

PRACTICE EXAM 5 — MBE SIMULATION (200 QUESTIONS)

Section 1 — Questions 1 through 100 (3 Hours)

1. A state legislature passes a statute prohibiting all door-to-door solicitation for charitable donations between 6:00 p.m. and 9:00 a.m. A nonprofit organization that relies on evening solicitation challenges the statute under the First Amendment. What is the most likely outcome?

- A. The statute is unconstitutional because it discriminates against charitable solicitation
- B. The statute is a content-neutral time, place, and manner restriction that will be upheld if it is narrowly tailored to serve a significant government interest and leaves open ample alternative channels of communication
- C. The statute is per se unconstitutional under strict scrutiny
- D. The statute is automatically valid as an exercise of the police power

2. A plaintiff sues a defendant in federal court for negligence based on a slip-and-fall accident. The defendant moves for summary judgment, attaching an affidavit from a witness who states the floor was dry at the time of the fall. The plaintiff responds with an affidavit from a different witness who states the floor was wet. What is the proper outcome?

- A. Summary judgment is denied because the conflicting affidavits create a genuine dispute of material fact that the jury must resolve
- B. Summary judgment is granted to the defendant because the moving party's affidavit is more credible
- C. Summary judgment is denied only if the plaintiff also produces physical evidence
- D. Summary judgment is granted because affidavits are not admissible evidence

3. A criminal defendant is charged with first-degree murder. Before trial, the prosecution provides a witness list. At trial, the prosecution calls a witness whose name was not on the list. The defense objects. Under the Sixth Amendment Compulsory Process and Confrontation Clauses, what result?

- A. The witness must be excluded automatically
- B. The witness must be excluded if the prosecution intentionally omitted the name
- C. The witness must be excluded only if the defense files a written motion
- D. The trial court has discretion to admit the testimony, considering factors such as prejudice to the defense, the prosecution's good faith, and the materiality of the testimony; exclusion is one available remedy but not required

4. A buyer and seller enter into a written contract for the sale of 1,000 widgets at \$15 each, with delivery in 30 days. Twenty days later, the seller calls the buyer and says, "I can deliver in 15 days instead." The buyer says, "That works for me." The seller delivers in 15 days. The buyer rejects, claiming the goods were delivered too early. Under the UCC, what result?

- A. The buyer may reject because the original contract date controls
- B. The seller's early delivery is a breach
- C. Under UCC § 2-209, the parties' oral modification is enforceable; the modification advanced the delivery date by mutual agreement, and the buyer cannot reject conforming goods delivered on the modified date
- D. The buyer may reject only with the seller's consent to the modification

5. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant from a six-person lineup. The defense argues the lineup was unduly suggestive because the defendant was the only one in handcuffs. What is the proper analysis?

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

6. A grantor conveys real property "to A for life, then to B if B has reached age 25 at the time of A's death." B is 18 at the time of the conveyance. Under the common law Rule Against Perpetuities, what is the status of B's interest?

- A. B's interest is valid because B is a life in being at the time of the conveyance, so the contingency (B reaching 25) must resolve, if at all, within B's lifetime
- B. B's interest is void because B might not reach 25 within the perpetuities period
- C. B's interest is void because the contingency creates a possibility of reverter
- D. B's interest is valid only if B's parents consent

7. A federal court is hearing a state-law negligence case in diversity. The state has a substantive law providing that contributory negligence is a complete defense, regardless of the percentage. The defendant argues the federal court should apply the state rule rather than pure comparative negligence. What is the proper outcome?

- A. The federal court applies federal common law on negligence
- B. The federal court applies federal procedural rules
- C. The federal court applies pure comparative negligence as the federal default
- D. Under Erie, the federal court applies the state's contributory negligence rule because the negligence regime is substantive law affecting recovery

8. A defendant is on trial for the murder of his neighbor. During the prosecution's case, the prosecution offers testimony from a witness who claims the defendant said, three weeks before the murder, "That neighbor of mine is going to pay for what he did." 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

9. A state statute requires all public school teachers to begin each school day by leading students in a moment of silence "for prayer or meditation." A teacher challenges the statute under the Establishment Clause. What is the most likely outcome?

- A. Under the Establishment Clause, the statute is unconstitutional because it endorses religion by including the explicit purpose of facilitating prayer; the inclusion of "prayer" reveals a religious purpose that violates the Establishment Clause
- B. The statute is constitutional because moments of silence are religiously neutral
- C. The statute is constitutional because it permits secular meditation
- D. The statute is constitutional because individual students may choose what to think about

10. A pedestrian is struck by a vehicle and suffers serious injuries. The pedestrian sues the driver for negligence. At trial, the plaintiff seeks to introduce evidence that the driver paid for the plaintiff's medical bills immediately after the accident, arguing this shows the driver's admission of fault. The defense objects under FRE 409. What result?

- A. The evidence is admissible to prove fault
- B. Under FRE 409, evidence of furnishing or offering to pay medical expenses is not admissible to prove liability; the rule encourages humanitarian gestures by ensuring they cannot be used against the offeror
- C. The evidence is admissible only to show the existence of damages
- D. The evidence is admissible if the payment was made within 24 hours of the accident

11. A federal court is hearing a complex commercial case. The plaintiff sues a corporation incorporated in Delaware with its principal place of business in California. The plaintiff is a citizen of California. The defendant moves to dismiss for lack of diversity. What result?

- A. Diversity is satisfied because the corporation is incorporated in Delaware
- B. Diversity exists because the plaintiff and defendant have different addresses
- C. Diversity must be evaluated based on principal place of business alone
- D. Under 28 U.S.C. § 1332(c)(1), a corporation is a citizen of both its state of incorporation and its principal place of business; the corporation is a citizen of California, sharing citizenship with the plaintiff, defeating diversity

12. A defendant is on trial for assault. The defense argues that the defendant was acting in self-defense after being attacked by the alleged victim. The prosecution argues that the defendant used excessive force. What is the proper standard?

- A. Self-defense requires no use of force whatsoever
- B. Self-defense requires the defendant to retreat first
- C. Self-defense requires the defendant to have reasonably believed he was in imminent danger of unlawful 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
- D. Self-defense is unavailable if any force is used

13. A state law requires all individuals seeking to register a firearm to first complete a background check, pay a \$500 fee, and wait 90 days. A gun-rights organization challenges the law under the Second Amendment. What is the most likely outcome?

- A. Under the Second Amendment as applied to the states through the Fourteenth Amendment, the law must be evaluated using the historical analysis framework of Bruen, considering whether the regulation is consistent with the nation's historical tradition of firearm regulation; many traditional regulations have included background checks, fees, and waiting periods
- B. The law is unconstitutional because it burdens Second Amendment rights
- C. The law is automatically unconstitutional
- D. The law is constitutional because it serves a compelling government interest

14. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs propose a settlement. The settlement provides for cash payments to class members and significant attorney's fees. The court must determine whether to approve the settlement. 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 considering relevant factors
- C. The court must obtain unanimous consent of all class members
- D. The court must approve the settlement unless objections are unanimous

15. A defendant is on trial for first-degree murder. The defense seeks to introduce expert testimony from a psychiatrist regarding the defendant's mental state at the time of the killing. The prosecution objects, arguing the testimony is not based on reliable methodology. What is the proper procedure?

- A. The court must defer to the expert's qualifications
- B. The court must exclude all psychiatric testimony
- C. The court must allow the jury to decide reliability
- D. 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

16. A grantor conveys real property "to A and her heirs in fee simple absolute." Three years later, A wishes to sell the property. May A do so?

- A. No, because A holds only a life estate
- B. No, because A's heirs must consent
- C. Yes, because A holds a fee simple absolute, the most complete ownership interest, and may freely alienate the property without restriction or the consent of others
- D. Yes, but only if A first obtains court approval

17. A federal lawsuit is filed by a plaintiff against a defendant for a state-law tort claim. The defendant moves to dismiss for lack of personal jurisdiction, arguing he has insufficient contacts with the forum state. The plaintiff alleges the defendant conducted business in the forum state through targeted email solicitations. What is the proper analysis?

- A. Personal jurisdiction is satisfied by the plaintiff's residence
- B. Under *International Shoe* and modern minimum-contacts analysis, specific personal jurisdiction requires the defendant to have purposefully directed activities at the forum state, and the claim must arise out of or relate to those contacts; targeted email solicitations may satisfy purposeful availment if the contacts are substantial
- C. Personal jurisdiction is automatic if the defendant has any contact with the state
- D. Personal jurisdiction requires physical presence in the forum

18. A defendant is convicted of armed robbery. On appeal, the defendant argues that his confession should have been suppressed because police continued to interrogate him after he said, "I think I want to talk to a lawyer." Under *Davis v. United States*, what result?

- A. Under *Davis v. United States*, the suspect's request for counsel must be unambiguous and unequivocal; the statement "I think I want to talk to a lawyer" is an ambiguous request that does not require police to cease interrogation, and the confession is therefore admissible
- B. The confession is inadmissible because the suspect mentioned a lawyer
- C. The confession is inadmissible because the suspect was in custody
- D. The confession is admissible because the suspect voluntarily spoke

19. A federal court is hearing a state-law contract case in diversity. The state has a substantive law requiring that all contracts for services exceeding \$5,000 be in writing. The defendant moves to dismiss because the alleged contract was oral. What result?

- A. The federal court applies federal common law on contracts
- B. The federal court applies federal procedural rules on contract enforcement
- 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

20. 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 18 months. 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 inadmissible to show character
- B. Prior crimes are inadmissible if uncharged
- C. Prior crimes are inadmissible if too remote in time
- D. 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 schemes within 18 months may demonstrate a common scheme

21. A state passes a law requiring all licensed attorneys to be U.S. citizens. A lawful permanent resident with valid bar credentials applies for admission and is denied. He challenges the law under the Equal Protection Clause. What is the proper standard of review?

- A. Strict scrutiny applies because alienage classifications by state governments generally receive strict scrutiny under the Equal Protection Clause; the state must show the classification is necessary to serve a compelling government interest
- B. Rational basis review applies because regulating attorneys is a traditional state function
- C. Intermediate scrutiny applies because alienage is a quasi-suspect class
- D. No scrutiny applies because the state has unlimited authority to regulate the practice of law

22. A federal lawsuit is filed by a plaintiff against multiple defendants. After answering, the defendants stipulate to dismissal of certain claims with prejudice. The plaintiff later attempts to refile the dismissed claims. The defendants assert res judicata. What result?

- A. The dismissed claims may be refiled because the dismissal was procedural
- B. Under transactional res judicata, a final judgment on the merits — including a dismissal with prejudice — bars all claims arising from the same transaction or series of transactions that were raised or could have been raised in the prior action
- C. The dismissed claims may be refiled if the plaintiff discovers new evidence
- D. The dismissed claims may be refiled if the original defendants consent

23. 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 his wife in bed with another man. The prosecution argues that the discovery does not constitute adequate provocation under modern law. What is the proper analysis?

- A. Heat of passion never applies to spousal killings
- B. Modern courts uniformly reject adultery as adequate provocation
- C. Heat of passion requires the killing to occur instantly
- D. 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 act of adultery has

historically been recognized as adequate provocation in many common law jurisdictions, though some modern jurisdictions have moved away from this rule

24. A federal court is hearing a complex commercial case. The plaintiff seeks to compel 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 relate to business decisions. What is the proper analysis?

- A. All emails to in-house counsel are protected
- B. Emails to in-house counsel are never protected
- C. Under *Upjohn Co. v. United States*, the attorney-client privilege protects emails sent for the purpose of seeking, obtaining, or providing legal advice, including communications with in-house counsel; emails relating purely to business decisions, without a legal-advice purpose, are not protected
- D. The privilege applies only if the emails are marked "confidential"

25. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation in the community for being peaceful and non-violent. On cross-examination, the prosecution asks whether the witness has heard about the defendant's prior conviction for misdemeanor battery five years ago. The defense objects. Is the question allowed?

