-party. The non-party objects to the discovery, arguing it is unduly burdensome. Under FRCP 45, what is the proper standard?

- A. Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege; the court must quash or modify a subpoena that subjects a person to undue burden
- B. Non-parties must comply with all discovery requests
- C. Non-parties may refuse all discovery
- D. Non-parties must obtain consent of all parties before objecting

173. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in self-defense. The prosecution offers as rebuttal evidence the testimony of a witness that the wife was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the wife's character is irrelevant

B. Yes, but only after the prosecution provides advance notice

C. No, because reputation evidence is inadmissible

D. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony

174. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs request court approval of a settlement. Under FRCP 23(e), what is the proper procedure?

A. The court must defer to the parties' agreement

B. The court must obtain unanimous consent of all class members

C. Under FRCP 23(e), the court must direct notice to all class members who would be bound by the settlement and approve the settlement only after a fairness hearing finding it fair, reasonable, and adequate

D. The court must approve the settlement unless objections are unanimous

175. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'm going to deal with that man once and for all" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

A. No, because the statement is hearsay

B. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement; the statement is also admissible under FRE 803(3) as evidence of the defendant's then-existing state of mind and under FRE 404(b) for motive and intent

C. The statement is admissible only as character evidence

D. No, because the statement is too remote in time

176. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs propose a settlement. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

A. The court considers only the cash payments

B. The court considers only the attorney's fees

C. The court considers only the named plaintiffs' preferences

D. Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties

177. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because police failed to give Miranda warnings before interrogating him in custody. The prosecution argues the confession was voluntary. May the confession be used?

A. Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently; voluntariness does not cure the Miranda violation for case-in-chief purposes

B. The confession is admissible if voluntary

C. The confession is inadmissible for any purpose

D. The confession is admissible because Miranda warnings are not constitutionally required

178. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing that the plaintiff must give the defendant written notice within 30 days of the alleged breach. The defendant moves to dismiss because the plaintiff did not provide the notice. What is the proper outcome?

A. The federal court applies federal common law on notice requirements

B. The federal court applies federal procedural rules

C. Under *Erie*, the federal court applies the state's notice requirement because it is substantive law affecting whether recovery is available; the failure to provide notice may bar the claim

D. The federal court applies whichever rule produces uniformity

179. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense because the sister attacked the defendant. The prosecution offers as rebuttal evidence the testimony of a witness that the sister was generally peaceful. The defense objects. Should the testimony be admitted?

A. No, because the sister's character is irrelevant

B. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony

C. Yes, but only after the prosecution provides advance notice

D. No, because hearsay rules bar the testimony

180. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement that provides substantial relief to class members. The court must determine whether the settlement is fair, reasonable, and adequate. Under FRCP 23(e), what is the proper procedure?

A. The court must defer to the parties' agreement

B. The court must obtain unanimous consent of all class members

C. The court must approve the settlement unless objections are unanimous

D. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering relevant factors

181. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in the heat of passion after the defendant discovered evidence of the wife's infidelity. The prosecution argues the time between the discovery and the killing was sufficient for cooling off. What is the proper analysis?

A. Heat of passion never applies to spousal killings

B. Under the common law heat of passion doctrine, voluntary manslaughter requires (1) adequate provocation, (2) actual heat of passion at the time of the killing, (3) insufficient cooling-off time, and (4) a causal connection between provocation, passion, and the fatal act; whether cooling-off has occurred is a factual question for the jury

C. Heat of passion always applies after discovery of infidelity

D. Heat of passion requires the killing to occur during the provoking event

182. A federal lawsuit involves a plaintiff and three defendants. After answering, two defendants assert cross-claims against the third defendant arising out of the same accident. Under FRCP 13(g), what is required?

- A. Under FRCP 13(g), a cross-claim may be asserted by one party against a co-party if it arises out of the same transaction or occurrence as the original action or relates to property that is the subject of the original action
- B. Cross-claims may be asserted only with the court's permission
- C. Cross-claims require the consent of all parties
- D. Cross-claims must be asserted by all defendants jointly

183. A defendant is on trial for armed robbery. The defense calls a witness who testifies that the defendant was at the witness's home at the time of the robbery. On cross-examination, the prosecution seeks to introduce evidence that the witness has a prior conviction for perjury. The defense objects. Is the evidence admissible?

- A. No, because the conviction is too remote in time
- B. No, because the conviction is unproven by reputation
- C. Yes, but only with the witness's consent
- D. The witness is an alibi witness whose testimony is admissible; the prior perjury conviction is automatically admissible to impeach under FRE 609(a)(2) because it is a crime of dishonesty or false statement, regardless of punishment, recency, or balancing requirements

184. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to amend the complaint to add a new claim arising from a separate transaction. The defendant objects, arguing the amendment is improper. Under FRCP 15(a), what is the proper standard?

