

PRACTICE EXAM 5: MBE SIMULATION

(200 QUESTIONS)

1. A federal district court grants a forum non conveniens dismissal in favor of a foreign forum. Under modern doctrine, the federal court must:

- A. Maintain jurisdiction if the foreign forum applies materially different substantive law
- B. Conditionally dismiss only if the plaintiff stipulates to refile in the foreign forum within 90 days
- C. Apply a presumption strongly favoring the plaintiff's chosen forum when private interests are balanced
- D. Weigh private and public interest factors against the plaintiff's choice, which receives less deference if the plaintiff is foreign

2. A college student challenges a state law that does not apply to her but that affects her plans for future relocation to the state. The student is unsure whether she will actually move. Under Article III standing requirements:

- A. Standing exists because the student has expressed concrete future intentions to relocate to the state
- B. Standing is lacking because the alleged injury is speculative and not certainly impending
- C. Standing exists because the law's existence creates a chilling effect on the student's future choices
- D. Standing is lacking only if the state can demonstrate the law will not be enforced against her

3. A person makes a written offer to sell her car for \$10,000. Three days later, before the offeree responds, the offeror dies. The offeree, unaware of the death, mails an acceptance two days after the offer. Under traditional contract law:

- A. No contract is formed because the offeror's death terminates the offer automatically
- B. A contract is formed because the offeree had no notice of the offeror's death
- C. A contract is formed because the offer was not personal to the deceased's continued participation

D. A contract is formed if the offeree had begun performance in reliance on the offer

4. A defendant commits a residential burglary at night. During the burglary, the homeowner suffers a fatal heart attack from fear. The defendant is charged with felony murder. Under the majority rule:

A. The defendant is not guilty because heart attacks from fear are not foreseeable consequences of burglary

B. The defendant is not guilty because death must result from the defendant's direct violent conduct

C. The defendant is guilty because residential burglary is an inherently dangerous felony that can support felony murder

D. The defendant is guilty only if the homeowner was already known to suffer from a heart condition

5. At a personal injury trial, the plaintiff seeks to introduce photographs of her injuries that are graphic and likely to cause juror emotional reactions. The defendant objects under FRE 403. The court should:

A. Admit the photographs if their probative value is not substantially outweighed by the danger of unfair prejudice

B. Exclude the photographs because all graphic injury photographs are inadmissible at civil trials

C. Admit the photographs only if the plaintiff agrees to limit damages claimed at trial

D. Exclude the photographs because emotional reactions necessarily constitute unfair prejudice

6. A life tenant chops down valuable timber on the property for sale, beyond what is necessary for ordinary household consumption. The remainderman sues to enjoin and recover damages. Under the doctrine of waste:

A. The life tenant may freely use the property's resources without accounting to the remainderman

B. The life tenant is liable only if the timber harvest substantially destroys the property's character

C. The life tenant is liable only if the remainderman can show actual depreciation in market value

D. The life tenant has committed voluntary (affirmative) waste by exploiting the property's resources beyond ordinary use

7. A physician treats a patient using methods that conform to the standard of care among physicians in the same specialty. The patient suffers a poor outcome and sues. Under modern medical malpractice standards:

- A. The physician is liable because adverse outcomes raise an inference of negligent treatment
- B. The physician is not liable because compliance with the specialty's standard of care satisfies the duty
- C. The physician is liable only if the patient can prove the standard itself is unreasonable
- D. The physician is liable only if the procedure is also approved by professional medical associations

8. A defendant in State A defames a State B resident by posting false statements on a website. The defendant knew the plaintiff lived in State B and intended to harm her there. The plaintiff sues in State B. Under the *Calder v. Jones* effects test:

- A. State B lacks jurisdiction because the defendant never physically entered State B
- B. State B lacks jurisdiction because the website was equally accessible from all states
- C. State B has jurisdiction because the defendant expressly aimed his conduct at the State B forum
- D. State B has jurisdiction only if the defendant had other systematic contacts with the state

9. A state law restricting absentee voting for a particular election is challenged by an absentee voter. The election has now passed, but similar restrictions may apply to future elections. The defendant moves to dismiss for mootness. Under the "capable of repetition yet evading review" exception:

- A. The case is moot because the specific election cannot be remedied through judicial intervention
- B. The case is moot unless the plaintiff can show actual harm from the specific election in dispute
- C. The case is not moot because all elections present continuing controversies for the courts
- D. The case is not moot because the issue is likely to recur but evades full review during each election cycle

10. An offer is mailed on Monday. The offeree mails a rejection on Wednesday morning. Later Wednesday, the offeree changes her mind and mails an acceptance. The rejection reaches the offeror on Friday; the acceptance reaches on Thursday. Under traditional mailbox rule analysis:

- A. A contract is formed because the acceptance reached the offeror before the rejection arrived
- B. No contract is formed because rejection becomes effective on dispatch, terminating the offer
- C. No contract is formed because the offeree cannot send both rejection and acceptance
- D. A contract is formed because the offeree's later acceptance overrides the earlier rejection

11. A police officer observes a person walking quickly in an unfamiliar neighborhood at 2 AM. The officer stops the person and demands identification. The person has no specific suspicious conduct beyond walking quickly. Under *Terry v. Ohio*:

- A. The officer's stop is valid because police may stop anyone walking at night for security purposes
- B. The officer's stop is invalid because identification requests require probable cause to detain
- C. The officer's stop is invalid because the conduct does not establish reasonable suspicion of criminal activity
- D. The officer's stop is valid because the officer's experience and judgment satisfy reasonable suspicion

12. At a personal injury trial, the defendant seeks to introduce evidence that he "always uses his turn signal" when changing lanes. The defendant offers his neighbor's testimony confirming this practice over five years. Under FRE 406, the testimony is:

- A. Inadmissible because it constitutes propensity character evidence prohibited under FRE 404
- B. Admissible as evidence of habit demonstrating a regular practice that is probative of action
- C. Inadmissible because witnesses cannot testify about defendant's everyday driving practices
- D. Admissible only if the defendant first introduces evidence of his good driving character

13. A grants the back parcel of his estate to B. The back parcel has an existing visible drainage system running through A's retained front parcel. The deed does not mention the drainage. After conveyance, B's drainage requires use of the system through A's parcel. B claims an easement implied by prior use. Under the quasi-easement doctrine:

- A. B has no easement because the deed makes no mention of the drainage system
- B. B has an easement only if she can prove A intended to grant continued drainage access

- C. B has an easement by necessity because access through A's parcel is the only way to drain
- D. B has an easement by implication because the use was apparent, continuous, and reasonably necessary at severance

14. A neighbor's lawn sprinkler waters too far, sending water onto the plaintiff's adjacent property. The neighbor adjusts the sprinkler only after the plaintiff complains. The plaintiff sues for trespass to land. The neighbor is:

- A. Liable for trespass because intentional intrusion onto another's land includes intrusion of tangible matter
- B. Not liable for trespass because water from a sprinkler is not a physical entry on land
- C. Not liable for trespass because the neighbor lacked knowledge that water was reaching the property
- D. Liable for trespass only if the water caused measurable property damage to the plaintiff

15. During a federal civil deposition, an attorney objects to a question and instructs the witness not to answer. Under FRCP 30(c)(2), an attorney may instruct a deponent not to answer only:

- A. When the question seeks information related to facts not yet alleged in any pleading
- B. When the question is harassing or designed to embarrass the deponent in an unprofessional manner
- C. When necessary to preserve a privilege, enforce a limitation ordered by the court, or present a Rule 30(d)(3) motion
- D. When the question requires the witness to express a legal opinion or interpret governing law

16. A protest group burns draft cards in a public demonstration against the war. They are prosecuted under a federal statute prohibiting the destruction of draft cards. The group claims First Amendment protection. Under *United States v. O'Brien*:

- A. The conduct is fully protected because all symbolic acts merit highest First Amendment scrutiny
- B. The conduct may be regulated under intermediate scrutiny if the statute serves a substantial government interest unrelated to suppressing expression
- C. The conduct is unprotected because draft card destruction is purely conduct, not speech

D. The conduct is protected only if the prosecution can show the protesters intended to convey a specific political message

17. A neighbor saves a homeowner's house from a fire while the homeowner is away. When the homeowner returns, he is grateful and promises to pay the neighbor \$1,000 for the heroic rescue. The homeowner later refuses to pay. The neighbor sues. Under traditional contract doctrine:

- A. The promise is unenforceable because past consideration is not valid consideration for a new promise
- B. The promise is enforceable because the neighbor's actions constituted bargained-for consideration
- C. The promise is enforceable because moral obligation creates legally enforceable duties to compensate
- D. The promise is enforceable under promissory estoppel because the neighbor relied on her good deed

18. A defendant tells a victim that he will safeguard her diamond ring for one week while she travels. He receives the ring intending to keep it permanently. The defendant is charged with larceny. The most accurate analysis is:

- A. The defendant is guilty of embezzlement because he received lawful possession before forming criminal intent
- B. The defendant is guilty of false pretenses because the victim transferred title based on misrepresentation
- C. The defendant is not guilty because the victim voluntarily gave him possession of the property
- D. The defendant is guilty of larceny by trick because possession (not title) transferred under deception

19. At a federal narcotics trial, the prosecution seeks to introduce a statement made by an alleged coconspirator before joining the conspiracy. The statement concerned drug trafficking plans the coconspirator was already considering. Under FRE 801(d)(2)(E):

- A. The statement is admissible because all statements of conspirators are admissible against co-conspirators
- B. The statement is inadmissible because it concerned activities outside the scope of the eventual conspiracy
- C. The statement is inadmissible because it was made before the speaker joined the conspiracy

D. The statement is admissible if the speaker eventually joined the conspiracy and the statement furthered it

20. In a notice jurisdiction, O conveys Blackacre to A, who records. O then conveys to B, a subsequent purchaser for value. B has actual knowledge of the prior conveyance to A. As between A and B:

A. B prevails because B paid value for the property and has no record-based notice of A's interest

B. A prevails because B had actual notice of A's prior interest at the time of his purchase

C. B prevails because notice jurisdictions favor subsequent purchasers regardless of awareness

D. A prevails only because A recorded before B did, satisfying the recording requirement

21. Two negligent fires merge into one wildfire that burns the plaintiff's home. Either fire alone would have been sufficient to destroy the home. The plaintiff sues both defendants. Under the substantial factor test:

A. Neither defendant is liable because neither's fire was the but-for cause of the harm

B. Both defendants are liable only if they acted in concert with a common purpose

C. The defendant whose fire arrived first is liable; the second is excused as a non-cause

D. Both defendants are liable because each fire was a substantial factor in causing the destruction

22. A plaintiff brings a state-law action that requires resolution of a substantial, contested federal issue. The defendant invokes federal-question jurisdiction. Under *Grable & Sons Metal Products v. Darue*:

A. Federal-question jurisdiction may exist if the state-law claim necessarily raises a substantial federal issue actually disputed

B. Federal-question jurisdiction never extends to state-law claims, regardless of the federal issue involved

C. Federal-question jurisdiction extends only when federal law is the sole source of the claim

D. Federal-question jurisdiction requires the federal issue to be raised in the defendant's answer

23. A state agency seeks to revoke a professional license without providing a hearing beforehand. The licensee challenges the procedure on due process grounds. Under *Mathews v. Eldridge*, the balancing considers:

- A. Only the state's interest in administrative efficiency in revoking licenses
- B. The private interest, risk of erroneous deprivation, and the government's interest including administrative burden
- C. Whether the state has provided any procedure at all before deprivation occurs
- D. The competing constitutional rights of similarly situated licensees in the state

24. A friend orally agrees to "make good" any debt that the borrower fails to pay on a \$20,000 loan. The borrower defaults. The lender sues the friend. The friend asserts the Statute of Frauds. Under the suretyship provision:

- A. The promise is enforceable because all suretyship agreements are exempt from the Statute of Frauds
- B. The promise is enforceable only if the friend received pecuniary benefit from the underlying loan
- C. The promise is unenforceable because promises to answer for another's debt must be in writing
- D. The promise is enforceable if the friend ratifies the obligation after the borrower's default

25. A defendant is interrogated by police while in custody, after he requests counsel. Police continue questioning him. Under *Edwards v. Arizona*:

- A. Police may continue questioning so long as they administer fresh Miranda warnings
- B. Police may continue questioning if the defendant's request was ambiguous
- C. Police must wait one hour before resuming questioning of the same suspect
- D. All further police-initiated interrogation must cease until counsel is present

26. A witness testifies that she recognized the defendant's voice during a phone conversation. The witness met the defendant once briefly several years ago. Under FRE 901(b)(5):

- A. The witness's voice identification is admissible because familiarity acquired under any circumstances suffices
- B. The witness's identification requires expert acoustic analysis to confirm the voice match
- C. The witness's identification is inadmissible because brief past contact is insufficient familiarity
- D. The witness's identification is admissible only if corroborated by other evidence of identity

27. A claimant uses a vacation cottage adversely for two months each summer for 25 years. The statutory period is 20 years. The true owner sues for ejectment. Under the continuity requirement for adverse possession:

- A. The claimant fails because adverse possession requires year-round continuous occupancy
- B. The claimant fails because intermittent use creates no presumption of continuity for adverse possession
- C. The claimant prevails because continuous use is judged by the property's normal use pattern
- D. The claimant prevails only if the true owner had actual knowledge of the seasonal occupation

28. A defendant tells only the plaintiff that the plaintiff is a "thief and a fraud." No one else hears the statement. The plaintiff sues for defamation. The defendant is:

- A. Liable because the false statement directly damages the plaintiff's self-perception
- B. Not liable because defamation requires publication to a third party other than the plaintiff
- C. Liable only if the plaintiff repeats the statement to others in any subsequent conversation
- D. Not liable because all statements made directly to the alleged victim are absolutely privileged

29. A nonprofit civil rights organization sues a corporation seeking systemic injunctive and declaratory relief on behalf of all current and former employees. Under FRCP 23(b)(2):

- A. The class cannot be certified because all class actions seeking damages require Rule 23(b)(3) certification
- B. The class may be certified only if monetary damages are excluded from the relief sought
- C. The class may be certified only if the corporation consents to representative litigation

D. The class may be certified if the corporation has acted on grounds that apply generally to the class, making injunctive relief appropriate

30. A state law requires all school-age children to attend public school until age 16. Amish parents object on religious grounds, asserting also their fundamental parental right to direct their children's upbringing. Under *Wisconsin v. Yoder*:

- A. The law is unconstitutional as applied because the combined free exercise and parental rights claims trigger heightened scrutiny
- B. The law is constitutional because it is a neutral law of general applicability under *Smith*
- C. The law is constitutional only if the state demonstrates a substantial educational interest in universal attendance
- D. The law is unconstitutional because compulsory education violates fundamental rights of all parents

31. A contract provides for \$500-per-day liquidated damages for late completion. Actual damages would likely range from \$50 to \$100 per day. The court would likely:

- A. Enforce the clause because both parties agreed to the specified amount in writing
- B. Enforce the clause because liquidated damages provisions are generally upheld absent fraud
- C. Refuse to enforce the clause as a penalty disproportionate to actual likely damages
- D. Refuse to enforce the clause because all per-diem damage provisions are penalties per se

32. A defendant intentionally sets fire to his own home for the purpose of collecting insurance proceeds. He is charged with arson. At common law, arson required the burning of a dwelling house of another. Under modern statutes:

- A. The defendant is not guilty of arson because arson cannot involve one's own dwelling at common law
- B. The defendant is not guilty of arson because intent to defraud insurance is a separate offense
- C. The defendant is guilty only of insurance fraud, not arson, under modern law
- D. The defendant is guilty of arson under modern statutes that extend the offense to one's own property

33. A criminal defendant offers a statement by an unavailable declarant who said, "I committed the crime that the defendant is charged with." Under FRE 804(b)(3):

- A. The statement is admissible because penal-interest statements by unavailable declarants are categorically reliable
- B. The statement is admissible only if corroborating circumstances clearly indicate its trustworthiness
- C. The statement is inadmissible because penal-interest exceptions do not apply when offered by a defendant
- D. The statement is admissible only if the declarant signed a written confession to the police

34. O conveys Blackacre "to A for life, then to A's first child to reach age 21." A is alive at the conveyance and has no children. The interest in A's first child:

- A. Is valid under the Rule Against Perpetuities because A is the validating life and any child must reach 21 within A's life plus 21 years
- B. Violates the Rule Against Perpetuities because the child might reach 21 more than 21 years after lives in being
- C. Is void because the class of A's children is uncertain at the time of the conveyance
- D. Is valid only if A already has a living child at the time of the conveyance

35. A child trespasser is injured on the defendant's property by an artificial condition that posed a foreseeable risk to children. The condition was a swimming pool with no fence. Under the attractive nuisance doctrine:

- A. The defendant is not liable because trespassers are owed only the duty to refrain from willful harm
- B. The defendant is liable only if the child was actively invited onto the property
- C. The defendant may be liable if the conditions of the attractive nuisance doctrine are met, including the foreseeability of child trespassers
- D. The defendant is liable only if the child suffered fatal injuries from the artificial condition

36. A defendant fails to assert an affirmative defense in his answer. The defense is discovered later through evidence. Under FRCP 8(c) and 15:

- A. The defense is permanently waived because all affirmative defenses must be in the answer
- B. The defense may be raised by motion to amend the answer if leave to amend is granted under Rule 15
- C. The defense is preserved automatically because affirmative defenses arise from evidence at trial
- D. The defense may be raised only after the close of discovery and before any trial

37. A state law assigns students to public schools based on their race to achieve racial balance. A student challenges the law as violating equal protection. Under modern Supreme Court doctrine (*Parents Involved in Community Schools v. Seattle School District*):