- A. 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 tests her knowledge of the defendant's actual reputation in the community
- B. No, because misdemeanors are unproven
- C. No, because the conviction is too remote in time
- D. Yes, but only if the conviction is also a felony

26. A federal court has jurisdiction over a class action against a defendant. The named plaintiffs propose a settlement that pays each class member \$25 and provides \$2 million in attorney's fees. Numerous class members object, arguing the settlement is grossly unfair. What is the proper analysis?

- A. The court must approve the settlement because settlement is favored

- B. Under FRCP 23(e), the court must scrutinize settlements carefully, especially when objections are substantial; a settlement that provides nominal relief to class members while providing substantial attorney's fees raises concerns about fairness, reasonableness, and adequacy that may require disapproval
- C. The court must approve the settlement unless all objections are sustained
- D. The court must approve the settlement if the named plaintiffs agree

27. A defendant is on trial for the federal crime of conspiracy to distribute narcotics. The prosecution offers testimony from a co-conspirator who claims the defendant directed the drug distribution scheme. The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because co-conspirator testimony is hearsay
- B. The testimony is admissible only with corroboration
- C. The testimony is admissible only after the defendant is convicted
- D. Under FRE 801(d)(2)(E), co-conspirator statements made during the course of and in furtherance of the conspiracy are not hearsay and are admissible against the defendant if (1) a conspiracy existed, (2) the declarant and defendant were members, and (3) the statement was in furtherance, as determined by the court under *Bourjaily*

28. A state passes a law requiring all out-of-state milk producers to pay a higher tax than in-state producers when selling milk within the state. The out-of-state producers challenge the law under the Dormant Commerce Clause. What is the most likely outcome?

- A. The law is automatically valid under the police power
- B. The law is constitutional because the state has authority to regulate its own markets
- C. Under the Dormant Commerce Clause, a state law that discriminates against out-of-state commerce — facially, in purpose, or in effect — is virtually per se invalid; the discriminatory tax on out-of-state producers cannot survive constitutional scrutiny unless the state shows the law serves a legitimate, non-protectionist purpose unavailable through nondiscriminatory means
- D. The law is constitutional because milk is a local product

29. A defendant is on trial for the murder of his business partner. The defense calls an alibi witness who testifies that the defendant was with him at a restaurant at the time of the killing. On cross-examination,

the prosecution asks the witness whether the witness has a prior felony conviction for tax evasion. The defense objects. Is the question allowed?

- A. No, because the conviction is too remote in time
- B. Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as tax evasion involving fraud) are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements
- C. No, because tax evasion is not a crime of moral turpitude
- D. Yes, but only if the prosecution provides advance notice

30. A defendant breaches a contract with the plaintiff to sell a parcel of unique waterfront property. The plaintiff sues for specific performance. 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 applies even when the buyer could obtain comparable land elsewhere
- 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

31. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks punitive damages. The state has a substantive law capping punitive damages at three times compensatory damages. The defendant argues the cap should apply. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's punitive damages cap because such caps are substantive law affecting the measure of recovery for the underlying state-created cause of action
- D. The federal court applies whichever rule produces uniformity

32. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained pursuant to a search warrant that was issued based on inaccurate information in the affidavit. The defense alleges the officer recklessly disregarded the truth. Under *Franks v. Delaware*, what result?

- A. The evidence must be admitted because warrants are presumed valid
- B. The evidence must be excluded if any error appears in the affidavit
- C. The evidence must be excluded only if the suppression hearing is held
- D. Under *Franks v. Delaware*, the defendant must show by a preponderance that the affidavit contained a deliberately false statement or a statement made with reckless disregard for the truth, and the false statement was necessary to a finding of probable cause; if shown, the evidence must be excluded

33. A buyer enters into a contract with a seller to purchase 500 widgets at \$20 each. The seller fails to deliver. The buyer purchases substitute widgets from another supplier at \$25 each on the same business day. The buyer sues for damages. What is the proper measure?

- A. The buyer recovers nothing because cover was timely
- 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 $500 \times (\$25 - \$20) = \$2,500$
- C. The buyer recovers the full \$12,500 cover cost
- D. The buyer recovers only consequential damages

34. A state law requires all candidates for state legislative office to be at least 30 years old. A 28-year-old challenges the law under the Equal Protection Clause. What is the proper standard of review?

- A. Under the Equal Protection Clause, age classifications generally receive rational basis review because age is not a suspect class; the state need only show the classification is rationally related to a legitimate government interest
- B. Strict scrutiny applies because the classification burdens fundamental rights
- C. Intermediate scrutiny applies because age is a quasi-suspect class
- D. No review applies because the state has unlimited authority to set qualifications

35. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for lack of subject matter jurisdiction, arguing the amount in controversy does not exceed \$75,000. The plaintiff alleges damages of \$80,000 in good faith. What result?

- A. The plaintiff's allegation is conclusive of jurisdiction
- B. The court must dismiss because the defendant disputes the amount
- C. Under *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, the sum claimed by the plaintiff controls if the claim is made in good faith; the defendant must show to a legal certainty that the claim is for less than the jurisdictional amount to defeat jurisdiction
- D. The court must hold an evidentiary hearing

36. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, two weeks before the murder, "I'm going to take care of that man once and for all." 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; the statement is also admissible under FRE 404(b) as evidence of motive and intent

37. A grantor conveys real property "to A for life, then to A's children who reach age 21." A has two living children at the time of conveyance, both under age 21. A dies. The children take the property when they reach age 21. Under the common law Rule Against Perpetuities, what is the status of the gift?

- A. The gift to A's children is valid because the children must reach 21 within their own lifetimes (which started during A's life, a life in being); each child's contingency resolves within the perpetuities period
- B. The gift is void because A might have additional children
- C. The gift is void because the contingency is too remote
- D. The gift is valid only if A's parents consent

38. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of certain documents from a third party. The third party objects, arguing the documents are privileged. The plaintiff disputes the privilege claim. What is the proper procedure?

- A. The court must order production immediately
- B. Under FRCP 26(b)(5) and FRCP 45, a third party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court then evaluates the validity of the privilege claim, potentially through in camera review
- C. The third party may refuse all production
- D. The court must defer to the third party's representations

39. A state passes a law prohibiting any person from speaking publicly about a pending criminal trial during jury deliberations. A journalist who plans to write an editorial about the trial challenges the law under the First Amendment. What is the most likely outcome?

- A. The law is unconstitutional because it is a content-based restriction on speech
- B. The law is constitutional as a reasonable time, place, and manner restriction
- C. The law is constitutional because it serves the compelling interest of protecting jury deliberations
- D. Under the First Amendment, a content-based restriction on speech, such as a prohibition on speaking about specific topics, is presumptively unconstitutional and subject to strict scrutiny; the government must show the restriction is narrowly tailored to serve a compelling interest

40. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank showing the robbery. The defense argues the videotape was not properly authenticated. What is the proper standard?

- A. The videotape is admissible without authentication
- B. The videotape is inadmissible because it shows the defendant
- C. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims; testimony establishing the recording system, time of recording, and chain of custody satisfies this standard
- D. The videotape requires expert testimony to authenticate

41. A federal court is hearing a state-law contract case in diversity. The plaintiff and defendant are citizens of different states. The plaintiff seeks \$50,000 in damages. The defendant moves to dismiss for lack of subject matter jurisdiction. What result?

- A. The court has jurisdiction because the parties are diverse
- B. Under 28 U.S.C. § 1332, diversity jurisdiction requires the amount in controversy to exceed \$75,000; a \$50,000 claim does not meet this threshold, and the federal court must dismiss for lack of subject matter jurisdiction
- C. The court has jurisdiction if both parties consent
- D. The court has jurisdiction if the case involves a federal interest

42. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims to have seen the defendant flee from the scene moments after the killing. The defense argues this is insufficient to prove the defendant committed the killing. What is the proper analysis?

- A. 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
- B. Flight evidence is inadmissible without corroboration
- C. Flight evidence is conclusive of guilt
- D. Flight evidence requires direct physical evidence

43. A state law authorizes the use of public school facilities for private religious instruction during school hours, with attendance optional. The instructional materials are religious in nature. A taxpayer challenges the law under the Establishment Clause. What is the most likely outcome?

- A. The law is constitutional because attendance is optional
- B. The law is constitutional because the state may permit private use of public facilities
- C. Under the Establishment Clause, a state arrangement that uses public school facilities and time to provide religious instruction during school hours, even with optional attendance, raises significant Establishment Clause concerns by entangling public schools with religious instruction
- D. The law is constitutional if no public funds are used

44. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's prior settlement in a similar case. The defendant objects under FRE 408. What is the proper analysis?

- A. The evidence is admissible to show fault
- B. The evidence is admissible only with the defendant's consent
- C. The evidence is admissible to show the existence of similar claims
- D. Under FRE 408, evidence of compromise offers, settlements, and conduct during compromise negotiations is generally inadmissible to prove liability for, invalidity of, or amount of a disputed claim; the rule encourages settlement by ensuring related conduct is not used as evidence at trial

45. 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 indicted but before counsel was appointed. Under *Massiah v. United States*, what result?

- A. The questioning is permissible because the defendant did not invoke his right to counsel
- B. Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment; deliberate elicitation of statements from an indicted defendant without counsel violates the right and the statements must be suppressed
- C. The questioning is permissible because the defendant voluntarily spoke
- D. The questioning is permissible if the defendant initiated the conversation

46. A federal lawsuit involves a plaintiff and three defendants. The plaintiff timely files her complaint. One defendant moves to dismiss for lack of personal jurisdiction. The defendant has been served and has appeared in the case. Has the defendant waived the personal jurisdiction defense?

- A. Under FRCP 12(b)(2), a defendant must raise the defense of lack of personal jurisdiction in the answer or by motion; failure to do so waives the defense, but timely raising it preserves the defense even if the defendant has also addressed other matters
- B. The defense is waived because the defendant appeared
- C. The defense is waived because the defendant filed a motion
- D. The defense is waived because the defendant was served

47. A defendant is on trial for the federal crime of bank fraud. 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 about the defendant's prior arrest for forgery. The defense objects. Is the question allowed?

- A. No, because the question is more prejudicial than probative
- B. No, because the conviction is too remote in time
- C. 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
- D. Yes, but only if the prosecution provides documentation

48. A buyer signs a written contract to purchase a parcel of land from a seller for \$400,000. The seller represents that the land has access to a public road. After signing but before closing, the buyer discovers that the only "access" is through a private road owned by a neighbor, with no recorded easement. May the buyer terminate the contract?

- A. No, because the buyer should have investigated before signing
- B. No, because the access exists in fact
- C. Yes, but only if the buyer can prove fraud
- D. Yes, because the lack of recorded access constitutes a material defect that renders title unmarketable; the buyer is entitled to terminate the contract requiring marketable title

49. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The settlement provides for substantial relief to class members and reasonable attorney's fees. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

- A. 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
- B. The court considers only the cash payments
- C. The court considers only the attorney's fees
- D. The court considers only the named plaintiffs' preferences

50. A defendant is on trial for armed robbery. The defense seeks to introduce evidence that the alleged victim had previously assaulted other people. The prosecution objects, arguing this is character evidence. What is the proper analysis?

- A. The victim's prior assaults are admissible to show propensity
- 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; reputation or opinion testimony, and (in some circumstances) specific prior acts, may be admissible to support the defense
- C. The victim's prior assaults are inadmissible without corroboration
- D. The victim's prior assaults require advance notice from the defendant

51. A state law requires all businesses to obtain a permit from the state Department of Labor before hiring workers. A federal agency contends that the law conflicts with federal labor law and is preempted. What is the proper analysis?