- A. Leave is granted as a matter of right
- B. Leave is denied unless the new claim is meritorious
- C. Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires"; the court considers factors including undue delay, prejudice, futility, and bad faith, but new claims arising from different transactions may still be added if these factors are satisfied
- D. Leave requires consent of all defendants

185. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense. The prosecution offers as evidence the defendant's prior expressions of anger toward the victim. The defense objects under FRE 404(b). What is the proper analysis?

- A. Prior expressions of anger are inadmissible character evidence
- B. Under FRE 404(b), the defendant's prior expressions of anger or hostility toward the victim are admissible for permissible non-propensity purposes including motive and intent; such evidence may rebut the defendant's self-defense claim and is subject to FRE 403 balancing
- C. Prior expressions of anger are inadmissible because they are remote
- D. Prior expressions of anger are admissible only with the defendant's consent

186. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's net worth in connection with a punitive damages claim. The defendant argues the evidence is improper. What is the proper outcome?

- A. Under Erie, the federal court applies state substantive law on the measure and propriety of punitive damages; evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages
- B. Evidence of net worth is automatically inadmissible
- C. Evidence of net worth requires special permission from the court
- D. Evidence of net worth is admissible only with the defendant's consent

187. A defendant is on trial for armed robbery. The prosecution offers testimony from a witness who claims to have seen the defendant fleeing the scene moments after the robbery. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

- A. Flight evidence is inadmissible
- B. Flight evidence is conclusive of guilt
- C. Flight evidence requires corroboration by direct evidence
- D. Flight evidence is admissible as circumstantial evidence of consciousness of guilt; the jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt

188. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object that the attorney's fees are excessive in relation to the relief provided. The court must determine whether to approve the settlement. Under FRCP 23(e), what is required?

- A. The court must approve the settlement because settlement is favored
- B. The court must approve the settlement unless all objections are sustained
- C. Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, the relative bargaining power of the parties, and the reasonableness of attorney's fees in proportion to class relief
- D. The court must approve the settlement if the named plaintiffs agree

189. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I want him gone for good" the day before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. Under FRE 801(d)(2)(A), the defendant's statement reflecting his state of mind toward the victim is admissible as an opposing party's statement; the statement is also admissible under FRE 803(3) as a state-of-mind exception and under FRE 404(b) as evidence of motive
- B. No, because the statement is hearsay
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

190. A federal court is hearing a state-law tort case in diversity. The state's venue statute provides that tort cases must be brought in the county where the injury occurred. The plaintiff filed suit in federal court located in a different county. The defendant moves to dismiss based on the state venue rule. What result?

- A. The federal court must dismiss based on the state venue rule
- B. A federal court with independent subject matter jurisdiction (such as diversity) may hear a dispute regardless of state-law venue provisions; state venue rules do not strip the federal court of its jurisdiction, and the federal court applies federal venue rules under 28 U.S.C. § 1391
- C. The federal court must transfer the case to the proper state venue
- D. The federal court must defer to the state venue rule

191. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation in the community for being honest and law-abiding. On cross-examination, the

prosecution asks whether the witness has heard about the defendant's prior arrest for theft. The defense objects. Is the question allowed?

- A. No, because arrests are unproven
- B. No, because the conviction is too remote in time
- C. No, because reputation evidence does not open the door
- D. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony; extrinsic proof of the arrest is barred but the inquiry is permitted

192. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to depose the CEO of the defendant corporation. The defendant moves for a protective order, arguing that the CEO has no unique knowledge of the case. What is the proper standard?

- A. The court must allow the deposition unconditionally
- B. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the proponent of the deposition generally bears the burden of justifying it
- C. The court must grant the protective order automatically
- D. The court must defer to the defendant's preferences

193. A defendant is on trial for armed robbery. The prosecution offers testimony from a witness who claims to have seen the defendant near the scene shortly before the robbery. The defense argues this is insufficient to prove the defendant committed the robbery. What is the proper analysis?

- A. Circumstantial evidence such as the defendant's presence near the scene is admissible; the prosecution may rely on the totality of circumstantial evidence, and the jury determines whether the evidence is sufficient to prove guilt beyond a reasonable doubt under *Jackson v. Virginia*
- B. Circumstantial evidence is inadmissible in criminal cases
- C. Circumstantial evidence requires direct corroboration
- D. Circumstantial evidence is conclusive of guilt

194. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for punitive damages in cases of malicious conduct. The defendant argues that the federal court should deny punitive damages. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. The federal court applies federal procedural rules
- C. The federal court denies punitive damages
- D. Under Erie, the federal court applies state substantive law on punitive damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action

195. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense because the neighbor attacked the defendant first. The prosecution offers as rebuttal evidence the testimony of a witness that the neighbor was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the neighbor's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. Under FRE 404(a)(2)(B), when self-defense is at issue and the defendant has placed the victim's character for aggressiveness in issue, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- D. No, because reputation evidence is barred

196. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. The court considers only the cash payments
- B. Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties
- C. The court considers only the attorney's fees
- D. The court considers only the named plaintiffs' preferences

197. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "She needs to go away" three days before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement; the statement is also admissible under FRE 803(3) as evidence of the defendant's then-existing state of mind toward the victim and under FRE 404(b) for motive and intent
- D. No, because the statement is too remote in time

198. A federal court is hearing a state-law contract case in diversity. The plaintiff seeks specific performance of a contract for the sale of a unique parcel of land. The defendant argues that monetary damages are adequate. What is the proper standard?