- A. The law is constitutional because the state has a compelling interest in racial diversity
- B. The law is constitutional if the racial assignments are intended to remedy past de jure segregation
- C. The law is constitutional if the state demonstrates that race-neutral alternatives are inadequate
- D. The law is unconstitutional because race-based student assignment requires strict scrutiny, which it cannot survive

38. A person enters into a contract while suffering from a severe mental disorder that prevents her from understanding the nature of the transaction. The other party knew or should have known of her impairment. The contract is:

- A. Voidable at the option of the impaired party because the other party knew or should have known of the incapacity
- B. Void and unenforceable regardless of the impaired party's subsequent ratification
- C. Enforceable because mental incapacity must be formally adjudicated to affect contract capacity
- D. Enforceable because contracts between competent adults are presumed valid absent fraud

39. A police officer lawfully stops a suspect based on reasonable suspicion of armed robbery. The officer pats down the suspect's clothing and feels a hard object. Without verifying its identity through touch, the officer reaches inside and removes a wallet containing drugs. Under *Terry* and its progeny:

- A. The search is valid because *Terry* permits seizure of any object discovered during a lawful pat-down
- B. The search is invalid because the officer exceeded the scope of a *Terry* frisk for weapons

- C. The search is valid because the wallet might have contained weapons concealed inside it
- D. The search is invalid because the underlying stop required probable cause, not just reasonable suspicion

40. A husband tells his wife in confidence that he is planning to commit a major financial fraud. Later, the husband is prosecuted and the wife is called to testify about the confidential communication. The husband invokes marital privilege. Under the crime-fraud exception:

- A. The communication is privileged because it occurred during the course of the marriage
- B. The communication is privileged unless the wife voluntarily waives the privilege herself
- C. The communication is not privileged because it concerned future criminal conduct
- D. The communication is privileged because marital confidences are absolutely protected

41. A homeowner takes out a mortgage in a "title theory" state. The lender:

- A. Holds only a lien on the property until the loan is fully repaid by the borrower
- B. Holds no interest in the property; the mortgage is purely a contractual claim against the borrower
- C. Holds title only when the borrower defaults and the lender forecloses on the property
- D. Holds legal title to the property during the loan term, with the borrower holding equitable title

42. A homeowner keeps a domesticated bear that he has raised from infancy. The bear has never shown aggression. A visitor is bitten when she tries to feed it. The homeowner is:

- A. Not liable because the bear was tame and had never previously shown aggressive behavior
- B. Strictly liable because bears are wild animals subject to strict liability regardless of disposition
- C. Not liable because the visitor's choice to feed the bear constitutes assumption of risk
- D. Liable only if the homeowner violated a state regulation regarding exotic animal possession

43. A federal court hearing a diversity action concerning a tort claim must determine whether to apply federal common law or state law on a substantive issue not addressed by any federal rule or statute. Under Erie:

- A. State substantive law applies because federal courts have no general federal common law in diversity cases
- B. Federal common law applies because diversity jurisdiction empowers federal courts to develop their own rules
- C. The court must apply whichever law better serves the interest of uniform application across the federal courts
- D. The court must apply state procedural law and federal substantive law in all diversity cases

44. A state law denies inheritance rights to children born out of wedlock unless paternity was established before the father's death. A non-marital child challenges the law. Under intermediate scrutiny for illegitimacy classifications:

- A. The law is constitutional because states have broad authority over inheritance law
- B. The law is unconstitutional because illegitimacy classifications are subject to strict scrutiny
- C. The law is constitutional if substantially related to the state's important interest in efficient estate administration
- D. The law is unconstitutional because rational basis review cannot justify illegitimacy distinctions

45. A buyer sends a purchase order. The seller's acknowledgment differs on minor procedural terms. Under UCC § 2-207, between merchants:

- A. The acknowledgment operates as a counteroffer, rejecting the original purchase order
- B. The acknowledgment becomes the contract because seller's acknowledgment supersedes buyer's order
- C. No contract forms because the documents fail to match in their material terms
- D. The acknowledgment operates as acceptance, and the new terms become part of the contract unless they materially alter the agreement

46. A defendant is threatened with death unless he commits a robbery. The threat is from another person, who will kill him if he does not comply. The defendant raises a defense. Under common law:

- A. The defense is duress because the threat came from a human source compelling the defendant to act

- B. The defense is necessity because the defendant faced a choice between greater and lesser harms
- C. The defense is self-defense because the defendant was protecting himself from imminent harm
- D. The defense is justification because the defendant's actions prevented a greater social harm

47. A witness for the plaintiff testifies favorably. On cross-examination, defense counsel wants to ask whether the witness is paid a consulting fee for testifying. The plaintiff objects. The question is:

- A. Improper because compensation arrangements are confidential commercial relationships
- B. Proper only with prior notice to the plaintiff before trial begins
- C. Proper to demonstrate possible bias and motive to favor the paying party in testimony
- D. Improper because impeachment requires evidence of prior bad acts or convictions

48. A subdivision developer imposes covenants requiring all owners to maintain landscaping. The covenants are properly recorded. A subsequent purchaser of a lot fails to do so. Under equitable servitude doctrine, the developer (or successor) may enforce against the subsequent purchaser if:

- A. The purchaser actually saw the covenant before purchase and agreed in writing to comply
- B. The covenant touches and concerns the land, the parties intended it to run, and the purchaser had notice
- C. The covenant was approved by the local government as part of the original subdivision plan
- D. The covenant has been consistently enforced against all prior owners of every lot

49. In a contributory negligence jurisdiction, a pedestrian negligently crosses against the light. A driver sees her in time to brake safely but fails to do so. The pedestrian sues. Under the last clear chance doctrine:

- A. The pedestrian's contributory negligence bars all recovery despite the driver's later opportunity
- B. The driver is excused because contributory negligence is a complete defense regardless of timing
- C. The pedestrian recovers only if she shows actual knowledge of the driver's negligent conduct
- D. The pedestrian may recover because the driver had the last opportunity to avoid the harm

50. A defendant fails to answer a complaint and the clerk enters default. Several months later, the defendant moves to set aside the default judgment, claiming he was unaware of the suit due to a clerical error in service. Under FRCP 55(c) and 60(b):

- A. The court may set aside the default judgment for good cause, including excusable neglect under Rule 60(b)
- B. The default judgment is final after one year and cannot be set aside under any circumstances
- C. The default judgment may be set aside only with the prevailing party's consent
- D. The default judgment may be set aside only if the defendant proves the suit lacks substantive merit

51. A city ordinance prohibits all leafleting in the central business district during daytime business hours. The ordinance is content-neutral. Under intermediate scrutiny for time, place, and manner restrictions:

- A. The ordinance is constitutional because cities have broad authority to regulate public conduct in commercial areas
- B. The ordinance is constitutional because content-neutral restrictions face only rational basis review
- C. The ordinance is unconstitutional unless narrowly tailored to a significant government interest and leaves ample alternative channels
- D. The ordinance is unconstitutional because all leafleting restrictions in public forums violate the First Amendment

52. A construction contract provides: "Payment shall be made upon issuance of an architect's certificate of completion." The contractor completes the work, but the architect refuses to issue the certificate based on a personal dislike. Under the doctrine of constructive conditions:

- A. The contractor cannot recover until the architect issues the certificate as the contract requires
- B. The contractor may recover despite no certificate if the architect's refusal is in bad faith or unjustified
- C. The contractor must obtain a court order requiring the architect to issue the certificate
- D. The contractor's only remedy is damages from the architect for tortious interference

53. A defendant approaches a hitman and offers \$5,000 to commit murder. The hitman declines. The defendant is later charged with solicitation. The defendant argues that solicitation is incomplete because the hitman refused. Under common law:

- A. The defendant is not guilty because solicitation requires both the request and the recipient's agreement
- B. The defendant is not guilty because the hitman's refusal terminated the inchoate offense
- C. The defendant is guilty only of attempted solicitation because no agreement was reached
- D. The defendant is guilty because solicitation is complete upon making the request with criminal intent

54. At trial, a witness testifies that she cannot remember the details of a transaction from years ago. She wrote a detailed memorandum at the time of the transaction. The memorandum cannot refresh her memory now. Under FRE 803(5):

- A. The memorandum may be read into evidence as a recorded recollection if foundational requirements are satisfied
- B. The memorandum must be admitted as an exhibit and given to the jury during deliberations
- C. The memorandum is inadmissible because the witness cannot independently verify it at trial
- D. The memorandum is admissible only with the consent of the opposing party

55. A possesses land adversely from 2010 to 2020. A sells his possessory interest to B in 2020 by quitclaim deed. B continues adverse possession from 2020 to 2025. The statutory period is 15 years. In 2025, the true owner sues B. The question of tacking depends on:

- A. Whether A and B were in privity at the time of the transfer of possessory interest
- B. Whether B's individual possession alone satisfies the statutory period
- C. Whether the true owner had actual knowledge of the multiple possessors during the period
- D. Whether A's quitclaim deed expressly assigned the right to claim adverse possession

56. A defendant tells the plaintiff's coworkers, falsely, that the plaintiff is "incompetent at her job." The plaintiff sues for slander but cannot show specific economic loss. Under common law slander rules:

- A. The plaintiff cannot recover any damages because slander always requires special damages
- B. The plaintiff may recover general damages for the false statement about her competence
- C. The plaintiff may recover without special damages because the statement constitutes slander per se as imputing professional misconduct
- D. The plaintiff may recover only if the statement was overheard by potential employers

57. A plaintiff moves for summary judgment. The defendant submits an affidavit creating contradictory factual claims. Under FRCP 56:

- A. The court should grant the motion if the defendant's affidavit is conclusory in its assertions
- B. The court should grant the motion only if the plaintiff also produces affidavit evidence in support
- C. The court should grant the motion based on credibility assessment of the defendant's claims
- D. The court should deny the motion if the defendant's affidavit raises a genuine issue of material fact

58. A reporter is subpoenaed to testify before a grand jury about confidential sources for a published article. The reporter refuses, asserting a First Amendment privilege. Under *Branzburg v. Hayes*:

- A. The reporter has an absolute privilege protecting all confidential source communications
- B. The First Amendment provides no general reporter's privilege exempting reporters from grand jury subpoenas
- C. The reporter has a qualified privilege overcome only by the most compelling government interest
- D. The First Amendment requires courts to balance press freedom against grand jury needs in every case

59. A contractor builds a house according to specifications, except that he uses a slightly different brand of plumbing pipe (functionally equivalent) than specified. The homeowner refuses to pay. Under substantial performance:

- A. The contractor may recover the contract price minus damages from the minor deviation
- B. The contractor may not recover because the contract required strict compliance with specifications
- C. The contractor may recover only on a quantum meruit basis for materials and labor

D. The contractor may recover the contract price in full because the deviation was immaterial

60. A police officer lawfully enters a defendant's home with a warrant to search for stolen jewelry. While searching a desk drawer, the officer sees a marijuana bag in plain view. The marijuana:

A. Is inadmissible because the warrant only authorized a search for jewelry

B. Is inadmissible because plain view requires an immediate determination that the object is contraband

C. Is admissible under the plain view doctrine because the officer was lawfully present and observed it openly

D. Is admissible only if the officer first contacts a magistrate for an amended warrant

61. At a civil trial, a party seeks to introduce a properly authenticated government inspector's report concerning a workplace safety inspection. Under FRE 803(8):

A. The report is inadmissible because all government reports require live foundational testimony

B. The report is admissible only if the inspector also testifies and is available for cross-examination

C. The report is inadmissible because government reports cannot be used to prove disputed factual findings

D. The report is admissible as a public record containing the agency's official factual findings

62. A holds an easement of way across B's adjacent parcel. A purchases B's parcel, holding both as a single fee. A later sells A's original parcel to C. The deed to C makes no mention of the easement. C subsequently seeks to use the path across the parcel that A still owns. C:

A. Has no easement because the original easement was extinguished by merger when A acquired both parcels

B. Has an easement because the original easement was permanent and binds all subsequent owners

C. Has an easement only if A's deed to C expressly granted it with proper formalities

D. Has an easement by necessity if the parcel lacks any other practical access

63. A homeowner hires an independent contractor to repair her chimney. The contractor negligently leaves debris on the sidewalk, injuring a pedestrian. The homeowner is:

- A. Liable because all employers are vicariously liable for the torts of independent contractors hired
- B. Generally not liable because employers are not vicariously liable for negligent acts of independent contractors
- C. Liable only if she actively supervised the work or had direct involvement in the negligence
- D. Liable only if the contractor's negligence violated specific state safety regulations

64. A plaintiff brings a federal-law claim in federal court. The defendant raises a state-law counterclaim arising from the same transaction. Under 28 U.S.C. § 1367:

- A. The court lacks jurisdiction over the state-law counterclaim because counterclaims require independent jurisdiction
- B. The court lacks jurisdiction because counterclaims may only be brought in state court
- C. The court has supplemental jurisdiction only with the consent of both parties
- D. The court has supplemental jurisdiction over the state-law counterclaim because it is part of the same case or controversy

65. A state law prohibits public school teachers from wearing religious garments while teaching. A teacher is fired for wearing a hijab. She sues, claiming the law violates her free exercise rights. Under Smith and modern doctrine:

- A. The law is constitutional because all neutral laws of general applicability are valid
- B. The law is constitutional only if the state provides exemptions for religious practice
- C. The law's constitutionality depends on whether it is neutral and generally applicable; targeted laws face strict scrutiny
- D. The law is unconstitutional under any standard because religious clothing is core religious expression

66. A renter leases a hotel room overlooking a parade route specifically to view the parade. The parade is unexpectedly cancelled before the date. The renter refuses to pay. Under the doctrine of frustration of purpose:

- A. The renter is excused from performance because the principal purpose of the contract was destroyed

- B. The renter must pay because the hotel still made the room available as contractually promised
- C. The renter must pay because frustration of purpose requires parties to expressly bargain for that purpose
- D. The renter is excused only if both parties expressly conditioned payment on parade occurrence

67. Three defendants commit an armed robbery. During the robbery, the victim's accomplice shoots and kills one of the felons. The remaining felons are charged with the death of their accomplice under the felony murder doctrine. Under the majority "agency" theory:

- A. The remaining felons are guilty because death occurred during the commission of an enumerated felony
- B. The remaining felons are guilty because the death was foreseeable from armed robbery
- C. The remaining felons are guilty because the accomplice was a participant in the criminal enterprise
- D. The remaining felons are not guilty because the killing was not by them or their agent

68. A patient sues a physician for medical malpractice in federal court. The patient seeks to introduce statements made by the physician to his colleagues about the patient's case. The physician objects, asserting doctor-patient privilege. Under federal law:

- A. The communications are privileged because all medical communications enjoy federal common-law protection
- B. The communications are not privileged because federal common law generally does not recognize a doctor-patient privilege
- C. The communications are privileged only if the physician took affirmative steps to maintain confidentiality
- D. The communications are privileged only if the patient executed a written waiver of confidentiality

69. A commercial tenant installs custom shelving for displaying merchandise. The shelving is screwed into the walls but can be removed without significant damage. The lease is silent on fixtures. At lease end:

- A. The shelving belongs to the landlord because it has become permanently attached to the realty
- B. The shelving belongs to the landlord because all attached items become fixtures by operation of law

C. The tenant may remove the shelving because trade fixtures attached for the tenant's business may be removed

D. The shelving belongs to the tenant only if the lease expressly grants removal rights

70. A consumer is injured when his microwave oven malfunctions due to a defective heating element installed during manufacturing. The consumer sues the manufacturer. Under strict products liability for manufacturing defects:

A. The plaintiff need not prove negligence; only that the product was defective when it left the manufacturer's control

B. The plaintiff must prove the manufacturer knew or should have known about the defect

C. The plaintiff must prove the manufacturer failed to follow proper quality control procedures

D. The plaintiff must prove the manufacturer was negligent in selecting component suppliers

71. A defendant timely files a notice of removal to federal court. The plaintiff does not move to remand within 30 days. The defendant later realizes that the plaintiff and one defendant are co-citizens, destroying diversity. The defendant raises the issue. The court should:

A. Affirm removal because procedural objections to removal must be raised within 30 days

B. Remand the action because subject matter jurisdiction defects can be raised at any time

C. Affirm removal because the plaintiff waived objections by failing to timely move to remand

D. Remand only if the plaintiff consents to remand within a reasonable time

72. A private citizen sues a state in federal court for damages, alleging the state violated his federal constitutional rights. The state asserts Eleventh Amendment immunity. The suit is:

A. Permitted because constitutional violations create an exception to Eleventh Amendment immunity

B. Permitted only if the citizen first exhausted all state administrative remedies

C. Barred because the Eleventh Amendment prohibits private suits for damages against states in federal court

D. Permitted only if Congress has expressly waived state sovereign immunity

73. A grandmother contracts with a builder: "If you finish my grandchild's house, I will pay you \$50,000 as a wedding gift." The builder completes the work. The grandmother dies before paying. The grandchild sues the estate for \$50,000. The grandchild is:

- A. A creditor beneficiary because the contract was intended to discharge an existing debt
- B. An incidental beneficiary with no direct rights to enforce the contract
- C. Not a beneficiary because the grandmother could have revoked the gift at any time
- D. A donee beneficiary with the right to enforce the contract directly against the estate

74. A suspect is held in an interview room at a police station for three hours of questioning by detectives who tell him he is not under arrest and is free to leave. The suspect says nothing. Eventually, he makes incriminating statements without Miranda warnings. The statements are:

- A. Admissible because the suspect was not in custody during the interview
- B. Inadmissible because Miranda warnings are required at all police station interviews
- C. Admissible only if the suspect was permitted to make a phone call during the questioning
- D. Inadmissible because three hours of questioning constitutes custodial interrogation regardless of formal status

75. At trial, a witness testifies she cannot remember a particular conversation. Her attorney shows her a document to refresh her memory. After looking at the document, she testifies based on her refreshed memory. The opposing counsel:

- A. May not see the document because it was used only as a memory aid for the witness
- B. May see the document and may cross-examine the witness about it under FRE 612
- C. May object to admission of the document because it was not properly authenticated
- D. May see the document only if she shows the witness's recollection remains insufficient

76. A and B hold Blackacre as joint tenants with right of survivorship. A dies, leaving a will devising "my real property to my daughter." B claims by survivorship; the daughter claims under the will. Who prevails?