- A. State labor laws are immune from federal preemption
- B. Federal preemption applies only when explicit federal preemption exists
- C. State labor laws automatically preempt federal law
- D. Under the Supremacy Clause, federal law preempts state law when (1) federal law expressly preempts state law, (2) federal law occupies the field, or (3) state law conflicts with federal law (either making compliance impossible or frustrating the federal purpose); the court analyzes the specific federal and state laws to determine preemption

52. A federal court is hearing a complex commercial case. The plaintiff moves to amend the complaint to add a new claim. The defendant objects, arguing the amendment is futile. 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 generally favors amendment unless the proposed claim is patently futile
- D. Leave requires consent of all defendants

53. 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 felony involving theft. The witness denies the conviction. The defense seeks to introduce a certified court record of the conviction. Is the evidence admissible?

- A. Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement, such as theft, are automatically admissible to impeach, and may be proven by extrinsic evidence (such as a certified court record) when the witness denies them
- B. No, because the witness denied the conviction
- C. No, because theft is not a crime of moral turpitude
- D. Yes, but only with the witness's consent

54. 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 the evidence is improper. What is the proper outcome?

- A. Evidence of net worth is automatically inadmissible
- B. 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
- C. Evidence of net worth requires special permission
- D. Evidence of net worth is admissible only with the defendant's consent

55. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting 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. The confession is admissible because the defendant later spoke voluntarily
- C. The confession is admissible because the right was waived
- 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 any subsequent waiver

56. A state passes a statute requiring all licensed drivers to be U.S. citizens. A lawful permanent resident challenges the law under the Equal Protection Clause. What is the proper standard of review?

- A. Rational basis review applies because driving is not a fundamental right
- B. Intermediate scrutiny applies because alienage is a quasi-suspect class
- C. Under the Equal Protection Clause, alienage classifications by state governments generally receive strict scrutiny; the state must show the classification is necessary to serve a compelling government interest, which most state restrictions on driver licenses fail
- D. No scrutiny applies because the state has authority to regulate driving

57. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges that the defendant violated her constitutional rights. The defendant is a state actor. The plaintiff sues under 42 U.S.C. § 1983. What must the plaintiff show?

- A. The plaintiff must show only that the defendant caused harm
- B. Under 42 U.S.C. § 1983, the plaintiff must show that the defendant (1) acted under color of state law and (2) deprived the plaintiff of a federal constitutional or statutory right; the state action requirement and the constitutional violation must both be established
- C. The plaintiff must show fraud
- D. The plaintiff must show physical injury

58. A defendant is on trial for the murder of his sister. The defense calls an alibi witness who testifies that the defendant was at the witness's home at the time of the killing. On cross-examination, the prosecution asks the witness whether she has been previously convicted of perjury. The defense objects. Is the question allowed?

- A. Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement, such as perjury, are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements
- B. No, because the conviction is too remote in time
- C. No, because the conviction is unproven by reputation
- D. Yes, but only if the prosecution provides documentation

59. A federal court is hearing a complex commercial case. The plaintiff seeks to compel discovery from the defendant. The defendant moves for a protective order, arguing that the requested documents are highly confidential and contain trade secrets. What is the proper procedure?

- A. The defendant must produce the documents
- B. The defendant may refuse all production
- C. Under FRCP 26(c), a party may obtain a protective order limiting discovery, including provisions for confidential treatment of trade secrets and other sensitive information; the court balances the need for discovery against the burden of disclosure
- D. The court must order in camera review of all documents

60. A defendant is on trial for armed robbery. The defense argues that the defendant was acting under duress because a third party threatened to harm the defendant's family unless he participated in the robbery. The prosecution argues that duress is not a defense to armed robbery. What is the proper analysis?

- A. Duress is not a defense to any criminal offense
- B. Duress is a defense only to property crimes
- C. Duress requires physical threats to the defendant personally
- D. Duress is a defense in most jurisdictions to most crimes (excluding homicide in many jurisdictions) when the defendant reasonably believed he or another was in imminent danger of serious bodily harm or death; threats to family members can satisfy the imminent-danger requirement

61. A grantor conveys real property "to A in fee simple, but if the property is ever used as a tavern, the grantor or her heirs may re-enter and take possession." A operates a wine bar on the property. The grantor's heirs seek to re-enter. What result?

- A. A wine bar is not generally considered a "tavern" under the ordinary meaning of the term; restrictions in deeds are construed strictly against the grantor, and the heirs cannot reclaim the property based on this construction
- B. The grantor's heirs may reclaim because operating a wine bar is operating a tavern
- C. The grantor's heirs may reclaim because the deed gave them the right to re-enter
- D. The property has automatically reverted to the grantor's heir

62. A federal court is hearing a class action lawsuit against a corporation. The named plaintiffs seek certification under FRCP 23(b)(3). The plaintiffs satisfy the 23(a) requirements. For certification under 23(b)(3), what additional showing is required?

- A. The plaintiffs must show that all class members consent
- B. Under FRCP 23(b)(3), 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

63. A state law authorizes warrantless searches of any home where a probation officer believes a parolee resides. A homeowner whose home is searched challenges the law under the Fourth Amendment. What is the most likely result?

- A. The search is constitutional because parolees have reduced privacy rights
- B. The search is constitutional because probation officers have authority
- C. The search is constitutional because of the special needs doctrine
- D. Under the Fourth Amendment, warrantless searches of homes (a place with the highest expectation of privacy) generally require either consent, exigent circumstances, or a warrant supported by probable cause; while parole searches are permitted under reduced standards, this rule must be balanced against the privacy expectations of other residents and the home's special status

64. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense. The prosecution wishes to offer rebuttal evidence about the neighbor's character. Under FRE 404(a)(2), what is the proper sequence?

- A. The prosecution may offer victim character evidence first
- B. The prosecution may offer victim character evidence at any time
- C. Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense or by offering evidence of the victim's character, the prosecution may then rebut with evidence of the victim's peaceful character through reputation or opinion testimony
- D. The prosecution may not offer victim character evidence at all

65. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff serves the defendant by mail without a signed waiver. The defendant moves to dismiss for insufficient service. What result?

- 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
- 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

66. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant in a photo lineup. The defense challenges the identification, arguing the photo of the defendant was the only one in color among black-and-white photos. What is the proper analysis?

- A. The identification is automatically excluded
- B. 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 opportunity to view, attention, accuracy of prior description, certainty, and time between the crime and identification
- C. The identification is admissible because lineups are presumptively reliable
- D. The identification is admissible only if the witness is unavailable

67. A buyer enters into a written contract with a seller for the sale of land. The buyer pays a \$20,000 earnest money deposit. The seller fails to deliver marketable title due to an outstanding judgment lien. The buyer terminates the contract. What is the buyer entitled to recover?

- A. The earnest money is forfeited
- B. The buyer recovers the earnest money plus damages
- C. The buyer recovers the earnest money plus the cost of preparing for closing
- D. The buyer is entitled to recover the earnest money plus damages for breach, including any reliance costs and out-of-pocket expenses; the seller's failure to deliver marketable title is a material breach justifying termination

68. A federal court has jurisdiction over a complex commercial case under diversity jurisdiction. During discovery, the plaintiff seeks to depose the defendant CEO. The defendant moves for a protective order under the apex deposition doctrine. What is the proper standard?

- A. The court must allow the deposition unconditionally
- B. The court must grant the protective order automatically
- C. 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
- D. The court must defer to the defendant's preferences

69. 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 and the M'Naghten test should apply. 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

70. 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

71. A state's senior senator faces a federal criminal prosecution for accepting bribes in exchange for legislative favors. The defense argues that the Speech or Debate Clause shields the senator from prosecution. What is the proper analysis?

- A. The Speech or Debate Clause shields all legislative activity
- B. The Speech or Debate Clause shields only protected legislative acts
- C. Under the Speech or Debate Clause of Article I, § 6, Members of Congress are shielded from prosecution for acts that fall within the sphere of legitimate legislative activity (such as speeches, debates, and the introduction of bills); the clause does not shield non-legislative acts such as accepting bribes, even when the bribe relates to legislative action
- D. The clause provides absolute immunity from any criminal prosecution

72. A federal lawsuit is filed by a plaintiff against multiple defendants. 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 consent
- B. The plaintiffs must show that damages are certain
- C. The plaintiffs must show that common questions predominate over individual questions
- D. 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

73. 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 him" three 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), 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 and FRE 803(3) as state of mind
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in ti

74. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing that contracts for personal services cannot be specifically enforced. The plaintiff seeks specific performance. The defendant argues that the federal court should apply the state rule. What result?

- A. Under Erie, the federal court applies the state's substantive law on the availability of specific performance because remedies for breach of contract are substantive law affecting the measure of recovery
- B. The federal court applies federal common law on remedies
- C. The federal court applies federal procedural rules
- D. The federal court awards specific performance regardless

75. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because the warning given did not adequately convey his right to remain silent. Under Miranda, what result?

- A. Miranda warnings need only inform of the right to counsel
- B. Miranda warnings must be in writing
- C. Under *Miranda v. Arizona*, the prosecution must show that the defendant was informed (1) of his right to remain silent, (2) that any statement may be used against him, (3) of his right to counsel, and (4) that counsel will be appointed if he cannot afford one; the warnings must be substantively complete to be valid
- D. Miranda warnings need only be substantially complete

76. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to amend the complaint after the deadline for amendments. The defendant objects. Under FRCP 15(a) and 16(b), what is the proper standard?

- A. Amendment is freely permitted
- B. Amendment is denied automatically
- C. Under FRCP 15(a), leave to amend should be freely given when justice so requires
- D. Under FRCP 16(b)(4), modifying a scheduling order requires "good cause" shown; the moving party must show diligence in attempting to comply with the deadline before the court will permit amendment after the deadline

77. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by allowing the prosecution to use the defendant's silence after Miranda warnings against him at trial. Under *Doyle v. Ohio*, what result?

- A. Under *Doyle v. Ohio*, the prosecution's use of a defendant's post-Miranda silence to impeach his trial testimony violates the Due Process Clause; the silence is "insolubly ambiguous" and the prior assurance of the right to remain silent renders its use unfair
- B. The prosecution may use the silence to impeach
- C. The prosecution may use the silence as substantive evidence of guilt
- D. The prosecution may use the silence only with prior notice

78. 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 facts that, if true, would establish all elements of the cause of action. What is the proper outcome?

- A. The motion is granted because the complaint must include legal conclusions
- B. Under *Twombly* and *Iqbal*, when the plaintiff's complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss should be denied; the court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor
- C. The motion is granted because the complaint must include evidence
- D. The motion is denied automatically

79. 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. 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

80. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory and punitive damages. The state has a substantive law requiring punitive damages to be proven by clear and convincing evidence. The plaintiff argues federal law applies. 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. Under Erie, the federal court applies the state's clear and convincing evidence standard for punitive damages because burdens of proof are substantive law affecting outcome
- D. The federal court applies the preponderance standard as the federal default

81. A state passes a law prohibiting the display of any obscene material in public. A bookstore owner challenges the law under the First Amendment, arguing that the standard for "obscene" is vague. What is the most likely outcome?