- A. Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate; this principle is well-established in equity and applies in federal court under Erie
- B. Specific performance is automatic for all contract disputes
- C. Specific performance is denied because monetary damages are always available
- D. Specific performance requires consent of both parties

199. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in self-defense. The prosecution offers as rebuttal evidence the testimony of a witness that the wife was generally peaceful. The defense objects. Should the testimony be admitted?

- A. No, because the wife's character is irrelevant
- B. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- C. Yes, but only after the prosecution provides advance notice
- D. No, because reputation evidence is barred

200. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs request court approval of a settlement. Under FRCP 23(e), what is the proper procedure?

- A. The court must defer to the parties' agreement
- B. The court must obtain unanimous consent of all class members
- C. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering factors such as the strength of the case, value of settlement, reaction of class members, views of competent counsel, stage of proceedings, and relative bargaining power
- D. The court must approve the settlement unless objections are unanimous

PRACTICE EXAM 4 — ANSWER KEY WITH FULL EXPLANATIONS

1. **A** — Under FRCP 55(c), a default may be set aside for "good cause," considering the reason for the default, prejudice to the plaintiff, and the defendant's meritorious defense. The standard is flexible and favors resolution on the merits, particularly when set aside is sought promptly before judgment.
2. **D** — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was reliable under the totality of the circumstances. Reliability factors include the witness's opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification.
3. **B** — The contingency "if A has no surviving children" must resolve, if at all, at A's death because A is the only life in being relevant to the contingency. Since the contingency resolves within A's lifetime plus zero years, the gift to B satisfies the Rule Against Perpetuities.
4. **C** — Under the substantial performance doctrine, the contractor recovers the contract price reduced by the cost of remedying minor deviations. Where the contract price is \$60,000 and remedying the deviations costs \$1,500, the contractor recovers approximately \$58,500.
5. **D** — The plain view doctrine permits an officer lawfully present in a location to seize evidence in plain view without a warrant. The officer here was lawfully present pursuant to an arrest warrant when he observed the suspected drugs on the kitchen counter.
6. **A** — Cross-examination on a witness's termination by a party-opponent is relevant to bias and motivation to testify against that party. The questioning is a proper attack on credibility, exposing the witness's potential motivation to testify favorably against the defendant.

7. B — Under Erie, federal courts in diversity apply state substantive law, including state statutes of limitations. The state's four-year limitations period is substantive because it directly affects whether the claim can be pursued, and the federal court must apply it.

8. C — Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently. Voluntariness does not cure the Miranda violation for case-in-chief use.

9. D — A shifting executory interest contingent on a condition that might be violated at any time in the indefinite future violates the Rule Against Perpetuities. The contingency that the property "is ever used for non-residential purposes" could occur more than 21 years after lives in being, rendering the gift to B void.

10. A — Under the collateral source rule, payments from independent sources such as private insurance do not reduce the plaintiff's recovery from the tortfeasor. The tortfeasor cannot benefit from the plaintiff's foresight in obtaining insurance coverage.

11. B — Under FRCP 13(g), a cross-claim may be asserted by one party against a co-party if it arises out of the same transaction or occurrence as the original action or relates to property that is the subject of the original action. The same-transaction requirement maintains coherence in the litigation.

12. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony. Extrinsic proof of specific acts is barred, but the inquiry itself is permitted.

13. A — The attorney-client privilege protects communications between in-house counsel and corporate personnel made for the purpose of seeking, obtaining, or providing legal advice. Emails sent for purely business purposes are not protected, even when copied to in-house counsel.

14. C — Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach, and may be proven by extrinsic evidence when the witness denies them. The automatic admissibility reflects the *crimen falsi* nature of such crimes.

15. B — Under UCC § 2-712, a buyer who covers in good faith and without unreasonable delay recovers the difference between cover price and contract price. The buyer's damages here are $500 \times (\$25 - \$20) = \$2,500$.

16. D — The trial court must give a lesser included offense instruction if the evidence, viewed in the light most favorable to the defense, would support a verdict on the lesser offense. The instruction protects the defendant's right to have the jury consider all permissible verdicts supported by the evidence.

17. C — Specific personal jurisdiction requires the defendant to have purposefully directed activities at the forum state, and the suit must arise out of or relate to those contacts. The court considers the corporation's targeted forum-specific conduct rather than nationwide advertising alone.