- A. The daughter prevails because the will expressly devised the property to her by name
- B. The daughter prevails because joint tenancies are presumed severed by testamentary disposition
- C. B prevails because the right of survivorship operates by operation of law before any testamentary disposition
- D. B prevails only if A's will did not specifically reference the joint tenancy interest

77. A defendant fraudulently misrepresents the value of his business to induce the plaintiff to purchase it. The plaintiff buys and later discovers the truth, but the business is performing normally. The plaintiff sues for fraud. The plaintiff may recover:

- A. Nothing because she has not suffered any actual measurable economic harm
- B. Punitive damages without proof of any compensatory damages from the misrepresentation
- C. Damages measured by the difference between the value as represented and the value as received
- D. The full purchase price upon returning the business to the defendant under rescission theory

78. A defendant is personally served with process while temporarily visiting State X. The defendant has no other contacts with State X. The plaintiff sues the defendant in State X court on a claim unrelated to the visit. Under *Burnham v. Superior Court*:

- A. The court lacks personal jurisdiction because the defendant lacks minimum contacts with State X
- B. The court lacks personal jurisdiction because mere visits do not satisfy purposeful availment
- C. The court has personal jurisdiction only if the defendant's visit was related to the underlying claim
- D. The court has personal jurisdiction because traditional tag jurisdiction over individuals personally served remains valid

79. A city ordinance prohibits ritual animal sacrifice, enacted shortly after a Santeria church announced plans to open. Legislative history shows the law targeted the church. Under *Church of Lukumi Babalu Aye v. Hialeah*:

- A. The ordinance is unconstitutional because it specifically targets religious practice and fails strict scrutiny

- B. The ordinance is constitutional because it is facially neutral on its face
- C. The ordinance is constitutional only if the city demonstrates significant public health concerns
- D. The ordinance is unconstitutional only if church members can show direct harm from enforcement

80. A contractor agrees to build a house for \$200,000. Halfway through construction, the contractor demands \$30,000 more, claiming unexpected difficulties. The homeowner reluctantly agrees in writing. Under the common law pre-existing duty rule:

- A. The additional payment is enforceable because both parties freely agreed to the modification
- B. The additional payment is unenforceable because the contractor was already obligated to complete the work
- C. The additional payment is enforceable because the contractor encountered genuine difficulties
- D. The additional payment is unenforceable only if the homeowner can prove economic duress

81. A defendant supplies sugar to a baker, knowing the baker will use it to make legal pastries. The baker also illegally uses some of the sugar to manufacture illegal drugs. The defendant is charged with conspiracy to manufacture drugs. Under the majority rule:

- A. The defendant is guilty because his supply contributed to the underlying criminal activity
- B. The defendant is guilty only if he received profits from the drug manufacturing operation
- C. The defendant is not guilty because mere knowledge of illegal use is insufficient without specific intent
- D. The defendant is not guilty because conspiracy requires direct participation in the criminal enterprise

82. A corporation's CEO meets with corporate counsel to discuss strategy for a pending litigation. The communications are made in confidence. Later, the CEO leaves the company and is asked about the communications in litigation. The CEO claims privilege. The privilege:

- A. Belongs to the CEO personally because the communications were made with the corporation's attorney
- B. Belongs to the CEO and the corporation jointly, requiring both consents for waiver
- C. Belongs to no one because the CEO has left the company
- D. Belongs to the corporation, which holds the privilege through its current management

83. A grantor signs a deed for Blackacre but keeps it locked in his safe, intending to deliver it to the grantee later. The grantor dies before any delivery. The grantee learns of the deed and claims title. The deed is:

- A. Ineffective because no delivery occurred during the grantor's lifetime
- B. Effective because the grantor's intent to convey was clear from his actions
- C. Effective only if the grantor signed a will referencing the conveyance
- D. Effective if the grantee can show payment of consideration before the death

84. A patient signs a written consent form for elective knee surgery. During surgery, the doctor decides to also perform a minor procedure on a nearby ligament without explicit consent, believing it would benefit the patient. The patient sues for battery. The doctor is:

- A. Not liable because emergency medical decisions during surgery are presumed authorized
- B. Liable for battery because the procedure exceeded the scope of the patient's consent
- C. Liable only if the patient suffered measurable harm from the additional procedure
- D. Not liable because medical professionals have implied authority for related procedures

85. A plaintiff's complaint contains only the conclusory allegation that "the defendant violated the antitrust laws by engaging in price-fixing." No specific factual allegations support the claim. The defendant moves to dismiss. Under *Twombly* and *Iqbal*:

- A. The motion should be denied because notice pleading requires only basic claim notice
- B. The motion should be denied if the plaintiff can discover supporting facts during litigation
- C. The motion should be granted because conclusory allegations without supporting facts fail the plausibility standard
- D. The motion should be granted only if the defendant produces evidence rebutting the claim

86. A state law imposes a tax on out-of-state trucking companies entering the state. The tax is not facially discriminatory but disproportionately affects interstate carriers. The trucking industry challenges the law. Under *Pike v. Bruce Church*:

- A. The law is constitutional because all state tax laws are presumed valid under federal preemption
- B. The law is unconstitutional because all taxes on interstate commerce violate the Commerce Clause
- C. The law is unconstitutional unless the state demonstrates it serves a compelling local interest
- D. The law's constitutionality depends on balancing local benefits against the burden on interstate commerce

87. A buyer purchases goods on an approval basis under a sale-on-approval contract. The buyer takes possession and inspects the goods. While in his possession, but before he indicates acceptance, the goods are destroyed by an accidental fire. Under UCC § 2-326:

- A. The buyer bears the risk of loss because he had taken possession before approval
- B. The seller bears the risk of loss because title and risk of loss remain with the seller until acceptance
- C. The risk is shared equally because both parties were involved in the transaction
- D. The buyer bears the risk only if the contract expressly required him to insure the goods

88. Police executing a search warrant approach the suspect's home, announce "Police! Search warrant!" and immediately enter without waiting for any response. The suspect challenges the search. Under *Wilson v. Arkansas*:

- A. The knock-and-announce rule is part of the Fourth Amendment reasonableness analysis, but failure to wait may be justified by exigent circumstances
- B. The search is automatically invalid because failure to wait violates the knock-and-announce rule per se
- C. The search is automatically valid because the warrant authorizes immediate entry regardless of announcement
- D. The search is invalid only if officers cannot show probable cause to suspect destruction of evidence

89. A patient tells her doctor: "I've been having severe chest pains for three days. They started after I slipped on my neighbor's icy sidewalk." Under FRE 803(4):

- A. Both statements are admissible because all statements to a treating physician are categorically admissible

- B. The pain statement is inadmissible because it concerns the patient's subjective sensation
- C. The pain statement is admissible; the slip-cause statement is admissible if relevant to diagnosis
- D. Both statements are inadmissible because patient statements to doctors are pure hearsay

90. A neighbor uses a footpath across the plaintiff's land with the plaintiff's express permission for 25 years. The statutory adverse possession period is 20 years. The neighbor now claims adverse possession. The neighbor:

- A. Has acquired title by adverse possession because the use exceeded the statutory period
- B. Has acquired title because long-term use creates a presumption of adverse use
- C. Has acquired an easement by prescription, even if not full title
- D. Has not acquired adverse possession because permissive use is not hostile

91. A defendant's negligent driving causes minor physical injury to the plaintiff, who has an undiagnosed condition that makes her highly susceptible to severe complications from the injury. She suffers severe consequences. Under the eggshell plaintiff doctrine:

- A. The defendant is liable for the full extent of the harm caused, including injuries exacerbated by the plaintiff's condition
- B. The defendant is liable only for the foreseeable extent of harm to an average person without pre-existing conditions
- C. The defendant is liable only if she had actual knowledge of the plaintiff's susceptibility before the injury
- D. The defendant is liable in proportion to the plaintiff's general physical condition before the accident

92. A federal class action under Rule 23(b)(3) reaches a proposed settlement. Under Rule 23(e), the court must:

- A. Approve the settlement automatically if the named plaintiffs accept the terms
- B. Provide notice to all class members and conduct a fairness hearing before approving the settlement
- C. Approve the settlement if the defendant's counsel certifies it is reasonable
- D. Approve the settlement only with the consent of all named class members

93. A state law deprives a class of residents of certain economic rights traditionally exercised by citizens. The affected residents challenge the law under the 14th Amendment's Privileges or Immunities Clause. Under the Slaughter-House Cases:

- A. The clause protects all economic rights against state interference, providing broad constitutional protection
- B. The clause is the central source of substantive economic rights against state action
- C. The clause prohibits any state law disadvantaging traditional citizens' rights
- D. The clause protects only a narrow set of national citizenship rights, not state-based economic rights

94. A merchant orally agrees to make 100 specially designed widgets for a buyer. The widgets are customized for the buyer's specific manufacturing process. After the merchant begins production, the buyer cancels. The merchant sues. Under UCC § 2-201(3)(a):

- A. The contract is unenforceable because oral agreements for goods over \$500 require a writing
- B. The contract is enforceable only to the extent of the merchant's actual production
- C. The contract is enforceable under the specially manufactured goods exception once production has begun
- D. The contract is enforceable only if the merchant has finished production before cancellation

95. Two defendants agree to commit a bank robbery. A drives them to the bank. B then says, "I'm not going through with this," and walks away. A robs the bank alone. B is later arrested. Under the majority bilateral conspiracy rule:

- A. B is guilty of conspiracy because the agreement was complete; withdrawal does not undo prior conspiracy liability
- B. B is not guilty of conspiracy because she withdrew before any substantive crime was completed
- C. B is guilty of both conspiracy and the robbery, because Pinkerton liability attaches
- D. B is not guilty of either offense because her withdrawal terminated her criminal participation

96. At a trial, a party seeks to introduce a certified copy of a state-issued business license. Under FRE 902(4):

- A. The certified copy requires authentication by an official witness from the issuing agency
- B. The certified copy is self-authenticating and requires no extrinsic foundation
- C. The certified copy is inadmissible because government records require live foundational testimony
- D. The certified copy is self-authenticating only if accompanied by an affidavit from the state

97. A tenant signs a one-year residential lease. The apartment has serious plumbing problems that the landlord refuses to fix. The tenant remains in the apartment but withholds rent. The landlord sues for unpaid rent. The tenant's best defense is:

- A. The doctrine of frustration of purpose because plumbing failure has frustrated the lease's purpose
- B. The doctrine of waste because the plumbing damage is causing structural deterioration of the property
- C. The covenant of quiet enjoyment because the plumbing noise has disturbed peaceful possession
- D. The implied warranty of habitability because the landlord failed to maintain the premises in livable condition

98. A driver fails to maintain her brakes and crashes into another car, injuring the driver. The driver sues for negligence. To establish proximate cause, the plaintiff must show:

- A. The harm to the plaintiff was a foreseeable consequence of the defendant's negligent conduct
- B. The driver actually knew the brakes were failing and continued driving despite the danger
- C. The driver was the sole cause of the accident with no contribution from other factors
- D. The accident occurred during normal driving conditions on a public road

99. A plaintiff sues a defendant for breach of contract. The defendant has a claim against the plaintiff arising from the same transaction, but the defendant does not assert it. After judgment, the defendant brings the omitted claim in a separate action. The claim is:

- A. Permitted because counterclaims are always permissive in federal litigation
- B. Permitted because failure to assert a counterclaim creates no preclusive effect on later litigation
- C. Barred because compulsory counterclaims (Rule 13(a)) not asserted in the first action are precluded

D. Barred only if the defendant explicitly waived the counterclaim in the first action

100. A defendant burns a cross on a private lawn to intimidate residents based on race. He is prosecuted under a state law banning cross-burning with intent to intimidate. Under *Virginia v. Black*:

- A. The conviction is unconstitutional because cross-burning is always protected symbolic speech
- B. The conviction is constitutional if the prosecution proves intent to intimidate the specific victims
- C. The conviction is constitutional because all racial intimidation is unprotected speech
- D. The conviction is unconstitutional unless the defendant explicitly threatened specific individuals

101. A seller agrees to deliver goods on July 1. On May 1, the seller emails the buyer: "I will not be delivering the goods under any circumstances." The buyer may:

- A. Wait until July 1 to determine whether actual breach occurs
- B. Sue the seller in May only if she has incurred actual damages from the repudiation
- C. Wait until July 1 and then sue, but recover only damages incurred after that date
- D. Treat the repudiation as immediate breach and sue for damages without waiting until July 1

102. A homeowner returns home to find a stranger taking items from his garage. The homeowner shouts at the stranger to leave; instead, the stranger takes another item. The homeowner pushes the stranger to the ground, causing minor injury. The homeowner is:

- A. Privileged to use reasonable, non-deadly force to defend property from imminent intrusion or removal
- B. Liable for battery because force cannot be used to defend property except in life-threatening situations
- C. Privileged to use any necessary force, including deadly force, against any property intruder
- D. Liable for battery only if the stranger suffered serious injury beyond minor harm

103. At a will contest trial, the proponent of the will seeks to introduce a statement made by the testator a week before signing: "I intend to leave my entire estate to my niece." Under FRE 803(3):

- A. The statement is inadmissible because it concerns the testator's past intentions of future conduct
- B. The statement is admissible only if other evidence corroborates the testator's actual intent
- C. The statement is admissible as a then-existing statement of mental state and intent
- D. The statement is inadmissible because the testator cannot be cross-examined

104. A developer sells lots in a subdivision by reference to a recorded plat. The plat shows roads and parks. A buyer who purchases a lot adjacent to a "park" subsequently learns the developer is selling that park area for commercial development. The buyer:

- A. Has no rights to the park because lots are sold subject to developer discretion
- B. Has an implied easement to use the park as shown on the recorded subdivision plat
- C. Has rights to the park only if expressly granted in the deed to the lot
- D. Has rights only if the buyer paid additional consideration for park access

105. A defendant negligently leaves a sample of gasoline on a workbench in his garage. The gasoline ignites due to an unforeseeable lightning strike, causing damage to a neighbor's property. The neighbor sues for negligence. Under Palsgraf and proximate cause doctrine:

- A. The defendant is liable because his negligence created the risk of fire damage
- B. The defendant is not liable because the unforeseeable lightning strike is an intervening superseding cause
- C. The defendant is liable because the fire was foreseeable from any flammable substance in a garage
- D. The defendant is liable only if he had explicitly anticipated lightning damage in his area

106. A plaintiff requests documents related to a lawsuit. The defendant withholds some documents based on attorney-client privilege. Under FRCP 26(b)(5):

- A. The defendant must produce a privilege log identifying each withheld document and the basis for the privilege claim
- B. The defendant may withhold documents without identifying them if the privilege is clear from context
- C. The defendant must produce the documents and let the court determine privilege on review

D. The defendant must provide the documents to the court for in-camera review automatically

107. Congress enacts a law requiring state legislatures to enact specific regulatory schemes governing certain commercial activities. A state challenges the law as exceeding federal authority. Under *New York v. United States*:

- A. The law is constitutional because the Commerce Clause authorizes any federal regulation
- B. The law is constitutional if the regulated activity affects interstate commerce
- C. The law is unconstitutional because the federal government cannot commandeer state legislatures to enact federal policy
- D. The law is unconstitutional only if the state can show the regulation interferes with traditional state functions

108. A seller of agricultural equipment tells a buyer: "This tractor will plow 50 acres per day under normal field conditions." The buyer purchases. The tractor consistently plows only 25 acres per day in normal conditions. Under UCC § 2-313:

- A. The buyer has no remedy because the statement was sales puffery
- B. The buyer's only remedy is to return the tractor for a full refund
- C. The buyer must prove the seller intended the statement as a binding warranty
- D. The buyer may recover for breach of express warranty because the affirmation became part of the basis of the bargain

109. After being formally charged with a crime, a defendant is placed in a lineup without his attorney present. The victim identifies him. Under *Wade and Gilbert*:

- A. The post-charge lineup is a critical stage requiring the presence of counsel; identification without counsel is inadmissible
- B. The lineup is constitutionally valid as long as it does not include unduly suggestive procedures
- C. The lineup is constitutional because the right to counsel attaches only at trial
- D. The lineup is invalid only if the defendant's counsel has previously been notified about its scheduling

110. A party offers a printout of a computer database to prove the contents of records. The opposing party objects on best-evidence grounds. Under FRE 1001:

- A. The printout is inadmissible because original electronic records must be produced
- B. The printout is treated as an original because a printout of computer data is considered an original or a duplicate
- C. The printout is inadmissible unless authenticated by a forensic computer specialist
- D. The printout is admissible only if the underlying electronic file is also produced

111. A neighbor enters the plaintiff's land without permission and walks across it. The plaintiff suffers no measurable harm. The plaintiff sues for trespass. Under common law:

- A. The plaintiff cannot recover because trespass requires actual damages
- B. The plaintiff may recover only an injunction to prevent future trespass
- C. The plaintiff may recover nominal damages for the intentional trespass even absent measurable harm
- D. The plaintiff may recover only if she can show damage to her property's market value

112. A pharmaceutical company markets a prescription medication without warning of a known serious side effect. A patient suffers harm from the side effect. Under strict products liability:

- A. The company is not liable because patients receive prescription drugs only through doctors with a separate duty to warn
- B. The company is liable only if it negligently failed to discover the risk during testing
- C. The company is liable only if the patient can show she would not have taken the medication with adequate warning
- D. The company is liable for failure to warn of known risks where ordinary use would not reveal them

113. A plaintiff sues a defendant in federal court, alleging the defendant's conduct in the forum state caused the plaintiff's injury. The defendant has only this one contact with the state. Under *International Shoe* and its progeny:

- A. The court has specific personal jurisdiction if the defendant purposefully availed himself of the forum and the claim arises from the contact
- B. The court lacks jurisdiction because a single contact is never sufficient for personal jurisdiction
- C. The court has general jurisdiction because any in-state conduct satisfies the requirements
- D. The court lacks jurisdiction because specific jurisdiction requires multiple contacts with the forum

114. A municipality refuses to allow a protest group to march on public sidewalks in front of a courthouse. The group sues, claiming First Amendment protection. Public sidewalks are:

- A. Designated public forums subject only to time, place, and manner restrictions tied to government interest
- B. Limited public forums where content-based restrictions are permitted with rational basis
- C. Traditional public forums where content-based restrictions face strict scrutiny
- D. Non-public forums where the government may exclude any expressive activity it disfavors

115. A seller orally agrees to sell land to a buyer. The buyer makes substantial improvements to the land in reliance. The seller refuses to convey. The buyer sues. The seller asserts the Statute of Frauds. Under equitable estoppel:

- A. The seller's Statute of Frauds defense is preserved because all land sales must be in writing
- B. The seller may be estopped from asserting the Statute of Frauds because the buyer detrimentally relied on the oral agreement and made unequivocally referable acts
- C. The seller's defense fails only if the buyer can prove subjective knowledge of the agreement's terms
- D. The seller's defense is preserved unless the buyer also paid earnest money under the oral agreement

116. A defendant is charged with battery. The applicable statute requires intent to cause harmful or offensive contact. The defendant claims he was extremely intoxicated when the conduct occurred. Voluntary intoxication:

- A. May negate the specific intent required for battery in jurisdictions treating it as a specific intent crime
- B. Is a complete defense to any criminal charge involving violent conduct

- C. Is never a defense because all violent crimes have strict liability mens rea
- D. Is a defense only if the defendant's intoxication resulted from involuntary administration of intoxicants

117. On direct examination of a friendly witness, an attorney asks: "And then the defendant struck the victim, didn't he?" The opposing counsel objects. Under FRE 611(c):

- A. The question is proper for friendly witnesses on direct examination
- B. The question is proper because the witness has demonstrated memory impairment
- C. The question is improper because leading questions are never permitted on direct examination
- D. The question is improper because leading questions are generally not permitted on direct examination of a friendly witness

118. A landowner has the right to prevent a neighbor from constructing buildings that block a particular view of the ocean. This right is best characterized as:

- A. An affirmative easement permitting the landowner to enter the neighbor's property
- B. A profit a prendre allowing the landowner to take resources from the neighbor's property
- C. A negative easement restricting the servient owner from doing something on her own land
- D. An equitable servitude based on contractual rights between the parties

119. A defendant takes possession of the plaintiff's car without permission and keeps it for two weeks. The plaintiff demands return, and the defendant complies. The plaintiff accepts return and sues for conversion damages. The plaintiff may recover:

- A. Nothing because the car was eventually returned undamaged
- B. The fair rental value of the car for the two-week period as damages for the wrongful possession
- C. The full value of the car at the time of conversion because conversion is always a forced sale
- D. Only nominal damages because no measurable harm resulted from the temporary taking

120. A plaintiff requests the defendant to waive service of process. The defendant fails to return the waiver form. Under FRCP 4(d):

- A. The defendant may be required to bear the costs of service performed by other means
- B. The defendant is automatically subject to default judgment for refusing to waive
- C. The defendant cannot challenge service procedures in the underlying action
- D. The defendant must pay the plaintiff's attorney's fees for the unwaived service

121. A state law gives women-owned businesses preferential treatment in awarding government contracts. The law is challenged by male-owned business owners. Under intermediate scrutiny for gender:

- A. The law is constitutional because it remedies historical discrimination against women
- B. The law is unconstitutional because gender-based affirmative action violates equal protection per se
- C. The law is constitutional if substantially related to remedying any general gender disparity
- D. The law's constitutionality depends on whether it is substantially related to an important government interest, such as remedying identified past discrimination

122. A buyer purchases a painting from a seller for \$5,000, both believing it is a copy. After purchase, the painting is discovered to be an authentic original worth \$500,000. The seller sues to rescind. Under mutual mistake doctrine:

- A. The seller cannot rescind because the buyer assumed the risk of authenticity by purchasing as a copy
- B. The seller cannot rescind because mutual mistake does not justify undoing completed transactions
- C. The seller may rescind because both parties were mistaken about a basic assumption that materially affected value
- D. The seller may rescind only if the buyer concealed material information about the painting's true value

123. A defendant approaches a victim, displays a knife, and demands the victim's wallet. The victim complies without further protest. The defendant is charged with robbery. The defendant:

- A. Is guilty only of larceny because no physical force was actually used

- B. Is guilty of robbery because the threat of imminent force satisfies the elements
- C. Is guilty only of assault because the victim handed over the wallet voluntarily
- D. Is not guilty of robbery because the threat involved only a non-deadly type of weapon

124. A witness identifies the defendant at a police lineup conducted shortly after the crime. At trial, the witness is unsure of her identification. The prosecutor wants to introduce the prior identification under FRE 801(d)(1)(C). The identification is:

- A. Inadmissible hearsay because the prior identification was made outside trial
- B. Inadmissible because the witness's current uncertainty undermines reliability
- C. Admissible only if the original lineup was non-suggestive and properly conducted
- D. Admissible because prior identifications by a testifying witness are non-hearsay under the rules

125. In a race jurisdiction, O conveys Blackacre to A. A does not record. O then conveys to B, who has actual knowledge of A's prior conveyance. B records before A records. As between A and B:

- A. B prevails because B recorded first, which is the controlling factor under a race statute
- B. A prevails because B had actual notice of A's prior interest at the time of his purchase
- C. A prevails because race statutes always include exceptions for bad-faith subsequent purchasers
- D. B prevails only if B can establish bona fide purchaser status without any notice

126. A passenger is injured on a public bus due to the driver's negligence. The passenger sues the bus company. The bus company owed:

- A. The highest duty of care under the common carrier doctrine, because of the special relationship
- B. Ordinary care, the same as any other property owner
- C. A duty only to refrain from willful or wanton harm to passengers
- D. No duty because passengers assume the ordinary risks of public transportation

127. A plaintiff brings a state-law claim. The defendant intends to raise a defense based on federal law. The defendant removes to federal court on federal-question grounds. The federal court should:

- A. Retain the action because the federal defense is substantial and outcome-determinative
- B. Retain the action if the federal defense is colorable and properly preserved
- C. Remand the action because federal-question jurisdiction depends on the well-pleaded complaint, not on defenses
- D. Remand only if the plaintiff explicitly disclaims any federal-law arguments at trial

128. A tenured professor at a state university is dismissed without notice or hearing. She sues under § 1983 for violation of procedural due process. To establish a due process claim, the professor must first show:

- A. The state acted with malicious intent in terminating her employment
- B. She had a constitutionally protected property interest in her continued employment
- C. Other faculty in similar situations were treated more favorably
- D. Her termination violated specific state statutes governing university employment

129. A buyer sends a purchase order. The seller's acknowledgment states: "This acceptance is expressly conditioned on the buyer's assent to the additional terms set forth herein." Under UCC § 2-207:

- A. A contract forms on the original terms only, with the additional terms disregarded
- B. A contract forms incorporating both sets of terms automatically
- C. No contract forms because the acknowledgment is a counteroffer
- D. The expressly conditional language creates a counteroffer; no contract forms unless the buyer assents to the new terms

130. A defendant is charged with murder. At trial, evidence shows that due to a severe psychotic disorder, he could not appreciate that killing the victim was morally wrong. The jurisdiction follows the M'Naghten test. The defendant should be:

- A. Convicted of murder because he understood the physical nature of his actions
- B. Convicted of voluntary manslaughter as a partial mitigation
- C. Found not guilty by reason of insanity because he could not know his act was wrong
- D. Found guilty but mentally ill because his disorder does not satisfy M'Naghten

131. A witness testifies: "I'm not sure exactly when, but I think I saw the defendant near the warehouse maybe a year or two ago." The defendant's attorney objects. The testimony is:

- A. Inadmissible because the witness's heavily hedged language indicates lack of personal knowledge
- B. Admissible because witnesses may testify based on their general impressions of events
- C. Inadmissible only if the witness cannot establish a specific date or time
- D. Admissible if the witness can confirm she had some basis for the recollection

132. A homeowner defaults on a \$400,000 mortgage. The lender forecloses, and the property sells at auction for \$350,000. The lender seeks a \$50,000 deficiency judgment from the homeowner. In a jurisdiction with anti-deficiency statutes for purchase-money mortgages:

- A. The lender may recover the deficiency only if the original loan documents authorize personal liability
- B. The lender may not recover any deficiency because the statute bars deficiency on purchase-money mortgages
- C. The lender may recover the deficiency if the foreclosure sale price was below fair market value
- D. The lender may recover the deficiency only after exhausting all other collection options

133. A defendant blocks the only exit from a small room and refuses to let the plaintiff leave. The plaintiff does not attempt to push past the defendant. The plaintiff sues for false imprisonment. The defendant is:

- A. Not liable because no physical contact occurred
- B. Not liable because the plaintiff could have attempted to push past
- C. Liable because intentional confinement of the plaintiff against her will, by any means, including blocking exits, constitutes false imprisonment

D. Liable only if the confinement caused actual physical harm to the plaintiff

134. An attorney files a complaint containing allegations he knows to be false. The opposing party moves for sanctions under Rule 11. The court should:

- A. Decline to impose sanctions unless the attorney's misconduct affected the trial outcome
- B. Impose sanctions only on the represented party, not the attorney
- C. Impose sanctions automatically based on the false allegations
- D. Impose sanctions after providing notice of the proposed sanction and an opportunity to be heard

135. A public employee is fired for criticizing the agency in an op-ed written as part of her official duties. Under *Garcetti v. Ceballos*:

- A. The employee's speech is protected because all speech by public employees enjoys First Amendment protection
- B. The employee's speech is not protected because it was made pursuant to her official duties
- C. The employee's speech is protected if it addresses a matter of public concern
- D. The employee's speech is protected only if she can show the criticism was factually accurate

136. A seller agrees to deliver goods on a specified date. On that date, the seller tenders the goods at the designated delivery point. The buyer is not present to accept delivery. Under common law:

- A. The seller has tendered performance, discharging her duty to perform unless the buyer claims a defect
- B. The seller must wait at the delivery point for the buyer to accept the goods
- C. The seller's tender is incomplete because the buyer did not actually receive the goods
- D. The seller must store the goods at her own expense until the buyer is available

137. A suspect confesses after 24 hours of interrogation without food, water, or sleep. Officers repeatedly promise leniency if he confesses. The confession's admissibility depends on:

- A. Whether the suspect received Miranda warnings before each interrogation
- B. Whether the officers had probable cause to suspect the defendant
- C. Whether the confession was voluntary under the totality of the circumstances
- D. Whether the suspect ultimately confessed truthfully and accurately

138. At a contract dispute trial, a party seeks to introduce a series of invoices generated by his accounting department. To establish the business records exception, the proponent must show:

- A. The invoices accurately reflect the underlying transactions through expert testimony
- B. The opposing party had access to the invoices during discovery
- C. The original creator of the invoices testifies at trial
- D. The invoices were made by a person with knowledge at or near the time, in the regular course of business

139. A and B own Blackacre as joint tenants with right of survivorship. A executes a deed conveying her interest to C without notifying B. A dies shortly after. As to the property:

- A. The deed severed the joint tenancy at execution, leaving B and C as tenants in common
- B. The joint tenancy continues with C taking A's interest as a joint tenant with B
- C. A's heirs own A's half because the deed to C was invalid without B's consent
- D. C owns the entire property because A's deed transferred her survivorship rights

140. A factory emits foul odors that interfere with thousands of residents in the surrounding community. A particular resident sues for damages. The resident's claim is best classified as:

- A. Public nuisance because the harm affects the general community
- B. Public nuisance, requiring the plaintiff to show a special harm distinct from that suffered by the general public
- C. Private nuisance because each affected resident has individual property rights
- D. Both private and public nuisance, with damages doubled accordingly

141. A federal officer is sued in state court for actions taken in his official capacity. The officer wants to remove the action to federal court. Under 28 U.S.C. § 1442:

- A. Removal is improper because state courts have jurisdiction over federal officers
- B. Removal requires the consent of the state attorney general
- C. Removal is proper under the federal officer removal statute when a federal officer is sued for official acts
- D. Removal requires evidence that the state court is biased

142. A state program provides taxpayer-funded vouchers that parents may use at any school, including religious schools. The program is challenged under the Establishment Clause. Under *Zelman v. Simmons-Harris*:

- A. The program is unconstitutional because public funds may not flow to religious institutions
- B. The program is unconstitutional unless religious schools are excluded from voucher participation
- C. The program is constitutional only if religious schools constitute a small minority of participating institutions
- D. The program is constitutional because the funds reach religious schools only through independent choices of parents

143. A buyer accepts goods, uses them for several months, and then discovers a hidden defect substantially impairing their value. The buyer notifies the seller and wishes to undo the acceptance. The buyer's remedy is:

- A. Revocation of acceptance under UCC § 2-608 because the defect substantially impairs value and was difficult to discover
- B. Rejection under UCC § 2-601 because all defective goods may be rejected at any time
- C. Cancellation under UCC § 2-720 because acceptance does not bar later rescission
- D. Quantum meruit under UCC § 2-209 because the parties never had a true meeting of the minds

144. A bank teller takes \$5,000 from the cash drawer for personal use. She is charged with embezzlement. The most accurate analysis is:

- A. The teller is guilty of larceny because she took property belonging to the bank
- B. The teller is guilty of embezzlement because she lawfully possessed the funds before stealing them
- C. The teller is guilty of both larceny and embezzlement because she stole property she lawfully held
- D. The teller is guilty only of false pretenses because she obtained the bank's funds through her position

145. At a drug trial, the prosecution seeks to introduce drugs allegedly seized from the defendant. The prosecution offers testimony from each person who handled the drugs from seizure to trial. Under authentication doctrine:

- A. The drugs are inadmissible because all physical evidence requires expert authentication
- B. The drugs are inadmissible because the chain of custody must be unbroken and continuous
- C. The drugs are admissible if the chain of custody establishes their identity with reasonable certainty
- D. The drugs are admissible only if forensic testing confirms they are the same substance seized

146. A and B own Blackacre as tenants in common. A leases the entire property to a third party and collects all the rent. B demands an accounting. Under common law:

- A. A may keep all rent because A holds the rental agreement with the third party
- B. A is liable to B only for damages caused by the rental, not for accounting of profits
- C. A and B share equally regardless of their ownership shares
- D. A must account to B for B's proportional share of any net rental income received from the third party

147. Two negligent fires merge into one. One fire is set by Defendant A; the other is set independently by Defendant B. Either fire alone would have destroyed the plaintiff's home. The plaintiff sues both. Under the substantial factor test:

- A. Neither defendant is liable because neither's fire was the but-for cause
- B. Both defendants are liable because each fire was a substantial factor in causing the destruction
- C. The defendant whose fire arrived first is liable; the second is excused
- D. Both defendants are liable only if they acted in concert with a common purpose

148. A plaintiff obtains a default judgment in federal court against a defendant who never appeared. The plaintiff seeks to enforce the judgment in a second state. The defendant attempts to challenge the original court's personal jurisdiction. The defendant:

- A. May collaterally attack the original judgment for lack of personal jurisdiction in the enforcing court
- B. May not challenge the judgment because failure to appear waived all defenses
- C. May not challenge the judgment because final judgments are not subject to collateral attack
- D. May only challenge by moving to vacate in the original court within the statute of limitations

149. A state law prohibits all advertising of prescription drug prices by pharmacies. A pharmacy challenges the law on First Amendment grounds. Under *Central Hudson*:

- A. The law is constitutional because pharmacy advertising involves only commercial speech with reduced protection
- B. The law is unconstitutional because all commercial speech receives strict scrutiny
- C. The state must show the restriction directly advances a substantial government interest and is no more extensive than necessary
- D. The state must show the restriction is reasonable and not arbitrary, given the state's authority over pharmacies

150. A consumer signs a take-it-or-leave-it loan agreement with extremely high interest rates and harsh penalty clauses. The borrower defaults and sues to invalidate the agreement. The court may refuse to enforce based on:

- A. Lack of consideration because the loan terms are one-sided
- B. Frustration of purpose because the borrower's default substantially changed circumstances
- C. Mutual mistake because the borrower was unaware of all consequences
- D. Unconscionability because the contract terms are procedurally and substantively unfair

151. A defendant shoots a victim, intending to kill her. The victim is rushed to surgery but dies from anaphylactic shock caused by an anesthesia she was allergic to. The defendant did not know about the allergy. Under common law:

- A. The defendant's causation defense succeeds because the anaphylactic reaction was unrelated to the gunshot
- B. The defendant is liable because the death was caused by medical treatment foreseeable from a serious gunshot wound
- C. The defendant is not liable because the chain of causation was broken by the unforeseeable allergic reaction
- D. The defendant is liable only if the medical staff was grossly negligent in administering the anesthesia

152. At a personal injury trial, the plaintiff seeks to introduce her own statement made five minutes after a car accident: "That other driver ran the stop sign!" The plaintiff was visibly distressed when she made the statement. Under FRE 803(2):

- A. The statement is admissible as an excited utterance made under the stress of a startling event
- B. The statement is inadmissible because too much time passed between the event and the statement
- C. The statement is admissible only if other witnesses corroborate the stop-sign violation
- D. The statement is inadmissible because the declarant is the plaintiff with motive to fabricate

153. An easement holder repeatedly assures the servient owner that he will no longer use the easement. The servient owner relies and spends substantial sums constructing a building that blocks the way. The easement holder later demands access. The easement is most likely:

- A. Still in effect because oral assurances cannot terminate recorded easements
- B. Still in effect because easement termination requires formal release in a recorded writing
- C. Terminated by estoppel because the servient owner detrimentally relied on the holder's assurances
- D. Terminated by adverse possession because the servient owner has exclusively used the burdened strip

154. A grocery store customer slips on a puddle that store employees should have discovered through reasonable inspection. The customer sues the store. The store owes business invitees:

- A. No duty because business invitees assume the risks of shopping
- B. A duty only to warn of conditions actually known to employees

- C. The highest duty of care because invitees pay for goods on the property
- D. A duty of reasonable care to discover and remedy dangerous conditions or to warn about them

155. A plaintiff requests documents prepared by the defendant's attorney in anticipation of litigation. Under *Hickman v. Taylor* and Rule 26(b)(3):

- A. The documents are absolutely protected from discovery regardless of plaintiff's need
- B. The documents are protected as work product unless the plaintiff shows substantial need and undue hardship
- C. The documents are discoverable as all relevant materials are subject to disclosure
- D. The documents are discoverable only after the attorney is deposed and authenticates them

156. A defendant gives a speech advocating violence against the government in the abstract. He is prosecuted under a law banning incitement to lawless action. Under *Brandenburg v. Ohio*:

- A. The conviction is constitutional because the speech advocates illegal conduct
- B. The conviction is unconstitutional unless the speech is directed at producing imminent lawless action and is likely to do so
- C. The conviction is constitutional if the speech creates a general risk of violence in the future
- D. The conviction is constitutional if the speech expresses sympathy with criminal activity

157. A buyer urgently needs goods to fulfill a major order. The seller, learning of the urgency, demands triple the contracted price. The buyer pays under protest. The buyer later sues to recover the excess. Under economic duress:

- A. The buyer prevails because the seller's threat left no reasonable alternative and was wrongful
- B. The buyer loses because economic duress applies only to physical threats
- C. The buyer prevails because all unfair commercial demands constitute economic duress
- D. The buyer prevails only if the parties had a prior contractual relationship

158. A grand jury subpoena requires a witness to produce business records. The witness asserts the Fifth Amendment privilege against self-incrimination. Under the act-of-production doctrine:

- A. The privilege does not apply because subpoenas seek only documents, not testimony
- B. The privilege protects the act of production only if the records themselves are inculpatory
- C. The privilege protects only the contents of the records, not the act of production
- D. The privilege may protect the testimonial aspects of the production, including authentication and existence of the documents

159. A customer is injured at a grocery store. After the incident, the store installs new non-slip mats throughout. The customer sues and seeks to introduce evidence of the new mats. Under FRE 407:

- A. The mats are admissible because they show the store recognized the dangerous condition
- B. The mats are admissible because they tend to prove the feasibility of safer measures
- C. The mats are inadmissible to prove negligence because subsequent remedial measures are excluded for that purpose
- D. The mats are inadmissible only if the store can show prior similar incidents occurred

160. The government condemns a small business for a public highway project. The business generates substantial income from its current operations. The government argues just compensation is limited to land value, excluding business goodwill. Under the Fifth Amendment:

- A. Just compensation must include the full value of the business including goodwill
- B. Just compensation is generally limited to fair market value of the real property, not goodwill
- C. Just compensation must include relocation costs and lost future profits
- D. Just compensation is determined by the highest value reasonably attainable

161. An employee's supervisor tells the company's HR department, in writing, that the employee has been embezzling. The statement is false but made in good faith based on apparent evidence. The employee sues for defamation. The supervisor's communication is:

- A. Not protected because all defamatory statements give rise to liability regardless of context
- B. Not protected because written defamation is always actionable as libel per se
- C. Protected by absolute privilege because employment communications are always immune
- D. Protected by qualified privilege because the supervisor had a common-interest right to report suspected misconduct

162. A plaintiff sues one of two co-owners of property in federal court. The other co-owner cannot be joined without destroying diversity. The defendant moves to dismiss. The court should:

- A. Determine whether the omitted co-owner is indispensable; if so, dismiss the action under Rule 19(b)
- B. Continue with the suit because permissive joinder is sufficient for co-owners
- C. Grant judgment for the defendant because failure to join a co-owner is fatal at the pleading stage
- D. Permit joinder over the diversity objection because federal courts have inherent retention powers

163. An employer's general workplace dress code requires uniform attire. A Sikh employee requests an exception for religious headwear. The employer refuses. The employee sues under Title VII. Under EEOC v. Abercrombie & Fitch:

- A. The employer must accommodate only if the employee provides specific written notice in advance
- B. The employer need not accommodate because dress codes are presumed neutral
- C. The employer must reasonably accommodate religious practices unless the accommodation causes undue hardship
- D. The employer must accommodate only if the employee can show financial harm

164. A buyer contracts to purchase a rare antique vase from a seller. The seller refuses to deliver. The buyer cannot find a comparable vase. The buyer sues. Under UCC § 2-716:

- A. The buyer's only remedy is monetary damages for the difference between the contract and market prices
- B. The buyer may obtain specific performance because the goods are unique and damages are inadequate
- C. The buyer's remedy is liquidated damages based on the market price difference

D. The buyer may obtain damages only because UCC permits specific performance only for real estate

165. A defendant grabs a knife from his kitchen drawer and stabs his roommate during an argument. The roommate dies. The defendant is charged with first-degree (premeditated) murder. To prove premeditation:

- A. The prosecution must show planning over an extended period before the killing
- B. The prosecution must show the defendant had a previous relationship of conflict with the victim
- C. The prosecution must show the defendant used a weapon prepared specifically for the killing
- D. The prosecution must show some advance reflection or planning, though the time may be brief

166. A witness testifies on direct examination about a contract negotiation. On cross-examination, opposing counsel asks about the witness's prior bankruptcy filing. The plaintiff objects. The question is:

- A. Improper because the witness's bankruptcy is unrelated to the subject of direct examination or witness credibility
- B. Proper because bankruptcy filings show financial motivation potentially affecting credibility
- C. Proper if the cross-examination remains within the scope of contract testimony
- D. Improper because impeachment requires direct relevance to the underlying claims

167. O conveys Blackacre "to A for life, then to A's grandchildren who survive A." A is alive at the time of conveyance with two children. When does the class of grandchildren close?

- A. When the first grandchild is born during A's lifetime
- B. When A dies, regardless of whether any grandchildren are then alive
- C. When A dies, including all grandchildren born by that date
- D. When all of A's children have died and no more grandchildren can be born

168. A defendant observes a stranger drowning in a public pool. The defendant is an excellent swimmer and could safely rescue. The defendant does nothing, and the stranger drowns. In most American jurisdictions:

- A. The defendant is liable because moral duties create legal obligations when no risk exists
- B. The defendant is liable because adults have a general duty to assist when able
- C. The defendant is liable only if she had a special relationship with the stranger creating a duty
- D. The defendant is not liable because there is generally no legal duty to rescue strangers

169. A corporation is incorporated in Delaware with its principal place of business in California. The corporation is a citizen of:

- A. Only Delaware because that is the corporation's state of incorporation
- B. Both Delaware and California for purposes of diversity jurisdiction under § 1332(c)
- C. Only California because the principal place of business controls under the nerve center test
- D. The state where the corporation conducts the majority of its business activities annually

170. A public school student wears a black armband to protest a war policy. The school suspends her under a rule against political symbols. Under *Tinker v. Des Moines*:

- A. The suspension is unconstitutional because student speech is protected unless it substantially disrupts school
- B. The suspension is constitutional because schools have broad authority over student conduct
- C. The suspension is constitutional if the school can show any disruption to school activities
- D. The suspension is unconstitutional only if the speech directly addresses school policies

171. A seller contracts to deliver specific goods identified in the contract. Before delivery, the goods are destroyed in a fire through no fault of either party. Under common law impossibility:

- A. The seller must obtain similar goods from another supplier to fulfill the obligation
- B. The seller is liable for the buyer's incidental damages from the failure to deliver
- C. The seller is discharged from performance, and the buyer has no breach of contract claim
- D. The seller and buyer share the loss equally because neither was at fault

172. At a criminal trial, the prosecution seeks to introduce a written statement by a witness who has died before trial. The statement was made during a police interrogation. The defendant objects on Confrontation Clause grounds. Under *Crawford v. Washington*:

- A. The statement is admissible because hearsay exceptions cover prior unsworn statements
- B. The statement is admissible because the witness's death made cross-examination impossible
- C. The statement is admissible if the trial court determines it bears adequate indicia of reliability
- D. The statement is inadmissible because testimonial hearsay requires the defendant's prior opportunity to cross-examine

173. At a civil trial, a party offers an unavailable declarant's statement: "I borrowed \$10,000 from my brother last year and never paid him back." Under FRE 804(b)(3):

- A. The statement is inadmissible because it concerns a private financial matter
- B. The statement is admissible as a declaration against the declarant's pecuniary interest
- C. The statement is admissible only if the brother corroborates the underlying loan
- D. The statement is inadmissible because pecuniary admissions are not exceptions to hearsay

174. A buyer contracts to purchase a property. A title search reveals an unsatisfied mortgage from a prior owner that was never released of record. The buyer refuses to close, claiming title is unmarketable. The seller offers to set up an escrow to pay off the mortgage from the sale proceeds. The buyer:

- A. Must close because the seller's escrow arrangement renders the title marketable at closing
- B. May refuse because outstanding mortgages always make title unmarketable per se
- C. Must close because a buyer cannot reject title based on encumbrances discoverable in records
- D. May refuse because the seller bears the burden of clearing all clouds before closing

175. A defendant follows the industry custom in maintaining its equipment. An accident injures the plaintiff. The plaintiff argues the industry custom itself is negligent. Under the T.J. Hooper rule:

- A. The defendant is per se non-negligent because compliance with industry custom is conclusive

- B. The defendant is automatically negligent because deviations from custom create liability
- C. Compliance with industry custom is evidence of due care but not conclusive; the custom itself may be unreasonable
- D. The defendant is non-negligent only if the custom is specified in formal industry regulations

176. A foreign manufacturer sells products to a distributor in State A. The distributor resells the products nationally, including in State B. A product defect causes injury in State B. The plaintiff sues the manufacturer in State B court. The manufacturer has no other contacts with State B. Under *McIntyre v. Nicastro* (plurality):

- A. State B has jurisdiction because the manufacturer placed products into a national stream of commerce
- B. State B has jurisdiction because injury occurred within the forum state
- C. State B lacks jurisdiction only if the manufacturer can show actual harm to its business
- D. State B lacks jurisdiction because the manufacturer did not purposefully target the State B market

177. A state law requires nonresident attorneys to pay a higher annual fee than resident attorneys to practice law in the state. A nonresident attorney challenges the law. Under the Privileges and Immunities Clause of Article IV:

- A. The law is constitutional because all state regulations of professional licensing are permitted
- B. The law is unconstitutional because it discriminates against nonresidents in a fundamental economic activity
- C. The law is constitutional if applied uniformly to all members of the bar
- D. The law is unconstitutional only if the nonresident shows actual financial harm

178. A contract requires the seller to provide a custom-built machine plus installation and one year of maintenance. The buyer claims the contract is for goods under UCC. The seller claims it is primarily a service contract under common law. Under the predominant purpose test:

- A. UCC always applies to contracts involving any goods component
- B. Common law always applies to contracts involving any service component

- C. The court must determine which aspect predominates and apply that body of law to the entire contract
- D. The court must sever the contract and apply each body of law to its respective portion

179. A defendant becomes voluntarily intoxicated and, while drunk, beats his roommate to death. He is charged with first-degree (premeditated) murder. Voluntary intoxication:

- A. May negate the specific intent for premeditation, potentially reducing the charge to second-degree murder
- B. Cannot be considered because voluntary intoxication is never a defense to homicide
- C. Is a complete defense because intoxication negates criminal capacity entirely
- D. May reduce the charge to involuntary manslaughter regardless of the prosecution theory

180. A child tells a doctor: "Daddy hit me with a belt." In a later trial of the father for child abuse, the doctor wants to testify about the statement. Under FRE 803(4):

- A. The statement is inadmissible because identification of an attacker is irrelevant to treatment
- B. The statement is admissible only as the act of being hit, not the identification
- C. The statement is admissible only if the doctor verifies the abuse occurred
- D. The statement is admissible because identification of an attacker can be relevant to treatment in suspected child abuse cases

181. A subdivides her land into two parcels. She sells the back parcel to B. The back parcel has no access to a public road except across A's retained front parcel. The deed makes no mention of access. B claims an easement by necessity. B should:

- A. Lose because easements by necessity require an express grant
- B. Lose because B should have negotiated access before purchasing
- C. Prevail because the necessity for access existed at the time of severance from the common owner
- D. Prevail only if B can show A intended to grant access

182. A defendant deliberately spits on a person's clothing during a heated argument. No physical injury results, but the person feels humiliated. The person sues for battery. The defendant is:

- A. Not liable because spitting does not constitute the harmful physical contact required for battery
- B. Liable for battery because intentional contact offensive to a reasonable person's dignity is actionable
- C. Liable only if the person can show measurable physical injury or harm
- D. Not liable because battery requires intent to cause physical harm, not just emotional harm

183. A plaintiff sues a defendant for damages arising from real property located in State X. The plaintiff is a citizen of State Y. The defendant is a citizen of State Z. The plaintiff files in State Y court. Under the local action rule (where applicable):

- A. The court may dismiss because actions affecting real property must be brought where the property is located
- B. The court must transfer the case to the federal court in State X
- C. The court has jurisdiction because the plaintiff chose her preferred forum
- D. The court must apply State X law regardless of where the case is filed

184. A state passes a law requiring photo identification to vote. Critics argue the law disproportionately burdens minority voters who lack required ID. The law is challenged under equal protection. Under *Crawford v. Marion County Election Board*:

- A. The law is unconstitutional because all voting restrictions face strict scrutiny
- B. The law is unconstitutional unless the state demonstrates a compelling interest in voter ID
- C. The law is unconstitutional if any voter is disenfranchised by the requirement
- D. The law is generally constitutional if it serves the state's interest in preventing fraud, applying rational basis or balancing review

185. A buyer's purchase order contains a forum selection clause requiring all disputes in State X. The seller's acknowledgment contains a different forum selection clause requiring State Y. Both parties are merchants. Under UCC § 2-207:

- A. The buyer's clause controls because purchase orders are the first form
- B. The seller's clause controls because acknowledgments supersede orders
- C. The differing forum clauses cancel each other out under the "knockout rule," and default UCC terms apply
- D. No contract forms because the parties did not agree on forum selection

186. A defendant approaches a victim from behind, grabs her purse by the strap, and forcefully yanks it off her shoulder. The victim resists momentarily before the strap breaks. The defendant flees with the purse. The defendant is charged with robbery. The defendant is:

- A. Not guilty of robbery because the victim did not see the defendant
- B. Guilty of robbery because the forcefully overcoming of the victim's resistance constitutes the force element
- C. Guilty only of larceny because no weapon was used
- D. Guilty of robbery only if the victim suffered injury during the encounter

187. Two co-defendants jointly retain an attorney to represent both of them in a criminal case. They have confidential communications with the attorney about strategy. Later, one defendant cooperates with the prosecution and testifies against the other. The attorney is called to testify about the joint communications. Under the joint client privilege:

- A. The privilege is automatically waived when one client cooperates with the prosecution
- B. The privilege is preserved because each client retains an individual privilege
- C. The privilege bars all testimony about communications made during the joint representation
- D. The privilege does not apply between joint clients in subsequent litigation between them

188. A landowner is granted an easement "to use the existing driveway across the servient property for personal vehicle access." Years later, the holder wishes to widen the driveway and use it for commercial vehicles. The servient owner objects. The court should rule that:

- A. The widening exceeds the scope of the easement because the original grant contemplated only existing personal use

- B. The widening is permitted because easements are construed broadly to accommodate the dominant estate's needs
- C. The widening is permitted only if the holder compensates the servient owner for the additional burden
- D. The widening exceeds the scope only if it would cause physical damage to the servient property

189. A mother witnesses her child being struck by a negligent driver. The mother is on a sidewalk safely away from the vehicle. She suffers severe emotional distress. Under the zone of danger rule (majority):

- A. The mother may recover because witnessing harm to a close family member supports recovery
- B. The mother may recover because the defendant's negligence foreseeably caused her distress
- C. The mother may not recover because she was not in the zone of physical danger from the vehicle
- D. The mother may recover only if she suffered physical manifestations of emotional distress

190. A defendant in State A publishes false statements on a website accessible from State B. The plaintiff, a State B resident, sues in State B court. The defendant knew the plaintiff was a State B resident. Under *Calder v. Jones* and *Walden v. Fiore*:

- A. State B has jurisdiction because the website is accessible from all states
- B. State B has jurisdiction because the defendant's conduct was expressly aimed at the State B forum and caused effects there
- C. State B lacks jurisdiction because internet content alone cannot establish minimum contacts
- D. State B lacks jurisdiction unless the defendant has systematic contacts beyond the website

191. A protester burns a U.S. flag at a political rally to express opposition to government policies. He is prosecuted under a state law making it a crime to "knowingly desecrate any national flag." Under *Texas v. Johnson*:

- A. The conviction is constitutional because flag burning is conduct rather than protected speech
- B. The conviction is constitutional because the state has a compelling interest in preserving symbolic unity
- C. The conviction is constitutional if the prosecution proves intent to incite violent reactions

D. The conviction is unconstitutional because flag burning is protected expressive conduct under the First Amendment

192. A seller orally agrees to sell land to a buyer. The buyer pays \$30,000 down, takes possession, and makes substantial improvements. The seller refuses to convey. The buyer sues. Under part performance:

- A. The buyer cannot enforce because all land sales must be in writing
- B. The buyer may enforce only if the seller signed any written acknowledgment
- C. The buyer may enforce under the part performance doctrine because of possession, payment, and improvements
- D. The buyer cannot enforce, but may recover the \$30,000 down payment

193. Police lawfully arrest a defendant. They search his cell phone for evidence of crimes. Under *Riley v. California*:

- A. The search is constitutional because police may search any item carried by an arrestee
- B. The search requires a warrant because the privacy interests in modern cell phones outweigh the search-incident-to-arrest justifications
- C. The search is constitutional if officers have probable cause to believe the phone contains evidence
- D. The search is constitutional only if the defendant explicitly consents to phone examination

194. A witness testifies inconsistently with a prior statement she made to police under oath at a preliminary hearing. The opposing party offers the prior statement. Under FRE 801(d)(1)(A):

- A. The prior inconsistent statement is admissible as non-hearsay if it was given under oath at a prior proceeding
- B. The prior statement is admissible only to impeach, not as substantive evidence
- C. The prior statement is inadmissible because the witness has now testified differently
- D. The prior statement is admissible only if the witness retracts her trial testimony

195. A possessor takes possession of a 10-acre parcel based on a defective deed describing the entire parcel. She actually farms only 3 acres and leaves the rest untended. After exceeding the statutory period, she claims adverse possession. Under color of title doctrine:

- A. The possessor obtains title only to the 3 acres actually farmed, because color of title cannot expand actual occupation
- B. The possessor obtains no title because color of title requires actual occupation of every described parcel
- C. The possessor obtains title to the 3 acres plus a reasonable buffer around them
- D. The possessor obtains title to all 10 acres described in the defective deed under the constructive adverse possession doctrine

196. A celebrity is described in a tabloid as having engaged in financial fraud. The statement is false. The celebrity sues. Under *New York Times v. Sullivan* and its progeny:

- A. The celebrity, as a public figure, must prove actual malice — knowledge of falsity or reckless disregard for truth
- B. The celebrity must prove only negligence as to falsity because tabloids have reduced accountability
- C. The celebrity must prove only that the statement was false to recover damages
- D. The celebrity cannot recover because tabloids have an absolute defense for any reporting

197. A plaintiff brings a federal action seeking only equitable relief — a permanent injunction. The defendant demands a jury trial. The Seventh Amendment:

- A. Guarantees the defendant's right to a jury trial in all federal civil actions
- B. Does not guarantee a jury trial in this case because the action is equitable, not legal
- C. Guarantees a jury trial only if the plaintiff also seeks damages
- D. Guarantees a jury trial only if both parties consent

198. A state law specifically excludes same-sex partners from spousal benefits available to opposite-sex spouses. Following modern Supreme Court doctrine in *Obergefell v. Hodges* and *Bostock v. Clayton County*:

- A. The law is constitutional because states retain authority over family law and marriage benefits
- B. The law is constitutional if applied uniformly to all eligible benefit recipients
- C. The law violates due process only because all marriage-related laws must be uniformly applied
- D. The law violates equal protection because it treats married couples differently based on sexual orientation

199. A merchant seller sells a used car to a buyer for \$5,000 "as is." The buyer signs a written disclaimer of all implied warranties. The buyer later discovers a major defect. The buyer sues. Under UCC § 2-316:

- A. The buyer cannot recover because the "as is" disclaimer fully disclaims all warranties
- B. The buyer may recover because implied warranties cannot be disclaimed by merchants
- C. The buyer's recovery depends on whether the disclaimer is conspicuous and uses appropriate language; "as is" generally validly disclaims implied warranties
- D. The buyer may recover for the express warranty arising from the seller's representations about the car

200. A defendant is attacked by an unarmed assailant. The defendant uses moderate force to subdue the attacker. The attacker stops attacking and begins to walk away. The defendant strikes the attacker again, causing additional injury. The defendant claims self-defense. The additional strike is:

- A. Justified because the attacker initially started the altercation
- B. Not justified because the threat had passed, and continued force is not self-defense
- C. Justified if the defendant reasonably believed the attacker might resume the attack
- D. Not justified because all retaliatory force is unlawful regardless of timing

Practice Exam 5: Answer Key with Explanations

1. D — Piper Aircraft v. Reyno established that forum non conveniens balances private interest factors (access to evidence, witness convenience) and public interest factors (court congestion, local interest) against the plaintiff's choice of forum. A foreign plaintiff's choice receives less deference because the

presumption that the home forum is convenient does not apply. The court need not retain jurisdiction merely because foreign law is less favorable.

2. B — Article III standing requires an injury that is concrete, particularized, and actual or imminent — not conjectural or hypothetical. *Lujan v. Defenders of Wildlife* held that speculative future intentions ("someday" plans) do not constitute the certainly impending injury required for standing. Uncertain future relocation cannot ground a present case or controversy.

3. A — At common law, the offeror's death terminates the offer by operation of law, regardless of the offeree's knowledge. The offer requires the continuing assent of a living offeror, and acceptance after death cannot create a contract because there is no contracting party to be bound. The rule operates automatically without notice.

4. C — Under the majority view, residential burglary qualifies as an inherently dangerous felony capable of supporting felony murder. The "but for" the felony causation requirement is satisfied because the fatal heart attack would not have occurred absent the burglary, and dangerous felonies foreseeably risk death even without direct violence. Knowledge of a victim's condition is not required.

5. A — FRE 403 permits exclusion only when probative value is substantially outweighed by the danger of unfair prejudice. Graphic injury photographs are routinely admitted in personal injury cases when they are probative of the nature and extent of injury, and emotional response alone is not "unfair" prejudice. The balancing tilts toward admission.

6. D — Voluntary (affirmative) waste occurs when a life tenant exploits the property's resources beyond ordinary use. Cutting timber for sale exceeds the open mines doctrine and reasonable household consumption, harming the remainderman's future interest. The remainderman is entitled to enjoin further waste and recover damages.

7. B — Medical malpractice requires deviation from the standard of care recognized in the defendant's specialty. A physician who conforms to the customary practice of similarly qualified practitioners satisfies the duty, and an adverse outcome alone does not establish negligence. Bad results are not malpractice without breach.

8. C — *Calder v. Jones* permits specific personal jurisdiction in the plaintiff's home state when the defendant intentionally directs tortious conduct at that forum with knowledge of likely effects there. Aiming defamatory content at a specific resident with intent to harm her there satisfies purposeful availment without physical presence.

9. D — The capable-of-repetition-yet-evading-review exception applies when (1) the challenged action is too short in duration to be fully litigated before cessation and (2) there is a reasonable expectation the same complaining party will be subject to the action again. Election cycles fit both prongs because each election ends before full appellate review can occur.

10. A — Under traditional mailbox rule analysis, when an offeree dispatches both a rejection and a later acceptance, the first to arrive controls. The acceptance arrived Thursday before the rejection arrived

Friday, so the acceptance became effective on receipt and a contract was formed before the rejection could terminate the offer.

11. C — *Terry v. Ohio* requires the officer to have specific, articulable facts giving rise to reasonable suspicion of criminal activity. Walking quickly in an unfamiliar neighborhood at night, without more, describes innocent conduct and does not establish the particularized suspicion that justifies an investigative detention.

12. B — FRE 406 admits evidence of habit — a person's regular response to repeated specific situations — to prove conformity on a particular occasion. A documented five-year practice of always using turn signals qualifies as habit rather than character, and habit is admissible without the propensity restrictions of FRE 404.

13. D — An easement implied by prior use (quasi-easement) requires (1) common ownership before severance, (2) prior use that was apparent and continuous, and (3) reasonable necessity at the time of severance. A visible drainage system used continuously meets all three elements, creating an implied easement at conveyance even without express deed language.

14. A — Trespass to land requires only an intentional physical entry onto another's land, including intrusion of tangible matter such as water. Causing water to enter the plaintiff's property through a sprinkler's overspray constitutes a physical intrusion, and the tort is complete upon entry regardless of measurable damage.

15. C — FRCP 30(c)(2) limits instructions not to answer to three narrow grounds: preserving a privilege, enforcing a court-ordered limitation, or presenting a Rule 30(d)(3) motion to terminate or limit a harassing deposition. Outside these grounds, counsel must allow the question and may state objections on the record.

16. B — *United States v. O'Brien* upheld the federal draft card destruction statute under intermediate scrutiny applicable to content-neutral regulations of symbolic conduct. Such regulations are valid if within the government's power, furthering a substantial interest unrelated to suppression of expression, with incidental restrictions no greater than necessary.

17. A — Past consideration is not valid consideration because it was not bargained for in exchange for the new promise. A promise made in gratitude for a completed prior act lacks the present exchange required to create a contract, and moral obligation alone does not transform a gratuitous promise into an enforceable one.

18. D — Larceny by trick occurs when the defendant obtains possession (not title) of property through misrepresentation, with the intent to permanently deprive existing at the time of the taking. Receiving the ring for "safekeeping" with the secret intent to keep it permanently fits this offense precisely.

19. C — FRE 801(d)(2)(E) reaches only statements made "during and in furtherance of" the conspiracy. A statement made before the speaker joined the conspiracy falls outside the temporal scope of the rule, regardless of whether the speaker later joined or the statement related to similar activities.

20. B — In a notice jurisdiction, a subsequent purchaser prevails over a prior unrecorded grantee only if she takes without notice (actual, constructive, or inquiry). B's actual knowledge of the prior conveyance to A defeats bona fide purchaser status, so A's interest prevails regardless of recording order.

21. D — When two independently sufficient causes combine to produce indivisible harm, the substantial factor test (*Anderson v. Minneapolis*) imposes liability on each defendant whose conduct was a substantial factor in causing the harm. The traditional but-for test fails when each cause alone would have been sufficient, so substantial factor governs.

22. A — *Grable & Sons Metal Products v. Darue* recognized federal-question jurisdiction over state-law claims that necessarily raise a substantial, actually disputed federal issue that a federal forum may entertain without disturbing the congressionally approved balance of federal and state judicial responsibilities.

23. B — *Mathews v. Eldridge* requires balancing (1) the private interest affected by the official action, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional procedural safeguards, and (3) the government's interest, including fiscal and administrative burdens of additional procedures.

24. C — The suretyship provision of the Statute of Frauds requires that a promise to answer for the debt or default of another be in writing and signed by the party to be charged. An oral promise to make good a borrower's default is a classic suretyship undertaking and falls within the writing requirement.

25. D — *Edwards v. Arizona* established a bright-line rule: once a suspect in custody invokes the right to counsel, all police-initiated interrogation must cease until counsel is present or the suspect himself reinitiates communication. Fresh Miranda warnings do not authorize resumption of questioning.

26. A — FRE 901(b)(5) permits voice identification based on hearing the voice at any time under circumstances connecting it with the alleged speaker. Brief past contact suffices because the rule sets a low foundational threshold and leaves the strength of identification to the trier of fact.

27. C — The continuity element of adverse possession is judged against the property's ordinary use pattern. A summer cottage's normal use is seasonal, so two months of summer occupancy each year for the statutory period satisfies continuous possession just as year-round use would for a permanent residence.

28. B — Defamation requires publication — communication of the defamatory matter to a third party other than the plaintiff. A statement made only to the plaintiff causes no reputational harm because reputation exists in the minds of others; without third-party publication, the tort is incomplete.

29. D — FRCP 23(b)(2) certification is appropriate when the party opposing the class has acted or refused to act on grounds generally applicable to the class, making final injunctive or declaratory relief appropriate for the class as a whole. Systemic civil rights cases seeking institutional injunctive relief fit this standard.

30. A — *Wisconsin v. Yoder* held that when free exercise rights combine with another fundamental right such as parental control over child-rearing, heightened scrutiny applies even under a Smith-era framework.

The hybrid-rights theory triggered scrutiny that compulsory attendance laws could not survive as applied to the Amish.

31. C — Liquidated damages are enforceable only if (1) damages were difficult to estimate at contracting and (2) the stipulated amount is a reasonable forecast of actual likely harm. A \$500/day rate five to ten times the highest plausible actual damage is unreasonable and operates as an unenforceable penalty.

32. D — Modern arson statutes have extended the offense beyond the common law requirement of burning a dwelling house of another to include burning one's own property, particularly when done with intent to defraud insurers. The common law restriction has been displaced by statute in nearly every jurisdiction.

33. B — FRE 804(b)(3) admits a statement against the declarant's penal interest when the declarant is unavailable, but in a criminal case the rule requires corroborating circumstances clearly indicating the trustworthiness of the statement. The corroboration requirement guards against fabricated confessions offered to exculpate defendants.

34. A — A is the validating life because any child of A must be born during A's lifetime; that child is a life in being at A's death and must reach 21 within 21 years thereafter. The interest vests, if at all, within A's life plus 21 years, satisfying the Rule Against Perpetuities.

35. C — The attractive nuisance doctrine imposes liability on a landowner for harm to child trespassers caused by artificial conditions when the owner knows or should know children are likely to trespass, the condition poses unreasonable risk children cannot appreciate, and the burden of eliminating the danger is slight compared to the risk. An unfenced pool is the paradigmatic case.

36. B — FRCP 8(c) requires affirmative defenses to be pleaded in the answer, but Rule 15(a)(2) permits amendment with the court's leave, which "should be freely given when justice so requires." A defense discovered through later-developed evidence may be added by amendment without permanent waiver.

37. D — *Parents Involved* held that race-based student assignment is subject to strict scrutiny and that diversity goals alone do not justify individualized racial classifications absent prior de jure segregation. A general racial-balance program fails strict scrutiny because race-neutral alternatives must first be considered and exhausted.

38. A — A contract entered by a person without mental capacity to understand the nature of the transaction is voidable at the option of the impaired party, particularly where the other party knew or should have known of the impairment. No formal adjudication is required; mental incompetence in fact suffices to allow disaffirmance.

39. B — A Terry frisk is limited to a protective patdown for weapons. The officer may seize an object whose contour or mass makes its identity as contraband immediately apparent (the "plain feel" doctrine), but reaching inside clothing to retrieve a clearly non-weapon object exceeds the protective rationale and constitutes an unlawful search.

- 40. C** — The crime-fraud exception removes the spousal communications privilege when the communication concerns ongoing or planned future criminal conduct. The privilege protects confidential marital exchange to preserve marital harmony, not to shield active criminal enterprise from prosecution.
- 41. D** — In a title-theory state, the mortgage operates as a transfer of legal title to the lender during the loan term, with the borrower retaining equitable title and the right of redemption. Lien-theory states, by contrast, treat the mortgage merely as a lien with title remaining in the borrower.
- 42. B** — Bears are wild animals as a matter of law, and strict liability attaches to owners for harm caused by their dangerous propensities regardless of taming, prior conduct, or knowledge of viciousness. The classification depends on the species, not the individual animal's temperament.
- 43. A** — *Erie Railroad v. Tompkins* abolished general federal common law in diversity cases, requiring federal courts to apply the substantive law of the state in which they sit. The decision rests on constitutional and statutory grounds, prohibiting federal courts from developing their own substantive rules in diversity cases.
- 44. C** — Intermediate scrutiny for illegitimacy classifications requires the law to be substantially related to an important government interest. The Supreme Court has upheld paternity-establishment requirements as substantially related to the state's important interest in orderly and efficient estate administration when the requirements are not insurmountable.
- 45. D** — UCC § 2-207 treats a definite expression of acceptance with additional or different terms as operative acceptance rather than rejection. Between merchants, additional terms become part of the contract unless the offer expressly limits acceptance, the new terms materially alter the agreement, or the offeror timely objects.
- 46. A** — Duress is the common-law defense that applies when the defendant is compelled by another person's threat of imminent serious bodily harm to commit a crime. Necessity addresses choice between natural-source harms; duress addresses human-source threats. Coercion by a human threat is the duress paradigm.
- 47. C** — Bias is always relevant to credibility and is a proper subject of cross-examination. A consulting fee creates financial motive to favor the paying party, and FRE 611(b) and bias impeachment principles permit inquiry into such arrangements without prior notice or expert foundation.
- 48. B** — Equitable servitudes run with the land when (1) the covenant touches and concerns the land, (2) the original parties intended it to bind successors, and (3) the subsequent purchaser had actual, constructive, or inquiry notice. Properly recorded covenants supply constructive notice satisfying the third element.
- 49. D** — The last clear chance doctrine restores recovery to a contributorily negligent plaintiff when the defendant had the final opportunity to avoid the harm and failed to use it. A driver who sees the pedestrian in time to brake safely has the last clear chance, neutralizing the plaintiff's earlier negligence.

50. A — FRCP 55(c) authorizes the court to set aside an entry of default for good cause, and Rule 60(b) extends the same relief to default judgments for reasons including mistake, excusable neglect, or any other reason justifying relief. Defective service producing the default qualifies as excusable neglect.

51. C — Content-neutral time, place, and manner restrictions in a traditional public forum must be narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication. A blanket ban on daytime leafleting in a commercial district is unlikely to satisfy narrow tailoring.

52. B — A condition requiring a third party's satisfaction (architect's certificate) is excused when the third party's refusal is in bad faith, dishonest, or otherwise unjustified. The good-faith requirement prevents the obligor from escaping payment through the architect's arbitrary withholding of approval.

53. D — Solicitation is complete the moment one person requests, urges, or commands another to commit a crime with the specific intent that the crime be committed. The solicited party's refusal is irrelevant; the offense punishes the criminal request itself, not any subsequent agreement.

54. A — FRE 803(5) admits a recorded recollection when the witness once knew the matter, now has insufficient memory, and the record was made or adopted when the matter was fresh in the witness's mind. The writing is read into evidence but, if offered by the proponent, is not received as an exhibit.

55. A — Tacking requires privity of estate between successive adverse possessors at the time of transfer. A quitclaim deed conveying the possessory interest establishes the privity necessary to add prior possession to the current possessor's period, allowing the combined years to satisfy the statutory requirement.

56. C — Statements imputing professional incompetence or misconduct in the plaintiff's trade or business constitute slander per se, allowing recovery of general damages without proof of special economic loss. The category exists because such accusations inherently damage business reputation in ways difficult to quantify.

57. D — FRCP 56(a) requires the court to deny summary judgment when the non-movant produces evidence creating a genuine dispute of material fact. The court does not weigh credibility at the summary judgment stage; conflicting affidavits raising a genuine factual dispute require submission to the jury.

58. B — *Branzburg v. Hayes* rejected a First Amendment reporter's privilege exempting journalists from grand jury subpoenas. Reporters have no greater privilege than ordinary citizens to refuse to testify before grand juries about confidential sources, although some lower courts recognize a qualified privilege in civil cases.

59. A — Substantial performance permits recovery of the contract price minus damages caused by the minor deviation, restoring the parties to the position they would have occupied with full performance. Trivial nonconformities such as a functionally equivalent pipe brand do not justify forfeiting payment but allow offset for any actual loss.

60. C — The plain view doctrine permits seizure of evidence discovered during a lawful search when the officer is lawfully positioned, the incriminating nature is immediately apparent, and the officer has lawful right of access. Marijuana visible during a warrant-authorized search of a desk drawer satisfies all three elements.

61. D — FRE 803(8) admits public records reflecting an agency's factual findings from a legally authorized investigation. A government safety inspector's report falls within the exception, and the rule eliminates the need for live foundational testimony when the document is properly authenticated.

62. A — Merger extinguishes an easement when the dominant and servient estates come into common ownership because no one can hold an easement over their own land. The easement does not automatically revive upon later severance; a new easement must be expressly created in the conveyance.

63. B — The general rule is that an employer is not vicariously liable for the torts of an independent contractor because the employer lacks the right to control the means and methods of work. Exceptions exist for non-delegable duties and inherently dangerous activities, but ordinary chimney repair does not trigger them.

64. D — 28 U.S.C. § 1367 grants supplemental jurisdiction over claims so related to the original federal-question claim that they form part of the same case or controversy under Article III. A counterclaim arising from the same transaction satisfies this common-nucleus requirement.

65. C — *Employment Division v. Smith* permits neutral and generally applicable laws to be applied to religious conduct without strict scrutiny, but *Church of Lukumi* requires strict scrutiny when laws target religious practice. Whether the dress code is constitutional turns on its neutrality and general applicability versus targeting analysis.

66. A — Frustration of purpose excuses performance when the principal purpose of the contract, known to both parties at formation, has been substantially frustrated through no fault of the obligor and the frustrating event was not a foreseeable risk assumed by the obligor. The parade's cancellation destroys the room rental's known principal purpose.

67. D — Under the majority "agency" theory of felony murder, liability attaches only when the killing is committed by a felon or an agent of the felons. A killing by a victim or police officer does not trigger felony murder because the killer is not the felons' agent.

68. B — Federal common law generally does not recognize a physician-patient privilege. Although the Supreme Court has recognized a psychotherapist-patient privilege under Rule 501 (*Jaffee v. Redmond*), the broader physician-patient privilege remains a creature of state law, not federal common law.

69. C — Trade fixtures — items installed by a commercial tenant to conduct the tenant's business — may be removed at lease end provided removal does not cause material damage to the premises. Custom display shelving installed for retail purposes falls squarely within the trade fixture rule.

70. A — Strict products liability for manufacturing defects requires only proof that the product was defective when it left the manufacturer's control and the defect caused the harm. The plaintiff need not

prove the manufacturer's negligence in design, manufacture, or supplier selection — strict liability dispenses with fault inquiries.

71. B — Subject matter jurisdiction defects are non-waivable and may be raised at any time by any party or the court sua sponte. Procedural defects in removal must be raised by motion to remand within 30 days, but the absence of complete diversity is a substantive jurisdictional defect that survives that deadline.

72. C — The Eleventh Amendment bars private suits for damages against a state in federal court without the state's consent or congressional abrogation pursuant to a valid enforcement power. Direct constitutional claims for damages against a state itself fall within this bar; suits against state officers in their official capacity for prospective relief proceed under *Ex parte Young*.

73. D — A donee beneficiary is one whom the promisee intends to benefit gratuitously, as opposed to discharging a debt. The grandmother's contract with the builder was structured as a wedding gift, making the grandchild a donee third-party beneficiary with direct enforcement rights against the estate.

74. A — Miranda warnings are required only for custodial interrogation, and custody is determined by whether a reasonable person would feel free to leave. Repeated assurances of freedom to leave and the absence of formal arrest weigh strongly against finding custody, even within a police station setting.

75. B — FRE 612 entitles the opposing party to inspect any writing used to refresh a witness's recollection while testifying, to cross-examine the witness about it, and to introduce relevant portions into evidence. The rule protects against undisclosed coaching through the use of writings during testimony.

76. C — The right of survivorship operates by operation of law at the moment of a joint tenant's death, transferring the deceased tenant's interest automatically to the surviving joint tenant. Nothing remains in the deceased's estate to pass under the will, so testamentary disposition cannot defeat the survivorship right.

77. C — The benefit-of-the-bargain measure compensates the defrauded buyer for the difference between the value as represented and the actual value received, restoring her to the position she would have occupied if the representations had been true. This is the standard measure of fraud damages in most jurisdictions.

78. D — *Burnham v. Superior Court* reaffirmed that physical presence in the forum at the time of personal service of process constitutes a constitutionally valid basis for personal jurisdiction. Traditional "tag" jurisdiction survives *International Shoe*; minimum contacts analysis applies only when the defendant is not physically served in the forum.

79. A — *Church of Lukumi Babalu Aye v. Hialeah* held that laws targeting religious practice are not neutral or generally applicable and trigger strict scrutiny. Legislative history showing the law was aimed at a specific religious group defeats facial neutrality, and the targeted ordinance could not survive the resulting strict scrutiny.

80. B — The common-law pre-existing duty rule provides that performance of a duty already owed is not consideration for a new promise. A contractor already obligated to complete the work for the original

price gives no fresh consideration for the modification, rendering it unenforceable absent unforeseen circumstances or recognized exceptions.

81. C — Conspiracy requires specific intent to agree and specific intent that the underlying offense be committed. Mere knowledge that a supplied product might be used unlawfully is insufficient; the supplier must share the criminal purpose. A legitimate supplier without participation in the criminal goal lacks the requisite mens rea.

82. D — The attorney-client privilege in the corporate context belongs to the corporation, not the individual officer who participated in the communication. The privilege is held and controlled by current corporate management, who may waive or assert it on the corporation's behalf, even after the original participant has left the company.

83. A — Delivery is essential to the effectiveness of a deed and requires the grantor's present intent to transfer title and some act manifesting that intent. Keeping a signed deed in the grantor's safe with intent to deliver later shows future intent, not present transfer, so no conveyance occurs and the deed is ineffective.

84. B — Battery exceeding the scope of consent is actionable even in the medical context. A patient's consent extends only to the specific procedure described, and operating on a different body part or performing an additional procedure absent emergency exceeds that consent and constitutes a battery, regardless of medical benefit.

85. C — *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal* require complaints to contain factual allegations sufficient to make the claim plausible on its face. Bare legal conclusions and conclusory recitations of the elements without supporting facts fail the plausibility standard and warrant dismissal under Rule 12(b)(6).

86. D — *Pike v. Bruce Church* established that nondiscriminatory state regulations burdening interstate commerce are constitutional if the burden imposed on interstate commerce is not clearly excessive in relation to the putative local benefits. The court must weigh local benefits against interstate burdens to assess constitutionality.

87. B — UCC § 2-326 provides that in a sale on approval, title and risk of loss remain with the seller until the buyer accepts the goods. Possession alone does not transfer risk; until the buyer manifests acceptance through approval or inconsistent acts, accidental destruction is the seller's loss.

88. A — *Wilson v. Arkansas* incorporated the knock-and-announce principle into the Fourth Amendment reasonableness analysis. The general rule requires officers to knock, announce, and wait a reasonable time, but exigent circumstances — danger to officers, risk of evidence destruction, or threat of escape — may justify immediate or no-knock entry.

89. C — FRE 803(4) admits statements made for and reasonably pertinent to medical diagnosis or treatment. Symptoms (chest pain) and general circumstances of injury (slipping on ice) are pertinent to diagnosis and treatment; identification of the at-fault party is generally not, except in special contexts such as suspected child abuse.

90. D — Hostility requires use without the true owner's permission. Express permission negates hostility regardless of duration, and permissive use cannot ripen into adverse possession because the possessor's occupation is consistent with the owner's title rather than adverse to it.

91. A — The eggshell plaintiff (or thin skull) rule requires the defendant to take the plaintiff as he finds her. Once the defendant's negligence triggers the harm, the defendant is liable for the full extent of injury, including aggravation caused by the plaintiff's pre-existing susceptibility, even if unforeseeable.

92. B — FRCP 23(e) requires court approval of any class action settlement after notice to all class members affected by the proposal and a fairness hearing at which the court evaluates whether the settlement is fair, reasonable, and adequate. The procedural protections guard absent class members from collusive or inadequate settlements.

93. D — The Slaughter-House Cases construed the Fourteenth Amendment Privileges or Immunities Clause narrowly to protect only rights of national citizenship — such as the right to travel to the federal seat of government or to use navigable waterways — and not the broader economic rights traditionally exercised under state law.

94. C — UCC § 2-201(3)(a) exempts contracts for specially manufactured goods from the Statute of Frauds writing requirement when the goods are not suitable for sale to others in the ordinary course of the seller's business and the seller has made a substantial beginning on manufacture or commitments to procure them.

95. A — A conspiracy is complete upon the agreement (and, in modern jurisdictions, an overt act), so withdrawal does not retroactively undo prior conspiracy liability. Withdrawal may, in some jurisdictions, terminate liability for subsequent substantive crimes committed by co-conspirators under Pinkerton, but the conspiracy itself remains chargeable.

96. B — FRE 902(4) lists certified copies of public records as self-authenticating, requiring no extrinsic foundation. The certification itself satisfies authentication; the opposing party may still raise other evidentiary objections, but the foundational requirement is met by the certificate alone.

97. D — The implied warranty of habitability requires residential landlords to maintain premises in livable condition, and breach excuses the tenant from full rent obligations or provides offset rights. Serious plumbing problems that the landlord refuses to repair constitute a clear breach of the habitability warranty.

98. A — Proximate cause limits liability to harms within the foreseeable scope of risk created by the defendant's negligence. Under *Palsgraf* and the foreseeability test, the plaintiff must show that the type of harm suffered was a foreseeable consequence of the defendant's failure to exercise reasonable care.

99. C — FRCP 13(a) makes compulsory any counterclaim arising out of the same transaction or occurrence as the opposing party's claim. A compulsory counterclaim omitted from the first action is barred from later assertion through claim preclusion principles operating on the prior judgment.

100. B — *Virginia v. Black* held that cross-burning may be prohibited as a true threat when done with intent to intimidate, but the statute may not treat the act of burning alone as prima facie evidence of

intimidating intent. The conviction stands if the prosecution proves the requisite intent beyond a reasonable doubt.

101. D — Anticipatory repudiation gives the non-breaching party an immediate cause of action for total breach. The repudiating party's clear, definite expression of unwillingness to perform allows the other party to sue at once for damages without waiting until the performance date.

102. A — A property owner may use reasonable, non-deadly force to defend property from imminent intrusion or removal after a verbal request to desist has been ignored or where such a request would be futile. Deadly force is not authorized solely to protect property, but reasonable non-deadly force is privileged.

103. C — FRE 803(3) admits statements of the declarant's then-existing state of mind, including intent or plan, but excludes statements of memory or belief about past events to prove the fact remembered. A testator's statement of present testamentary intent is admissible to prove that state of mind.

104. B — Sale of lots by reference to a recorded plat showing roads, parks, or open spaces creates an implied easement in favor of the lot owners to use those areas as depicted. The plat reference functions as an implied representation that becomes a binding part of the conveyance to each purchaser.

105. B — Proximate cause is limited to harms within the foreseeable scope of risk. An unforeseeable intervening force — such as a lightning strike — that becomes the immediate cause of the harm operates as a superseding cause cutting off the defendant's liability for the resulting damage.

106. A — FRCP 26(b)(5) requires a party withholding documents on privilege grounds to describe the nature of the documents in a manner that, without revealing privileged information, enables the opposing party to assess the claim. A privilege log identifying each withheld document and the basis for the claim satisfies the rule.

107. C — *New York v. United States* held that the Tenth Amendment prohibits Congress from commandeering state legislatures to enact federal regulatory policy. Congress may regulate private conduct directly, offer states inducements to act, or condition federal benefits, but cannot compel state legislative action.

108. D — UCC § 2-313 creates an express warranty from any affirmation of fact or promise relating to the goods that becomes part of the basis of the bargain. A specific performance representation about acreage per day is a factual affirmation, not puffery, and breach gives the buyer the standard warranty remedies.

109. A — *United States v. Wade* held that a post-indictment lineup is a critical stage of prosecution at which the Sixth Amendment right to counsel attaches. Identification at a lineup conducted without counsel present is inadmissible per se, and any in-court identification must have an independent source.

110. B — FRE 1001(d) treats a printout of computer data as an original under the Best Evidence Rule, provided it is shown to reflect the data accurately. The rule recognizes the impracticality of producing electronic data in its underlying form and accommodates ordinary business outputs.

111. C — Trespass is actionable per se without proof of damage because the protected interest is the exclusive right of possession. The intentional unauthorized entry itself is the harm, and the law recognizes nominal damages to vindicate the right even where measurable injury is absent.

112. D — A manufacturer's duty to warn extends to known or knowable risks that would not be apparent to ordinary users. Failure to warn renders the product defective under strict liability for the inadequate warning, regardless of negligence in discovering the risk, because warnings are part of the product's reasonable safety.

113. A — International Shoe and its progeny require purposeful availment of the forum's benefits and a claim arising out of or related to the defendant's forum contacts. A single suit-related contact can support specific personal jurisdiction provided the defendant purposefully directed activity at the forum.

114. C — Public sidewalks are quintessential traditional public forums where the government's ability to restrict speech is most limited. Content-based restrictions in such forums face strict scrutiny and survive only if narrowly tailored to a compelling government interest.

115. B — Equitable estoppel can prevent a party from asserting the Statute of Frauds defense when the other party has detrimentally relied on the oral agreement through acts unequivocally referable to the contract — such as taking possession, paying purchase money, and making substantial improvements.

116. A — Battery in jurisdictions treating it as a specific intent crime requires intent to cause harmful or offensive contact. Voluntary intoxication, while not a defense to general intent crimes, may negate the specific intent element where the offense is so classified, reducing or eliminating culpability.

117. D — FRE 611(c) prohibits leading questions on direct examination of a friendly witness except as necessary to develop testimony. The rule preserves the witness's testimony as the witness's own, rather than the attorney's, and applies particularly to questions that suggest the desired answer.

118. C — A negative easement restricts what the servient owner may do on her own land rather than granting affirmative use rights. Light, air, view, and lateral support easements historically constituted the recognized categories of negative easements at common law.

119. B — Where the chattel is returned and the plaintiff accepts the return rather than electing forced sale, the conversion remedy is limited to damages caused by the wrongful interference. The standard measure for temporary deprivation is the fair rental value of the chattel during the period of dispossession.

120. A — FRCP 4(d) creates incentives for waiving service: a defendant who declines without good cause to waive service may be required to bear the costs of service performed by alternative means. The rule encourages cooperation while preserving the defendant's other defenses.

121. D — Intermediate scrutiny for gender classifications requires the law to be substantially related to an important government interest. Gender-based affirmative action may satisfy this standard when designed to remedy identified past discrimination, but cannot rest on generalized assertions or stereotype.

122. C — Mutual mistake permits rescission when both parties were mistaken about a basic assumption underlying the contract, the mistake materially affected the agreed exchange, and the adversely affected party did not assume the risk. A shared belief that an authentic original was a copy meets all elements.

123. B — Robbery is the taking of property from the person of another by force or threat of imminent force. Brandishing a weapon and demanding property satisfies the threat element; actual physical contact is unnecessary because the implicit threat of imminent harm supplies the requisite coercion.

124. D — FRE 801(d)(1)(C) classifies a witness's prior statement identifying a person as non-hearsay when the declarant testifies and is subject to cross-examination. The rule applies regardless of the witness's current certainty about the identification.

125. A — In a pure race jurisdiction, priority is determined solely by who records first; notice is irrelevant. B's actual knowledge of the prior conveyance to A does not affect the analysis, and B's first recordation gives B priority over A's earlier but unrecorded interest.

126. A — Common carriers — including bus companies, airlines, and trains — owe their passengers the highest duty of care because of the special relationship and the passengers' surrender of control over their safety. The heightened duty derives from the public service nature of common carriage.

127. C — Federal-question jurisdiction depends on the well-pleaded complaint rule: the federal question must appear on the face of the plaintiff's properly pleaded claim. Anticipated federal defenses cannot establish federal-question jurisdiction, and removal premised on such defenses is improper.

128. B — Procedural due process requires a protected liberty or property interest as the threshold for entitlement to process. *Board of Regents v. Roth* established that tenured public employment creates a property interest sufficient to invoke due process, but the threshold finding of such an interest is required before the procedural inquiry begins.

129. D — UCC § 2-207(1) provides that a definite expression of acceptance operates as acceptance unless expressly made conditional on assent to the additional or different terms. Such conditional language creates a counteroffer, and no contract forms until the original offeror assents to the new terms.

130. C — Under *M'Naghten*, a defendant is legally insane if, due to a defect of reason from disease of the mind, he did not know the nature and quality of his act or did not know that the act was wrong. Inability to appreciate moral wrongfulness satisfies the second prong and supports an NGRI verdict.

131. A — FRE 602 requires that a witness have personal knowledge of the matter testified to. Heavily hedged testimony showing the witness lacks even a clear recollection of date, time, or the underlying observation indicates insufficient personal knowledge to support admission of the testimony.

132. B — Anti-deficiency statutes for purchase-money mortgages preclude the lender from recovering any unpaid balance beyond the foreclosure proceeds. The borrower's liability is limited to the security, and the lender bears the risk of any shortfall, regardless of the property's actual value.

133. C — False imprisonment requires intentional confinement of the plaintiff within fixed boundaries by any means, including physical barriers, threats, or assertion of authority. Blocking the only exit constitutes confinement; the plaintiff need not test the barrier by attempting to push through, and physical contact is unnecessary.

134. D — FRCP 11(c)(1) requires the court to provide the alleged offender with notice of the proposed sanction and a reasonable opportunity to respond before imposing sanctions. The procedural protections ensure fairness and accuracy in the sanctions process, distinguishing it from purely punitive proceedings.

135. B — *Garcetti v. Ceballos* held that public employees speaking pursuant to their official duties — rather than as citizens on matters of public concern — receive no First Amendment protection. Speech made as part of the employee's job functions falls outside Pickering balancing and is subject to ordinary employment discipline.

136. A — Tender of performance at the agreed time and place discharges the obligor's duty to perform unless the obligee timely claims a defect. The seller's tender at the designated point satisfies the obligation, even if the buyer fails to appear to take delivery.

137. C — Confession voluntariness is determined under the totality of the circumstances, considering the suspect's characteristics, length and conditions of interrogation, deprivation of food and sleep, and use of promises or threats. Twenty-four hours of deprivation combined with repeated leniency promises strongly indicates involuntariness.

138. D — FRE 803(6) requires that the record be made by, or from information transmitted by, a person with knowledge, at or near the time of the event, kept in the regular course of business, and that making such records was the regular practice of that business. All elements must be established for the business records exception.

139. A — A unilateral conveyance by one joint tenant destroys the unities of time, title, and interest, severing the joint tenancy as to that interest. After severance, the conveyed share is held as tenancy in common, eliminating the right of survivorship for that interest before the joint tenant's death.

140. B — Public nuisance involves unreasonable interference with a right common to the general public. A private plaintiff suing on a public nuisance must show special harm — a particular injury different in kind, not merely degree, from that suffered by the community at large.

141. C — 28 U.S.C. § 1442 permits federal officers (and persons acting under their direction) sued in state court for acts performed under color of federal office to remove the action to federal court. The federal officer removal statute protects federal functions from potential bias in state proceedings.

142. D — *Zelman v. Simmons-Harris* upheld a school voucher program against an Establishment Clause challenge because the funds reached religious schools only as a result of the genuine and independent choices of individual parents. Government neutrality combined with private decision-making negates the appearance of government endorsement.

143. A — UCC § 2-608 allows the buyer to revoke acceptance when the goods' nonconformity substantially impairs their value to him and acceptance was based on a reasonable assumption the nonconformity would be cured or on the difficulty of discovering the defect before acceptance.

144. B — Embezzlement is the fraudulent conversion of property by one already in lawful possession. A bank teller has lawful possession of cash drawer funds through her employment, and her subsequent appropriation for personal use transforms lawful possession into criminal conversion — the defining act of embezzlement.

145. C — Chain of custody establishes the identity and integrity of physical evidence through testimony tracing the item from seizure to trial. The chain need not be flawless; gaps go to weight rather than admissibility, provided the testimony establishes the evidence's identity with reasonable certainty.

146. D — Cotenants must account to each other for net rental income received from third parties in proportion to their ownership interests. The collecting cotenant cannot retain the entire rent because the property generates income for the benefit of all cotenants, regardless of who arranged the rental.

147. B — When two independently sufficient causes converge to produce indivisible harm, the substantial factor test imposes liability on each defendant whose conduct was a substantial factor. The but-for test fails because either cause alone would have produced the harm, but each remains a legally significant contributor.

148. A — A defendant who never appeared in the rendering court may collaterally attack the resulting default judgment in the enforcing court for lack of personal jurisdiction. Because the defendant did not appear, no waiver occurred, and the jurisdictional defect remains available as a defense to enforcement.

149. C — Central Hudson's four-part test for commercial speech requires the regulation to directly advance a substantial government interest and be no more extensive than necessary to serve that interest. Categorical bans on truthful price advertising rarely survive this scrutiny because narrower alternatives exist.

150. D — Unconscionability has procedural and substantive components: the bargaining process must be unfair (adhesion, lack of meaningful choice) and the resulting terms must be oppressively one-sided. A take-it-or-leave-it consumer loan with usurious rates and harsh penalties satisfies both dimensions and supports refusal of enforcement.

151. B — Foreseeable medical complications arising during treatment of an injury caused by the defendant do not break the chain of causation. The defendant takes the victim as found, including unknown medical sensitivities, and an allergic reaction to anesthesia is a foreseeable risk of necessary surgical treatment of serious injuries.

152. A — FRE 803(2) admits a statement relating to a startling event made while the declarant was under the stress of excitement caused by the event. Five minutes after a car accident, with the declarant visibly distressed, satisfies the temporal and excitement requirements; the declarant's interest in the litigation does not bar admission.

153. C — An easement may be terminated by estoppel when the holder makes representations on which the servient owner detrimentally relies. The owner's substantial investment in construction blocking the way, in reliance on the holder's assurances, justifies estoppel and extinguishes the easement.

154. D — Business invitees are owed a duty of reasonable care to inspect the premises and to discover and either remedy or warn of dangerous conditions. The duty extends to dangers the owner should have discovered through reasonable inspection, not merely those actually known.

155. B — *Hickman v. Taylor* and FRCP 26(b)(3) qualify rather than absolutely protect attorney work product. Materials prepared in anticipation of litigation are discoverable only on a showing of substantial need and inability to obtain the substantial equivalent without undue hardship; opinion work product receives heightened protection.

156. B — *Brandenburg v. Ohio* replaced the clear-and-present-danger test with a narrower standard: advocacy of illegal conduct is protected unless it is directed at inciting or producing imminent lawless action and is likely to produce such action. Abstract advocacy of violence does not satisfy the imminence-and-likelihood requirement.

157. A — Economic duress permits avoidance when a wrongful threat leaves the victim no reasonable alternative and induces assent to oppressive terms. Exploiting urgent need to extract supracompetitive prices, where no alternative supplier is available, satisfies the modern doctrine and supports restitution of the excess payment.

158. D — The act-of-production doctrine recognizes that the act of producing documents itself communicates testimonial assertions — that the documents exist, are in the witness's possession, and are authentic. The Fifth Amendment may protect these testimonial aspects even when the document contents are independently obtainable.

159. C — FRE 407 excludes evidence of subsequent remedial measures when offered to prove negligence, culpable conduct, defect, or need for warning. The rule encourages safety improvements by ensuring that taking corrective action will not be used against the actor; the evidence may be admitted for other purposes such as ownership, control, or feasibility if disputed.

160. B — The Fifth Amendment's Just Compensation Clause is generally limited to the fair market value of the real property taken. Business goodwill, lost future profits, and relocation expenses are typically not separately compensable elements absent specific statutory authorization beyond constitutional requirements.

161. D — Communications made between persons with a shared common interest — such as employer and HR regarding suspected misconduct — enjoy a qualified privilege defeated only by malice or excessive publication. Good-faith reports of suspected wrongdoing within an organization fall squarely within the common-interest privilege.

162. A — FRCP 19 requires a two-step analysis when joinder of a person is feasible but its absence may impair the action. The court determines whether the absent party is required (Rule 19(a)) and, if joinder

would destroy diversity, whether the action can proceed in equity and good conscience or must be dismissed.

163. C — Title VII requires reasonable accommodation of religious practices unless the accommodation would impose undue hardship on the employer. *EEOC v. Abercrombie & Fitch* held that an employer need not have actual knowledge of the religious need; the duty arises whenever religion is a motivating factor in the adverse action.

164. B — UCC § 2-716 authorizes specific performance when the goods are unique or in other proper circumstances. Rare antiques satisfy the uniqueness requirement, and the inability to locate a comparable item makes monetary damages an inadequate remedy, supporting equitable enforcement.

165. D — Premeditation requires some advance reflection or deliberation, but the period of reflection may be brief — modern decisions hold that even a few moments of conscious decision-making suffices. Extended planning is not required; what matters is that the defendant formed the intent to kill with some reflection.

166. A — The scope of cross-examination is generally limited to the subject matter of direct examination and matters affecting credibility. A prior bankruptcy filing, without connection to the contract testimony or to truthfulness as a character trait, is irrelevant and outside the proper scope of cross-examination.

167. C — The rule of convenience closes a class at the death of the life tenant when distribution is required. All grandchildren born by A's death and meeting the survivorship requirement take; grandchildren born after A's death are excluded, preventing indefinite delay of distribution.

168. D — American common law generally imposes no affirmative duty to rescue a stranger, even where rescue would be safe and easy. Liability for nonfeasance requires a special relationship — parent-child, employer-employee, common carrier-passenger, or similar — creating an affirmative duty of care.

169. B — 28 U.S.C. § 1332(c)(1) makes a corporation a citizen of both its state of incorporation and the state of its principal place of business. The principal place of business is determined by the "nerve center" test (*Hertz Corp. v. Friend*), but citizenship in the state of incorporation is also retained.

170. A — *Tinker v. Des Moines* held that students do not shed their constitutional rights at the schoolhouse gate. Symbolic political expression by students is protected unless school officials can show that the speech materially and substantially interfered with the operation of the school or invaded the rights of others.

171. C — Common-law impossibility discharges a contract when performance becomes objectively impossible through no fault of the obligor, and the impossibility was not a foreseeable risk assumed by that party. Destruction of specifically identified goods without fault discharges the seller's duty to deliver.

172. D — *Crawford v. Washington* held that testimonial hearsay is barred by the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. Statements made during police interrogation are quintessentially testimonial, and reliability findings cannot substitute for the right of confrontation.

173. B — FRE 804(b)(3) admits statements against the declarant's pecuniary, proprietary, or penal interest when the declarant is unavailable and a reasonable person would not have made the statement unless believing it true. Admitting an outstanding unpaid debt is against pecuniary interest because it acknowledges liability.

174. A — Marketable title is title reasonably free from doubt at the time of closing. An outstanding mortgage that the seller will satisfy from sale proceeds through escrow does not render title unmarketable because the encumbrance will be cleared in the closing process itself.

175. C — The T.J. Hooper rule treats compliance with industry custom as evidence of due care but not as conclusive. An entire industry may lag behind reasonable safety standards, and the trier of fact may find negligence despite conformity with custom when the custom itself is unreasonable.

176. D — Justice Kennedy's plurality opinion in *McIntyre v. Nicastro* required purposeful targeting of the specific forum state, not merely placing products into a national stream of commerce. Without specific contacts directed at State B's market, the manufacturer cannot be subject to its courts based solely on the distributor's resale activity.

177. B — The Privileges and Immunities Clause of Article IV prohibits state discrimination against nonresidents in fundamental economic activities, including the practice of law. *Supreme Court of New Hampshire v. Piper* struck down such residency-based fee differentials absent substantial justification not satisfied here.

178. C — The predominant purpose test determines whether a mixed goods/services contract is governed by the UCC or by common law. The court examines which aspect predominates — based on contract language, allocation of price, and the nature of the supplier's business — and applies that body of law to the entire contract.

179. A — Voluntary intoxication is recognized in most jurisdictions as capable of negating specific intent crimes, including the premeditation element of first-degree murder. The defense does not excuse the killing but may reduce the conviction to second-degree murder by negating the deliberative mental state.

180. D — FRE 803(4) admits statements pertinent to medical diagnosis or treatment, and the courts have expanded the rule to include identification of an abuser in child abuse cases because such identification is pertinent to treatment decisions — including discharge planning, safety arrangements, and psychological care.

181. C — An easement by necessity arises automatically when (1) the dominant and servient parcels share common ownership, (2) the common ownership is severed by conveyance, and (3) at the time of severance, the easement is strictly necessary for the use and enjoyment of the conveyed parcel. Landlocked parcels meet all three elements.

182. B — Battery encompasses intentional contacts that are offensive to a reasonable sense of personal dignity, even without physical harm. Spitting on another person is the paradigmatic offensive contact and constitutes battery; the harm is dignitary rather than physical, and emotional humiliation is the actionable injury.

183. A — The local action rule, where retained, requires that actions affecting title to or possession of real property be brought in the jurisdiction where the property is located. Courts in other states lack subject matter jurisdiction over such in rem-style claims even where personal jurisdiction over the defendant exists.

184. D — *Crawford v. Marion County Election Board* applied a balancing analysis to voter identification requirements, weighing the state's interest in preventing fraud and maintaining electoral integrity against the burdens on voters. Generally applicable photo ID laws have been upheld under this balancing where reasonable accommodations exist.

185. C — Under the majority knockout rule applied to UCC § 2-207, conflicting terms in the buyer's and seller's forms cancel each other out, and the contract consists of the agreed terms plus UCC gap-fillers. Neither party's forum selection clause governs when the forms directly conflict.

186. B — Robbery requires force or threat of force sufficient to overcome the victim's resistance. Yanking a purse strap forcefully enough to overcome a momentarily resistant grasp and break the strap constitutes the requisite force, distinguishing the crime from mere larceny by stealth or surprise.

187. D — The joint client privilege does not apply in subsequent litigation between the joint clients themselves. Communications made during joint representation may be disclosed in adverse proceedings between the former co-clients because the privilege exists against third parties, not between the joint clients.

188. A — An easement's scope is determined by the terms of the grant and the reasonable contemplation of the parties at creation. An easement limited by its language to "existing" personal vehicle use cannot be expanded to commercial vehicle traffic or widened to accommodate the new use without consent of the servient owner.

189. C — The majority zone of danger rule limits bystander NIED recovery to plaintiffs who were themselves within the zone of physical risk from the defendant's negligence. A mother safely positioned on a sidewalk, outside the path of the vehicle, falls outside the protected zone and cannot recover under this rule.

190. B — *Calder v. Jones* permits jurisdiction over a defendant whose conduct is expressly aimed at the forum state and causes effects there. *Walden v. Fiore* refined the analysis to require contacts with the forum itself, not merely with a plaintiff who resides there, but targeting a forum resident with intent to harm her there can satisfy both decisions.

191. D — *Texas v. Johnson* held that flag burning at a political protest is expressive conduct protected by the First Amendment. The state's interests in preserving the flag as a symbol of national unity and in preventing breaches of the peace cannot justify suppressing the political message conveyed by the act.

192. C — The part performance doctrine permits enforcement of an oral land sale contract when the buyer's conduct is unequivocally referable to the alleged agreement. The combination of possession, payment of substantial purchase price, and improvements is the classic showing supporting equitable enforcement notwithstanding the Statute of Frauds.

193. B — *Riley v. California* held that the search-incident-to-arrest exception does not extend to the data on a cell phone. The privacy interests in modern digital devices — which can contain detailed personal records — vastly outweigh the officer-safety and evidence-preservation rationales of the doctrine, so a warrant is required.

194. A — FRE 801(d)(1)(A) classifies a prior inconsistent statement as non-hearsay when the declarant testifies and is subject to cross-examination, and the prior statement was given under penalty of perjury at a trial, hearing, or other proceeding, or in a deposition. The statement may be used substantively, not just for impeachment.

195. D — Color of title combined with possession of part of the described parcel can support constructive adverse possession of the entire described tract under the constructive possession doctrine. The defective deed defines the boundaries of the claim, and actual possession of a portion extends the claim to the whole described area.

196. A — *New York Times v. Sullivan* and *Curtis Publishing v. Butts* require public figures suing for defamation to prove actual malice — knowledge of falsity or reckless disregard for the truth — by clear and convincing evidence. The heightened standard reflects First Amendment protection of robust public debate about public figures.

197. B — The Seventh Amendment preserves the right to jury trial in "suits at common law," which historically meant suits seeking legal rather than equitable relief. An action seeking only an injunction is purely equitable and falls outside the constitutional guarantee, so no jury trial right attaches.

198. D — *Obergefell v. Hodges* established that the fundamental right to marry extends to same-sex couples, and laws denying same-sex married couples the benefits available to opposite-sex married couples violate equal protection. Such differential treatment cannot survive even rational basis scrutiny under current doctrine.

199. C — UCC § 2-316(3)(a) permits disclaimer of implied warranties through language such as "as is" or "with all faults" provided the language is conspicuous to the buyer. A properly executed, conspicuous "as is" disclaimer effectively excludes implied warranties of merchantability and fitness.

200. B — Self-defense privileges only force reasonably necessary to repel an imminent threat. Once the attacker has stopped attacking and begun to withdraw, the imminence requirement is no longer satisfied, and additional force is not justified — retaliation or punishment is outside the self-defense privilege.