- A. The law is automatically constitutional under the police power
- B. Under the First Amendment, obscenity is unprotected speech under *Miller v. California* (which defines obscenity using a three-prong test based on (1) appeal to prurient interest, (2) patently offensive description of sex, and (3) lack of serious literary, artistic, political, or scientific value applying contemporary community standards); a law incorporating these standards is generally constitutional
- C. The law is unconstitutional because obscenity is protected speech
- D. The law is unconstitutional because obscenity standards cannot be precisely defined

82. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing that contracts must be proven by clear and convincing evidence when based on oral terms. The defendant argues that the federal court should apply this state 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 the preponderance standard as the federal default

83. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, two weeks before the killing, "I want her gone from my life." 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
- D. No, because the statement is too remote in time

84. A federal court has jurisdiction over a complex commercial case. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the work product doctrine because they were prepared by counsel in anticipation of litigation. The plaintiff argues the documents are needed for the case. Under FRCP 26(b)(3), what is the proper analysis?

- A. Work product is absolute and never disclosed
- B. Work product is freely discoverable
- C. Work product is disclosed if requested by counsel
- D. Under FRCP 26(b)(3), work product is generally protected from disclosure, but ordinary work product may be discoverable upon a showing of substantial need and undue hardship in obtaining the substantial equivalent; opinion work product (mental impressions, conclusions, opinions, legal theories) receives nearly absolute protection

85. A state law makes it a crime to "obstruct, hinder, or impede" any traffic stop. A traffic-stop subject who repeatedly questioned the officer's authority is convicted under the law. He challenges the conviction under the First Amendment. What is the most likely outcome?

- A. The conviction is constitutional because the state may regulate traffic stops
- B. Under the First Amendment, a vague criminal statute that allows arbitrary enforcement based on speech (such as questioning) may violate the First Amendment and Due Process Clauses; speech that does not constitute incitement or true threats is generally protected, and the statute's broad reach to mere verbal questioning raises serious constitutional concerns

- C. The conviction is constitutional because the state has authority to regulate the police
- D. The conviction is unconstitutional because all traffic stops are subject to First Amendment scrutiny

86. A defendant is on trial for armed robbery. The prosecution offers testimony from an eyewitness who claims to have seen the defendant outside the bank moments before the robbery. The defense argues that the witness's observations were obscured by the angle and lighting. What is the proper analysis?

- A. The witness's testimony is admissible, and the defense's arguments about the angle and lighting are matters of weight to be evaluated by the jury through cross-examination; perceptual capacity affects credibility, not admissibility
- B. The witness's testimony is automatically excluded
- C. The witness's testimony requires expert authentication
- D. The witness's testimony is admissible only if corroborated

87. 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. The court must grant summary judgment
- C. 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
- D. The court must allow the amended complaint without scrutiny

88. A defendant is on trial for the murder of his business partner. 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 at a pretrial suppression hearing. 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. Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent

89. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's prior similar acts. The defendant objects under FRE 404(b). What is the proper analysis?

- A. Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove the defendant's character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; the court must balance probative value against unfair prejudice under FRE 403
- B. Prior bad acts are always admissible
- C. Prior bad acts are always inadmissible
- D. Prior bad acts are admissible only with the defendant's consent

90. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank. The defense argues the videotape was not properly authenticated. Should the videotape be admitted?

- A. The videotape is inadmissible because it was made without consent
- B. Under FRE 901, the videotape is authenticated by evidence sufficient to support a finding that it is what the prosecution claims; testimony establishing the recording system, time of recording, and chain of custody satisfies the standard
- C. The videotape requires expert testimony
- D. The videotape is inadmissible because security cameras require warrants

91. A state's legislature passes a statute providing that no public school teacher may discuss alternative views to evolution in biology class. A biology teacher who wishes to discuss creationism challenges the law under the First Amendment. What is the most likely outcome?

- A. The law is constitutional because the state has authority to set curriculum
- B. The law is constitutional because curricular decisions are within state authority

C. The law is constitutional because evolution is the accepted scientific view

D. Under the First Amendment, when government employees speak as government employees about official duties, their speech is subject to control by the government employer under *Garcetti v. Ceballos*; however, statutory restrictions on educational content may also implicate the Establishment Clause and academic freedom concerns

92. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges that the defendant violated her First Amendment rights. The defendant is a state actor. The plaintiff sues under 42 U.S.C. § 1983. What standard applies to the defendant's qualified immunity defense?

A. Qualified immunity automatically applies to all state actors

B. Qualified immunity automatically does not apply to state actors

C. Under *Harlow v. Fitzgerald* and *Pearson v. Callahan*, a government official is entitled to qualified immunity unless (1) the official's conduct violated a constitutional right, and (2) the right was clearly established at the time of the conduct; both prongs must be satisfied to defeat immunity

D. Qualified immunity applies only to federal officials

93. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation in the community for being peaceful. On cross-examination, the prosecution asks whether the witness has heard about the defendant's prior arrest for assault. The defense objects. Is the question allowed?

A. 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

B. No, because arrests are unproven

C. No, because reputation evidence does not open the door

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

94. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing that contracts must be in writing if they exceed \$1,000. The defendant moves to dismiss because the alleged contract was oral. The plaintiff argues that the partial performance doctrine applies. What is the proper analysis?

- A. The federal court applies federal common law on contracts
- B. Under Erie, the federal court applies the state's statute of frauds and any state-law exceptions, including the partial performance doctrine; both the statute of frauds and its exceptions are substantive law affecting contract enforceability
- C. The federal court applies federal procedural rules on contract enforcement
- D. The federal court applies whichever rule produces uniformity

95. A defendant is convicted of murder. On appeal, the defendant argues that his Sixth Amendment right to confrontation was violated because the prosecution introduced statements from a witness who did not testify at trial. The witness's statements were made to police during interrogation about the crime. Under *Crawford v. Washington*, what result?

- A. The statements are admissible if reliable
- B. The statements are admissible because they are non-hearsay
- C. The statements are admissible only with the witness's consent
- D. Under *Crawford v. Washington*, testimonial statements (such as those made during police interrogation about past events) by a witness who does not testify at trial are inadmissible against the defendant unless the defendant had a prior opportunity to cross-examine, regardless of indicia of reliability

96. A buyer enters into a contract with a seller to purchase 200 widgets at \$30 each. The contract requires delivery within 14 days. The seller delivers 200 conforming widgets on day 12. The buyer accepts the delivery and pays the contract price. Three weeks later, the buyer discovers a latent defect that significantly reduces the value of the widgets. May the buyer recover damages?

- A. No, because the buyer accepted the delivery
- B. No, because the buyer paid the contract price
- C. Under UCC § 2-607 and § 2-714, a buyer who has accepted goods and later discovers a latent defect that could not reasonably have been discovered earlier may recover damages for breach of warranty, provided timely notice is given to the seller; the buyer is not barred by acceptance from recovering for latent defects
- D. No, because the defects are latent

97. A federal court has jurisdiction over a complex commercial litigation. The plaintiff moves for a preliminary injunction. The defendant argues that the plaintiff has not established likelihood of success. Under the four-factor test, what is required?

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

98. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense after the sister attacked the defendant with a kitchen 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

99. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges \$30,000 in compensatory damages and \$50,000 in punitive damages. The defendant moves to dismiss for lack of subject matter jurisdiction, arguing the amount in controversy is not satisfied. What result?

- A. The court must dismiss because compensatory damages alone do not exceed \$75,000
- B. The court must dismiss because punitive damages do not count
- C. Under 28 U.S.C. § 1332, the amount in controversy includes both compensatory and punitive damages if punitive damages are available under the applicable substantive law; the combined amount of \$80,000 exceeds the \$75,000 threshold, satisfying jurisdiction
- D. The court must dismiss because punitive damages must exceed \$75,000 alone

100. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in the heat of passion after the defendant discovered evidence of the neighbor's affair with the defendant's spouse. The prosecution argues that discovering an affair does not constitute adequate provocation under modern law. What is the proper analysis?

- A. Heat of passion never applies to spousal-related killings
- B. Modern courts uniformly reject affairs as adequate provocation
- C. Heat of passion requires the killing to occur during the provoking event
- D. Under the common law heat of passion doctrine, adequate provocation requires conduct sufficient to cause a reasonable person to lose self-control; discovery of a spouse's affair has historically been recognized as adequate provocation in many jurisdictions, though some modern courts have moved away from this rule

Section 2 — Questions 101 through 200 (3 Hours)

101. A state passes a law requiring all licensed nurses to be U.S. citizens. A lawful permanent resident with valid nursing credentials applies for a license and is denied. She challenges the law under the Equal Protection Clause. What is the proper standard of review?

- A. Under the Equal Protection Clause, alienage classifications by state governments generally receive strict scrutiny; the state must show the classification is necessary to serve a compelling government interest, which is difficult for routine licensure requirements
- B. Rational basis review applies because nursing regulation is a traditional state function
- C. Intermediate scrutiny applies because alienage is a quasi-suspect class
- D. No scrutiny applies because the state has unlimited authority to regulate the practice of nursing

102. A federal court is hearing a complex commercial case. The plaintiff seeks to introduce expert testimony from an economist regarding lost profits. The defendant challenges the expert's methodology under Daubert. What is the proper procedure?

- A. The court must defer to the expert's qualifications
- B. The court must allow the jury to decide reliability

C. 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

D. The court must exclude all expert testimony

103. A defendant is on trial for the murder of his wife. The defense argues that the defendant did not have the specific intent required for first-degree murder because he was intoxicated. Under the common law, what is the proper analysis?

A. Intoxication is never a defense

B. Intoxication is a complete defense

C. Voluntary intoxication is a defense only to general intent crimes

D. Under the common law, voluntary intoxication may negate the specific intent required for crimes like first-degree murder (which requires premeditation and deliberation); the intoxication evidence is relevant to whether the defendant could form the specific mental state, but is not a defense to lesser included offenses requiring only general intent or recklessness

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 net worth is automatically inadmissible

B. 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

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 life without parole. The defendant appeals, arguing the sentence is unconstitutional. What is the proper standard?

A. Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense; for serious offenses like armed robbery resulting in

death or grave injury, life without parole is generally not grossly disproportionate, especially for repeat offenders

- B. The sentence must be reversed if the defendant has no prior record
- C. The sentence must be reversed because life without parole is automatically unconstitutional
- D. The sentence is reviewed de novo

106. A state law authorizes the use of "any reasonable means" by police to obtain a confession from suspects. The defendant challenges the law as facially unconstitutional under the Fifth and Fourteenth Amendments. What is the most likely outcome?

- A. The law is constitutional because police have authority to interrogate
- B. The law is constitutional because suspects can refuse to speak
- C. The law is constitutional because confessions are encouraged
- D. Under *Miranda v. Arizona* and the Due Process Clause, statements obtained by physical coercion, threats, or psychological pressure are inadmissible; a state law authorizing "any reasonable means" of obtaining confessions, including those that may involve coercion, would be unconstitutional on its face

107. A buyer enters into a contract with a seller to purchase a parcel of land for \$400,000. The contract specifies that the seller will deliver marketable title at closing. Before closing, the buyer discovers that the property is subject to an undischarged mortgage of \$200,000. The buyer terminates the contract. May the buyer recover her earnest money?

- A. No, because the seller could pay off the mortgage at closing
- B. No, because the buyer should have known about the mortgage
- C. Yes, the buyer may recover her earnest money because the seller's inability to deliver marketable title constitutes a material breach justifying termination; an undischarged mortgage that the seller cannot or will not pay off at closing renders title unmarketable
- D. Yes, but only if the buyer paid in cash

108. 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" 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), 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
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

109. A federal court has jurisdiction over a class action against a corporation. 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 factors should the court consider?

- A. 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
- B. The court considers only the cash payments
- C. The court considers only the attorney's fees
- D. The court considers only the named plaintiffs' preferences

110. 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 the witness whether she was wearing her prescription glasses at the time of the alleged assault. The witness says she was not. The prosecution objects. Is the question allowed?