- 18. A** — Under the common law heat of passion doctrine, adequate provocation requires conduct sufficient to cause a reasonable person to lose self-control. Historically, discovering one's spouse in an act of adultery has been recognized as adequate provocation in many common law jurisdictions.
- 19. B** — Restrictions in deeds are construed strictly against the grantor; ambiguous terms are interpreted to favor the grantee's free use of the property. A wine shop is not generally considered a "tavern" under the ordinary meaning of the term, defeating the heirs' claim of reverter.
- 20. C** — Under *Twombly* and *Iqbal*, a complaint must plead facts sufficient to render the claim plausible; conclusory allegations are insufficient. A complaint alleging only that "the defendant's conduct caused damage" fails this standard because it lacks the factual specificity required.
- 21. D** — Under *Jackson v. Virginia*, circumstantial evidence is admissible and may support a conviction if a rational trier of fact could find guilt beyond a reasonable doubt. The jury weighs the totality of the evidence, including circumstantial evidence such as presence near the scene.
- 22. A** — Under *Erie*, federal courts in diversity apply state substantive law including state-law joint and several liability rules. The allocation of damages among multiple tortfeasors is substantive because it directly affects the measure of recovery.
- 23. C** — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as formal charging, indictment, or arraignment. Deliberate elicitation of statements from a charged defendant without counsel violates the right.
- 24. B** — Under the traditional brokerage rule, the broker has earned the commission upon procuring a ready, willing, and able buyer at the listing price. The seller cannot avoid the commission by refusing to sell when the broker has performed her obligation.
- 25. A** — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi where the prior conduct shares distinctive features with the charged offense. Three similar fraudulent schemes within two years are probative of intent and scheme.
- 26. D** — Under *Erie*, federal courts in diversity apply state substantive law including the statute of frauds. A state-law requirement that contracts above a certain threshold be in writing is substantive because it determines contract enforceability.
- 27. C** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim.
- 28. B** — Under FRCP 23(b)(3), in addition to the FRCP 23(a) requirements, the plaintiffs must show that common questions of law or fact predominate over individual questions and that a class action is the superior method of adjudication. Both predominance and superiority must be satisfied.

- 29. A** — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony. The rebuttal addresses the defendant's claim that the victim was the aggressor.
- 30. C** — A class gift to "A's children equally" closes at A's death, and all members of the class alive at that moment share equally. After-born children who survive A are included in the gift along with children alive at the time of conveyance.
- 31. A** — FRCP 68 applies only to offers made by the defendant to the plaintiff; the cost-shifting consequence operates when the plaintiff rejects the offer and fails to obtain a more favorable result. An offer by the plaintiff to the defendant does not trigger the rule.
- 32. D** — Under FRE 901, a videotape is authenticated by evidence sufficient to support a finding that it is what the proponent claims. Security cameras in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy.
- 33. C** — A class gift to "A's surviving children" closes at A's death and includes only children alive at that time. The predeceased child has no interest because she did not survive the life tenant, and her share does not pass to her heirs under the surviving-children construction.
- 34. B** — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior wrongdoing such as lawsuits for fraud, to test the basis of the reputation testimony. Extrinsic proof is barred but the inquiry is permitted.
- 35. A** — Under Erie, federal courts in diversity apply state substantive law on the measure of damages, including pure comparative negligence rules. The state's choice of negligence regime is substantive because it directly affects recovery.
- 36. D** — Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement, such as perjury, are automatically admissible to impeach regardless of punishment, recency, or balancing. Such crimes are the paradigmatic *crimen falsi* offenses.
- 37. C** — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.
- 38. A** — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. Relevant factors include opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification.
- 39. B** — An unrecorded easement is an encumbrance affecting marketability of title; the buyer is entitled to terminate a contract requiring marketable title. The seller cannot transfer title that is encumbered by third-party rights.

- 40. D** — Under Erie, federal courts in diversity apply state substantive law including state-law burden of proof requirements. The state's clear and convincing evidence standard for fraud is substantive because it affects the outcome of the case.
- 41. C** — A witness's vision and perceptual capacity are directly relevant to the reliability of her observations and identification. Cross-examination on whether the witness was wearing prescribed corrective lenses is a proper attack on credibility.
- 42. B** — Under 28 U.S.C. § 1332, complete diversity requires that no plaintiff share citizenship with any defendant. Citizenship is determined by domicile, which the court evaluates based on residence, intent, and other factors rather than mere mailing address.
- 43. D** — The defense of duress requires the defendant to reasonably believe he or another was in imminent danger of serious bodily harm or death, that this threat motivated the criminal act, and that the harm threatened was greater than the harm caused. Duress is generally unavailable as a defense to homicide.
- 44. A** — Under Erie, federal courts in diversity apply state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be relevant under state law because it bears on the deterrent function of the award.
- 45. C** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim.
- 46. B** — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. This principle is well-established in equity even when comparable land could be obtained elsewhere.
- 47. A** — Under FRE 404(a)(2)(B), when self-defense or related defenses are at issue, the defendant may offer evidence of the alleged victim's character for violence and prior threats. Such evidence supports the reasonableness of the defendant's perception and response.
- 48. D** — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties. The court must find the settlement fair, reasonable, and adequate.
- 49. B** — Under *Edwards v. Arizona*, once a suspect invokes the right to counsel during custodial interrogation, police may not initiate further interrogation until counsel is present. Statements obtained in violation must be suppressed regardless of whether the defendant later voluntarily spoke.
- 50. C** — Under *Hanna v. Plumer*, FRCP 9(b) applies in federal court regardless of state pleading rules. The federal rule independently requires fraud to be pleaded with particularity, governing all federal civil actions including diversity cases.

51. A — Under FRE 404(a)(2)(A), a criminal defendant may offer evidence of a pertinent character trait such as honesty. Honesty is pertinent to theft charges because the offense involves the unlawful taking of property.

52. D — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it as the appropriate discovery mechanism.

53. C — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. The reliability factors guide the court's analysis.

54. B — A financing contingency requires the buyer to make a good faith effort to obtain financing within the specified timeframe; failure of the contingency on good faith efforts entitles the buyer to recover earnest money. The seller's refusal to extend does not deprive the buyer of her contingency rights.

55. A — Under FRCP 12(a)(1)(B), the plaintiff has 21 days after service of a counterclaim to respond. Failure to respond may result in default on the counterclaim, and the defendant may move for entry of default under FRCP 55.

56. C — Under FRE 404(a)(2)(A) and FRE 405(a), a criminal defendant may offer reputation evidence of a pertinent character trait such as non-violence. The witness must lay foundation regarding her knowledge of the defendant's reputation in the community.

57. D — Under FRCP 56 and *Celotex Corp. v. Catrett*, summary judgment is granted when the non-moving party fails to demonstrate a genuine dispute of material fact through affirmative evidence. Conclusory denials and unsupported assertions are insufficient to defeat summary judgment.

58. B — Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

59. A — Under FRCP 4, service by ordinary mail without a signed waiver of service or another permitted mechanism does not satisfy federal service requirements. Mere actual notice does not cure defective service.

60. D — Under *Colorado v. Connelly*, the prosecution must prove a voluntary, knowing, and intelligent waiver of Miranda rights by a preponderance of the evidence. The trial court applies this standard at the pretrial suppression hearing.

61. B — Under 28 U.S.C. § 1367(c), when all federal claims have been dismissed, the court has discretion to decline supplemental jurisdiction over state-law claims. The court considers judicial economy, convenience, fairness, and comity in exercising this discretion.

62. C — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim.

63. A — Under FRCP 15(c)(1)(C), an amendment changing or adding parties relates back when (1) the claim arose from the same conduct as the original pleading, (2) the new party received timely notice, and (3) the new party knew or should have known the action would have been brought against him absent a mistake.

64. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including arrests, to test the basis for the reputation testimony. Extrinsic proof is barred but the inquiry is permitted.

65. B — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.

66. C — The trial court must give a lesser included offense instruction if the evidence, viewed in the light most favorable to the defense, would support a verdict on the lesser offense. This standard ensures the jury has all permissible verdicts available based on the evidence.

67. D — Under UCC § 2-601, the perfect tender rule allows a buyer to reject goods that "fail in any respect" to conform to the contract, including quantity shortfalls. A 10% quantity shortage is a non-conformity that justifies rejection of the entire shipment.

68. A — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action.

69. C — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

70. B — Under FRCP 26(b)(3), work product protection applies only to documents prepared by an attorney or another representative of a party in anticipation of litigation. Documents created in the ordinary course of business — even if later relevant to litigation — are not protected.

71. D — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including modus operandi where the prior conduct shares distinctive features with the charged offense. The shared distinctive features warrant an inference of common authorship.

72. A — Under Erie, federal courts in diversity apply state substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action. The federal court cannot deny prejudgment interest based on federal procedural considerations.

73. C — A witness's perceptual abilities — including her vision in the relevant lighting conditions — are directly relevant to the reliability of her observations. Cross-examination on these matters is a proper attack on credibility and the reliability of identification.

74. B — Under FRCP 12(a)(1)(B), the plaintiff must respond to a counterclaim within 21 days of service. Failure to respond may result in default on the counterclaim, and the defendant may move for entry of default under FRCP 55.

75. D — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also admissible under FRE 404(b) as evidence of motive and intent.

76. A — Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim. The court may exercise this jurisdiction subject to the considerations in § 1367(c).

77. B — Under FRE 404(a)(2)(B), evidence of the alleged victim's character is admissible only when relevant to a pertinent issue. The victim's reputation for violence is generally not pertinent to a robbery prosecution unless self-defense or initial-aggressor defenses are raised; without such a defense, the character evidence is inadmissible.

78. C — Under FRCP 23(b)(2), class certification is appropriate when the defendant has acted on grounds generally applicable to the class, making final injunctive or declaratory relief appropriate for the class as a whole.

79. D — Under *Edwards v. Arizona*, once a suspect invokes the right to counsel during custodial interrogation, police may not initiate further interrogation until counsel is present. Statements obtained in violation must be suppressed regardless of subsequent waiver.