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

111. A state law authorizes the seizure of any vehicle used in the commission of a felony. A vehicle owner whose car was used by a third party in a robbery (without the owner's knowledge or consent) has her car seized. She challenges the seizure under the Due Process Clause. What is the most likely outcome?

- A. The seizure is constitutional because the state has authority to seize property used in crimes
- B. Under the Due Process Clause, civil forfeiture of property requires proper procedural protections, and where an innocent owner had no knowledge or consent to the property's use in the crime, the forfeiture may be unconstitutional; the innocent owner defense has been recognized in some contexts as a constitutional requirement
- C. The seizure is constitutional because of the police power
- D. The seizure is constitutional if compensation is paid

112. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing for prejudgment interest at 6% on contract claims. The defendant argues that the federal court should not award prejudgment interest. What is the proper outcome?

- A. The federal court applies federal common law on interest
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action
- D. The federal court applies whichever rule produces uniformity

113. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense. 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 reputation evidence is inadmissible

114. 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 proponent of the deposition generally bears the burden of justifying it

115. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a warrantless search of his vehicle following a traffic stop. The officer had probable cause to believe the vehicle contained drugs. Under the automobile exception, what result?

- A. The search is unconstitutional because all searches require warrants
- B. Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime; the inherent mobility of vehicles justifies the exception
- C. The search is unconstitutional because traffic stops do not establish probable cause
- D. The search is unconstitutional because the search exceeded the scope of the stop

116. 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

117. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in self-defense because the wife attacked the defendant with a knife. 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

118. A state law requires all signs displayed on commercial property to be removed within 24 hours of any non-permanent event. A business owner who displays a sign for a charitable cause challenges the law under the First Amendment. What is the most likely outcome?

- A. Under the First Amendment, content-based restrictions on speech are subject to strict scrutiny; the government must show the restriction is narrowly tailored to serve a compelling interest. A regulation that targets specific types of signs based on content (commercial vs. charitable, etc.) would face strict scrutiny
- B. The law is constitutional because it is a reasonable time, place, and manner restriction
- C. The law is constitutional because it serves the compelling interest of property appearance
- D. The law is constitutional because the state has authority to regulate signs

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

- A. The plaintiffs must show that all class members consent
- B. The plaintiffs must show that the defendant has acted on grounds applicable to the entire class
- C. Under FRCP 23(b)(3), 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
- D. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications

120. A defendant is on trial for the murder of his neighbor. The prosecution offers a videotape from a security camera at a nearby business. 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. 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
- C. The videotape is inadmissible because security cameras require warrants
- D. The videotape requires expert testimony

121. A federal court is hearing a state-law breach of 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. The federal court applies federal procedural rules
- C. The federal court denies treble damages
- D. 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

122. A defendant is on trial for armed robbery. The defense calls a character witness who testifies that the defendant has a reputation for being honest and law-abiding. On cross-examination, the prosecution asks the witness whether she has heard about the defendant's prior conviction for theft. The defense objects. Is the question allowed?

- A. 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 tests her knowledge of the defendant's actual reputation
- B. No, because the question is more prejudicial than probative
- C. No, because the conviction is too remote in time
- D. No, because the question is unproven by reputation

123. A buyer signs a contract to purchase a parcel of land from a seller for \$400,000. The seller fails to deliver marketable title due to an outstanding lien. The buyer terminates the contract. May the buyer recover damages beyond her earnest money?

- A. No, because the buyer terminated the contract
- B. No, because earnest money is the sole remedy
- C. Yes, the buyer may recover damages for breach, including any reliance costs, costs of preparation for closing, and the difference between contract price and market value at the time of breach (if the market price is lower); the seller's failure to deliver marketable title is a material breach
- D. Yes, but only if the buyer paid the entire purchase price

124. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The settlement provides for substantial relief to class members and reasonable attorney's fees. The court must determine whether to approve the settlement. 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 considering relevant factors
- C. The court must obtain unanimous consent of all class members
- D. The court must approve the settlement unless objections are unanimous

125. 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. 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 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

126. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges that the defendant violated her constitutional rights. The defendant is a federal employee. The plaintiff sues under Bivens. What standard applies?

A. Under *Bivens v. Six Unknown Named Agents* and its progeny, a damages remedy is available for certain constitutional violations by federal officials, but the Supreme Court has narrowed the categories where *Bivens* claims may be brought; new contexts require special factors analysis under *Hernandez v. Mesa*, and routine extension is disfavored

B. *Bivens* is automatically available for all constitutional violations

C. *Bivens* is automatically unavailable for federal officials

D. *Bivens* requires explicit congressional authorization

127. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's prior similar acts. The defendant objects under FRE 404(b). What is the proper analysis?

A. Prior bad acts are always admissible

B. Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove the defendant's character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; the court balances probative value against unfair prejudice under FRE 403

C. Prior bad acts are always inadmissible

D. Prior bad acts are admissible only with the defendant's consent

128. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "I want her gone from my life" three 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. 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

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

129. A federal court has jurisdiction over a complex commercial case. The plaintiff moves 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
- 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

130. A defendant is convicted of murder. On appeal, the defendant argues that his Fifth Amendment right against self-incrimination was violated when the prosecution called him to testify in a related civil case where his testimony incriminated him in the murder case. Under the Fifth Amendment, what result?

- A. Under the Fifth Amendment, the privilege against self-incrimination applies in any proceeding (civil or criminal, administrative or judicial) where the witness's testimony could be used against him in a criminal proceeding; the defendant could properly invoke the privilege in the civil case to avoid incriminating himself
- B. The privilege applies only in criminal proceedings
- C. The privilege applies only at trial
- D. The privilege is automatically waived in civil cases

131. 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. 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
- D. Evidence of net worth is admissible only with the defendant's consent

132. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation for being peaceful. On cross-examination, the prosecution asks the witness

whether she has heard about the defendant's prior conviction for battery. The defense objects. Is the question allowed?

- A. No, because the conviction is too remote in time
- B. 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
- C. No, because the conviction is unproven by reputation
- D. Yes, but only if the prosecution provides documentation

133. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the work product doctrine. What is the proper standard?

- A. Work product is absolute
- B. Work product is freely discoverable
- C. Work product applies only to documents prepared by lawyers
- D. Under FRCP 26(b)(3), work product is generally protected from disclosure, but ordinary work product may be discoverable upon a showing of substantial need and undue hardship in obtaining the substantial equivalent; opinion work product receives nearly absolute protection

134. A defendant is on trial for the murder of his business partner. 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 prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent
- B. The prosecution must prove by clear and convincing evidence
- C. The prosecution must prove beyond a reasonable doubt
- D. The court defers to the police officer's account

135. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves for summary judgment. The plaintiff responds with affidavits and other evidence creating a genuine dispute of material fact. Under FRCP 56, what result?

- A. The motion is granted automatically
- B. The motion is granted because the moving party's evidence is more credible
- C. Under FRCP 56(a) and *Anderson v. Liberty Lobby*, summary judgment is granted only when there is no genuine dispute of material fact; the non-moving party's creation of a genuine dispute through affidavits and evidence defeats summary judgment, and credibility determinations are reserved for the trier of fact
- D. The motion is denied unconditionally

136. A state law authorizes the destruction of any animal believed to pose a danger to public safety. A horse owner whose horse was destroyed without prior notice or opportunity to be heard challenges the law under the Due Process Clause. What is the most likely outcome?

- A. The law is constitutional because the state has authority to address public safety
- B. Under the Due Process Clause and *Mathews v. Eldridge*, the deprivation of property requires procedural due process — typically including notice and an opportunity to be heard — before final action; emergency action may sometimes be permitted but generally requires post-deprivation review with reasonable promptness, especially where the alleged danger may not be immediately apparent
- C. The law is constitutional because animals are not protected by Due Process
- D. The law is constitutional if the owner is compensated

137. 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 teach him a lesson he won't forget" a week 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 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 FRE 404(b) for 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

138. A federal court is hearing a state-law 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 remedies
- C. The federal court applies federal procedural rules
- 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; this principle is well-established in equity and applies in federal court under Erie

139. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because the warnings given did not include the right to have counsel present during questioning. Under Miranda, what result?

- A. Miranda warnings are not constitutionally required
- B. The warnings are adequate if the defendant later spoke
- C. Under *Miranda v. Arizona*, the prosecution must show that the defendant was informed of (1) the right to remain silent, (2) that any statement may be used against him, (3) the right to counsel, and (4) the appointment of counsel if he cannot afford one; the right to counsel includes the right to have counsel present during questioning, and the omission of this aspect renders the warnings inadequate
- D. The warnings are adequate if substantially complete

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

- A. The defendant has no obligation
- B. 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
- C. The plaintiff's recovery is reduced
- D. The defendant is liable for the plaintiff's costs

141. A defendant is on trial for the murder of his sister. The defense calls an alibi witness who testifies that the defendant was at her home at the time of the killing. On cross-examination, the prosecution asks the witness whether she was previously convicted of perjury. The defense objects. Is the question allowed?

- A. Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as perjury) are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements
- B. No, because the conviction is too remote in time
- C. No, because the conviction is unproven
- D. Yes, but only if the prosecution provides documentation

142. A federal court is hearing a complex commercial case. The plaintiff seeks to compel discovery of certain documents from the defendant. The defendant claims the documents are protected by the attorney-client privilege. The plaintiff disputes the privilege claim. What is the proper procedure?

- A. The court must order in camera review of all documents
- B. The defendant must produce all documents
- C. The defendant may refuse all production
- D. 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 court then evaluates the validity of the privilege claim, potentially through in camera review

143. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant from a six-person lineup at the police station. The defense argues the lineup was unduly suggestive because the defendant was the only one not wearing a jacket. What is the proper analysis?

- A. The court must defer to the police officer's account
- B. 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
- C. The court must exclude all identification testimony

D. The court must require the lineup be photographed

144. 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. The court must grant summary judgment

C. 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

D. The court must allow the amended complaint without scrutiny

145. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims to have seen the defendant near the scene shortly before the killing. The defense argues this is insufficient to prove the defendant committed the killing. What is the proper analysis?

A. 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

B. Circumstantial evidence is inadmissible in criminal cases

C. Circumstantial evidence requires corroboration by direct evidence

D. Circumstantial evidence is conclusive of guilt

146. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory damages for emotional distress without accompanying physical injury. The state has a substantive law allowing such damages only when the plaintiff witnessed a close relative being injured. The defendant argues that the federal court should apply the state rule. 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 applies whichever rule produces uniformity
- D. Under Erie, the federal court applies the state's substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery

147. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a warrantless seizure of his cell phone. The phone was seized incident to his arrest. The officer searched the phone's contents without a warrant. Under *Riley v. California*, what result?

- A. The search is constitutional because it was incident to arrest
- B. The search is constitutional because cell phones have reduced privacy expectations
- C. Under *Riley v. California*, a warrantless search of a cell phone's digital contents is generally unconstitutional, even when conducted incident to a lawful arrest; cell phones contain such vast amounts of personal information that the search-incident-to-arrest exception does not justify searching their contents without a warrant
- D. The search is constitutional because the phone was lawfully seized

148. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery of documents from a third party. The third party objects, arguing the documents are protected by the attorney-client privilege. The plaintiff disputes the privilege claim. What is the proper procedure?

- A. The court must order production
- B. Under FRCP 45 and FRCP 26(b)(5), a third party served with a subpoena who withholds documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court evaluates the validity of the privilege claim
- C. The third party may refuse all production
- D. The court must defer to the third party's representations

149. A defendant is on trial for the murder of his wife. The defense calls a witness who testifies that the defendant was at home at the time of the killing. On cross-examination, the prosecution asks the witness whether he has been previously convicted of perjury. The defense objects. Is the question allowed?

- A. Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as perjury) are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements
- B. No, because the conviction is too remote in time
- C. No, because the conviction is unproven
- D. Yes, but only if the prosecution provides documentation

150. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing that contracts must be in writing if they exceed \$1,000. 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. 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

151. 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. The victim's reputation for violence is generally not pertinent to a robbery prosecution unless the defendant raises self-defense or initial-aggressor defenses
- 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; if the defendant raises such defenses, the evidence is admissible
- C. The victim's reputation is automatically admissible
- D. The victim's reputation is automatically inadmissible

152. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff seeks to certify a class action under FRCP 23(b)(2). What standard applies?

- A. The plaintiffs must show that all class members consent
- 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

153. 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). What is the proper analysis?

- 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 schemes within two years are probative of intent and scheme
- B. Prior crimes are inadmissible to show character
- C. Prior crimes are inadmissible if too remote
- D. Prior crimes are inadmissible unless charged

154. A federal court has jurisdiction over a complex commercial case. The plaintiff moves for a preliminary injunction. The defendant argues that the plaintiff has not established likelihood of success. Under the four-factor test, what is required?

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

155. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense after 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

156. A federal lawsuit is filed by a plaintiff. The defendant moves to dismiss for failure to state a claim. The plaintiff's complaint alleges sufficient facts to render the claim plausible. Under *Twombly* and *Iqbal*, what is the proper outcome?

- A. The motion is granted because the complaint must include legal conclusions
- B. The motion is granted because the complaint must include evidence
- C. Under *Twombly* and *Iqbal*, when the complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss is denied; the court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor
- D. The motion is denied automatically

157. 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. 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 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

158. A federal court is hearing a complex commercial litigation. The plaintiff seeks to compel discovery of documents from the defendant. The defendant claims the documents are protected by the attorney-client privilege because they were sent to in-house counsel. What is the proper analysis?

- A. 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 advice, including with in-house counsel; communications relating purely to business decisions without a legal-advice purpose 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"

159. 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. Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense; for serious offenses like armed robbery, lengthy sentences are generally not grossly disproportionate
- D. The sentence must be reversed if it exceeds the average for the offense

160. 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. 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
- C. The court must obtain unanimous consent of all class members
- D. The court must approve the settlement unless objections are unanimous

161. 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. 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; the statement is also admissible under FRE 803(3) as evidence of the defendant's then-existing state of mind toward the victim and FRE 404(b) for motive and intent

162. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's prior similar acts. The defendant objects under FRE 404(b). What is the proper analysis?

A. Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove the defendant's character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; the court balances probative value against unfair prejudice under FRE 403

B. Prior bad acts are always admissible

C. Prior bad acts are always inadmissible

D. Prior bad acts are admissible only with the defendant's consent

163. 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 the witness about her use of corrective lenses. The prosecution objects. 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 ability to perceive — including whether she was wearing her prescribed corrective lenses — directly affect the reliability of her observations

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

164. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to amend the complaint to add a new claim. The defendant objects, arguing the amendment is futile. 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. 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 but generally favors amendment unless the proposed claim is patently futile

165. 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 indicted but before counsel was appointed. Under *Massiah v. United States*, what result?

A. The questioning is permissible because the defendant did not invoke his right to counsel

B. The questioning is permissible because the defendant voluntarily spoke

C. The questioning is permissible if the defendant initiated the conversation

D. Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment; deliberate elicitation of statements from an indicted defendant without counsel violates the right and the statements must be suppressed

166. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing for prejudgment interest at 6% on contract claims. The defendant argues that the federal court should not award prejudgment interest. What is the proper outcome?

A. Under *Erie*, the federal court applies the state's 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 common law on interest

C. The federal court applies federal procedural rules

D. The federal court applies whichever rule produces uniformity

167. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant in a photo lineup. The defense argues the lineup was unduly suggestive because the photo of the defendant was the only one in color among black-and-white photos. What is the proper analysis?

- A. The identification is automatically excluded
- B. 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
- C. The identification is admissible because lineups are presumptively reliable
- D. The identification is admissible only if the witness is unavailable

168. 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

169. 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 rebuttal evidence the testimony of a witness that the neighbor 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 neighbor's character is irrelevant
- C. Yes, but only after the prosecution provides advance notice
- D. No, because hearsay rules bar the 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 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. 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

171. A state passes a law requiring all individuals to obtain a state-issued ID to vote in federal elections. The law provides no exceptions for individuals who lack the financial means to obtain such ID. A voter challenges the law under the Equal Protection Clause. What is the most likely outcome?

- A. The law is constitutional because the state has authority over voter registration
- B. The law is constitutional as a reasonable regulation
- C. Under the Equal Protection Clause, voter ID laws are evaluated under a balancing test (*Crawford v. Marion County*); facial challenges to such laws have generally been rejected, but as-applied challenges may succeed where the burden on particular voters is severe and unjustified
- D. The law is unconstitutional under strict scrutiny

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

- A. The defendant has no obligation
- B. 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
- C. The plaintiff's recovery is reduced
- D. The defendant is liable for the plaintiff's costs

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. 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 wife's character is irrelevant
- C. Yes, but only after the prosecution provides advance notice
- D. No, because reputation evidence is inadmissible

174. 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. 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 proponent of the deposition generally bears the burden of justifying it

175. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank showing the robbery. The defense argues the videotape was not properly authenticated. 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. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims; testimony establishing the recording system, time of recording, and chain of custody satisfies this standard
- D. The videotape requires expert testimony

176. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's prior similar acts to show motive. The defendant objects under FRE 404(b). What is the proper analysis?

- A. Prior bad acts are always admissible
- B. Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; the court balances probative value against unfair prejudice under FRE 403
- C. Prior bad acts are always inadmissible
- D. Prior bad acts are admissible only with the defendant's consent

177. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims to have seen the defendant fleeing the scene moments after the killing. The defense argues this is insufficient to prove the defendant committed the killing. What is the proper analysis?

- A. Flight evidence is inadmissible
- B. Flight evidence is conclusive of guilt
- C. Flight evidence requires direct physical 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

178. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs propose a settlement. The settlement provides for cash payments and reasonable 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 defer to the parties' agreement
- C. The court must obtain unanimous consent of all class members
- D. The court must approve the settlement unless objections are unanimous

179. 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" two 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), 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
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

180. 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 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 under Erie
- D. The federal court applies federal procedural rules

181. 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 about the defendant's prior conviction for theft. The defense objects. Is the question allowed?

- A. 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
- B. No, because the conviction is too remote in time
- C. No, because the question is more prejudicial than probative
- D. No, because the question seeks specific acts

182. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents 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. Under FRCP 26(b)(3), what is the proper standard?

- A. The documents are protected if they were prepared by lawyers
- B. The documents are protected if they involve confidential corporate information
- C. The documents are not protected because work product applies only after litigation has commenced
- D. 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

183. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in the heat of passion after a violent argument. The prosecution argues that the time between the argument and the killing was sufficient for the defendant to cool off. What is the proper analysis?

- A. Heat of passion never applies
- B. Heat of passion always applies after an argument
- C. 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; the cooling-off period is a factual question for the jury
- D. Heat of passion requires the killing to occur during the provoking event

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

- A. The defendant has no obligation
- B. 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
- C. The plaintiff's recovery is reduced
- D. The defendant is liable for the plaintiff's costs

185. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation for being peaceful. On cross-examination, the prosecution asks whether the witness has heard about the defendant's prior arrest for assault. The defense objects. Is the question allowed?

- A. 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
- B. No, because arrests are unproven
- C. No, because reputation evidence does not open the door
- D. No, because the question is more prejudicial than probative

186. 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. The federal court applies federal common law on liability
- B. The federal court applies pure several liability as the federal default
- C. The federal court applies whichever rule produces uniformity
- D. 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

187. 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 soon" 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 toward the victim and FRE 404(b) for motive
- C. The statement is admissible only as character evidence
- D. No, because the statement is too remote in time

188. A federal lawsuit is filed by a plaintiff. The defendant moves to dismiss for failure to state a claim. The plaintiff's complaint alleges sufficient facts. Under Twombly and Iqbal, what is the proper outcome?

- A. The motion is granted because the complaint must include legal conclusions
- B. The motion is granted because the complaint must include evidence
- C. Under Twombly and Iqbal, when the complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss is denied; the court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor
- D. The motion is denied automatically

189. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank. The defense argues the videotape was made without the depicted persons' 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 inadmissible because it is hearsay
- D. 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

190. 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. 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
- D. Evidence of net worth is admissible only with the defendant's consent

191. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "I want her gone for good" three 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), 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 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

192. A federal court has jurisdiction over a complex commercial case. The plaintiff moves for a preliminary injunction. The defendant argues that the plaintiff has not established likelihood of success. Under the four-factor test, what is required?

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

193. 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 rebuttal evidence the testimony of a witness that the neighbor 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 neighbor's character is irrelevant
- C. Yes, but only after the prosecution provides advance notice
- D. No, because hearsay rules bar the testimony

194. 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 the federal court should not award prejudgment interest. What is the proper outcome?

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

195. 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 about the defendant's prior conviction for theft. The defense objects. Is the question allowed?

- A. No, because the conviction is too remote in time
- B. 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
- C. No, because the question is more prejudicial than probative
- D. No, because the question seeks specific acts

196. A federal court has jurisdiction over a class action. 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 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

197. A defendant is convicted of armed robbery. The trial court imposes a sentence of life without parole. The defendant appeals, arguing the sentence is unconstitutional. What is the proper standard?

- A. Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense; for serious offenses like armed robbery with aggravating factors, life without parole is generally not grossly disproportionate
- B. The sentence must be reversed if the defendant has no prior record
- C. The sentence must be reversed because life without parole is automatically unconstitutional
- D. The sentence is reviewed de novo

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

- A. The plaintiffs must show that all class members consent
- B. The plaintiffs must show that the defendant has acted on grounds applicable to the entire class
- C. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications
- D. Under FRCP 23(b)(3), 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

199. 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. 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 hearsay rules bar the testimony

200. 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. 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
- C. Evidence of net worth requires special permission
- D. Evidence of net worth is admissible only with the defendant's consent

PRACTICE EXAM 5 – ANSWER KEY WITH FULL EXPLANATIONS

1. B — Time, place, and manner restrictions on speech must be content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. A restriction on door-to-door solicitation during certain hours is content-neutral and serves significant interests in residential privacy and public safety; if narrowly tailored, it will be upheld.

2. A — Under FRCP 56, summary judgment is denied when conflicting affidavits create a genuine dispute of material fact. Credibility determinations are reserved for the trier of fact, and the moving party's affidavit cannot prevail simply because an opposing affidavit also exists.

3. D — A trial court has discretion to admit witness testimony despite a violation of pretrial discovery rules, considering factors such as prejudice, the prosecution's good faith, and materiality. Exclusion is one available remedy but is not required; lesser sanctions are often appropriate.

4. C — Under UCC § 2-209, contract modifications need no consideration, and oral modifications are enforceable unless a "no oral modification" clause exists. The parties' mutual agreement to advance delivery transforms the modified date into the operative deadline, and conforming goods delivered on that date may not be rejected.

5. B — 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 opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

6. A — Under the Rule Against Perpetuities, B's interest is valid because B is a life in being at the time of conveyance. The contingency (B reaching age 25) must resolve, if at all, within B's own lifetime, satisfying the perpetuities period.

- 7. D** — Under Erie, federal courts in diversity apply state substantive law. The choice between contributory and comparative negligence directly affects recovery and is substantive law, not procedural.
- 8. 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.
- 9. A** — Under the Establishment Clause as interpreted in *Wallace v. Jaffree*, a moment-of-silence statute that explicitly references "prayer" reveals a religious purpose that violates the Establishment Clause. The inclusion of "prayer" — rather than a religiously neutral moment of silence — endorses religion impermissibly.
- 10. B** — Under FRE 409, evidence of furnishing or offering to pay medical expenses is not admissible to prove liability. The rule encourages humanitarian gestures by ensuring they cannot be used as admissions of fault.
- 11. D** — Under 28 U.S.C. § 1332(c)(1), a corporation is a citizen of both its state of incorporation and its principal place of business. When the corporation is a citizen of California (PPB) and the plaintiff is also a California citizen, complete diversity is defeated, requiring dismissal.
- 12. C** — Self-defense requires the defendant to have reasonably believed he was in imminent danger of unlawful harm and to have used reasonable, proportionate force in response. The force used must be commensurate with the threat; excessive force is not justified.
- 13. A** — Under the Second Amendment as applied to states through the Fourteenth Amendment, *New York State Rifle & Pistol Association v. Bruen* requires that firearm regulations be consistent with the nation's historical tradition. Many traditional regulations have included background checks, fees, and waiting periods.
- 14. 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.
- 15. D** — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court acts as gatekeeper to determine whether expert testimony is based on reliable principles and methods. The court considers testability, peer review, error rate, and general acceptance, among other factors.
- 16. C** — A fee simple absolute is the most complete ownership interest, permitting unrestricted use and alienation. A holder of a fee simple absolute may sell, lease, devise, or transfer the property without restriction or the consent of others.
- 17. B** — Under *International Shoe* and progeny, specific personal jurisdiction requires the defendant to have purposefully directed activities at the forum state, and the claim must arise out of or relate to those contacts. Targeted email solicitations may satisfy purposeful availment if substantial.

- 18. A** — Under *Davis v. United States*, a suspect's request for counsel must be unambiguous and unequivocal to require police to cease interrogation. The statement "I think I want to talk to a lawyer" is an ambiguous request, and officers are not required to clarify before continuing.
- 19. C** — Under *Erie*, federal courts in diversity apply state substantive law, including the statute of frauds. A state-law writing requirement for service contracts is substantive because it determines contract enforceability.
- 20. D** — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi. Three similar schemes within 18 months may demonstrate a common scheme and are probative of intent and design.
- 21. A** — Under the Equal Protection Clause, alienage classifications by state governments generally receive strict scrutiny. The state must show the classification is necessary to serve a compelling government interest, which routine occupational licensure requirements typically cannot satisfy.
- 22. B** — Under transactional *res judicata*, a final judgment on the merits — including dismissal with prejudice — bars all claims arising from the same transaction or series of transactions that were or could have been raised. The dismissed claims cannot be refiled.
- 23. D** — 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 adultery has been historically recognized as adequate provocation in many jurisdictions, though some modern courts have moved away from this rule.
- 24. C** — Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications with in-house counsel made for the purpose of seeking legal advice. Communications relating purely to business decisions, without a legal-advice purpose, are not protected, even if sent to in-house counsel.
- 25. A** — 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 tests the witness's knowledge of the defendant's actual reputation.
- 26. B** — Under FRCP 23(e), the court must scrutinize class settlements carefully, especially when objections are substantial. A settlement providing nominal class benefits with substantial attorney's fees raises fairness, reasonableness, and adequacy concerns that may warrant disapproval.
- 27. D** — Under FRE 801(d)(2)(E), co-conspirator statements made during the course of and in furtherance of the conspiracy are not hearsay. Under *Bourjaily v. United States*, the trial court must find by a preponderance that a conspiracy existed, the declarant and defendant were members, and the statement was in furtherance.
- 28. C** — Under the Dormant Commerce Clause, a state law that discriminates against out-of-state commerce — facially, in purpose, or in effect — is virtually *per se* invalid. A discriminatory tax on out-of-state producers cannot survive constitutional scrutiny unless the state shows the law serves a legitimate, non-protectionist purpose unavailable through nondiscriminatory means.

- 29. B** — Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach. Tax evasion involving fraud (rather than mere failure to file) implicates dishonesty and falls within the rule.
- 30. 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 even when comparable land could be obtained.
- 31. C** — Under Erie, federal courts in diversity apply state substantive law including state-law caps on punitive damages. Such caps are substantive because they directly affect the measure of recovery for the underlying state-created cause of action.
- 32. D** — Under *Franks v. Delaware*, the defendant must show by a preponderance that the affidavit contained a deliberately false statement or one made with reckless disregard for the truth, and that the false statement was necessary to a finding of probable cause. If shown, the evidence must be excluded.
- 33. B** — Under UCC § 2-712, an aggrieved buyer who covers in good faith without unreasonable delay recovers the difference between cover price and contract price. The buyer's damages here are $500 \times (\$25 - \$20) = \$2,500$.
- 34. A** — Under the Equal Protection Clause, age classifications generally receive rational basis review because age is not a suspect class. The state need only show the classification is rationally related to a legitimate government interest, which age-based legislative qualifications easily satisfy.
- 35. C** — Under *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, the sum claimed by the plaintiff in good faith controls the amount in controversy. The defendant must show to a legal certainty that the claim is for less than the jurisdictional amount to defeat jurisdiction.
- 36. 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 toward the victim.
- 37. A** — Under the Rule Against Perpetuities, the gift to A's children who reach age 21 is valid because each child must reach 21 within his or her own lifetime, which starts during A's life (a life in being). Each child's contingency resolves within the perpetuities period.
- 38. B** — Under FRCP 26(b)(5) and FRCP 45, a third party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed. The court then evaluates the validity of the privilege claim.
- 39. D** — Under the First Amendment, a content-based restriction on speech is presumptively unconstitutional and subject to strict scrutiny. The government must show the restriction is narrowly tailored to serve a compelling interest, which prohibitions on speaking about a specific topic typically cannot satisfy.

40. C — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Testimony establishing the recording system, time of recording, and chain of custody satisfies this standard.

41. B — Under 28 U.S.C. § 1332, diversity jurisdiction requires the amount in controversy to exceed \$75,000. A \$50,000 claim fails this threshold, and the federal court must dismiss for lack of subject matter jurisdiction.

42. A — 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.

43. C — Under the Establishment Clause and *McCullum v. Board of Education*, a state arrangement that uses public school facilities and time to provide religious instruction during school hours — even with optional attendance — raises significant Establishment Clause concerns. The on-premises use of public facilities entangles the state with religious instruction.

44. D — Under FRE 408, evidence of compromise offers, settlements, and conduct during compromise negotiations is generally inadmissible to prove liability for, invalidity of, or amount of a disputed claim. The rule encourages settlement by ensuring related conduct is not used at trial.

45. B — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment. Deliberate elicitation of statements from an indicted defendant without counsel violates the right, and the statements must be suppressed.

46. A — Under FRCP 12(b)(2), a defendant must raise the defense of lack of personal jurisdiction in the answer or by motion. Timely raising the defense preserves it even when the defendant has also addressed other matters; failure to raise it timely waives the defense.

47. C — 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.

48. D — A material defect in title — including the lack of recorded access — renders title unmarketable. The buyer is entitled to terminate a contract requiring marketable title because the seller cannot deliver the agreed-upon interest.

49. A — 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.

50. 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. Reputation or opinion testimony is admissible, and in some circumstances specific prior acts may also be admissible.

51. D — Under the Supremacy Clause, federal law preempts state law when (1) federal law expressly preempts, (2) federal law occupies the field, or (3) state law conflicts with federal law. The court analyzes the specific federal and state laws to determine preemption.

52. 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 unless the proposed claim is patently futile.

53. A — Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement (such as theft) 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.

54. B — 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 because it bears on the deterrent function of punitive damages.

55. 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 any subsequent waiver.

56. C — Under the Equal Protection Clause, alienage classifications by state governments generally receive strict scrutiny. The state must show the classification is necessary to serve a compelling government interest, which most state restrictions on driver licenses fail.

57. B — Under 42 U.S.C. § 1983, the plaintiff must show that the defendant (1) acted under color of state law and (2) deprived the plaintiff of a federal constitutional or statutory right. Both the state action requirement and the constitutional violation must be established.

58. A — 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 requirements. Such crimes are the paradigmatic *crimen falsi* offenses.

59. C — Under FRCP 26(c), a party may obtain a protective order limiting discovery, including provisions for confidential treatment of trade secrets and other sensitive information. The court balances the need for discovery against the burden of disclosure.

60. D — Duress is a defense to most crimes (excluding homicide in many jurisdictions) when the defendant reasonably believed he or another was in imminent danger of serious bodily harm or death. Threats to family members can satisfy the imminent-danger requirement.

61. A — 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 bar is not generally considered a "tavern" under the ordinary meaning of the term, defeating the heirs' claim of re-entry.

62. B — Under FRCP 23(b)(3), 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. Both predominance and superiority must be satisfied.

63. D — Under the Fourth Amendment, warrantless searches of homes (the place with the highest expectation of privacy) generally require consent, exigent circumstances, or a warrant supported by probable cause. While parole searches operate under reduced standards, this must be balanced against the privacy expectations of other residents.

64. C — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense or by offering evidence of the victim's character, the prosecution may then rebut with evidence of the victim's peaceful character. The defendant must open the door before the rebuttal evidence becomes admissible.

65. 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.

66. B — 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 crime and identification.

67. D — The buyer is entitled to recover earnest money plus damages for breach when the seller fails to deliver marketable title. Damages may include reliance costs, out-of-pocket expenses, and (where applicable) expectation damages; the seller's failure to deliver marketable title is a material breach.

68. C — 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.

69. 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.

70. 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.

71. C — Under the Speech or Debate Clause of Article I, § 6, Members of Congress are shielded from prosecution for acts within the sphere of legitimate legislative activity. The clause does not shield non-legislative acts such as accepting bribes, even when the bribe relates to legislative action.

72. D — 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 appropriate for the class as a whole. This category is typical for civil rights and discrimination cases.

73. 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 404(b) as evidence of motive and intent, and under FRE 803(3) as state-of-mind evidence.

74. A — Under Erie, federal courts in diversity apply state substantive law on the availability of specific performance because remedies for breach of contract are substantive law affecting the measure of recovery.

75. C — Under *Miranda v. Arizona*, the prosecution must show that the defendant was informed (1) of his right to remain silent, (2) that any statement may be used against him, (3) of his right to counsel, and (4) that counsel will be appointed if he cannot afford one. The warnings must be substantively complete to be valid.

76. D — Under FRCP 16(b)(4), modifying a scheduling order requires "good cause" shown. The moving party must show diligence in attempting to comply with the deadline before the court will permit amendment after the deadline.

77. A — Under *Doyle v. Ohio*, the prosecution's use of a defendant's post-Miranda silence to impeach his trial testimony violates the Due Process Clause. The silence is "insolubly ambiguous," and the Miranda assurance of the right to remain silent renders subsequent use unfair.

78. B — Under *Twombly* and *Iqbal*, when the plaintiff's complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss should be denied. The court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor.

79. 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.

80. C — 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 punitive damages. Burdens of proof are substantive because they affect outcome.

81. B — Under *Miller v. California*, obscenity is unprotected speech and is defined by a three-prong test: (1) appeal to prurient interest, (2) patently offensive description of sex, and (3) lack of serious literary, artistic, political, or scientific value applying contemporary community standards. A law incorporating these standards is generally constitutional.

82. A — 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 oral contracts is substantive because it affects the outcome of the case.

83. 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.

84. D — Under FRCP 26(b)(3), work product is generally protected from disclosure. Ordinary work product may be discoverable upon a showing of substantial need and undue hardship in obtaining the substantial equivalent; opinion work product (mental impressions, conclusions, legal theories) receives nearly absolute protection.

85. B — Under the First Amendment and Due Process Clause, a vague criminal statute that allows arbitrary enforcement based on speech may be unconstitutional. Speech that does not constitute incitement or true threats is generally protected, and statutes that reach mere verbal questioning of officers raise serious constitutional concerns.

86. A — A witness's testimony based on her observations is admissible, and defense arguments about angle and lighting are matters of weight to be evaluated by the jury through cross-examination. Perceptual capacity affects credibility, not admissibility.

87. C — 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.

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

89. A — Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove the defendant's character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake. The court balances probative value against unfair prejudice under FRE 403.

90. B — Under FRE 901, the videotape is authenticated by evidence sufficient to support a finding that it is what the prosecution claims. Testimony establishing the recording system, time of recording, and chain of custody satisfies the standard.

91. D — Under *Garcetti v. Ceballos*, when government employees speak as government employees about official duties, their speech is subject to control by the government employer. However, statutory restrictions on educational content may also implicate the Establishment Clause and academic freedom concerns.

92. C — Under *Harlow v. Fitzgerald* and *Pearson v. Callahan*, a government official is entitled to qualified immunity unless (1) the official's conduct violated a constitutional right, and (2) the right was clearly established at the time of the conduct. Both prongs must be satisfied to defeat immunity.

93. A — 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.

94. B — Under Erie, federal courts in diversity apply state substantive law including the statute of frauds and its exceptions (such as partial performance). Both the rule and the exception are substantive because they affect contract enforceability.

95. D — Under Crawford v. Washington, testimonial statements by a witness who does not testify at trial are inadmissible against the defendant unless the defendant had a prior opportunity to cross-examine. Statements made during police interrogation about past events are testimonial, and reliability is not a substitute for confrontation.

96. C — Under UCC § 2-607 and § 2-714, a buyer who has accepted goods and later discovers a latent defect that could not reasonably have been discovered earlier may recover damages for breach of warranty, provided timely notice is given to the seller. Acceptance does not bar recovery for latent defects.

97. B — Under the four-factor preliminary injunction test, the court considers (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest. All four factors must be evaluated and balanced before injunctive relief is granted.

98. 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.

99. C — Under 28 U.S.C. § 1332, the amount in controversy includes both compensatory and punitive damages if punitive damages are available under the applicable substantive law. The combined amount of \$80,000 exceeds the \$75,000 threshold, satisfying jurisdiction.

100. D — Under the common law heat of passion doctrine, adequate provocation requires conduct sufficient to cause a reasonable person to lose self-control. Discovery of a spouse's affair has historically been recognized as adequate provocation in many jurisdictions, though some modern courts have moved away from this rule.

101. A — Under the Equal Protection Clause, alienage classifications by state governments generally receive strict scrutiny. The state must show the classification is necessary to serve a compelling government interest, which routine occupational licensure requirements typically cannot satisfy.

102. C — 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.

103. D — Under the common law, voluntary intoxication may negate the specific intent required for crimes like first-degree murder (which requires premeditation and deliberation). The intoxication evidence is relevant to the specific mental state but is not a defense to lesser included offenses requiring only general intent or recklessness.

104. B — 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. A — Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense. For serious offenses like armed robbery with aggravating circumstances, life without parole is generally not grossly disproportionate.

106. D — Under *Miranda v. Arizona* and the Due Process Clause, statements obtained by physical coercion, threats, or psychological pressure are inadmissible. A state law authorizing "any reasonable means" of obtaining confessions — including coercive techniques — would be unconstitutional on its face.

107. C — The buyer may recover her earnest money because the seller's inability to deliver marketable title constitutes a material breach. An undischarged mortgage that the seller cannot or will not pay off at closing renders title unmarketable.

108. 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 state-of-mind evidence and under FRE 404(b) as motive and intent evidence.

109. A — 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.

110. D — A witness's vision and ability to perceive — including whether she was wearing her prescribed eyeglasses — directly affect the reliability of her observations. Cross-examination on these matters is a proper attack on credibility.

111. B — Under the Due Process Clause and innocent owner doctrine, civil forfeiture of property requires proper procedural protections. Where an innocent owner had no knowledge or consent to the property's use in the crime, the forfeiture may be unconstitutional; the innocent owner defense has been recognized in some contexts.

112. C — 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 state's 6% rate is substantive.

113. 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.

114. 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.

115. B — Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime. The inherent mobility of vehicles justifies the exception.

116. 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.

117. 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.

118. A — Under the First Amendment and *Reed v. Town of Gilbert*, content-based restrictions on speech, including sign regulations that distinguish based on content (commercial vs. charitable), are subject to strict scrutiny. The government must show the restriction is narrowly tailored to serve a compelling interest, which most distinctions cannot satisfy.

119. C — Under FRCP 23(b)(3), 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.

120. B — 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.

121. D — 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.

122. A — 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 tests the witness's knowledge of the defendant's actual reputation.

123. C — The buyer may recover damages for breach beyond her earnest money, including reliance costs, costs of preparation for closing, and expectation damages where the market price diverges from the contract price. The seller's failure to deliver marketable title is a material breach justifying termination and damages.

124. 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 considering relevant factors.

125. 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.

126. A — Under *Bivens v. Six Unknown Named Agents* and its progeny, a damages remedy is available for certain constitutional violations by federal officials. The Supreme Court has narrowed the categories

where Bivens claims may be brought; new contexts require special-factors analysis under *Hernandez v. Mesa*, and routine extension is disfavored.

127. B — Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake. The court balances probative value against unfair prejudice under FRE 403.

128. 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.

129. D — Under FRCP 15(c)(1)(C), an amendment relates back if (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.

130. A — Under the Fifth Amendment, the privilege against self-incrimination applies in any proceeding (civil or criminal, administrative or judicial) where the witness's testimony could be used against him in a criminal proceeding. The defendant could properly invoke the privilege in the civil case to avoid incriminating himself.

131. C — 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.

132. B — 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. Extrinsic proof is barred but the inquiry is permitted.

133. D — Under FRCP 26(b)(3), work product is generally protected from disclosure. Ordinary work product may be discoverable upon a showing of substantial need and undue hardship in obtaining the substantial equivalent; opinion work product receives nearly absolute protection.

134. A — Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent. The trial court applies this standard at the pretrial suppression hearing.

135. C — Under FRCP 56(a) and *Anderson v. Liberty Lobby*, summary judgment is granted only when there is no genuine dispute of material fact. The non-moving party's creation of a genuine dispute through affidavits defeats summary judgment, and credibility determinations are reserved for the trier of fact.

136. B — Under the Due Process Clause and *Mathews v. Eldridge*, deprivation of property requires procedural due process — typically notice and an opportunity to be heard — before final action. Emergency action may sometimes be permitted but generally requires prompt post-deprivation review.

137. 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 admissible under FRE 803(3) as state-of-mind evidence and under FRE 404(b) as evidence of motive.

138. 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. This principle is well-established in equity and applies in federal court under Erie.

139. C — Under *Miranda v. Arizona*, the prosecution must show that the defendant was informed of (1) the right to remain silent, (2) that any statement may be used against him, (3) the right to counsel, and (4) the appointment of counsel if he cannot afford one. The right to counsel includes the right to have counsel present during questioning, and the omission of that aspect renders the warnings inadequate.

140. B — 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.

141. A — Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as perjury) are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements.

142. D — 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 court then evaluates the validity of the privilege claim, potentially through in camera review.

143. B — 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 opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

144. C — 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.

145. A — 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.

146. D — Under Erie, federal courts in diversity apply state substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery.

147. C — Under *Riley v. California*, a warrantless search of a cell phone's digital contents is generally unconstitutional, even when conducted incident to a lawful arrest. Cell phones contain vast amounts of personal information that the search-incident-to-arrest exception does not justify searching without a warrant.

148. B — Under FRCP 45 and FRCP 26(b)(5), a third party served with a subpoena who withholds documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed. The court evaluates the validity of the privilege claim.

149. A — Under FRE 609(a)(2), prior convictions for crimes of dishonesty or false statement (such as perjury) are automatically admissible to impeach a witness, regardless of punishment, recency, or balancing requirements.

150. D — Under Erie, federal courts in diversity apply state substantive law including the statute of frauds. A state-law writing requirement is substantive because it determines contract enforceability.

151. 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. Where the defendant raises a self-defense theory, the evidence is admissible to support the defense.

152. 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.

153. 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 schemes within two years are probative of intent and scheme.

154. D — Under the four-factor preliminary injunction test, the court considers (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest. All four factors must be evaluated and balanced before relief is granted.

155. 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.

156. C — Under *Twombly* and *Iqbal*, when the complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss is denied. The court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor.

157. 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.

158. A — 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 advice. Communications relating purely to business decisions, without a legal-advice purpose, are not protected.

159. C — Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense. For serious offenses like armed robbery, lengthy sentences are generally not grossly disproportionate.

160. 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.

161. 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 803(3) as state-of-mind evidence and under FRE 404(b) as evidence of motive and intent.

162. A — Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake. The court balances probative value against unfair prejudice under FRE 403.

163. C — A witness's vision and ability to perceive — including whether she was wearing her prescribed corrective lenses — directly affect the reliability of her observations. Cross-examination on these matters is a proper attack on credibility.

164. B — Futility is one of the grounds on which a court may deny leave to amend under FRCP 15(a)(2); when the proposed claim is patently futile and would not survive a motion to dismiss, the court may deny leave despite the rule's general policy of liberality. The court evaluates whether amendment would meaningfully advance the litigation.

165. D — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment. Deliberate elicitation of statements from an indicted defendant without counsel violates the right and the statements must be suppressed.

166. 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 state's 6% rate is substantive.

167. B — 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 opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

168. 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.

169. 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.

170. D — Under Erie, federal courts in diversity apply state substantive law including the statute of frauds. A state-law writing requirement for sales of land is substantive because it determines contract enforceability.

171. C — Under the Equal Protection Clause and Crawford v. Marion County Election Board, voter ID laws are evaluated under a balancing test weighing the burden on voters against the state's interest in election integrity. Facial challenges have generally been rejected, but as-applied challenges may succeed where the burden is severe and unjustified.

172. B — 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.

173. 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.

174. 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.

175. C — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Testimony establishing the recording system, time of recording, and chain of custody satisfies this standard.

176. B — Under FRE 404(b), evidence of prior bad acts is generally inadmissible to prove character or propensity, but may be admissible for other purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake. The court balances probative value against unfair prejudice under FRE 403.

177. 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.

178. 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.

179. B — 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 state-of-mind evidence toward the victim.

180. 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 applies in federal court under Erie.

181. A — 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.

182. D — 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 — are not protected.

183. C — 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. The cooling-off period is a factual question for the jury.

184. B — 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.

185. A — 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.

186. D — 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.

187. 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 state-of-mind evidence and under FRE 404(b) as evidence of motive.

188. C — Under *Twombly* and *Iqbal*, when the complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss is denied. The court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor.

189. D — 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.

190. 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.

191. 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 state-of-mind evidence and under FRE 404(b) as evidence of motive and intent.

192. C — Under the four-factor preliminary injunction test, the court considers (1) likelihood of success on the merits, (2) irreparable injury, (3) balance of hardships, and (4) public interest. All four factors must be evaluated and balanced before injunctive relief is granted.

193. 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.

194. D — 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.

195. B — 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.

196. 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.

197. A — Under the Eighth Amendment proportionality doctrine, a sentence is unconstitutional only when it is grossly disproportionate to the gravity of the offense. For serious offenses like armed robbery with aggravating factors, life without parole is generally not grossly disproportionate.

198. D — Under FRCP 23(b)(3), 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.

199. 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.

200. B — 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.