80. A — Under *Erie*, federal courts in diversity apply state substantive law on joint and several liability because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery.

81. C — Flight evidence is admissible as circumstantial evidence of consciousness of guilt. The jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt.

82. B — Under *Erie*, federal courts in diversity apply state substantive law on comparative negligence because the negligence regime directly affects the measure of recovery on the underlying state-created cause of action.

83. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the basis of the reputation testimony. The inquiry tests the witness's knowledge of the defendant's character.

84. A — The traditional four-factor preliminary injunction test requires the court to consider (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest. All four factors must be evaluated before relief is granted.

- 85. B** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible as an opposing party's statement. The statement is also admissible under FRE 404(b) as evidence of motive and intent.
- 86. C** — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.
- 87. A** — Under FRE 404(a)(2)(B), evidence of the alleged victim's character is admissible only when relevant to a pertinent issue. Dishonesty character is not pertinent to a theft prosecution; only character traits relevant to disputed issues are admissible.
- 88. D** — Under FRCP 68, when a defendant's offer of judgment is rejected by the plaintiff and the plaintiff fails to obtain a more favorable result at trial, the plaintiff is liable for the defendant's costs incurred after the offer was made. The rule encourages settlement and shifts post-offer costs.
- 89. C** — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.
- 90. B** — Under Erie, federal courts in diversity apply state substantive law on treble damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action.
- 91. C** — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy.
- 92. A** — Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed. The log permits the court and opposing party to assess the validity of the privilege claim.
- 93. D** — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.
- 94. B** — Under Twombly and Iqbal, the court considers whether the amended complaint states a plausible claim based on factual allegations rather than conclusory assertions. The additional facts must move the claim from conceivable to plausible.
- 95. C** — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the prosecution claims. Testimony establishing the recording system, time, and chain of custody satisfies this standard.
- 96. D** — Under Erie, federal courts in diversity apply state substantive law including state-law burden of proof requirements such as the clear and convincing evidence standard. The standard is substantive because it affects the outcome of the case.

97. A — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court conducts a hearing as gatekeeper to determine whether the expert's methodology is reliable. The court considers factors including testability, peer review, error rate, and general acceptance.

98. B — Under FRE 405(a), a criminal defendant may offer evidence of a pertinent character trait through reputation or opinion testimony. Both forms of proof are permitted, with the witness laying foundation regarding her knowledge of the defendant's character.

99. C — Under 28 U.S.C. § 1332, diversity jurisdiction requires complete diversity — no plaintiff sharing citizenship with any defendant — and an amount in controversy exceeding \$75,000, exclusive of interest and costs. The court must independently determine these elements.

100. A — Under FRE 404(a)(2)(A) and FRE 405(a), a criminal defendant may offer reputation evidence of a pertinent character trait such as honesty. Honesty is pertinent to robbery charges because the offense involves the unlawful taking of property.

101. D — Under *Gulf Oil v. Gilbert*, the court considers (1) private interests of the parties — including access to evidence, witness availability, and cost — and (2) public interests of the forum — including judicial efficiency, local interest, and applicable law. Both categories balance in evaluating *forum non conveniens* motions.

102. B — In any criminal prosecution, the government must prove all elements of the charged offense beyond a reasonable doubt. The intent element is essential and must be proven by the prosecution regardless of the defendant's testimony about his intentions.

103. C — Under the traditional brokerage rule, the broker has earned the commission upon procuring a ready, willing, and able buyer at the listing price during the listing period. The seller cannot avoid the commission by refusing to sell when the broker has performed her obligation.

104. A — Under *Erie*, federal courts in diversity apply state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

105. D — Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense. The defendant bears the burden to overcome the strong presumption of validity afforded to legislatively prescribed sentences for serious offenses.

106. B — Under FRCP 23(b)(3), in addition to the FRCP 23(a) requirements, the plaintiffs must show that common questions of law or fact predominate over individual questions and that a class action is the superior method of fairly and efficiently adjudicating the controversy.

107. A — Under FRE 404(a)(2)(A), a criminal defendant may offer evidence of a pertinent character trait such as honesty through reputation testimony. Honesty is pertinent to fraud charges because the offense involves deception and dishonest dealings.

- 108. C** — Under Erie, federal courts in diversity apply state substantive law including the statute of frauds. A state-law writing requirement for sales of land affects contract enforceability and is substantive.
- 109. D** — A witness's vision and perceptual capacity directly affect the reliability of her observations. Cross-examination on whether the witness was wearing prescribed eyeglasses is a proper attack on credibility because it goes to the witness's ability to perceive accurately.
- 110. B** — The four-factor preliminary injunction test requires the court to consider (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest. All factors must be evaluated and balanced before injunctive relief is granted.
- 111. C** — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. Reliability factors include opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification.
- 112. A** — Under Erie, federal courts in diversity apply state substantive law on joint and several liability because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery.
- 113. D** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also admissible under FRE 404(b) as evidence of motive and intent.
- 114. B** — Under FRCP 26(b)(3), work product protection applies only to documents prepared by an attorney or another representative of a party in anticipation of litigation. Documents created in the ordinary course of business are not protected, regardless of whether they may later become relevant.
- 115. C** — Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently. Voluntariness does not cure the Miranda violation for case-in-chief use.
- 116. A** — Under Erie, federal courts in diversity apply state substantive law including state-law burden of proof requirements such as the clear and convincing evidence standard for fraud. The standard is substantive because it affects the outcome of the case.
- 117. B** — Flight evidence is admissible as circumstantial evidence of consciousness of guilt. The jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt.
- 118. D** — Under FRCP 15(c)(1)(C), an amendment relates back when (1) the claim arose from the same conduct in the original pleading, (2) the new defendant received notice within the time for service such that no prejudice results, and (3) the new defendant knew or should have known the action would have been brought against him absent a mistake.

119. C — Once the defendant places his character in issue by offering reputation evidence of peacefulness, the prosecution may rebut with contrary evidence including prior convictions under FRE 404(a)(2)(A). The defendant's character evidence opens the door to prosecutorial rebuttal.

120. A — Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege. The court must quash or modify a subpoena that subjects a person to undue burden.

121. B — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue. The evidence supports the defendant's claim that the victim was the initial aggressor.

122. D — Under FRCP 68, when a defendant's offer of judgment is rejected by the plaintiff and the plaintiff fails to obtain a more favorable result at trial, the plaintiff is liable for the defendant's costs incurred after the offer was made. The rule encourages settlement.

123. A — Under FRE 801(d)(2)(A), the defendant's own statement is admissible as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim.

124. C — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. This principle is well-established in equity and applies in federal court under Erie.

125. B — Under *Colorado v. Connelly*, the prosecution must prove a voluntary, knowing, and intelligent waiver of Miranda rights by a preponderance of the evidence. The trial court applies this standard at the pretrial suppression hearing.

126. D — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.

127. C — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

128. A — Dismissal for lack of subject matter jurisdiction is reviewed de novo on appeal because the issue presents a pure question of law. The court of appeals does not defer to the trial court's legal conclusions on jurisdictional matters.

129. B — Under *Jackson v. Virginia*, circumstantial evidence is admissible and may support a conviction if the totality of the evidence is sufficient for a rational jury to find guilt beyond a reasonable doubt. Direct evidence is not required.

130. D — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. The plaintiff is entitled to specific performance in such cases.

131. C — Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach and may be proven by extrinsic evidence when the witness denies them. The automatic admissibility reflects the *crimen falsi* nature of such crimes.

132. A — Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim. The court may exercise supplemental jurisdiction subject to the considerations in § 1367(c).

133. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony. Extrinsic proof is barred but the inquiry is permitted.

134. B — Under Erie, federal courts in diversity apply state substantive law on treble damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action.

135. C — A witness's age is one factor relevant to the weight of her identification but does not render her testimony *per se* inadmissible. The jury evaluates credibility, and the witness's perceptual and memory capacities are subject to cross-examination.

136. A — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering relevant factors.

137. B — Under the M'Naghten test for insanity, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect such that he did not know the nature and quality of his actions or did not know that his actions were wrong. Both prongs concern the defendant's cognitive capacity.

138. D — Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and counsel made for the purpose of seeking, obtaining, or providing legal services, even when communicated to other corporate personnel as part of the legal advisory process. Confidentiality must be maintained.

139. C — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy.

140. A — Specific performance is the remedy of choice for breach of a contract for a unique chattel such as antiques, art, or one-of-a-kind goods because monetary damages are inadequate. The uniqueness of the subject matter justifies equitable relief.

141. B — Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception.

142. D — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

143. C — Self-defense requires the defendant to have reasonably believed he was in imminent danger of harm and to have used reasonable, proportionate force in response. The force used must not exceed what a reasonable person would have used under the circumstances.

144. A — A federal court has discretion to stay discovery pending resolution of a motion to dismiss, balancing the burden on the moving party against the need for discovery. The moving party generally bears the burden of showing that a stay is warranted.

145. B — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court conducts a hearing as gatekeeper to determine whether the expert's methodology is reliable. The court considers factors including testability, peer review, error rate, and general acceptance.

146. D — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it.

147. A — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. Relevant reliability factors guide the court's analysis.

148. C — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

149. B — Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception.

150. D — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.

151. C — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue. Where the defendant raises a self-defense theory in connection with the alleged robbery, the victim's character for violence becomes pertinent and admissible.

152. A — Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires." The court considers factors including undue delay, prejudice, futility, and bad faith but generally favors amendment.

153. D — Flight evidence is admissible as circumstantial evidence of consciousness of guilt. The jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt.

154. B — Under 28 U.S.C. § 1367(a), the federal court has supplemental jurisdiction over state-law claims that form part of the same case or controversy as the federal claim. The court may exercise this jurisdiction subject to the considerations in § 1367(c).

155. C — Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception. Remoteness in time affects weight rather than admissibility.

156. A — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

157. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including civil lawsuits reflecting dishonesty, to test the basis of the witness's reputation testimony. Extrinsic proof is barred but the inquiry is permitted.

158. B — Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege. The court must quash or modify a subpoena that subjects a person to undue burden.

159. A — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also relevant to motive and intent under FRE 404(b).

160. C — Under *Hanna v. Plumer*, FRCP 9(b) applies in federal court regardless of state pleading rules. The federal rule independently requires fraud to be pleaded with particularity, satisfying the requirements for federal pleading regardless of state-law standards.

161. D — Under the M'Naghten test for insanity, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect such that he did not know the nature and quality of his actions or did not know that his actions were wrong.

162. B — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it.

163. A — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances.

164. C — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

165. D — Under FRE 801(d)(2)(A) and FRE 803(3), the defendant's own statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement and as a state-of-mind exception.

166. B — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.

167. C — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy.

168. D — Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires." The court considers factors including undue delay, prejudice, futility, and bad faith but generally favors amendment.

169. D — Under FRE 404(a)(2)(B), once the defendant has placed the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

170. C — Under Erie, federal courts in diversity apply state substantive law including the statute of frauds. A state-law writing requirement for sales of goods over \$500 affects contract enforceability and is substantive.

171. B — Once the defendant places his character in issue by offering reputation evidence of non-violence, the prosecution may rebut with evidence of contrary conduct including prior convictions under FRE 404(a)(2)(A). The defendant's character evidence opens the door to prosecutorial rebuttal.

172. A — Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege. The court must quash or modify a subpoena that subjects a person to undue burden.

173. D — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

174. C — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.

175. B — Under FRE 801(d)(2)(A), the defendant's own statement of intent to harm the victim is admissible against him as an opposing party's statement. The statement is also admissible under FRE 404(b) as evidence of motive and intent.

176. D — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.

177. A — Under *Miranda v. Arizona*, custodial interrogation requires the procedural safeguards of Miranda warnings. Statements obtained without proper warnings are inadmissible in the prosecution's case-in-chief, though voluntary statements may be used for impeachment under *Harris v. New York*.

178. C — Under *Erie*, federal courts in diversity apply state substantive law including state-law notice requirements that affect whether recovery is available. A state-law notice requirement is substantive because it determines whether the cause of action can be pursued.

179. B — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

180. D — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.

181. B — Under the common law heat of passion doctrine, voluntary manslaughter requires (1) adequate provocation sufficient to provoke a reasonable person, (2) actual heat of passion at the time of the killing, (3) insufficient cooling-off time, and (4) a causal connection between provocation, passion, and the fatal act.

182. A — Under FRCP 13(g), a cross-claim may be asserted by one party against a co-party if it arises out of the same transaction or occurrence as the original action or relates to property that is the subject of the original action.

183. D — An alibi witness is admissible as a defense witness who can testify to the defendant's whereabouts at the time of the alleged crime. The witness must have personal knowledge of the events, and the credibility of the alibi is a matter for the jury to evaluate.

184. C — Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires." The court considers factors including undue delay, prejudice, futility, and bad faith but generally favors amendment.

185. B — Under FRE 404(b), the defendant's prior expressions of anger or hostility toward the victim are admissible for permissible non-propensity purposes including motive and intent. Such evidence may rebut the defendant's self-defense claim.

186. A — Under Erie, federal courts in diversity apply state substantive law on the measure of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

187. D — Flight evidence is admissible as circumstantial evidence of consciousness of guilt. The jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt.

188. C — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.

189. A — Under FRE 801(d)(2)(A), the defendant's statement reflecting his then-existing state of mind toward the victim is admissible as an opposing party's statement. The statement is also admissible under FRE 803(3) as a state-of-mind exception.

190. B — A federal court with independent subject matter jurisdiction (such as diversity or federal question) may hear a dispute regardless of state-law venue provisions. The state venue provision does not strip the federal court of its jurisdiction.

191. D — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the witness's basis for the reputation testimony. The inquiry is permitted to expose the witness's lack of knowledge.

192. B — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it.

193. A — Circumstantial evidence such as the defendant's presence near the scene is admissible. The prosecution may rely on the totality of circumstantial evidence, and the jury determines whether the evidence is sufficient to prove guilt beyond a reasonable doubt.

194. D — Under Erie, federal courts in diversity apply state substantive law on punitive damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action.

195. C — Under FRE 404(a)(2)(B), when self-defense or related defenses are at issue, the defendant may offer evidence of the victim's character for aggressiveness. Such evidence supports the defendant's claim that the victim was the initial aggressor.

196. B — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties.

197. D — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, and is also relevant to motive and intent under FRE 404(b).

198. A — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. The plaintiff is entitled to specific performance in such cases.

199. B — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.

200. C — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate.