

# PRACTICE EXAM 6 — MBE SIMULATION (200 QUESTIONS)

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1. A plaintiff who is a citizen of Texas filed suit in federal court in Texas against a defendant who is a citizen of New Mexico, alleging negligence and seeking \$70,000 in damages. While a motion to dismiss for lack of subject-matter jurisdiction was pending, the plaintiff amended the complaint to add a claim for an additional \$20,000 in damages arising from the same incident. How should the court rule on the motion?

- A. Deny the motion because the parties remain diverse and the amended pleading now satisfies the requirement
- B. Grant the motion because the amount in controversy did not exceed \$75,000 when the complaint was filed
- C. Deny the motion because the amount in controversy is measured by good-faith allegations at any point
- D. Grant the motion because amendments cannot cure subject-matter jurisdictional defects that existed at filing

2. A homeowner sued a contractor in federal court based on diversity jurisdiction, seeking \$200,000 in damages for defective construction. After the close of discovery, the contractor moved for summary judgment, supported by an expert affidavit stating that the work met industry standards. The homeowner filed an opposition relying solely on her own deposition testimony asserting that the workmanship was poor. How should the court rule on the motion?

- A. Deny the motion because the homeowner's testimony creates a credibility dispute for the jury
- B. Deny the motion because expert testimony is not required to establish a construction defect claim
- C. Grant the motion because the homeowner cannot rebut expert evidence with only lay opinion
- D. Grant the motion only if the homeowner's testimony fails to identify a specific defect with admissible evidence

3. A plaintiff filed a federal civil rights action against three defendants. She properly served defendants A and B, but service on defendant C failed because the process server delivered the summons to C's neighbor. The 90-day service period under Rule 4(m) has expired. The plaintiff has shown that she made diligent but unsuccessful efforts to locate defendant C. How should the court proceed regarding defendant C?

- A. Extend the time for service upon a showing of good cause for the failure
- B. Dismiss the claim against defendant C with prejudice because the deadline has passed
- C. Treat the service on C's neighbor as sufficient because actual notice can be presumed
- D. Sever the claim against defendant C and transfer it to a different venue

4. A plaintiff sued a corporate defendant in federal district court alleging a federal employment discrimination claim. The defendant timely filed an answer that included a counterclaim against the plaintiff for breach of a non-disclosure agreement, governed entirely by state law. The plaintiff and the defendant are citizens of the same state. Does the federal court have jurisdiction over the counterclaim?

- A. No, because state-law claims between non-diverse parties cannot be heard in federal court
- B. No, because the counterclaim does not arise under federal law and there is no diversity
- C. Yes, because the counterclaim forms part of the same case or controversy under supplemental jurisdiction
- D. Yes, but only if the counterclaim seeks more than \$75,000 in damages from the plaintiff

5. A federal court sitting in diversity must decide whether to apply a state statute requiring a plaintiff in a medical malpractice action to file a certificate of merit within 60 days of filing the complaint, or apply only the federal pleading standards. Failure to comply with the state statute results in dismissal. The federal rules contain no analogous requirement. Which approach should the court take?

- A. Apply only Federal Rule 8 because federal pleading standards govern in federal court
- B. Apply the state statute because it is substantive and outcome-determinative under Erie
- C. Apply both, requiring the plaintiff to satisfy whichever standard is more demanding
- D. Apply only the state statute if the defendant raises it as an affirmative defense

6. A plaintiff filed a complaint in federal court alleging a federal trademark claim. The defendant moved to dismiss under Rule 12(b)(6), arguing that the complaint failed to state a plausible claim. The complaint alleged that the defendant used a "confusingly similar" mark and demanded damages, but provided no factual details about the marks or the alleged confusion. How should the court rule?

- A. Grant the motion because the complaint contains only conclusory allegations and no factual content
- B. Deny the motion because notice pleading requires only a short and plain statement of the claim
- C. Convert the motion to one for summary judgment and allow discovery before deciding
- D. Deny the motion because trademark claims are subject to a relaxed pleading standard

7. A plaintiff in federal court properly noticed the deposition of a non-party witness located 200 miles from the courthouse. The witness moved to quash the subpoena, arguing that the location was burdensome. The deposition was scheduled to take place at the witness's place of employment, which is 50 miles from her residence. Under the Federal Rules, the court should:

- A. Quash the subpoena because the deposition exceeds the 100-mile geographic limit
- B. Deny the motion because the witness consented when she accepted employment at that location
- C. Quash the subpoena because non-parties cannot be compelled to attend depositions
- D. Deny the motion because the location is within 100 miles of the witness's regular place of business

8. A federal jury returned a verdict for the plaintiff in a personal-injury action and awarded \$3 million in damages. The defendant filed a renewed motion for judgment as a matter of law and, in the alternative, a motion for new trial based on the excessiveness of the verdict. The trial judge believed that no reasonable jury could have found the defendant negligent. Which course of action is most appropriate?

- A. Grant the new trial only, because the verdict is excessive but the issue of liability was for the jury
- B. Deny both motions because the jury's verdict is entitled to substantial deference on appeal
- C. Grant the renewed motion for judgment as a matter of law and conditionally rule on the new trial motion
- D. Grant a remittitur reducing the damages without disturbing the finding of liability or negligence

9. A class of consumers filed an action in federal court alleging violations of state consumer-protection laws. The class includes more than 1,000 members from 30 different states, and the aggregate amount in

controversy exceeds \$10 million. No individual class member's claim exceeds \$5,000. The named plaintiff is from California; the defendant is incorporated in Delaware with its principal place of business in California. Does the federal court have subject-matter jurisdiction?

- A. Yes, under the Class Action Fairness Act because there is minimal diversity and the aggregate exceeds \$5 million
- B. No, because the named plaintiff and the defendant share California citizenship under traditional diversity rules
- C. Yes, because a federal court has supplemental jurisdiction over all related state-law class actions
- D. No, because no individual class member's claim independently meets the amount-in-controversy threshold

10. A defendant in a federal civil action timely removed the case from state court to federal court based on diversity jurisdiction. Two months later, after substantial discovery, the plaintiff amended the complaint to add a new defendant who is a citizen of the same state as the plaintiff. The original defendant moved to retain the case in federal court. How should the court rule?

- A. Retain jurisdiction because removal was proper at the time of filing
- B. Remand the entire action to state court because complete diversity has been destroyed
- C. Sever the claim against the new defendant and retain jurisdiction over the original parties
- D. Deny joinder of the new defendant and proceed only against the original removing defendant

11. A plaintiff filed a federal-question claim against a defendant in federal court. The defendant believed that the plaintiff lacked Article III standing because no injury-in-fact had been pleaded. By what mechanism, and at what stage, may the defendant raise this argument?

- A. Only by interlocutory appeal before discovery begins because standing is a threshold issue
- B. Only at trial through a Rule 50 motion for judgment as a matter of law
- C. Only in the answer as an affirmative defense to be tried with the merits
- D. At any time, including for the first time on appeal, because standing concerns subject-matter jurisdiction

12. Two plaintiffs were injured in the same automobile accident and filed separate negligence actions against the same defendant in federal district court based on diversity. The actions involve common questions of fact regarding the defendant's conduct. The court is considering whether to consolidate the actions. Under the Federal Rules, what is the proper standard for consolidation?

- A. Consolidation is mandatory whenever multiple actions arise from the same incident
- B. Consolidation requires consent of all parties to ensure due process is satisfied
- C. The court has discretion to consolidate actions involving common questions of law or fact
- D. Consolidation is barred when separate plaintiffs seek different categories of damages

13. A federal court entered final judgment for the defendant in a tort action after granting summary judgment. The plaintiff did not appeal. One year later, the plaintiff filed a second action in a different federal court against the same defendant arising from the same accident, asserting a new theory of recovery that was not pleaded in the first action. The defendant moved to dismiss. The court should:

- A. Allow the second action because the new theory was never adjudicated on the merits
- B. Dismiss because claim preclusion bars all claims that were or could have been litigated
- C. Allow the action only if the plaintiff can show that the new theory was unknown when the first action was filed
- D. Dismiss only the issues actually decided in the first action and allow the new theory to proceed

14. A federal district court ordered the parties to participate in court-annexed mediation. The plaintiff's attorney attended without the plaintiff being present and without authority to settle. The mediator reported the attorney's lack of authority to the court, and the defendant moved for sanctions. Which sanction is most likely to be upheld on appeal as a permissible exercise of the court's authority?

- A. Imposing reasonable expenses, including attorney's fees, caused by the failure to comply with the court's order
- B. Dismissing the plaintiff's claim with prejudice as a per se rule for failure to attend in person
- C. Holding the plaintiff in criminal contempt and ordering jail time until compliance with the order
- D. Awarding the defendant treble damages as a deterrent against future noncompliance with court orders

15. A defendant in a federal civil action served interrogatories on the plaintiff that exceeded the numerical limit allowed under the Federal Rules. The plaintiff did not object within the time for response and answered all of the interrogatories. The defendant then served additional interrogatories within the numerical limit. The plaintiff now objects to the additional interrogatories, arguing that the total exceeds the limit. How should the court rule?

- A. Sustain the objection because the limit applies cumulatively regardless of prior conduct
- B. Sustain the objection because the additional interrogatories duplicate prior discovery
- C. Overrule the objection only if the defendant shows substantial need for the information
- D. Overrule the objection because the plaintiff waived the limit by answering the earlier interrogatories

16. A plaintiff filed a wrongful-death action in federal court. The defendant served a request for production of documents seeking all of the decedent's medical records for the ten years before death. The plaintiff objected on grounds that the request was overbroad and not proportional to the needs of the case. The plaintiff's claim involves only damages related to a workplace injury that allegedly caused death. The court should:

- A. Order production of all medical records as relevant to causation and damages issues
- B. Sustain the objection in part and limit production to records relevant to the alleged injury
- C. Deny the objection because the decedent's privacy interests do not survive death
- D. Order production but allow the plaintiff to redact information unrelated to the litigation

17. A defendant moved to transfer venue from the Northern District of Illinois to the Southern District of New York under 28 U.S.C. § 1404(a). The plaintiff resides in Illinois; the defendant's principal place of business is in New York; most witnesses are in New York; and the relevant events occurred in New York. The court should:

- A. Deny the motion because the plaintiff's choice of forum is entitled to controlling weight
- B. Grant the motion only if the plaintiff consents to the transfer in writing
- C. Grant the motion because the convenience of parties and witnesses favors the transferee district
- D. Deny the motion because § 1404 requires both districts to have personal jurisdiction at filing

18. A federal court entered judgment after a bench trial finding that the defendant breached a contract and awarding the plaintiff \$500,000 in damages. The court's findings of fact were detailed and supported by the record. On appeal, the defendant argues that the trial court's findings were against the weight of the evidence. The appellate court should:

- A. Uphold the findings of fact unless they are clearly erroneous on the record as a whole
- B. Review the findings de novo because contract interpretation is a question of law
- C. Defer to the findings only when supported by uncontradicted documentary evidence
- D. Remand for new findings if the trial judge did not personally observe each witness testify

19. A plaintiff filed a personal-injury action in a state court. The defendant, a citizen of a different state, removed the case to federal court 35 days after being served with the complaint. The plaintiff moved to remand on the basis that removal was untimely. The amount in controversy and diversity are otherwise satisfied. The court should:

- A. Deny remand because the 30-day removal clock begins only when the defendant has actual notice of grounds for removal
- B. Deny remand because timing defects in removal procedure are not jurisdictional
- C. Grant remand because removal must occur within 30 days of service and any later filing is void
- D. Grant remand because procedural defects in removal are waivable only by stipulation

20. Two corporations entered into a contract containing a forum-selection clause designating the state and federal courts of Delaware as the exclusive forums for any dispute. One corporation sued the other in federal court in California, asserting diversity jurisdiction. The defendant moved to transfer the action to Delaware under § 1404(a). The court should:

- A. Deny the motion because forum-selection clauses cannot override the plaintiff's choice of forum
- B. Grant the motion only after weighing all traditional § 1404(a) factors equally
- C. Grant the motion because a valid forum-selection clause controls absent extraordinary circumstances
- D. Stay the motion pending arbitration of the forum-selection clause's enforceability

21. A plaintiff in a federal civil action sought to compel the defendant to produce documents that the defendant claimed were protected by the attorney-client privilege. The defendant inadvertently produced one of the documents during discovery without designating it as privileged. The plaintiff has read the document and intends to use it at trial. The defendant has demanded its return. How should the court rule?

- A. Order return of the document if the defendant took reasonable steps to prevent and rectify the disclosure
- B. Deny the demand because inadvertent disclosure constitutes an automatic waiver of the privilege
- C. Order return but permit the plaintiff to use information already learned from the document
- D. Deny the demand because the plaintiff's actual review of the document prejudices any return remedy

22. A federal court has entered a default judgment against a defendant who failed to answer a properly served complaint. Two years later, the defendant moved to set aside the judgment, claiming that she never received the summons and complaint because the process server delivered them to the wrong address. The defendant offered evidence supporting her claim. How should the court rule?

- A. Deny the motion because Rule 60(b) imposes a one-year deadline that has been exceeded
- B. Grant the motion because a judgment entered without proper service is void and may be set aside at any time
- C. Deny the motion because the defendant's two-year delay constitutes laches as a matter of law
- D. Grant the motion only if the defendant deposits the full judgment amount with the court

23. A plaintiff filed a federal class action on behalf of a putative class of 5,000 consumers. The defendant opposed class certification, arguing that individual issues of reliance predominate over common questions. The plaintiff alleged a uniform misrepresentation that was directed to all class members. The court should certify the class if:

- A. The plaintiff agrees to limit recovery to statutory damages that do not require proof of reliance
- B. Reliance can be presumed because the misrepresentation was material and disseminated to all members
- C. The plaintiff bonds the costs of notice and provides individual opt-out forms to each class member
- D. Common questions predominate over individual questions and a class action is superior to other methods

24. A plaintiff sued two defendants in federal court for joint and several liability. After a jury trial, the jury returned a verdict in favor of the plaintiff for \$1 million against defendant A but in favor of defendant B. The plaintiff appealed only the verdict in favor of defendant B. Defendant A did not appeal. On appeal, the appellate court determined that the trial court committed reversible error in instructions affecting both defendants. The appellate court should:

- A. Reverse the verdict as to both defendants and order a new trial against both
- B. Reverse only as to defendant B because defendant A did not appeal and is bound by the verdict
- C. Affirm both verdicts because the instructional error was harmless as to defendant A
- D. Reverse and remand against defendant B only, while preserving the judgment against defendant A

25. A federal court issued a temporary restraining order against a defendant without notice to the defendant, finding that immediate and irreparable harm would result. The TRO was issued on March 1. By default, when does the TRO expire absent further court action?

- A. On March 15, fourteen days after issuance, unless extended for good cause for a like period
- B. On March 8, seven days after issuance, with no possibility of extension by the issuing court
- C. When the hearing on the preliminary injunction is held, regardless of how many days pass
- D. On March 30, thirty days after issuance, because TROs are presumptively valid for one month

26. A federal district court denied a plaintiff's motion for class certification in a putative class action seeking damages and injunctive relief. The plaintiff wishes to immediately appeal the denial without waiting for final judgment. Which of the following describes the proper procedure?

- A. The plaintiff must obtain certification from the district court that the order involves a controlling question of law
- B. The plaintiff may petition the court of appeals for permission to appeal within 14 days of the denial
- C. The plaintiff may appeal as of right because class-certification orders are final decisions for appeal purposes
- D. The plaintiff must wait for final judgment because interlocutory appeals are not permitted in this context

27. A plaintiff served the defendant with requests for admission. The defendant did not respond within 30 days. The plaintiff then moved for summary judgment based on the matters deemed admitted. The defendant has now moved to withdraw the deemed admissions, offering to file responses immediately. Withdrawal would prejudice the plaintiff because trial is two weeks away. The court should:

- A. Permit withdrawal because requests for admission are disfavored as a discovery device
- B. Deny withdrawal because the failure to respond was inexcusable as a matter of law
- C. Permit withdrawal only if the defendant pays all of the plaintiff's attorney's fees to date
- D. Deny withdrawal if it would prejudice the plaintiff in maintaining the action on the merits

28. A federal court granted summary judgment for the defendant in a contract action. The court found that the plaintiff's contract claim was barred by the statute of limitations. Six months later, the plaintiff filed a new action in state court against the same defendant, alleging fraud arising from the same underlying transaction. The fraud claim was not pleaded in the federal action. The defendant moved to dismiss based on res judicata. How should the court rule?

- A. Dismiss because claim preclusion bars all claims that arose from the same transaction or occurrence
- B. Allow the action because dismissal on limitations grounds is not a judgment on the merits
- C. Dismiss only if the plaintiff knew of the fraud at the time of filing the first action
- D. Allow the action because state courts are not bound by federal preclusion principles

29. A federal court of appeals reversed a district court's grant of summary judgment and remanded for further proceedings. On remand, the district court reviewed the same record and entered judgment on the same grounds previously reversed. The plaintiff appealed again. The court of appeals should:

- A. Affirm because the district court is in the best position to evaluate its own record
- B. Remand for trial because issues of credibility cannot be resolved on summary judgment
- C. Reverse because the district court was bound by the law of the case from the prior appeal
- D. Vacate and reassign the case to a different district judge on remand without ruling on the merits

30. A federal statute prohibits state and local governments from requiring federal employees to perform jury service while on duty for the federal government. A state law subjects all residents, including federal

employees, to jury service regardless of their employment. Which constitutional doctrine most directly resolves this conflict?

- A. The Tenth Amendment, which reserves to the states all powers not delegated to the federal government
- B. The Supremacy Clause, under which valid federal law preempts conflicting state law
- C. The Privileges and Immunities Clause, which protects federal employees from discriminatory state laws
- D. The Commerce Clause, which permits Congress to regulate the activities of federal employees

31. A state legislature enacted a statute imposing a \$5 per pound tax on out-of-state coal sold within the state, while imposing only a \$1 per pound tax on coal mined and sold within the state. The stated purpose is to protect the state's coal industry. A challenge has been brought under the federal Constitution. The court should hold the statute:

- A. Constitutional under the state's police powers because energy regulation is traditionally state-controlled
- B. Constitutional because states retain plenary authority to tax goods entering their borders
- C. Unconstitutional under the Privileges and Immunities Clause as it discriminates against non-residents
- D. Unconstitutional under the dormant Commerce Clause because it discriminates against interstate commerce

32. Congress enacted a statute requiring all state and local police officers to perform background checks on prospective handgun purchasers using a federal database, pending implementation of a national instant-check system. A local sheriff challenged the statute as exceeding Congress's authority. The court should hold the statute:

- A. Unconstitutional because Congress may not commandeer state officials to enforce federal regulatory programs
- B. Constitutional under Congress's commerce power to regulate the interstate firearms market
- C. Constitutional under the Necessary and Proper Clause because the regulation is incidental to federal authority
- D. Unconstitutional only as applied to officers whose duties are funded entirely by state appropriations

33. A state university adopted an admissions policy that gives a fixed numerical bonus to applicants from underrepresented racial minorities. The policy is challenged by a rejected applicant under the Equal Protection Clause. Under current Supreme Court doctrine, the court should evaluate the policy under:

- A. Rational-basis review because educational admissions are within the state's police power
- B. Intermediate scrutiny because race-conscious admissions serve important government interests
- C. Strict scrutiny, requiring the policy to be narrowly tailored to achieve a compelling government interest
- D. A balancing test weighing the applicant's interest against the institution's pedagogical objectives

34. A federal statute imposes a tax on the manufacture of a certain pesticide and uses the revenue to fund environmental cleanup activities. The tax produces substantial revenue, but the rate is also set high enough to discourage production of the pesticide. A manufacturer challenges the tax as an unauthorized exercise of federal regulatory power. The court should:

- A. Strike down the tax because its regulatory purpose exceeds Congress's taxing authority
- B. Uphold the tax because it produces revenue and is not an obvious penalty regardless of its incidental regulatory effect
- C. Uphold the tax only if Congress could independently regulate the pesticide under the Commerce Clause
- D. Strike down the tax because environmental regulation is reserved to the states under the Tenth Amendment

35. A state law requires all commercial billboards along state highways to display only messages "in the public interest as determined by the state highway commission." The commission has denied approval to a billboard with a religious message. The billboard owner sues under the First Amendment. The court should hold the law:

- A. Unconstitutional because it is a content-based restriction on speech that cannot survive strict scrutiny
- B. Constitutional as a reasonable time, place, and manner restriction on commercial speech displays
- C. Constitutional because the state's interest in aesthetics outweighs the burden on the speaker
- D. Unconstitutional only as applied to religious speech protected by the Free Exercise Clause

36. Congress passed a statute requiring all internet service providers to retain records of their users' online activities for two years and to provide those records to federal law enforcement upon request without a warrant. A coalition of providers and users challenges the statute. Which constitutional provision provides the strongest basis for challenging the warrantless disclosure requirement?

- A. The First Amendment, which protects anonymous communication on the internet
- B. The Fifth Amendment, which protects against compelled self-incrimination by users
- C. The Tenth Amendment, which reserves regulatory authority to the states for online activity
- D. The Fourth Amendment, which protects against unreasonable searches of private communications

37. A state statute provides that any person convicted of a felony loses the right to vote permanently, unless restored by individual gubernatorial action. The statute applies uniformly to all felons regardless of the nature of the offense. A challenge is brought under the Fourteenth Amendment. Under current Supreme Court doctrine, the court should:

- A. Strike down the statute under strict scrutiny because voting is a fundamental right
- B. Strike down the statute under intermediate scrutiny because permanent disenfranchisement is excessive
- C. Uphold the statute because the Fourteenth Amendment specifically permits felon disenfranchisement
- D. Remand for fact-finding regarding the rate of disenfranchisement among different racial groups

38. A municipal ordinance prohibits any person from soliciting funds in public parks "for any cause or purpose." A religious organization challenges the ordinance under the First Amendment. The city argues that the ordinance serves to protect park users from harassment. The court should hold the ordinance:

- A. Constitutional because cities have broad authority to regulate activities in public parks
- B. Unconstitutional because public parks are traditional public forums and the ban is overbroad
- C. Constitutional only if applied uniformly to all religious and non-religious organizations alike
- D. Unconstitutional only as applied to non-commercial solicitation by religious organizations

39. Congress enacted a statute making it a federal crime to possess a firearm within 1,000 feet of any school. A criminal defendant prosecuted under the statute challenges it as exceeding Congress's commerce

power. The statute contains no jurisdictional element requiring a connection to interstate commerce. Under current Supreme Court doctrine, the court should hold the statute:

- A. Unconstitutional because possession of a firearm near a school is not economic activity affecting interstate commerce
- B. Constitutional because firearms are commercial goods that frequently cross state lines in interstate transactions
- C. Constitutional under the Necessary and Proper Clause as incidental to federal education funding programs
- D. Unconstitutional only as applied to firearms that were not manufactured or transported in interstate commerce

40. A state law requires all candidates for state office to have resided in the state for at least five years before filing for candidacy. A newly relocated resident, a citizen of the state, challenges the law under the Equal Protection Clause. The court should evaluate the law under:

- A. Rational-basis review because residency is not a suspect classification under Supreme Court precedent
- B. Intermediate scrutiny because political participation by recent residents implicates important interests
- C. Rational-basis review because states have plenary authority over their election processes
- D. Strict scrutiny because the law burdens the fundamental right to interstate travel and political participation

41. A federal regulation requires all state agencies receiving federal funds for transportation projects to adopt certain workplace safety standards. A state agency refuses to comply, arguing that the condition exceeds federal authority. The federal funds at issue constitute approximately 8% of the state's transportation budget. The court should hold the condition:

- A. Unconstitutional as commandeering of state legislative processes by federal regulators
- B. Constitutional as a permissible exercise of Congress's spending power tied to a federal interest
- C. Unconstitutional only if the state can show the conditions are unrelated to transportation safety
- D. Constitutional only if the workplace standards apply identically to private contractors and state agencies

42. A state imposes a license tax on out-of-state corporations doing business within the state, calculated as a percentage of the corporation's worldwide income. In-state corporations pay a tax based only on income earned within the state. An out-of-state corporation challenges the tax. The court should hold the tax:

- A. Constitutional because states have plenary taxing authority over corporations operating within their borders
- B. Constitutional only if the out-of-state corporation maintains physical presence within the state
- C. Unconstitutional because it taxes income unrelated to activities within the state, violating Due Process
- D. Unconstitutional under the Import-Export Clause because it taxes income from foreign sources

43. A federal agency issued a regulation interpreting an ambiguous statutory provision. A regulated party challenges the regulation, arguing that the agency's interpretation is incorrect. Under current Supreme Court doctrine after the 2024 Loper Bright decision, the court should:

- A. Independently interpret the statute, giving the agency no special deference on questions of law
- B. Defer to the agency's interpretation if reasonable, regardless of whether the court would adopt it
- C. Apply Chevron deference only if Congress expressly delegated interpretive authority to the agency
- D. Strike down the regulation because agencies cannot make legislative determinations under Article I

44. A state legislature passed a resolution endorsing Christianity as "the moral foundation of our state." A taxpayer challenges the resolution under the Establishment Clause. The resolution has no operative legal effect; it does not appropriate funds or establish any program. The court should:

- A. Strike down the resolution under the Lemon test because it has the primary effect of endorsing religion
- B. Uphold the resolution because hortatory legislative statements do not establish religion in any operative sense
- C. Strike down the resolution because any official preference for one religion violates neutrality
- D. Dismiss for lack of standing because the taxpayer cannot show a sufficient particularized injury

45. A federal statute requires all employers with more than 50 employees to provide a minimum number of paid leave days per year. A state government with 10,000 employees challenges the statute as applied to state employment. The court should hold the statute:

- A. Unconstitutional because Congress cannot regulate the employment terms of state governmental workers
- B. Constitutional because Congress may regulate the employment practices of state governments through generally applicable laws
- C. Constitutional only if the state has waived its sovereign immunity for related employment claims
- D. Unconstitutional only as applied to elected officials and policy-making employees of the state

46. A federal law prohibits the broadcast of "indecent" material on television between the hours of 6 a.m. and 10 p.m. A broadcaster challenges the statute under the First Amendment. The Supreme Court has previously upheld similar restrictions in the context of broadcast television. The court should evaluate the law under:

- A. A standard recognizing the unique characteristics of broadcast media that justify content regulation
- B. Strict scrutiny applicable to all content-based restrictions on speech regardless of medium
- C. Rational-basis review because television broadcasters operate under federal licensing requirements
- D. Intermediate scrutiny applicable to time, place, and manner restrictions in any medium

47. A federal court is asked to review a state legislative apportionment plan alleged to be a partisan gerrymander designed to favor one political party. The plan does not discriminate on the basis of race. Under current Supreme Court doctrine, the federal court should:

- A. Strike down the plan only if the plaintiffs prove an actual lack of competitive elections under the plan
- B. Apply strict scrutiny because partisan gerrymandering burdens fundamental voting rights
- C. Dismiss the claim because partisan gerrymandering presents a nonjusticiable political question in federal court
- D. Order a new plan drawn by a special master to ensure proportional representation of each party

48. A state university revoked a student organization's recognition because the organization refused to admit members who did not share its religious beliefs. The university's policy requires recognized organizations to accept all comers. The student organization sues under the First Amendment. The court should:

- A. Order the university to reinstate recognition because the organization's membership criteria are core associational rights
- B. Order reinstatement only if the organization is willing to amend its constitution to comply with university policy
- C. Apply strict scrutiny because religious organizations have heightened protection from state regulation
- D. Uphold the policy if it is viewpoint-neutral and reasonably related to legitimate educational interests

49. A federal statute authorizes the President to impose tariffs on imported goods in response to national security threats, providing only that the President "shall determine" what constitutes such a threat. A challenge is brought arguing that the delegation is unconstitutional. Under current Supreme Court doctrine, the court should:

- A. Strike down the delegation because foreign affairs powers are non-delegable presidential responsibilities
- B. Uphold the delegation if Congress provided an intelligible principle to guide the President's discretion
- C. Strike down the delegation because Congress alone has the constitutional power to regulate foreign commerce
- D. Uphold the delegation only if Congress retained the power to override the President's determination

50. A municipality requires all persons soliciting signatures on petitions in public spaces to obtain a permit and wear an identifying badge. A citizen wishes to anonymously gather signatures for a ballot initiative. The citizen challenges the requirement under the First Amendment. The court should hold the requirement:

- A. Unconstitutional because the badge requirement chills anonymous political speech without narrow tailoring
- B. Constitutional because cities may regulate the manner of conduct in public spaces
- C. Constitutional only if the requirement is limited to soliciting signatures for partisan ballot measures

D. Unconstitutional only as applied to political speech as opposed to commercial solicitation

51. A city ordinance prohibits all door-to-door commercial solicitation in residential neighborhoods between 5 p.m. and 9 a.m. A nonprofit organization wishes to canvass for political donations during evening hours. The ordinance does not distinguish between commercial and non-commercial solicitation. Under the First Amendment, the court should:

- A. Uphold the ordinance because residential privacy is a compelling government interest in all cases
- B. Strike down the ordinance only if applied to nonprofit organizations seeking political donations
- C. Strike down the ordinance as overbroad because it sweeps in protected non-commercial speech
- D. Uphold the ordinance as a content-neutral time, place, and manner restriction on solicitation

52. A state law requires all candidates for state judicial office to be members of a recognized state bar association for at least seven years before election. A candidate who has practiced law for ten years but only recently joined the state bar challenges the law. The court should:

- A. Strike down the law under strict scrutiny because it burdens the right to seek elective office
- B. Uphold the law under rational basis review because experience requirements are reasonably related to judicial competence
- C. Strike down the law because it discriminates against attorneys licensed in other jurisdictions
- D. Apply intermediate scrutiny because professional licensing implicates important state interests

53. A city enacted a zoning ordinance that prohibits any new construction on coastal land within 200 feet of the high-tide line. A property owner who purchased oceanfront land before the ordinance was enacted is now unable to build any structure on the parcel. The land has no other economically viable use. The owner sued claiming a regulatory taking. The court should:

- A. Find no taking because zoning regulations are a traditional exercise of police power
- B. Find a taking only if the ordinance is shown to lack a rational relationship to a public purpose
- C. Find a taking only if the owner demonstrates the regulation was enacted to single out his property
- D. Find a taking because the regulation deprives the owner of all economically beneficial use of the land

54. A state prison regulation requires all inmates to be clean-shaven for security reasons. An inmate whose sincere religious beliefs require him to grow a beard challenges the regulation under the federal Religious Land Use and Institutionalized Persons Act. The court should:

- A. Strike down the regulation as applied to the inmate unless the state shows it is the least restrictive means of furthering a compelling interest
- B. Uphold the regulation because prison administrators are entitled to substantial deference on security matters
- C. Strike down the regulation because grooming requirements always violate the Free Exercise Clause of the First Amendment
- D. Uphold the regulation if the state shows it is rationally related to legitimate penological objectives

55. A federal statute provides that any person who knowingly transports a kidnapped victim across state lines is subject to federal prosecution. A defendant prosecuted under the statute argues that it exceeds Congress's commerce power. The court should:

- A. Strike down the statute because kidnapping is a non-economic activity traditionally regulated by states
- B. Strike down the statute because the federal government may not duplicate state criminal jurisdiction
- C. Uphold the statute because Congress may regulate the use of channels and instrumentalities of interstate commerce
- D. Uphold the statute only if the prosecution shows the kidnapping had a substantial economic impact

56. A state law prohibits anyone under the age of 21 from purchasing alcohol. A 19-year-old college student challenges the law as discriminating on the basis of age in violation of the Equal Protection Clause. The court should:

- A. Apply intermediate scrutiny because age-based classifications burden important interests of young adults
- B. Apply rational basis review because age is not a suspect classification under the Equal Protection Clause
- C. Apply strict scrutiny because the law denies a fundamental right to participate in adult commerce
- D. Strike down the law because the federal government, not the states, regulates alcohol distribution

57. The President signed an executive order directing all federal agencies to disregard a specific federal regulation that the President believed exceeded statutory authority. The regulation had been promulgated through formal notice-and-comment rulemaking. A party adversely affected by the executive order sued. The court should:

- A. Strike down the executive order because the President cannot unilaterally rescind regulations adopted through statutorily required procedures
- B. Uphold the order because the President has constitutional authority to direct executive agency actions
- C. Uphold the order only if Congress has expressly delegated rescission authority to the President
- D. Dismiss for lack of standing because plaintiffs cannot challenge presidential supervision of agencies

58. A buyer orally agreed with a seller to purchase 500 units of a specially manufactured component for \$200,000. The seller began producing the components in accordance with the buyer's specifications before the buyer attempted to cancel the order. The seller has expended \$50,000 on production. The buyer asserts the Statute of Frauds as a defense. Under UCC Article 2, the contract is:

- A. Unenforceable because contracts for goods over \$500 must be in writing without exception
- B. Enforceable only to the extent of the \$50,000 already expended by the seller
- C. Enforceable because the buyer's specifications constitute a sufficient signed writing
- D. Enforceable because specially manufactured goods are exempt from the writing requirement once production has substantially begun

59. A contractor agreed to build a house for an owner for \$200,000. After completing 75% of the work, the contractor abandoned the project. The owner hired another contractor to complete the work for \$80,000, which exceeded the unpaid balance of the original contract by \$30,000. The owner sued the original contractor. The owner is entitled to recover:

- A. \$80,000 representing the full cost paid to the substitute contractor for completion
- B. Nothing because the original contractor was not in material breach of the contract
- C. \$30,000 representing the excess cost of completion over the unpaid contract balance
- D. The original contract price of \$200,000 as restitution for the contractor's breach of the agreement

60. A seller mailed an offer to a buyer on March 1 to sell a parcel of land for \$300,000, stating that the offer would remain open until March 15. On March 5, the seller mailed a revocation. On March 7, the buyer mailed an acceptance without knowledge of the revocation. The buyer received the revocation on March 8; the seller received the acceptance on March 10. A binding contract:

- A. Was formed on March 7 because acceptance was effective on dispatch under the mailbox rule
- B. Was not formed because the offer was revoked before the seller received the acceptance
- C. Was not formed because real estate offers are subject to the writing requirement of the Statute of Frauds
- D. Was formed on March 10 when the seller actually received the buyer's written acceptance

61. A homeowner contracted with a painter to paint the homeowner's house for \$5,000. The contract specified blue paint. The painter completed the job using red paint, mistakenly believing the homeowner wanted red. The homeowner refused to pay anything, and the painter sued for the contract price. The painter should recover:

- A. \$5,000 as the agreed contract price for performance of the painting work
- B. Nothing because the painter materially breached the contract by using the wrong color
- C. \$4,500 in restitution for the reasonable market value of the work that was actually done
- D. \$500 representing the diminished value resulting from the use of the wrong paint color

62. A buyer and seller signed a written contract for the sale of a used car for \$15,000. The contract contained a merger clause stating it was the complete and final agreement. The buyer subsequently sought to introduce evidence that the seller had orally promised to include a one-year service warranty as part of the deal. The court should:

- A. Admit the evidence because oral agreements supplementing written contracts are always admissible
- B. Admit the evidence under the consistent additional terms exception to the parol evidence rule
- C. Exclude the evidence because warranty terms must always be in writing under the UCC
- D. Exclude the evidence because the merger clause indicates the writing was intended as a complete integration

63. A father contracted with a college to pay \$40,000 for his daughter's first-year tuition. The contract expressly stated that the daughter was the intended beneficiary and that the college's obligation to provide educational services ran to her benefit. When the college refused to enroll the daughter despite payment, she sued. The daughter:

- A. Cannot sue because she is not in privity of contract with the college
- B. Can sue only if her father assigns his rights under the contract to her
- C. Can sue as an intended third-party beneficiary of the contract between her father and the college
- D. Can sue only for restitution of the tuition payment but not for specific performance of enrollment

64. A wholesaler contracted to deliver 1,000 widgets to a retailer at \$10 each on June 1. On May 15, the wholesaler informed the retailer that it would not be able to deliver due to supply problems. The retailer immediately purchased 1,000 widgets from another supplier at \$12 each. The wholesaler now demands that the retailer wait until June 1 before declaring breach. The retailer:

- A. Must wait until June 1 because the wholesaler retains the right to cure before the performance date
- B. May treat the anticipatory repudiation as an immediate breach and recover the \$2,000 cover damages
- C. May recover only nominal damages because the breach has not yet caused any actual harm
- D. May recover the full contract price as liquidated damages without proof of actual loss

65. A buyer and seller signed a contract for the sale of a painting for \$5,000. Both parties believed the painting was a copy. After the sale, both parties learned it was an original work by a famous artist worth \$500,000. The seller seeks to rescind the contract on the basis of mutual mistake. The court should:

- A. Grant rescission because both parties were mistaken about a basic assumption of the contract
- B. Deny rescission because the seller bears the risk of mistakes regarding authenticity
- C. Grant rescission only if the buyer knew or should have known of the painting's true origin
- D. Deny rescission because no rescission is available after performance has been completed

66. A merchant buyer sent a merchant seller a purchase order for 500 units of equipment at \$100 each. The seller responded with an acknowledgment form accepting the order but adding a clause requiring the

buyer to give written notice of any defects within 60 days of delivery, consistent with reasonable commercial practice. Under UCC § 2-207, the additional notice term:

- A. Does not become part of the contract because it materially alters the offer's payment terms
- B. Becomes part of the contract only if the buyer expressly accepts the additional term in writing
- C. Voids the contract because the additional term creates a counteroffer requiring separate acceptance
- D. Becomes part of the contract because both parties are merchants and the term is not materially altering

67. A seller contracted to sell a unique sculpture to a buyer for \$100,000. The seller breached by selling the sculpture to a third party. The buyer cannot find a comparable substitute. The buyer's most appropriate remedy is:

- A. Specific performance, because the subject matter is unique and money damages are inadequate
- B. Punitive damages, because the seller acted in bad faith by selling to a third party
- C. Restitution of any payments made, plus consequential damages for emotional distress
- D. Reformation of the contract to require the seller to obtain a substitute sculpture

68. A travel agency contracted with a hotel to reserve 100 rooms for an annual industry convention to be held in the hotel's city. Before the convention, the convention organizers cancelled the event due to a public-health emergency, making the entire purpose of the room reservation impossible to fulfill. The hotel sued for breach. The travel agency's best defense is:

- A. Impossibility, because performance has become physically impossible due to events beyond control
- B. Impracticability, because the cost of performance has become commercially unreasonable
- C. Frustration of purpose, because the principal purpose of the contract has been substantially destroyed
- D. Mutual mistake, because both parties assumed the convention would proceed as scheduled

69. An uncle promised his nephew \$10,000 if the nephew would refrain from drinking, smoking, and gambling until he turned 25. The nephew refrained for several years, but the uncle never paid. The nephew sued. Under modern contract law, the uncle's promise is:

- A. Unenforceable because the nephew suffered no harm by abstaining from these activities
- B. Enforceable because the nephew gave up legal rights, providing consideration for the promise
- C. Unenforceable because the uncle's promise was motivated by moral obligation without value
- D. Enforceable as a gift promise because of the nephew's reliance on the uncle's representation

70. A general contractor agreed to build a building for the owner for \$1 million. Halfway through the project, the contractor discovered unforeseen rock formations and demanded an additional \$200,000. The owner orally agreed to pay the additional sum. After completion, the owner refused to pay the extra amount. Under modern contract law for service contracts:

- A. The modification is unenforceable because the contractor's pre-existing duty bars enforcement under traditional rules
- B. The modification is enforceable only if the original contract expressly permitted oral modification
- C. The modification is unenforceable because contracts over \$500,000 require all modifications in writing
- D. The modification may be enforceable if made in good faith and supported by unanticipated circumstances

71. An insurance policy required the insured to notify the insurer of any claim within 30 days of the occurrence of a loss, and explicitly stated that timely notice "is a condition precedent to coverage under this policy." The insured suffered a loss but did not notify the insurer for six months. Under the traditional approach to express conditions:

- A. The insurer may deny coverage because the express condition precedent has not been satisfied
- B. The insurer cannot deny coverage without showing prejudice from the late notification
- C. The insurer cannot deny coverage because policyholder notice requirements are generally unenforceable
- D. The insurer may deny coverage only if it demonstrates actual loss of evidence from the delayed notice

72. A builder contracted to construct a custom home for an owner. Before construction began, the builder assigned its rights and delegated its duties under the contract to another construction company. The original contract was silent regarding assignment. The owner objected and refused to accept performance from the assignee. The owner's position is:

- A. Incorrect because all contract rights and duties are freely assignable absent express prohibition
- B. Correct because construction contracts always require personal performance by the original contractor
- C. Correct because the contract involves personal services and delegation of duties requires the obligee's consent
- D. Incorrect because the assignee assumes all original obligations, fully protecting the owner's interests

73. A father orally promised his prospective son-in-law that if the marriage took place, the father would convey to him a 100-acre farm. The marriage occurred, but the father refused to convey the farm. The son-in-law sued for specific performance. Under the Statute of Frauds:

- A. The promise is enforceable because oral promises made in consideration of marriage are an exception to the writing requirement
- B. The promise is unenforceable because promises made in consideration of marriage must be in a signed writing
- C. The promise is enforceable because the marriage constitutes part performance sufficient to satisfy the statute
- D. The promise is unenforceable because parol promises regarding land can never be specifically enforced

74. A buyer ordered 100 widgets at \$50 each from a seller, with delivery to be made within 30 days. The seller shipped 100 widgets, but only 90 conformed to the contract specifications; 10 were non-conforming. The buyer rejected the entire shipment as non-conforming. Under UCC § 2-601 (the perfect tender rule), the buyer:

- A. May reject only the 10 non-conforming widgets and must accept the 90 that conform
- B. Must accept the entire shipment because the seller substantially performed the contract
- C. May reject the entire shipment only if the seller has been notified and refused to cure
- D. May reject the entire shipment because the goods failed to conform exactly to the contract

75. An employee was promised by her employer that she would receive a \$50,000 retirement bonus if she completed 30 years of service. The employee, relying on this promise, declined other employment opportunities and remained with the company for 30 years. After her retirement, the employer refused to pay. Under the doctrine of promissory estoppel:

- A. The employer's promise is enforceable because the employee reasonably and detrimentally relied on the promise
- B. The promise is unenforceable because employment-related bonuses must be reduced to writing
- C. The promise is enforceable only if the employee gave consideration beyond continued employment
- D. The promise is unenforceable because retirement bonus promises are presumptively gratuitous gifts

76. A seller sent the buyer an offer to sell a tract of land for \$300,000, stating that the offer "shall be irrevocable for 30 days." The seller is not a merchant. Five days later, before the buyer accepted, the seller revoked the offer. The buyer sued to enforce the original offer. Under common law:

- A. The seller's revocation is invalid because the offer expressly stated it would be irrevocable
- B. The seller's revocation is valid because the option promise was not supported by consideration
- C. The revocation is invalid because real estate offers must remain open for the time specified
- D. The revocation is valid only if the seller communicates the revocation in writing to the buyer

77. A merchant seller agreed to ship 100 widgets to a buyer "F.O.B. seller's plant." The seller delivered the widgets to a common carrier in proper condition. While in transit, the widgets were destroyed in a flood. Neither party was at fault. Under UCC § 2-509, the loss falls on:

- A. The seller, because the seller bears the risk until the goods reach the buyer's location intact
- B. Neither party, because the loss was caused by an act of God excusing performance under impossibility
- C. The seller, because shipment terms are presumed favorable to buyers under modern commercial practice
- D. The buyer, because the risk of loss passed when the goods were delivered to the carrier at the seller's plant

78. A seller of a used automobile told the buyer that the car had been driven only 50,000 miles, although the seller knew the car had actually been driven over 150,000 miles. The buyer relied on this representation in purchasing the car for \$15,000. The actual value of the car was \$8,000. The buyer's remedies include:

- A. Rescission of the contract with restitution of the purchase price, or damages for the loss in value

- B. Specific performance compelling the seller to deliver a car that has been driven only 50,000 miles
- C. Reformation of the contract to reflect the actual mileage of the vehicle as discovered after purchase
- D. Punitive damages only, because the buyer accepted delivery despite being aware of the misrepresentation

79. A doctor came upon an unconscious accident victim on a public road. The doctor provided life-saving medical care. Upon recovery, the victim refused to pay any compensation, asserting that no contract for services existed. The doctor sued for the reasonable value of the services rendered. The doctor is entitled to:

- A. Nothing, because emergency services rendered without prior agreement are presumed gratuitous
- B. The contract price established by the doctor's regular fee schedule for similar emergency services
- C. Restitution in quantum meruit for the reasonable value of the emergency medical services provided
- D. The amount the patient subjectively benefited from continuing to live, as determined by life expectancy

80. A bakery entered into a requirements contract with a flour supplier, agreeing to purchase "all the flour the bakery requires" for one year at a fixed price. After six months, the bakery dramatically expanded its operations and increased flour orders to 10 times the previous level. The supplier objected. Under UCC § 2-306:

- A. The supplier must fulfill all orders because requirements contracts impose no quantity limitation
- B. The supplier is excused only if the increased demand is unreasonably disproportionate to the prior course of dealing
- C. The contract is unenforceable due to the lack of a specified quantity term in the original agreement
- D. The supplier must fulfill orders only up to a quantity that yields the supplier a reasonable profit

81. A contract for the construction of a commercial building contained a liquidated damages clause requiring the contractor to pay \$1,000 per day for each day completion is delayed beyond the agreed deadline. The actual damages from delayed completion are estimated to be \$50 per day. The contractor completed the project 30 days late, and the owner sued for \$30,000 in liquidated damages. The court should:

- A. Enforce the clause because liquidated damages clauses are presumptively valid in commercial construction contracts
- B. Enforce the clause because the contractor agreed to it as part of the bargained-for exchange
- C. Award only the actual damages of \$1,500 because liquidated damages clauses cannot exceed proven losses
- D. Refuse to enforce the clause because it is a penalty grossly disproportionate to anticipated or actual damages

82. A seller mailed an offer to sell goods to a buyer. The offer stated that "acceptance must be communicated by return mail." The buyer received the offer and accepted by telephoning the seller. The seller did not respond. The buyer now seeks to enforce the contract. The contract:

- A. Was not formed because the offer specified the exclusive manner of acceptance as return mail
- B. Was formed because telephone acceptance is reasonable under modern commercial practice
- C. Was formed because the seller waived the manner-of-acceptance requirement by remaining silent
- D. Was formed because all acceptance manners are equally effective absent express rejection

83. A merchant seller sold a bicycle to a consumer buyer. The bicycle's tires failed catastrophically due to a manufacturing defect, causing the buyer injury. The contract included a written disclaimer of "all warranties, express or implied." Under the UCC:

- A. The disclaimer is fully effective because parties to a sale may disclaim any warranties they choose
- B. The disclaimer is effective for express warranties but not for the implied warranty of fitness
- C. The disclaimer is ineffective to bar a personal injury claim arising from a breach of warranty in a consumer goods context
- D. The disclaimer is effective only if signed by both parties on the same day as the original sale

84. A contract for the sale of land provides that "this contract is conditioned upon the buyer obtaining financing satisfactory to the buyer within 30 days of execution." The buyer rejected multiple loan offers from qualified lenders and then claimed that the financing condition had not been satisfied. The seller sued for breach. Under modern law:

- A. The condition is satisfied automatically once any qualified lender offers any rate of financing
- B. The condition operates entirely at the buyer's sole and unreviewable discretion regardless of motive
- C. The buyer's rejection terminates the contract because financing was an express condition precedent
- D. The buyer is required to exercise the discretion in good faith and not arbitrarily reject reasonable terms

85. A contractor and homeowner entered into a contract for renovation work for \$50,000. The contractor performed substantial work but breached the contract by failing to install required insulation. The reasonable cost to install the missing insulation is \$3,000. The homeowner refused to pay anything. The contractor's damages action should result in recovery of:

- A. Nothing, because failure to install insulation is a material breach precluding any recovery
- B. \$47,000, representing the contract price less the cost to complete the missing performance
- C. \$50,000, the full contract price, with the homeowner having a separate action for the breach
- D. The reasonable market value of the work performed, regardless of the original contract price

86. A seller and buyer entered into a contract for the sale of 100 widgets at \$20 each. After acceptance, the buyer discovered that the widgets were non-conforming. The buyer notified the seller of the rejection and held the widgets at the buyer's warehouse pending instructions. Two months passed without any communication from the seller. Under the UCC, the buyer may:

- A. Sell the rejected goods on the seller's account in a commercially reasonable manner to recover storage costs
- B. Treat the goods as the buyer's own property after a reasonable period of seller inaction
- C. Destroy the non-conforming goods to avoid additional storage costs and seek damages from the seller
- D. Demand replacement goods from the seller without further obligation to safeguard the originals

87. A homeowner contracted with a builder to construct a swimming pool for \$30,000. After completing approximately one-third of the work, the builder abandoned the project without justification. The reasonable value of the work performed is \$8,000. The owner has spent \$25,000 to hire another contractor to complete the project. The builder sued for restitution. The builder should recover:

- A. \$10,000, representing one-third of the original contract price for partial completion

- B. \$8,000, representing the reasonable market value of the partial performance rendered
- C. Nothing, because the builder willfully abandoned the project without justification
- D. \$5,000, representing the difference between the original contract price and the cost of completion

88. A defendant entered a convenience store, displayed a knife to the cashier, and demanded the money in the register. The cashier complied. The defendant then noticed a customer pulling out a wallet and demanded that wallet as well. The customer handed it over. The defendant is properly charged with:

- A. One count of robbery for the entire incident as a single transaction
- B. One count of robbery against the store and theft from the customer
- C. Two counts of theft because no physical force was used against the customer
- D. Two counts of robbery — one against the store and one against the customer

89. A defendant intentionally fired a gun into a crowded room with no specific target, killing one person and seriously injuring two others. The defendant claims he did not intend to kill anyone. Under common-law murder principles, the defendant is most likely guilty of:

- A. Involuntary manslaughter, because death resulted from gross negligence rather than intent to kill
- B. Murder, because firing into a crowd demonstrates a depraved heart and implied malice toward human life
- C. Voluntary manslaughter, because the killing was committed in a state of provocation in a public space
- D. Aggravated assault only, because intent to kill any specific person cannot be proven

90. A defendant was charged with conspiracy to distribute illegal drugs. The defendant claims that he had not yet completed any overt acts furthering the conspiracy at the time of his arrest. Under the modern majority rule for conspiracy:

- A. The conspiracy is complete upon the agreement plus an overt act by any conspirator in furtherance
- B. The conspiracy requires a substantial step toward distribution and significant overt acts by the defendant himself
- C. The conspiracy requires the actual commission of the underlying drug distribution offense

D. The conspiracy is not complete until each conspirator has personally performed an overt act in furtherance

91. A defendant was attacked by an assailant who began to choke him. The defendant pulled out a knife and stabbed the assailant in the chest, killing him. The defendant could have potentially escaped by retreating, but he did not attempt to do so. In a jurisdiction that follows the majority "stand your ground" approach:

- A. The defendant is guilty of murder because he failed to attempt retreat before using deadly force
- B. The defendant is guilty of manslaughter because deadly force was disproportionate to the threat
- C. The defendant is guilty only if he initiated the original confrontation with the assailant
- D. The defendant is not guilty because he had no duty to retreat before using justified deadly force

92. Three defendants planned to rob a bank. During the robbery, one defendant shot and killed a bank teller. The second defendant did not personally use force or cause the death; he merely served as the getaway driver. Under the felony-murder rule in the majority of jurisdictions:

- A. The second defendant is not guilty of murder because he did not personally cause the teller's death
- B. The second defendant is guilty of manslaughter only because his role in the robbery was secondary
- C. The second defendant is guilty of murder because a death occurred during the commission of the felony
- D. The second defendant is guilty of murder only if he knew the first defendant was armed with a firearm

93. A police officer arrested a suspect on suspicion of burglary and immediately began questioning him about the offense at the scene of arrest. The officer did not provide Miranda warnings. The suspect made incriminating statements. The prosecutor seeks to introduce the statements at trial. The statements should be:

- A. Admitted because public-safety questions immediately following arrest do not require Miranda warnings
- B. Excluded because the suspect was in custody and was subjected to interrogation without prior Miranda warnings

C. Admitted because Miranda warnings are not required at the scene of arrest before transportation to the station

D. Excluded only if the prosecutor cannot show the warnings would have been ineffective in any event

94. Police officers responded to a 911 call reporting a domestic disturbance at an apartment. Upon arrival, they heard sounds of an altercation inside. Without a warrant, they entered the apartment and arrested the occupant for assault. The occupant moves to suppress evidence obtained during the entry. The court should:

A. Deny the motion under the exigent-circumstances exception to the warrant requirement

B. Grant the motion because all warrantless entries into residences are presumptively unconstitutional

C. Deny the motion only if the officers had probable cause based on what they saw before entering

D. Grant the motion because exigent circumstances require an objectively reasonable belief of imminent danger

95. A bank teller was given \$10,000 by a customer for deposit into the customer's account. Instead of completing the transaction, the teller pocketed the cash and altered the bank records to conceal the transaction. The teller is most properly charged with:

A. Larceny, because she took the customer's money without consent

B. False pretenses, because she misrepresented her intention to deposit the funds

C. Robbery, because she took the cash in her capacity as an agent for the customer

D. Embezzlement, because she was lawfully entrusted with the money in her capacity as bank employee

96. A defendant was indicted on charges of armed robbery. During the indictment phase, the defendant has not yet retained counsel and has not been arraigned. Police seek to conduct a lineup identification. The defendant requests that counsel be present. Under the Sixth Amendment:

A. The defendant has no right to counsel during the lineup because no formal charges have yet been filed

B. The defendant has no right to counsel during the lineup because identification procedures are not custodial

C. The defendant has the right to counsel at the lineup because formal adversarial proceedings have commenced

D. The defendant has the right only to a Fourteenth Amendment due process review of the lineup procedure

97. A defendant intended to murder his neighbor. He purchased poison, mixed it into the neighbor's coffee, and placed the coffee cup on the neighbor's porch. The neighbor never drank the coffee because the defendant suddenly changed his mind and retrieved the cup before the neighbor arrived. The defendant is most properly charged with:

A. Conspiracy to commit murder, because the defendant took steps in furtherance of the agreed-upon plan

B. Attempted murder, because the defendant took a substantial step toward the crime before abandonment

C. Assault with intent to murder, because the defendant placed the poisoned coffee within reach

D. No offense, because the defendant voluntarily abandoned his plan before the neighbor was harmed

98. A police officer obtained a search warrant for a home based on an affidavit from an informant. The warrant was facially valid but the affidavit contained material misrepresentations that the officer made deliberately. The search uncovered illegal drugs. The defendant moves to suppress. The court should:

A. Grant suppression under *Franks v. Delaware* because the warrant was procured through deliberate false statements

B. Deny suppression under the good-faith exception because the officer relied on a facially valid warrant

C. Deny suppression because the warrant itself was facially valid on its face when issued

D. Grant suppression only if the informant testifies that the misrepresentations affected probable cause

99. A defendant suffered from a severe mental illness at the time he committed a homicide. He understood that his act was illegal but believed that voices commanded him to commit the act and felt compelled to obey. The jurisdiction follows the M'Naghten test for insanity. The defendant's insanity defense:

A. Succeeds because the defendant could not control his actions due to mental illness

B. Succeeds because the defendant suffered from a severe mental disease at the time of the act

C. Succeeds because the voices are evidence of a defective mental state that prevented moral judgment

D. Fails because the defendant understood the nature and wrongfulness of his act at the time

100. A suspect was given Miranda warnings and invoked his right to remain silent. The police ceased questioning. Two hours later, after the suspect had been moved to a different room and given fresh Miranda warnings, a different officer began questioning him about an unrelated offense. The suspect waived his rights and made incriminating statements. The statements are:

- A. Inadmissible because once a suspect invokes the right to silence, all police questioning must permanently cease
- B. Inadmissible because the police circumvented the original invocation by using a different officer
- C. Admissible if the police scrupulously honored the initial invocation and the second questioning concerned a different offense
- D. Admissible only if the suspect expressly initiated the conversation that led to the new round of questioning

101. A defendant is arrested without a warrant and brought to the police station. Several hours later, before any judicial determination of probable cause, the defendant makes incriminating statements after waiving Miranda rights. The defendant later moves to suppress the statements. Under *County of Riverside v. McLaughlin*:

- A. The statements are inadmissible because no judicial determination of probable cause had been made
- B. The statements are admissible if no more than 48 hours had elapsed between arrest and the statements
- C. The statements are inadmissible because warrantless arrests require immediate judicial review before questioning
- D. The statements are admissible only if the defendant's probable cause hearing had already commenced

102. A defendant walked into his home and found his spouse engaged in sexual relations with another person. In a state of rage, the defendant immediately attacked the other person, killing him with a heavy object. The defendant is charged with murder. The defendant's best defense is:

- A. Self-defense, because the defendant reasonably believed his home was being invaded by an intruder
- B. Defense of property, because the defendant was protecting his marital home from unauthorized presence

- C. Justifiable homicide, because the defendant acted to protect the sanctity of marital relationships
- D. Voluntary manslaughter, because adequate provocation in the heat of passion reduces murder to manslaughter

103. Police arrested a defendant outside her vehicle for an outstanding warrant. After the defendant was placed in the patrol car, officers searched her vehicle. They found illegal drugs in the glove compartment. Under *Arizona v. Gant*, the search is:

- A. Lawful because police may always search the entirety of a vehicle incident to an arrest
- B. Lawful only if the officers had independent probable cause to believe the vehicle contained contraband
- C. Unlawful because the defendant was secured and unable to access the vehicle at the time of the search
- D. Unlawful because all warrantless vehicle searches violate the Fourth Amendment without exigent circumstances

104. A defendant told a jeweler that he wanted to purchase a diamond necklace and asked to "take it home for inspection," promising to return with payment the next day. The defendant intended to keep the necklace and never return. The defendant is most properly charged with:

- A. Larceny by trick, because the defendant obtained possession through fraudulent misrepresentation of intent
- B. Embezzlement, because the defendant was given possession with the jeweler's full consent
- C. Robbery, because the defendant took the necklace through a coercive scheme
- D. False pretenses, because the jeweler transferred title to the necklace based on the defendant's promise

105. Police obtained evidence in violation of the Fourth Amendment. The defendant was tried and convicted, and on appeal, the conviction was reversed and remanded for a new trial. At the second trial, the prosecution introduced testimony from a witness whose identity was learned through the unlawful search. The defendant moved to exclude. Under *Wong Sun v. United States*:

- A. The testimony is admissible because witness testimony is not subject to the exclusionary rule
- B. The testimony is inadmissible because all evidence derived from a Fourth Amendment violation is barred

C. The testimony is inadmissible as fruit of the poisonous tree unless the connection is sufficiently attenuated

D. The testimony is admissible if the witness would have been discovered through an independent source

106. A defendant gave his friend a gun, knowing the friend intended to use it to commit a robbery. During the robbery, the friend shot and killed a clerk, an outcome the defendant did not specifically intend or foresee. Under the majority rule for accomplice liability:

A. The defendant is not guilty of murder because he did not personally cause the clerk's death

B. The defendant is guilty of murder because the killing was a foreseeable consequence of the underlying robbery

C. The defendant is guilty only of being an accessory after the fact to the murder offense committed

D. The defendant is guilty of conspiracy to commit robbery but not for the resulting homicide

107. At trial, the prosecution sought to introduce a recorded statement made by a witness during a police interrogation. The witness was unavailable at trial because she had died. The statement was made when the witness was not under oath and was not subject to cross-examination. Under *Crawford v. Washington*:

A. The statement is admissible because witness unavailability satisfies the Confrontation Clause requirement

B. The statement is admissible if it bears sufficient indicia of reliability under the circumstances

C. The statement is inadmissible only if the defendant can show actual prejudice from its admission

D. The statement is inadmissible because it is testimonial and the defendant had no prior chance to cross-examine

108. A defendant broke into a home at 3:00 a.m. with the intent to steal valuables. Once inside, he discovered the home was unoccupied and contained nothing of value. He left without taking anything. Under common-law burglary, the defendant is:

A. Guilty of burglary because he broke and entered a dwelling at night with intent to commit a felony

B. Guilty only of trespass because no theft was actually accomplished during the unauthorized entry

C. Guilty of attempted larceny because no actual taking of property occurred during the incident

D. Not guilty of any offense because there were no actual valuables present to take from the dwelling

109. A police officer applied for a search warrant based on information from an anonymous informant. The affidavit established the informant's reliability and basis of knowledge, both of which were independently corroborated by police investigation. The warrant was issued and the search uncovered evidence. The defendant moves to suppress. Under *Illinois v. Gates*:

- A. The warrant is invalid because anonymous informants cannot establish probable cause as a matter of law
- B. The warrant is invalid unless the informant's identity is disclosed before the warrant is issued
- C. The warrant is valid because the totality of the circumstances established probable cause to search
- D. The warrant is valid only if police personally observed the alleged criminal activity at the location

110. A defendant fired a gun in the air during a celebration with no specific intent to harm anyone. The bullet came down and struck a person located approximately one mile away, killing him. The defendant was unaware that the person was present. The defendant is most likely guilty of:

- A. First-degree murder because firing a gun is conduct demonstrating premeditated intent to kill
- B. Involuntary manslaughter because the death resulted from criminally negligent conduct
- C. No offense because the defendant did not intend to harm anyone with the celebratory gunfire
- D. Voluntary manslaughter because the conduct was inherently dangerous to human life

111. A defendant was charged with first-degree murder. At trial, the jury acquitted him of first-degree murder but was unable to reach a verdict on second-degree murder. The prosecution seeks to retry him on second-degree murder. The defendant moves to dismiss on double jeopardy grounds. The court should:

- A. Dismiss because acquittal on the greater offense bars all related lesser charges
- B. Dismiss because second-degree murder is a lesser-included offense of first-degree murder
- C. Permit retrial because each degree of murder constitutes a distinct and separate offense
- D. Permit retrial because the jury hung on second-degree murder, which is not the same offense as first-degree

112. A defendant suffered from a recognized mental disease at the time of an offense. He understood that what he was doing was wrong but could not control his behavior due to an irresistible impulse caused by his illness. The jurisdiction follows the M'Naghten test for insanity. The defendant:

- A. Has a valid insanity defense because he suffered from a recognized mental disease at the time
- B. Has a valid defense because the impulse was caused by a recognized mental illness independent of will
- C. Does not have a valid insanity defense because M'Naghten does not recognize volitional impairment
- D. Does not have a valid defense because the impulse was not directly caused by the mental disease

113. A criminal defendant was charged with a misdemeanor punishable by up to 6 months in jail. The judge sentenced him to 30 days in jail after a trial in which he was unrepresented and had not waived counsel. The defendant appeals. Under *Argersinger v. Hamlin*:

- A. The conviction must be reversed because counsel must be appointed when actual imprisonment is imposed
- B. The conviction is valid because the right to counsel applies only to felony cases under the Sixth Amendment
- C. The conviction is valid because the defendant could have requested counsel but chose to proceed alone
- D. The conviction must be reversed because all misdemeanors automatically require appointed counsel

114. A defendant was given a rental car for a one-week period. After the rental period ended, the defendant did not return the car and instead drove it to another state, intending to use it permanently. The defendant is most properly charged with:

- A. Larceny, because the defendant took the car without the owner's permission
- B. Embezzlement, because the defendant lawfully obtained possession and then converted it
- C. Robbery, because the defendant used force or intimidation to retain possession of the vehicle
- D. False pretenses, because the defendant obtained the car through fraudulent representations

115. At trial, a witness sought to testify that immediately after a car accident, the plaintiff exclaimed, "That truck just ran the red light!" The defense objected on hearsay grounds. The plaintiff's statement was

made within 30 seconds of the collision, while the plaintiff was still excited and visibly shaken. The court should:

- A. Sustain the objection because the statement is offered to prove the truth of what was asserted
- B. Sustain the objection because the plaintiff is available to testify directly at trial
- C. Overrule the objection because the statement qualifies as an excited utterance under Rule 803(2)
- D. Overrule the objection because all statements made at the scene of an accident are admissible

116. At trial in a contract dispute, a witness offered to testify that "after the defendant signed the contract, he told me he had no intention of performing." The defendant objected on hearsay grounds. The court should:

- A. Sustain the objection because the statement is being offered to prove the defendant's intent
- B. Sustain the objection because the statement was made outside court without an oath
- C. Overrule the objection because state-of-mind statements always qualify as non-hearsay
- D. Overrule the objection because the statement is an opposing party's statement under Rule 801(d)(2)

117. The defendant is on trial for assault. The prosecution seeks to introduce evidence that the defendant committed three prior assaults to prove the defendant has a propensity for violent behavior. Under Federal Rule of Evidence 404(b):

- A. The evidence is inadmissible because character evidence may not be used to prove conformity with prior acts
- B. The evidence is admissible because prior acts of the same type are always relevant to current charges
- C. The evidence is admissible only if more than ten years have passed since the prior assaults
- D. The evidence is admissible if the prior assaults resulted in convictions for serious crimes

118. In a personal injury action, the plaintiff seeks to introduce evidence that after the accident, the defendant repaired the dangerous condition that allegedly caused the injury. The defendant objects. Under Federal Rule of Evidence 407:

- A. The evidence is admissible because subsequent repairs are always relevant to negligence determinations
- B. The evidence is admissible because they show the defendant's awareness of the dangerous condition
- C. The evidence is inadmissible to prove negligence or culpable conduct, though it may be admissible for other purposes
- D. The evidence is inadmissible for any purpose because it constitutes inadmissible character evidence

119. A witness in a fraud trial testifies that he received an email from the defendant containing incriminating statements. To authenticate the email, the proponent shows that the email was sent from the defendant's known email address and contained information only the defendant could have known. Under Federal Rule of Evidence 901:

- A. The email is inadmissible because electronic communications require expert authentication testimony
- B. The email is admissible because sufficient evidence supports a finding that the defendant authored it
- C. The email is inadmissible because the defendant must testify to authenticate his own communications
- D. The email is admissible only if the proponent can verify the email's complete chain of custody from sender to receiver

120. At a civil trial, an attorney is called to testify about communications she had with her former client. The communications were made for the purpose of seeking legal advice. The former client is now an opposing witness. The attorney objects to disclosure on grounds of attorney-client privilege. The court should:

- A. Override the privilege because the attorney-client relationship has ended
- B. Override the privilege because the former client is testifying voluntarily
- C. Override the privilege only if the communications were intended to facilitate a fraud
- D. Uphold the privilege because the privilege survives the end of the attorney-client relationship and belongs to the client

121. A witness in a civil case testifies on direct examination. On cross-examination, the opposing party seeks to impeach the witness by showing that she was convicted of perjury 12 years ago. Under Federal Rule of Evidence 609(b):

- A. The conviction is admissible because perjury convictions are always relevant to credibility
- B. The conviction is inadmissible because convictions older than ten years can never be used for impeachment
- C. The conviction is admissible only if its probative value substantially outweighs its prejudicial effect
- D. The conviction is inadmissible because civil cases do not permit impeachment by conviction

122. In a contract dispute, a party seeks to prove the terms of a written agreement by offering a photocopy of the original. The original is no longer available because it was destroyed in a fire. Under Federal Rules of Evidence 1003 and 1004:

- A. The photocopy is admissible because duplicates are admissible unless a genuine question of authenticity exists
- B. The photocopy is inadmissible because only the original document satisfies the best evidence rule
- C. The photocopy is admissible only if both parties stipulate to its authenticity in advance of trial
- D. The photocopy is inadmissible because the proponent has not shown reasonable diligence in seeking the original

123. At trial, a lay witness sought to testify that "the defendant appeared intoxicated at the time of the accident." The defendant objected on grounds that lay witnesses cannot offer opinions. Under Federal Rule of Evidence 701:

- A. The testimony is inadmissible because intoxication is a medical condition requiring expert testimony
- B. The testimony is admissible because lay opinion may be based on the witness's perception and is helpful
- C. The testimony is inadmissible because lay witnesses can testify only to objective physical observations
- D. The testimony is admissible only if the witness has previously witnessed the defendant intoxicated

124. A prosecutor in a homicide trial seeks to introduce a 911 call made by the victim immediately after being attacked. The victim stated, "John just stabbed me!" The victim died before trial. The defense objects on hearsay grounds. Under Federal Rule of Evidence 803(2):

- A. The statement is inadmissible because the victim is unavailable to be cross-examined at trial

- B. The statement is inadmissible because identifying the assailant requires personal observation under oath
- C. The statement is admissible only if the prosecutor first establishes the victim's lack of bias
- D. The statement is admissible as an excited utterance made under the stress of the startling event

125. At trial, a party sought to introduce expert testimony about a novel scientific method for analyzing DNA evidence. The opposing party objected, arguing the method lacks acceptance in the scientific community. Under *Daubert v. Merrell Dow*:

- A. The court must exclude the expert testimony because all novel scientific methods are unreliable
- B. The court must admit the expert testimony because qualifications, not method, control admissibility
- C. The court must determine whether the expert's methodology is reliable and the testimony will assist the trier of fact
- D. The court must defer to the jury to weigh the credibility of any scientific evidence offered at trial

126. In a criminal trial, a witness on direct examination claimed not to remember the events of the day in question. The prosecutor wishes to refresh the witness's recollection by showing him a police report he prepared at the time. Under Federal Rule of Evidence 612:

- A. The witness may review the document to refresh recollection, and the opposing party may inspect the document
- B. The witness may review the document only if it was admitted into evidence in advance of testimony
- C. The witness may not review the document because it is being used to refresh memory before testimony
- D. The witness may review the document only if the prosecutor agrees to make him available for cross-examination

127. At trial, a witness sought to testify that the deceased victim, before her death, told a friend that she was afraid the defendant would kill her. The defense objects. The prosecution offers the statement to show the victim's state of mind. The court should:

- A. Sustain the objection because the statement is offered to prove the truth of the victim's belief

- B. Overrule the objection if the victim's state of mind is at issue, such as in a defense of consent or self-defense
- C. Sustain the objection because hearsay from a deceased witness is inadmissible without the dying declaration
- D. Overrule the objection because all statements about a defendant's identity are admissible at trial

128. The defendant is on trial for federal drug trafficking. The prosecution calls the defendant's wife to testify about confidential communications she had with the defendant during their marriage about the drug operation. The wife is willing to testify. The defendant objects, asserting marital privilege. Under federal common law:

- A. The wife may testify because she has chosen to waive the privilege voluntarily
- B. The wife may testify because all marital communications can be compelled in drug trafficking prosecutions
- C. The wife may not testify because the spousal testimonial privilege belongs to her alone to assert or waive
- D. The wife may not testify about confidential marital communications because that privilege belongs to both spouses

129. At trial, a witness testified that she remembered preparing a written statement shortly after an incident but no longer remembers the events. The prosecutor seeks to admit the written statement under Federal Rule of Evidence 803(5). The court should admit the statement:

- A. Only if the witness is unavailable and her testimony cannot be obtained by other means
- B. Only if the original statement was made under oath and reviewed by an attorney before signing
- C. As past recollection recorded, with the statement read to the jury but not received as an exhibit
- D. As an exhibit to be read into evidence and provided to the jury as a regularly maintained record

130. The defendant is on trial for fraud. He seeks to introduce testimony from a longtime friend that the defendant is "an honest person." Under Federal Rule of Evidence 404(a)(2):

- A. The defendant may introduce pertinent character evidence in his defense, and the prosecution may then rebut
- B. The defendant cannot introduce character evidence in any criminal case for any purpose at trial
- C. The defendant may introduce character evidence only after the prosecution opens the door to character
- D. The defendant may introduce character evidence only after first stipulating to the facts of the alleged offense

131. After a customer slipped and fell in a grocery store, the store installed non-slip mats in the area where the fall occurred. In the customer's lawsuit, the customer seeks to introduce evidence of the mat installation. The defendant objects under Federal Rule of Evidence 407. The court should:

- A. Admit the evidence because subsequent remedial measures are always relevant to issues of negligence
- B. Exclude the evidence to prove negligence, though it may be admitted to show ownership if disputed
- C. Admit the evidence because the policy rationale of Rule 407 does not apply to consumer plaintiff cases
- D. Exclude the evidence for any purpose because subsequent remedial measures are categorically inadmissible

132. At trial, the prosecution introduced a portion of a recorded statement made by the defendant during a police interview. The defense seeks to introduce additional portions of the same recording to provide context. Under Federal Rule of Evidence 106:

- A. The defense must request leave of court and may introduce the rest only if the prosecution agrees
- B. The defense may introduce additional portions only after the prosecution rests its case-in-chief
- C. The defense may not introduce the additional portions because they constitute self-serving hearsay
- D. The defense may require the prosecution to introduce other portions that fairness requires in context

133. A witness sought to testify at trial that a third party had told her, "The defendant told me he was going to kill the victim." The defendant objected on hearsay grounds. The third party did not testify at trial. The statement involves:

- A. Single-level hearsay that is admissible as an opposing party statement under Rule 801(d)(2)

- B. Single-level hearsay that is admissible as evidence of intent under the Hillmon doctrine
- C. Double hearsay, requiring each level to satisfy an exception or exclusion to be admissible
- D. Direct evidence not subject to the hearsay rule because the statement concerns future conduct

134. A witness in a civil case testified about events that occurred at a meeting. On cross-examination, it was revealed that the witness was not actually present at the meeting and had only heard about it from others. The opposing party moves to strike the testimony. Under Federal Rule of Evidence 602:

- A. The testimony should be stricken because witnesses must testify only from personal knowledge
- B. The testimony should remain because second-hand information is admissible if the source is identified
- C. The testimony should be stricken only if the witness lacks expertise to interpret what others told him
- D. The testimony should remain if the opposing party fails to object before the witness completed direct examination

135. A defendant's medical record from a hospital visit contained a statement by the defendant that "I was driving 80 miles per hour when the accident occurred." The prosecutor seeks to introduce the record at trial under Federal Rule of Evidence 803(6). The defense objects. The court should:

- A. Admit the entire record because business records are exempt from the hearsay rule
- B. Admit the record but exclude the defendant's statement unless it qualifies as a separate exception
- C. Exclude the entire record because patient statements in medical records are not admissible at trial
- D. Admit the record only if the hospital staff member who created the record testifies in person

136. At trial in a wrongful death action, the plaintiff seeks to introduce a statement made by the decedent. The decedent told her sister, "I'm going to meet John at the warehouse tonight to confront him about the money." The decedent was killed at the warehouse later that evening. The defendant objects. Under the Hillmon doctrine and Rule 803(3):

- A. The statement is inadmissible because it identifies a third party and constitutes inadmissible hearsay
- B. The statement is admissible to prove that John was present at the warehouse on the night in question
- C. The statement is inadmissible because the decedent's intent is not relevant to wrongful death claims

D. The statement is admissible to prove the decedent's then-existing intent to go to the warehouse that night

137. At trial, a witness testified that the defendant was at the crime scene. On cross-examination, defense counsel sought to question the witness about a prior inconsistent statement she made to police. The prior statement was not under oath. Under Federal Rule of Evidence 613(b):

- A. The witness may be questioned about the prior inconsistent statement, with extrinsic evidence allowed if proper foundation is laid
- B. The witness may not be questioned about the prior statement because it was not made under oath
- C. The witness may be questioned only if she first denies making any prior inconsistent statement
- D. The witness may be questioned only if the prior statement was reduced to writing and signed

138. In a federal civil case, a doctor is called to testify about confidential statements made by a patient. The patient asserts the physician-patient privilege. The case is in federal court based on diversity jurisdiction, applying state substantive law. Under Federal Rule of Evidence 501:

- A. The federal common-law privilege applies and there is no physician-patient privilege in federal court
- B. The state physician-patient privilege does not apply because federal courts have their own privilege rules
- C. State law on privileges applies because the underlying case involves state substantive law
- D. The privilege applies only if both the state and federal jurisdictions recognize physician-patient confidentiality

139. A police officer testified at trial that the deceased victim of an assault told him just before she died, "It was Roberto who stabbed me." The defense objected, arguing the statement is inadmissible hearsay. Under Federal Rule of Evidence 804(b)(2) (dying declaration):

- A. The statement is admissible because dying declarations are universally admissible in any criminal case
- B. The statement is admissible only if the victim believed her death was imminent when making the statement
- C. The statement is inadmissible because police officers may not testify to statements by deceased victims

D. The statement is admissible because the victim is unavailable and the statement identifies her assailant

140. A party seeks to introduce a chain of custody document for biological evidence. The original chain of custody log shows the evidence was collected, transferred between officers, and stored at the police evidence room. Under Federal Rule of Evidence 901:

- A. The evidence must be excluded if there are any gaps or irregularities in the chain of custody
- B. The evidence is automatically admissible because chain of custody documents are public records
- C. The chain of custody must be proved by the personal testimony of each individual who handled the evidence
- D. The chain of custody must establish reasonable certainty that the evidence has not been altered, with gaps going to weight

141. At trial, defense counsel attempted to introduce evidence that the plaintiff in a personal injury case had been involved in three prior motor vehicle accidents within the past five years. The plaintiff objects. Under Federal Rule of Evidence 404(b):

- A. The evidence is admissible because prior accidents establish the plaintiff's propensity for recklessness
- B. The evidence is admissible because it bears on the plaintiff's credibility about the current accident
- C. The evidence is inadmissible to prove propensity but may be admitted for limited purposes like causation
- D. The evidence is admissible because civil cases impose lower standards for character evidence than criminal cases

142. At trial, the plaintiff asks the court to take judicial notice that "the sun rises in the east." The defendant objects. Under Federal Rule of Evidence 201:

- A. The court may take judicial notice because the fact is not subject to reasonable dispute and is generally known
- B. The court may take judicial notice only after expert testimony confirming the astronomical observation
- C. The court may not take judicial notice because the issue must be tried as a question of fact
- D. The court may take judicial notice only if both parties stipulate to its accuracy in advance of trial

143. At trial, a witness sought to testify that he heard the defendant say to a third party, "I don't care what happens to anyone, I'm going to drive home no matter how much I've had to drink." The prosecutor offers the statement as evidence of recklessness. The defense objects. The statement is:

- A. Inadmissible hearsay because it concerns the defendant's intent regarding future conduct
- B. Admissible because it is an opposing party's statement under Rule 801(d)(2)
- C. Inadmissible because it relates to the defendant's state of mind without other evidence of intoxication
- D. Admissible only if the prosecutor can establish foundation through expert testimony about intent

144. A party seeks to authenticate a handwritten letter at trial. The party calls a witness who is not a handwriting expert but has seen the alleged author's handwriting on numerous occasions. The witness identifies the writing as the author's. Under Federal Rule of Evidence 901(b)(2):

- A. The witness cannot authenticate the handwriting because lay witnesses cannot testify to identification
- B. The witness can authenticate only if first qualified as an expert in document examination
- C. The witness can authenticate only if the alleged author is present in court to be examined
- D. The witness may authenticate based on familiarity with the handwriting acquired outside of litigation

145. A landowner conveyed Blackacre "to my son for life, then to my daughter in fee simple." The son and daughter are both alive. The daughter wishes to sell her interest now. Under the common law of estates:

- A. The daughter cannot sell because her interest is contingent upon outliving her brother
- B. The daughter cannot sell because her future interest cannot be transferred until it becomes possessory
- C. The daughter may sell her vested remainder interest immediately because it is a present interest
- D. The daughter may sell only if she first obtains her brother's written consent to the transaction

146. A landowner granted a written easement to a neighbor for the purpose of crossing the landowner's property to reach the neighbor's land. The neighbor used the easement for 15 years. The landowner then sold his property. The new owner blocked access. The neighbor sued. The easement:

- A. Continues to bind the new owner because written easements are generally appurtenant and run with the land
- B. Was extinguished by the sale because easements are personal rights that do not transfer to new owners
- C. Continues only if the new owner expressly assumed the easement obligation in the deed
- D. Continues only for an additional five years because easements are presumptively limited to 20 years

147. A claimant occupied a piece of land for 22 years, using it openly and continuously as her own. The true owner of the land did not object during this time. The statutory adverse possession period in the jurisdiction is 20 years. The claimant's use was hostile, actual, open, notorious, and exclusive. The claimant:

- A. Cannot acquire title because she did not initially purchase the land or pay taxes
- B. Cannot acquire title because the true owner's failure to act constitutes implied consent
- C. May acquire title only if the original owner expressly disclaims any interest in the land
- D. May acquire title because all elements of adverse possession have been satisfied for the statutory period

148. Owner A conveyed Blackacre to B, who failed to record the deed. Owner A then fraudulently conveyed Blackacre to C, who paid value, took without notice of B's interest, and immediately recorded the deed. The jurisdiction has a notice statute. The valid title belongs to:

- A. B, because B's deed was executed and delivered first regardless of recording
- B. C, because C is a bona fide purchaser for value without notice who took title from A
- C. B, because A had no remaining interest to convey after the original conveyance to B
- D. A, because A's fraud invalidates both conveyances and reverts title in the original grantor

149. Three friends took title to a parcel as joint tenants with right of survivorship. One of the joint tenants conveyed her interest to her son. The remaining two original joint tenants did not consent to the conveyance. Following the conveyance, the title status is:

- A. The conveyance is void because joint tenants cannot transfer without consent from all other joint tenants

- B. The original joint tenancy continues with the son substituting for the original tenant
- C. The two original tenants hold as joint tenants between themselves, with the son holding as a tenant in common
- D. The entire estate has been converted to a tenancy in common among all three parties

150. A homeowner gave a mortgage on her home to Bank A in exchange for a \$200,000 loan. One year later, she gave a second mortgage on the same property to Bank B for \$50,000. Bank A's mortgage was recorded; Bank B's mortgage was also recorded but later in time. The homeowner defaults on both. Upon foreclosure, the proceeds are insufficient to pay both:

- A. Bank A has priority for repayment because its mortgage was recorded first
- B. The two banks share the proceeds proportionally based on the amount of their respective loans
- C. Bank B has priority because it was the more recent lender and bears greater diligence in monitoring
- D. The proceeds are paid to the homeowner first, then distributed to the banks based on negotiation

151. A grantor conveyed Blackacre "to A for life, then to B and his heirs if B reaches age 21." At the time of the conveyance, B is 15 years old. A is the present life tenant. B's interest is best characterized as:

- A. A vested remainder subject to open because B's siblings may also share
- B. A contingent remainder because B's interest is subject to a condition precedent of reaching age 21
- C. An executory interest because B's interest follows A's life estate
- D. A vested remainder subject to total divestment because B is currently identified

152. A tenant leased an apartment for a one-year term. Halfway through the term, the heating system failed in winter, making the apartment uninhabitable. The landlord refused to make repairs despite repeated requests. The tenant moved out and stopped paying rent. The landlord sued for unpaid rent. The tenant's best defense is:

- A. Failure of consideration, because the landlord failed to maintain the property in usable condition
- B. Constructive eviction by the lessor, because the failure to repair forced the tenant to vacate

- C. Frustration of purpose, because the heating failure defeated the principal purpose of the lease
- D. Breach of the implied warranty of habitability, requiring the apartment to meet basic living standards

153. A developer sold lots in a residential subdivision. Each deed contained a restrictive covenant stating that "the property shall be used only for residential single-family purposes." Twenty years later, surrounding land use has changed to predominantly commercial. A homeowner seeks a declaratory judgment that the covenant is no longer enforceable. The court should:

- A. Always enforce the covenant because restrictive covenants are valid for the duration specified in the deed
- B. Always invalidate the covenant because surrounding land use changes make all original covenants obsolete
- C. Apply the doctrine of changed conditions and weigh whether the covenant's purpose has been substantially frustrated
- D. Apply the doctrine of laches and bar enforcement because the homeowner waited too long to seek relief

154. In a race-notice jurisdiction, Owner A conveyed Blackacre to B for value. B failed to record. Owner A then conveyed the same property to C for value. C had no notice of B's interest. C recorded immediately. B subsequently recorded. Which party has superior title?

- A. C, because C is a bona fide purchaser without notice and recorded first
- B. B, because B's conveyance was first in time despite the subsequent recording by C
- C. A, because the double conveyance is fraudulent and invalidates both transactions
- D. B and C as tenants in common, with priority of payment determined by recording dates

155. A landowner granted an oral easement to her neighbor to use a driveway for a period of 20 years. The neighbor used the driveway for 5 years and made significant improvements based on the agreement. The landowner now seeks to revoke the easement. Under most jurisdictions:

- A. The easement is fully enforceable because oral easements are valid for any agreed duration
- B. The easement is automatically unenforceable because all easements must be in writing under the Statute of Frauds

- C. The easement may be revoked at any time because oral grants create only licenses, not easements
- D. The easement may be enforceable through estoppel because of detrimental reliance and improvements

156. A grantor signed and delivered a deed to a grantee that contained the proper legal description and statement of intent to convey Blackacre. The deed did not include the word "heirs" or "successors and assigns." Under the modern law of conveyances:

- A. The deed is invalid because the words "heirs" are required under common law to create any estate
- B. The deed conveys a fee simple absolute by default because modern law presumes a fee simple
- C. The deed conveys a life estate because it lacks the words of inheritance required for a fee simple
- D. The deed is invalid because it lacks the proper formality required for residential property conveyances

157. A buyer contracted to purchase a parcel of land. Upon examining the title, the buyer's attorney discovered an outstanding mortgage in the amount of \$50,000 owed to a third party. The seller has not satisfied the mortgage. The buyer refuses to close. Under the common law of marketable title:

- A. The buyer must close because all properties have some form of encumbrances that are routinely encountered
- B. The buyer must close because the buyer's obligations under the contract are independent of clean title
- C. The buyer is not required to close because outstanding mortgages constitute defects in marketable title
- D. The buyer must close only after deducting the mortgage amount from the agreed purchase price

158. A and B own adjoining parcels. A acquired an easement by necessity over B's land to access a public road, as A's parcel had no other access. Later, A purchased an additional parcel that provides access to the road. B argues the easement should be terminated. The easement:

- A. May be terminated because the necessity that gave rise to the easement no longer exists
- B. Cannot be terminated because easements by necessity continue regardless of subsequent property acquisitions
- C. May be terminated only if A expressly disclaims the easement in writing after acquiring the alternative access

D. Continues to exist but may be reduced to non-exclusive use through B's lawful property development

159. A landlord leased commercial property to a tenant for a 5-year term. Two years into the lease, the tenant assigned all of his rights and obligations to a third party. The landlord did not consent to the assignment but the contract was silent about assignments. Six months later, the assignee defaulted on rent. The landlord sued the original tenant. The original tenant:

- A. Is not liable because the assignment relieved him of any further obligation to pay rent
- B. Is liable only for rent due during the period before the assignment took place
- C. Is liable only if the landlord first attempts collection from the current assignee
- D. Remains liable for rent because an assignment does not release the original tenant without a novation

160. A grantor conveyed Blackacre "to A for life, then to the grantor's heirs." Under the doctrine of worthier title at common law:

- A. The grantor's heirs receive a remainder interest because the worthier title doctrine no longer applies
- B. The grantor retains a reversion because the doctrine prevents conveyance to one's own heirs
- C. A receives a fee simple absolute through merger of present and future interests
- D. The grantor's heirs receive a contingent remainder because they are not yet ascertained

161. A claimant moved onto a parcel of unoccupied land, erecting a cabin and using it as her primary residence. After 8 years, she abandoned the property entirely, leaving no possessions and showing no intent to return. After 3 years away with no return, she came back. The statute of limitations in the jurisdiction is 15 years. After 4 more years, the true owner filed a quiet title action. The claimant:

- A. Has acquired title because her possession totals more than 15 years calendar time
- B. Has acquired title because the original entry was hostile and exclusive
- C. Has not acquired title because the abandonment for 3 years interrupted the continuity required for adverse possession
- D. Has not acquired title because the original entry was without color of title

162. A grantor conveyed Blackacre "to A and her heirs so long as the property is used for agricultural purposes, but if not, then to B and her heirs." A's interest is best characterized as:

- A. A fee simple subject to executory limitation, with B holding an executory interest
- B. A fee simple absolute because the limitation has not yet taken effect at conveyance
- C. A determinable fee simple with the grantor retaining a possibility of reverter
- D. A life estate followed by remainder in B subject to a condition subsequent

163. Two parcels were originally owned by one person. The owner used a driveway on Parcel 1 to access Parcel 2 for many years. The owner then sold Parcel 2 to a buyer, who continued to use the driveway. The original owner now blocks access from Parcel 1. The buyer claims an implied easement. The court should grant the easement if:

- A. The two parcels were originally part of one tract owned by the same person at any point
- B. The driveway was apparent and continuous before the severance of the parcels
- C. The easement is reasonably necessary for the buyer's enjoyment of Parcel 2 after severance
- D. All three conditions are satisfied: prior common ownership, prior use that was continuous and apparent, and reasonable necessity

164. A homeowner with a mortgage sold her property to a buyer who explicitly assumed the mortgage. After the sale, the buyer defaulted on payments. The lender sought to foreclose and also pursued a deficiency judgment against the buyer. The original homeowner:

- A. Has no continuing liability because the sale transferred all interests in the property to the buyer
- B. Is liable only if the lender's deficiency judgment proves insufficient against the buyer
- C. Remains personally liable on the original promissory note as the original borrower
- D. Is liable only as a guarantor and only after the lender exhausts all remedies against the buyer

165. A grantor conveyed property to a grantee using a quitclaim deed. After the conveyance, it was discovered that the grantor had not had valid title to a portion of the property. The grantee sued for breach of warranty. Under the common law of conveyances:

- A. The grantor is liable because all deeds carry an implied warranty of good title under modern law
- B. The grantor is not liable because a quitclaim deed conveys only whatever interest the grantor has without warranties
- C. The grantor is liable because conveying property without warning of title defects is fraudulent
- D. The grantor is liable only if the grantee paid more than the fair market value of the property received

166. A husband and wife took title to property as tenants by the entirety. The husband, without his wife's knowledge or consent, conveyed his interest in the property to a third party. The wife now seeks to set aside the conveyance. Under traditional common law:

- A. The conveyance is void because tenants by the entirety cannot unilaterally transfer their interests
- B. The conveyance creates a tenancy in common between the wife and the husband's transferee
- C. The conveyance severs the tenancy by the entirety and creates a joint tenancy with the third party
- D. The conveyance is valid because all spousal property may be transferred without the other spouse's consent

167. A tenant installed an expensive air-conditioning unit in her leased apartment. The unit was bolted to the wall and could be removed only with significant damage to the wall. When the lease ended, the tenant wished to remove the unit. The landlord argued the unit had become a fixture. Under the common law of fixtures, the unit is most likely:

- A. Personal property that the tenant may remove without restriction at lease end
- B. A fixture that the landlord may sell back to the tenant at a reduced price
- C. Personal property only if the lease expressly preserves the tenant's right to remove it
- D. A fixture that has become part of the realty and cannot be removed without the landlord's consent

168. A deed contained a covenant requiring the grantee to maintain a hedge as a boundary marker. The grantee complied for several years and then sold the property to a buyer. The original grantor seeks to enforce the covenant against the buyer. For the covenant to run with the land at law:

- A. Only horizontal privity between the original parties is required

- B. Only the original grantee's actual notice of the covenant is necessary
- C. The covenant must touch and concern the land, with horizontal and vertical privity, and notice
- D. The covenant must merely be in writing and recorded in the chain of title

169. A tenant subleased her apartment to a subtenant. The original lease prohibited subleasing without the landlord's written consent. The tenant did not obtain consent before subletting. The landlord discovered the sublease. Under most lease provisions:

- A. The sublease is automatically void because consent was not obtained in advance
- B. The landlord may declare the original lease forfeit and evict both the tenant and subtenant
- C. The sublease is valid against the tenant but unenforceable against the landlord
- D. The landlord may collect double rent from both the tenant and subtenant going forward

170. A buyer purchased a parcel of land and recorded the deed. Unknown to the buyer, a prior grantee from the same grantor had recorded an earlier deed in a different recording index. The two deeds describe the same property. In a race-notice jurisdiction:

- A. The buyer prevails if she had no actual or constructive notice and recorded properly
- B. The earlier grantee prevails because earlier deeds always take priority in recording disputes
- C. The buyer prevails only if the earlier deed contained an error that destroyed its constructive notice effect
- D. Both parties share the property as tenants in common until a court resolves the recording dispute

171. A grantor conveyed Blackacre to A "in fee simple, but A shall not transfer the property to anyone." A subsequently sold Blackacre to B. The grantor sued to set aside the conveyance. The court should:

- A. Set aside the conveyance because direct restraints on alienation are uniformly enforceable when express
- B. Uphold the conveyance only if the restraint was reasonably limited in time and scope
- C. Set aside the conveyance because the language is sufficient to create a fee simple determinable
- D. Uphold the conveyance because direct restraints on alienation of a fee simple are generally void

172. A driver ran a stop sign and collided with a pedestrian, who suffered serious injuries. The pedestrian had been jaywalking at the time. In a comparative-fault jurisdiction following pure comparative negligence:

- A. The pedestrian recovers nothing because his own negligence contributed to his injuries
- B. The pedestrian's recovery is reduced by the percentage of his own fault as determined by the jury
- C. The pedestrian recovers only if his fault is less than the driver's fault as found by the jury
- D. The pedestrian recovers fully because the driver's violation of traffic law constitutes negligence per se

173. A newspaper published an article stating that a public official had accepted bribes. The story was false. The official sued for defamation. To prevail under *New York Times Co. v. Sullivan*, the official must prove:

- A. The newspaper acted unreasonably in publishing the false statements without verification
- B. The newspaper's article contained false statements of fact rather than opinion
- C. The newspaper acted with actual malice—knowledge of falsity or reckless disregard for truth
- D. The newspaper specifically targeted the official rather than the political position he held

174. A circus operator kept a tiger in a sturdy enclosure on circus grounds. Despite the enclosure being properly maintained, the tiger escaped and injured a person passing by. The injured person sued. Under the common law:

- A. The circus is liable only if the injured party can prove the operator was negligent in maintaining the enclosure
- B. The circus is liable only if the operator failed to provide adequate warning signs to passersby
- C. The circus is strictly liable for injuries caused by the escape of an inherently dangerous wild animal
- D. The circus is not liable because the enclosure was properly maintained at the time of the escape

175. A doctor diagnosed a patient with a serious illness but failed to inform the patient promptly. By the time the patient was informed, the illness had progressed significantly. The patient sued. To establish causation in a medical malpractice action, the patient must prove:

- A. The doctor's conduct fell below the standard of care expected of a reasonable physician
- B. The doctor specifically intended to delay communication of the diagnosis to the patient
- C. The doctor's actions are the sole cause of the patient's current condition without any other contributing factors
- D. The doctor's failure was a substantial factor in causing the harm and the harm would not have occurred otherwise

176. A defendant approached a victim from behind with a baseball bat raised in a threatening posture. The victim did not see the defendant. The victim later learned of the incident from a witness. The victim sued for assault. The defendant:

- A. Is not liable for assault because the victim was not aware of the threat at the time
- B. Is liable for assault because raising a weapon constitutes an immediate threat
- C. Is liable for assault because the witness observed the threatening conduct
- D. Is liable only if the bat actually struck the victim with sufficient force to cause injury

177. A plaintiff was injured when a sign fell from a building owned by the defendant. The sign had been properly installed and inspected, and there was no evidence of negligence on the defendant's part. The plaintiff seeks to invoke *res ipsa loquitur*. For the doctrine to apply, the plaintiff must establish:

- A. The defendant has admitted control over the sign that caused the injury
- B. The accident is of a kind that ordinarily does not occur without negligence, and the instrumentality was under the defendant's control
- C. The injury was so severe that the standard of care must necessarily have been breached
- D. Multiple witnesses observed the sign falling from the building at the time of the incident

178. A defendant intentionally pushed a plaintiff against a wall, intending only to startle the plaintiff. The plaintiff struck her head and suffered a serious concussion. The defendant claims he did not intend to cause serious harm. The defendant is:

- A. Not liable for battery because his intent was limited to startling the plaintiff

- B. Not liable for battery because he did not intend to cause serious physical injury
- C. Liable for battery only if the plaintiff can prove the defendant should have foreseen the concussion
- D. Liable for battery because the intentional contact was harmful or offensive, and intent to cause harm follows the act

179. A consumer was injured when a power tool malfunctioned. The consumer purchased the tool used from a private seller. The original manufacturer is solvent and based in the same state. The consumer sues the manufacturer under strict products liability. The manufacturer's best defense is:

- A. The product was not defective because it functioned for several years before the malfunction occurred
- B. The consumer should sue the private seller because the seller was the direct source of the tool
- C. The product reached the consumer with substantial alteration through prior use, breaking the chain of liability
- D. The consumer assumed the risk of using used tools and cannot recover under any theory of liability

180. A driver was driving 60 miles per hour in a 25 mph zone when she struck a pedestrian. The speed limit was set by state statute. The pedestrian sued. Under the doctrine of negligence per se:

- A. The pedestrian recovers automatically because the driver violated a criminal statute
- B. The driver's violation of the speed limit constitutes negligence if the statute was designed to protect against this type of harm
- C. The driver is liable only for the speeding violation but not for the resulting injury
- D. The pedestrian must still prove the elements of common-law negligence apart from the statute

181. A defendant borrowed a friend's lawn mower with permission. After using it, the defendant kept the mower for his own permanent use, despite repeated requests from the friend to return it. The friend sued for conversion. The defendant:

- A. Is not liable because the original taking was lawful with the friend's permission
- B. Is liable for trespass to chattels but not conversion because no destruction occurred

C. Is liable for conversion because his retention of the mower constituted an exercise of dominion inconsistent with the owner's rights

D. Is liable only if the friend can prove the mower was substantially damaged during the defendant's possession

182. A homeowner failed to repair a broken step on her front porch. A delivery person tripped on the step and was seriously injured. The delivery person sued the homeowner for negligence. The homeowner's duty of care toward the delivery person is:

A. The duty of reasonable care because the delivery person was an invitee or licensee on the property

B. The duty of care owed to a trespasser, because the delivery person had no express invitation to enter

C. No duty of care because the delivery person was not the homeowner's guest or family member

D. A heightened duty of strict liability because the homeowner controls the conditions of the property

183. A blasting company used dynamite to clear rocks for a construction project. The blast damaged a nearby home, although the company exercised all reasonable care. The homeowner sued. Under the doctrine of strict liability for abnormally dangerous activities:

A. The company is not liable because it exercised reasonable care in conducting the blasting

B. The company is liable only if the blast was conducted at an unreasonable time

C. The company is liable only if the homeowner can prove specific negligence in the blast operations

D. The company is strictly liable because blasting is an abnormally dangerous activity regardless of care

184. A pedestrian was struck and injured by a bicyclist in a designated bike lane. The pedestrian was crossing the lane against a red signal. The pedestrian sued the bicyclist. The bicyclist had been traveling within the speed limit and was unable to stop in time. Under traditional comparative negligence:

A. The pedestrian's claim is barred entirely because he was illegally crossing against the signal

B. The pedestrian's recovery is reduced by his percentage of fault but he may still recover damages

C. The pedestrian recovers full damages because bicyclists owe pedestrians a heightened duty of care

D. The pedestrian recovers nothing because crossing against a signal constitutes assumption of risk

185. A storeowner became aware that there was water on the floor in her store. Before the storeowner could clean it up, a customer slipped on the water and was injured. The customer sued. The storeowner's duty as to the customer:

- A. Is satisfied only by undertaking immediate inspection of all areas of the store at all times
- B. Is satisfied if she warns customers about any conditions that could cause injury after they enter the store
- C. Required her to take reasonable steps to make the floor safe once she had knowledge of the dangerous condition
- D. Is no duty at all because customers must protect themselves from temporary spills in commercial premises

186. Two defendants negligently caused a single indivisible injury to the plaintiff. The plaintiff sustained \$100,000 in damages. One defendant has substantial assets; the other is judgment-proof. Under traditional joint and several liability:

- A. The plaintiff may recover the full \$100,000 from either defendant, who may then seek contribution from the other
- B. The plaintiff may recover only \$50,000 from each defendant because the harm should be split equally
- C. The plaintiff may recover only from the judgment-proof defendant because the harm was caused jointly
- D. The plaintiff may recover only the proportion of damages caused by each defendant's specific negligence

187. A celebrity sued a newspaper for invasion of privacy based on the publication of a story revealing his decades-old prior drug arrest, a fact that was already publicly available in court records. The celebrity claims the publication caused him significant emotional distress. The newspaper's best defense is:

- A. The newspaper was acting in the public interest by reporting on a person who entered the public arena
- B. The celebrity assumed the risk of media coverage when he became a public figure in the entertainment industry
- C. The newspaper is shielded by the First Amendment from any tort liability based on accurate reporting
- D. The information was matter of public record and the publication of truthful public-record information is privileged

188. A defendant repeatedly called the plaintiff late at night for several months, screaming obscenities and making threatening statements. The plaintiff developed severe anxiety as a result. The plaintiff sued for intentional infliction of emotional distress. The defendant's conduct:

- A. Is not actionable because the harassment did not involve physical contact with the plaintiff
- B. Constitutes extreme and outrageous conduct sufficient to support an IIED claim
- C. Is not actionable because telephone harassment must be addressed only through criminal statutes
- D. Constitutes negligence only because the defendant did not intend to cause severe distress to the plaintiff

189. A defendant walked across a clearly marked private parcel of land owned by the plaintiff. The defendant caused no damage. The plaintiff sued for trespass. The defendant:

- A. Is not liable because no actual damage resulted from his crossing of the property
- B. Is liable only for nominal damages because trespass requires proof of actual harm to the property
- C. Is liable for trespass because intentional entry onto another's land is actionable even without damages
- D. Is not liable because brief crossings do not constitute trespass under modern law

190. A swimmer was drowning in a public lake. A bystander on the shore was a competent swimmer who could have easily saved the swimmer with no risk to himself but chose not to act. The swimmer drowned. The swimmer's estate sued the bystander. Under the common law:

- A. The bystander has no duty to rescue a stranger absent a special relationship or assumption of duty
- B. The bystander has a duty to attempt rescue when no significant risk to himself is involved
- C. The bystander is liable because failure to act when capable of preventing harm is negligence per se
- D. The bystander is liable because every competent swimmer owes a duty to anyone drowning in public waters

191. A defendant intentionally entered the plaintiff's land to retrieve his dog, which had escaped onto the property. The plaintiff sued for trespass. The defendant's best defense is:

- A. Self-defense, because retrieving the dog was necessary to prevent property damage

- B. Private necessity, because the entry was reasonable to recover the defendant's own property
- C. Public necessity, because the entry served a broad public interest in animal welfare
- D. Consent, because the dog's presence on the property indicates implied consent for retrieval

192. A driver caused an accident resulting in injury to a pedestrian. The pedestrian had a preexisting heart condition that was aggravated by the trauma of the accident, resulting in greater damages than would have been incurred by a healthy person. The driver argues that he should not be liable for damages exceeding what would have occurred to a healthy pedestrian. Under the eggshell-skull rule:

- A. The driver is liable only for damages that would have been suffered by a person without the preexisting condition
- B. The driver is liable only if the plaintiff disclosed the preexisting heart condition before the accident
- C. The driver is liable only if the preexisting condition was caused by prior negligence not at issue in the lawsuit
- D. The driver is liable for the full extent of damages, including those caused by the preexisting condition

193. An employee of a delivery company struck and injured a pedestrian while making a delivery during work hours. The employee was driving recklessly at the time. The pedestrian sued both the employee and the delivery company. Under the doctrine of respondeat superior:

- A. The delivery company is liable because the employee was acting within the scope of his employment at the time
- B. The delivery company is not liable because reckless driving was not authorized by the company
- C. The delivery company is liable only if it specifically directed the reckless conduct in question
- D. The delivery company is not liable because individual tort liability cannot be transferred to employers

194. A plaintiff was injured when she fell on a poorly maintained sidewalk owned by the city. The city had received complaints about the sidewalk's condition for over a year but had not repaired it. The plaintiff sued the city. Under most modern interpretations of governmental immunity:

- A. The city has full sovereign immunity from suit, regardless of the duration of the notice
- B. The city is liable only if the plaintiff first exhausts all administrative complaint procedures

C. The city may be held liable for proprietary or maintenance functions that breached the duty of reasonable care

D. The city is liable for both compensatory and punitive damages due to the prolonged failure to repair

195. A plaintiff suffered emotional distress after witnessing her father be struck and killed by a car negligently driven by the defendant. The plaintiff was a few feet away when the accident occurred. The plaintiff sued for negligent infliction of emotional distress. Under most jurisdictions following the bystander theory:

A. The plaintiff cannot recover because she suffered no physical impact in the accident

B. The plaintiff may recover because she was in the zone of danger and closely related to the victim

C. The plaintiff may recover only if she personally feared for her own physical safety

D. The plaintiff cannot recover for emotional injuries suffered by witnessing harm to others

196. A store manager mistakenly believed that a customer had shoplifted. The manager detained the customer in the store's back office for two hours while investigating. The customer was eventually released after the manager realized the mistake. The customer sued for false imprisonment. The manager's best defense is:

A. There was no false imprisonment because the customer was free to leave at any time during the detention

B. The store manager has full immunity from civil suit for matters arising during the operation of the store

C. The customer voluntarily entered the back office and therefore consented to the detention there

D. The shopkeeper's privilege, which allows reasonable detention of suspected shoplifters for a reasonable time

197. A driver was distracted by his cell phone and ran a red light, colliding with another vehicle. The other driver suffered minor injuries but had a significant preexisting condition that was aggravated by the collision. The injured driver claims significantly higher damages than a typical accident victim would experience. The driver's liability:

A. Includes all damages caused by the accident under the principle that defendants take their victims as they find them

- B. Is limited to the damages that a person without the preexisting condition would have suffered in the same accident
- C. Is limited unless the plaintiff disclosed the preexisting condition before the accident occurred
- D. Includes only direct and immediate damages, not those attributable to the preexisting medical condition

198. A real estate seller represented to a buyer that the home had no water damage, when in fact the seller knew the basement had flooded multiple times. The buyer relied on this statement in purchasing the home and later discovered the truth. The buyer sued. The seller is liable for:

- A. Negligent misrepresentation, requiring proof of breach of a duty of due care
- B. Strict liability misrepresentation for any false statement of fact regardless of knowledge
- C. Fraudulent misrepresentation because the seller knowingly made false statements with intent to induce reliance
- D. Innocent misrepresentation because the seller did not realize the buyer was relying on the statement

199. A factory legally operating in an industrial zone emits significant noise and odors that disturb a nearby residential property. The factory has operated for many years; the homeowner moved into the area recently. The homeowner sued for private nuisance. Under the "coming to the nuisance" doctrine:

- A. The homeowner is barred from recovery because she chose to live near an existing industrial operation
- B. The factory is automatically liable because its operations interfere with the homeowner's use of her property
- C. The factory is liable because all industrial operations near residences constitute per se nuisance
- D. Coming to the nuisance is a factor to consider but does not automatically bar recovery for substantial interference

200. A defendant negligently caused a fire on his property. The fire spread to neighboring property due to unusually strong winds. The neighbors sued the defendant for damages. The defendant claims the unusual winds were an intervening cause that broke the chain of causation. Under the foreseeability test:

- A. The defendant is not liable because unusual winds are an act of God that excuses negligence
- B. The defendant remains liable if the spreading of fire by wind is a reasonably foreseeable consequence

- C. The defendant is liable only for damage to property immediately adjacent to the fire's origin
- D. The defendant is not liable for damage caused by any unusual or extraordinary natural force

## PRACTICE EXAM 6 — FULL ANSWER KEY WITH EXPLANATIONS

- 1. B** — Diversity jurisdiction requires the amount in controversy to exceed \$75,000 at the time the complaint is filed. The plaintiff's original claim of \$70,000 did not meet this threshold, and a post-filing amendment cannot retroactively cure a jurisdictional defect that existed at commencement. Subject-matter jurisdiction is measured at filing, not after amendment.
- 2. D** — Under *Celotex v. Catrett*, the non-movant must come forward with admissible evidence creating a genuine issue of material fact. A homeowner's lay testimony may rebut expert opinion only if she identifies a specific defect supportable by admissible evidence. Conclusory claims about workmanship without specifics are insufficient to defeat summary judgment.
- 3. A** — Rule 4(m) provides that if service is not made within 90 days, the court must extend time upon a showing of good cause. Diligent but unsuccessful efforts to locate the defendant constitute good cause. The proper remedy is an extension rather than dismissal of the claim.
- 4. C** — Under 28 U.S.C. § 1367, supplemental jurisdiction extends to claims forming part of the same case or controversy as the claim providing original jurisdiction. A counterclaim arising from the same transactional facts as the federal claim falls within supplemental jurisdiction even when state-law-based and between non-diverse parties.
- 5. B** — Under *Erie* and *Hanna*, federal courts in diversity apply state substantive law where its disregard would be outcome-determinative. A certificate-of-merit statute requiring dismissal for non-compliance is outcome-determinative and substantive, so the federal court must enforce it alongside federal pleading rules.
- 6. A** — Under *Iqbal* and *Twombly*, a complaint must contain factual content allowing the reasonable inference of liability. Bare conclusory allegations of a "confusingly similar" mark, without supporting factual specifics, fail the plausibility standard and warrant dismissal under Rule 12(b)(6).
- 7. D** — Rule 45(c) permits depositions within 100 miles of where the witness resides, is employed, or regularly transacts business. Because the deposition was scheduled at the witness's place of employment, the geographic requirement is satisfied regardless of distance from her residence.
- 8. C** — When granting a renewed motion for judgment as a matter of law, Rule 50(c) requires the trial court to conditionally rule on the alternative new-trial motion. This prevents a second trial if the JMOL is reversed on appeal and preserves the judge's discretion on the alternative remedy.

**9. A** — The Class Action Fairness Act establishes jurisdiction where any class member is diverse from any defendant, the class has at least 100 members, and the aggregate amount in controversy exceeds \$5 million. CAFA displaces traditional complete-diversity and individual-amount requirements for qualifying class actions.

**10. B** — Under 28 U.S.C. § 1447(e), when post-removal joinder of a non-diverse defendant would destroy subject-matter jurisdiction, the court must either deny joinder or permit joinder and remand. Once complete diversity is destroyed, the federal court loses jurisdiction over the entire action.

**11. D** — Article III standing is jurisdictional and cannot be waived by the parties. Subject-matter jurisdiction may be raised at any stage—including for the first time on appeal or by the court sua sponte—so a standing challenge is never untimely.

**12. C** — Rule 42(a) authorizes consolidation of actions involving a common question of law or fact, committed to the court's discretion. Consolidation is neither mandatory upon common facts nor dependent on party consent; the court balances efficiency against potential prejudice.

**13. B** — Claim preclusion bars relitigation of claims that were or could have been litigated in the prior action arising from the same transaction. Summary judgment is a final adjudication on the merits, so a new theory based on the same facts is barred even though never previously raised.

**14. A** — Rule 16(f) authorizes courts to impose sanctions, including expenses and attorney's fees, for failure to comply with a pretrial order. Monetary sanctions tied directly to the costs caused by the violation are routinely upheld; more severe sanctions like dismissal require additional procedural protections.

**15. D** — Objections to interrogatories must be timely raised or are deemed waived under Rule 33(b)(4). By answering interrogatories that exceeded the numerical limit without objection, the plaintiff waived the right to invoke the limit against subsequent requests properly served within the rule.

**16. B** — Rule 26(b)(1) limits discovery to matters relevant to claims or defenses and proportional to the needs of the case. A ten-year medical records request is disproportionate when the litigation concerns a specific workplace injury, so the court should narrow the scope rather than deny production entirely.

**17. C** — Under 28 U.S.C. § 1404(a), the court considers convenience of parties and witnesses and the interests of justice. When the operative events occurred and the witnesses reside in the transferee district, those factors outweigh the plaintiff's choice of forum and warrant transfer.

**18. A** — Rule 52(a)(6) provides that findings of fact must not be set aside unless clearly erroneous, with due regard to the trial court's credibility assessments. This deferential standard applies to all factual determinations regardless of whether the evidence is documentary or testimonial.

**19. D** — Under 28 U.S.C. § 1446(b), removal must be effected within 30 days of service. Removal on day 35 was procedurally defective, and the plaintiff's timely motion to remand preserved the objection, requiring remand to state court.

- 20. C** — Under *Atlantic Marine v. U.S. District Court*, a valid forum-selection clause is given controlling weight in the § 1404(a) analysis and warrants transfer absent extraordinary circumstances. The plaintiff's choice of forum and private-interest factors must yield to the parties' contractual designation.
- 21. A** — Federal Rule of Evidence 502(b) prevents waiver from inadvertent disclosure where the holder took reasonable steps to prevent it and promptly rectified the error. The privilege is preserved if these safeguards are met, even after the opposing party has reviewed the document.
- 22. B** — A judgment entered without proper service is void for lack of personal jurisdiction. Rule 60(b)(4) motions to set aside a void judgment are not subject to the one-year limitation and may be made at any reasonable time because a void judgment is a legal nullity.
- 23. D** — Rule 23(b)(3) certification requires that common questions predominate over individual questions and that a class action is superior to other available methods. Both elements must be satisfied for damages classes, and the predominance inquiry focuses on whether common issues drive resolution of the case.
- 24. C** — A non-appealing party generally cannot benefit from an appeal taken by another party, and the judgment as to that party becomes final. Because defendant A did not appeal the verdict against him, that judgment remains in place independent of the plaintiff's separate appeal regarding defendant B.
- 25. A** — Rule 65(b)(2) provides that a temporary restraining order expires no later than 14 days after entry unless extended by the court for a like period upon good cause. The default duration limits a TRO's emergency nature pending the adversarial preliminary-injunction hearing.
- 26. B** — Rule 23(f) allows discretionary interlocutory review of class certification orders. A party seeking review must petition the court of appeals within 14 days of the certification ruling; the petition does not require district court certification under § 1292(b).
- 27. D** — Rule 36(b) permits withdrawal of deemed admissions when withdrawal would promote presentation of the merits and the requesting party fails to show prejudice. Significant prejudice from late withdrawal—such as eve-of-trial timing—is grounds to deny the motion.
- 28. A** — Under claim preclusion, a judgment based on the statute of limitations bars subsequent claims arising from the same transaction in most jurisdictions. The fraud claim arises from the same underlying transaction as the time-barred contract claim, so it is precluded under the transactional test.
- 29. C** — Under the law-of-the-case doctrine, a district court on remand is bound by the appellate court's prior rulings. When the court of appeals reverses a summary judgment, the district court cannot reenter the same ruling on the same record without disregarding the appellate mandate.
- 30. B** — Under the Supremacy Clause, valid federal law preempts conflicting state law. A federal statute prohibiting states from imposing burdens on federal employees acting in their official capacity preempts a contrary state requirement.

- 31. D** — A state tax that facially discriminates against interstate commerce is virtually per se invalid under the dormant Commerce Clause. The five-fold differential between out-of-state and in-state coal is clear economic protectionism that cannot withstand constitutional scrutiny.
- 32. A** — Under *Printz v. United States*, Congress may not commandeer state or local executive officials to enforce federal regulatory programs. The Tenth Amendment prohibits direct conscription of state officers regardless of how compelling the federal interest may be.
- 33. C** — Under *Grutter v. Bollinger* and *Students for Fair Admissions v. Harvard*, race-conscious admissions policies are subject to strict scrutiny. The policy must be narrowly tailored to serve a compelling state interest, and rigid numerical bonuses generally cannot survive that demanding standard.
- 34. B** — Under the taxing power, Congress may impose taxes that generate revenue even if they also produce regulatory effects. As long as the levy produces revenue and is not an obvious penalty, courts uphold it under Congress's broad taxing authority even when it discourages targeted activity.
- 35. A** — A content-based restriction on speech is presumptively unconstitutional and subject to strict scrutiny. A licensing scheme that vests officials with discretion to approve only messages deemed "in the public interest" fails strict scrutiny and constitutes an unconstitutional prior restraint.
- 36. D** — The Fourth Amendment protects against unreasonable searches and seizures, including warrantless compelled disclosure of private communications. Mandatory warrantless retention and disclosure of users' private online activity implicates a reasonable expectation of privacy and lacks the warrant requirement.
- 37. C** — Section 2 of the Fourteenth Amendment expressly contemplates disenfranchisement for participation in rebellion or other crime. *Richardson v. Ramirez* confirms that felon disenfranchisement is permitted by the Constitution and survives rational-basis review.
- 38. B** — Public parks are traditional public forums where the government's authority to regulate speech is at its minimum. A blanket ban on all solicitation in parks is overbroad because it sweeps in protected non-commercial advocacy and is not narrowly tailored to a significant government interest.
- 39. A** — Under *United States v. Lopez* and *Morrison*, Congress's Commerce Clause power does not extend to non-economic activity lacking a substantial relationship to interstate commerce. Mere possession of a firearm near a school is not economic activity, and the statute contains no jurisdictional element tying it to interstate commerce.
- 40. D** — Durational residency requirements that burden the right to interstate travel and political participation are subject to strict scrutiny. A five-year requirement to seek elective office penalizes recent migrants and cannot survive strict scrutiny absent a compelling justification narrowly tailored.
- 41. B** — Under the spending power as articulated in *South Dakota v. Dole*, Congress may attach conditions to federal funds if the condition relates to the federal interest and is not coercive. Workplace safety conditions tied to transportation funding at modest funding levels are a permissible exercise of the spending power.

**42. C** — The Due Process Clause requires a sufficient nexus between the taxing state and the activity being taxed. Imposing a state tax on income earned entirely outside the state, with no connection to in-state activity, exceeds the constitutional limits of state taxing authority.

**43. A** — Under *Loper Bright Enterprises v. Raimondo* (2024), the Chevron doctrine has been overruled, and courts must independently interpret statutory ambiguities without deference to agency interpretation. Courts now exercise independent judgment on questions of law even when an agency has weighed in.

**44. D** — Under *Flast v. Cohen* and its progeny, taxpayer standing for Establishment Clause challenges requires a nexus to a congressional spending or taxing measure. A hortatory legislative resolution with no operative legal effect or appropriation does not satisfy the Flast nexus and fails the particularized-injury requirement.

**45. B** — Under *Garcia v. San Antonio Metropolitan Transit Authority*, Congress may regulate the employment terms of state and local governments through generally applicable laws. The Tenth Amendment does not shield state employers from neutral federal regulations of employer-employee relations.

**46. A** — Under *FCC v. Pacifica Foundation*, the unique characteristics of broadcast media—pervasiveness and accessibility to children—justify content-based regulation that would be impermissible in other contexts. Broadcasters operate under a more permissive standard for content regulation than print or internet speech.

**47. C** — Under *Rucho v. Common Cause*, claims of partisan gerrymandering present nonjusticiable political questions in federal court. The Supreme Court held that federal courts lack judicially manageable standards to resolve partisan-gerrymandering claims absent racial discrimination.

**48. D** — Under *Christian Legal Society v. Martinez*, a viewpoint-neutral and reasonable "all-comers" policy is constitutional even when applied to religious student organizations. The policy is evaluated as a regulation of a limited public forum and need only be reasonable in light of the educational purpose.

**49. B** — Under the nondelegation doctrine as applied since *J.W. Hampton*, Congress may delegate authority to the executive if it articulates an intelligible principle to guide that authority. The intelligible-principle requirement is highly deferential and is rarely violated even in broad foreign-affairs delegations.

**50. A** — Under *Buckley v. Valeo* and *McIntyre v. Ohio Elections Commission*, anonymous political speech receives heightened First Amendment protection. A badge requirement that compels disclosure of canvasser identity chills anonymous political expression and cannot survive narrow-tailoring analysis without a compelling interest.

**51. C** — A regulation aimed at commercial solicitation cannot constitutionally sweep in core non-commercial political speech without narrow tailoring. Because the ordinance applies indiscriminately to political and commercial solicitation, it is overbroad and fails First Amendment scrutiny.

**52. B** — Professional licensing and experience requirements are reviewed under rational-basis scrutiny when applied to candidates for state office. A bar-membership requirement bears a rational relationship to ensuring judicial competence and survives constitutional review.

**53. D** — Under *Lucas v. South Carolina Coastal Council*, a regulation that deprives an owner of all economically beneficial use of land constitutes a per se regulatory taking requiring just compensation. The total deprivation of beneficial use triggers compensation regardless of the regulation's public purpose.

**54. A** — Under the Religious Land Use and Institutionalized Persons Act, the government cannot impose a substantial burden on an inmate's religious exercise without showing the regulation is the least restrictive means of furthering a compelling interest. *Holt v. Hobbs* applied this exact framework to a prison beard policy.

**55. C** — Under the Commerce Clause, Congress has plenary authority to regulate the use of channels and instrumentalities of interstate commerce. Transporting a kidnapped person across state lines falls squarely within the channels-of-commerce category and is within congressional reach.

**56. B** — Age is not a suspect or quasi-suspect classification under the Equal Protection Clause, so age-based laws are reviewed under rational-basis scrutiny. A minimum drinking age is rationally related to protecting public health and safety and easily survives review.

**57. A** — Under the Take Care Clause and APA principles, the President cannot unilaterally rescind a regulation that was lawfully promulgated through statutorily required procedures. A new rulemaking or congressional action is required to lawfully repeal an existing rule.

**58. D** — UCC § 2-201(3)(a) provides an exception to the Statute of Frauds for specially manufactured goods not suitable for sale to others, once the seller has substantially begun their manufacture or commitments to procure them. Because production has begun on bespoke components, the writing requirement does not bar enforcement.

**59. C** — The injured party's expectation damages are measured by the cost of completion minus the unpaid contract balance. The owner paid the substitute contractor \$30,000 in excess of the remaining contract balance, and that excess is the proper measure of damages for the original contractor's breach.

**60. A** — Under the mailbox rule, acceptance of an offer by mail is effective upon dispatch, not upon receipt. Because the buyer mailed acceptance on March 7 before receiving the revocation, a contract was formed on dispatch despite the prior revocation in transit.

**61. B** — A painter who uses non-conforming materials commits a material breach that precludes recovery on the contract. Because the wrong paint color renders the work unusable for the owner's purpose, the painter cannot recover the contract price and has not substantially performed.

**62. D** — A merger clause indicates the writing was intended as a complete and final integration. Under the parol evidence rule, evidence of prior or contemporaneous oral agreements is excluded when the writing is fully integrated, even for warranties.

- 63. C** — An intended third-party beneficiary has standing to enforce a contract made for her benefit. Because the daughter is expressly named as the beneficiary of the educational-services obligation, she may sue the college directly without privity of contract.
- 64. B** — Under the doctrine of anticipatory repudiation, a clear and unequivocal statement that a party will not perform allows the non-breaching party to treat the contract as immediately breached. The retailer was entitled to cover by purchasing substitutes and recover the difference as damages.
- 65. A** — Under Restatement (Second) § 152, a contract may be rescinded when both parties were mistaken about a basic assumption that materially affects the agreed exchange. A mutual mistake about whether a painting is a copy or an original goes to a basic assumption of the contract and supports rescission.
- 66. D** — Under UCC § 2-207(2), between merchants, additional terms become part of the contract unless they materially alter it, the offer expressly limits acceptance to its terms, or notification of objection has been given. A 60-day defect notice provision consistent with reasonable commercial practice is not materially altering.
- 67. A** — Specific performance is available when the subject matter is unique and money damages are inadequate. A unique sculpture cannot be replaced through cover, so the buyer's only adequate remedy is to compel the original transaction.
- 68. C** — Frustration of purpose applies when the principal purpose of the contract is substantially destroyed by an event whose non-occurrence was a basic assumption. The cancellation of the convention destroys the agency's purpose for reserving rooms, even though performance remains physically possible.
- 69. B** — Under *Hamer v. Sidway*, forbearance from a legal right constitutes valid consideration. Giving up the right to drink, smoke, or gamble is a legal detriment to the promisee and sufficient consideration for the uncle's promise.
- 70. D** — Under modern contract law and Restatement (Second) § 89, a contract modification is enforceable without new consideration if it is fair and equitable in light of unanticipated circumstances. Unforeseen subsurface conditions justifying additional compensation can support modification despite the pre-existing duty rule.
- 71. A** — When notice is expressly designated as a condition precedent to coverage, strict compliance is traditionally required. The insured's failure to give notice within the prescribed period defeats coverage because the condition itself, not just the policy obligation, has not been satisfied.
- 72. C** — A contract for personal services contemplates performance by the specific party named, and delegation of duties requires the obligee's consent. Because construction of a custom home involves personal skill and judgment, the owner is not required to accept performance from an assignee.
- 73. B** — Under the Statute of Frauds, promises made in consideration of marriage—other than mutual promises to marry—must be in a writing signed by the party to be charged. An oral promise to convey land in consideration of marriage is unenforceable.

**74. D** — Under the perfect tender rule of UCC § 2-601, the buyer may reject the entire shipment if the goods fail in any respect to conform to the contract. Substantial performance is not the governing standard for goods, and even a small non-conformity entitles the buyer to reject.

**75. A** — Promissory estoppel under Restatement § 90 makes a promise enforceable when the promisor should reasonably expect to induce action, the promisee does act in reliance, and injustice can be avoided only by enforcement. Three decades of service in reliance on the bonus promise satisfies all elements.

**76. B** — At common law, an offer is freely revocable until accepted, even if the offeror states it will remain open for a specified period, unless the option promise is supported by consideration. Because no consideration was given for the irrevocability promise, the seller was free to revoke.

**77. D** — Under UCC § 2-509(1)(a), in an F.O.B.-seller's-plant shipment contract, risk of loss passes to the buyer when the goods are duly delivered to the carrier. Loss in transit after proper delivery falls on the buyer regardless of fault.

**78. A** — A buyer induced by fraudulent misrepresentation may elect rescission with restitution or damages measured by the difference between the value as represented and the actual value. The buyer chooses the more advantageous remedy based on the facts of the inducement.

**79. C** — Under quasi-contract or quantum meruit, a party who confers an emergency benefit on another without opportunity to contract may recover the reasonable value of services rendered. Emergency medical care is the classic case where restitution is appropriate to prevent unjust enrichment.

**80. B** — Under UCC § 2-306, a requirements contract obligates the buyer to purchase actual good-faith requirements, but quantities unreasonably disproportionate to stated estimates or prior course of dealing are not enforceable. A tenfold increase in demand is presumptively disproportionate and excuses the supplier's performance beyond reasonable requirements.

**81. D** — Liquidated damages clauses are enforceable only when the amount is a reasonable forecast of difficult-to-measure actual damages and is not a penalty. A \$1,000-per-day clause against \$50-per-day actual damages is grossly disproportionate and unenforceable as a penalty.

**82. A** — When an offer specifies an exclusive manner of acceptance, the offeree must accept in that manner to form a contract. The buyer's telephone acceptance did not comply with the required return-mail manner, so no contract was formed.

**83. C** — Under UCC § 2-719(3), a clause limiting consequential damages for personal injury in the sale of consumer goods is prima facie unconscionable. A warranty disclaimer cannot validly bar a personal-injury claim arising from a manufacturing defect in consumer goods.

**84. D** — A satisfaction clause involving the buyer's judgment must be exercised in good faith and may not be used as a pretext to avoid the contract. The buyer who unreasonably rejects qualified financing breaches the implied duty of good faith inherent in the condition.

**85. B** — When a contractor substantially performs but breaches in some respect, damages are measured by the contract price less the cost to complete or correct the breach. The owner owes the contract price minus the \$3,000 needed to install the missing insulation.

**86. A** — Under UCC § 2-603, a buyer who rightfully rejects goods has a duty to follow the seller's reasonable instructions; absent such instructions the buyer may sell perishable or storage-burdened goods on the seller's account. The buyer may sell the rejected goods commercially reasonably to recover storage and incidental costs.

**87. C** — A builder who willfully and unjustifiably abandons a construction project is generally barred from recovery in restitution. Because the builder abandoned the project without justification and the cost of completion exceeded the contract price, no restitutionary recovery is available.

**88. D** — Robbery is the taking of property from the person or presence of another by force or fear. Each victim subjected to the threat of force is a separate offense, so taking from the cashier and then threatening the customer constitutes two distinct robberies.

**89. B** — Common-law murder includes killings committed with implied malice, including conduct manifesting a depraved heart or extreme indifference to human life. Firing into a crowd is the classic example of conduct that implies malice and supports a murder conviction without specific intent to kill.

**90. A** — Under the modern majority rule, conspiracy requires an agreement plus an overt act in furtherance by any conspirator. The overt act need not be substantial or performed by the defendant himself; any act by any co-conspirator suffices to complete the offense.

**91. D** — Under the majority "stand your ground" rule, a person attacked in a place where he has a legal right to be has no duty to retreat before using justified deadly force. A reasonable belief in the necessity of deadly force to repel a deadly attack is sufficient to invoke self-defense.

**92. C** — Under the felony-murder rule, all participants in a dangerous felony are liable for any death occurring during its commission. A getaway driver participating in a robbery is criminally responsible for the killing committed by a co-felon during the felony.

**93. B** — Under *Miranda v. Arizona*, statements obtained from a suspect in custody during interrogation are inadmissible unless the suspect was first advised of his rights. Custodial interrogation triggers the warning requirement, and questioning at the scene of arrest qualifies as custodial.

**94. A** — Under the exigent-circumstances exception, police may enter a residence without a warrant when they have probable cause to believe an emergency or threat to safety exists. Sounds of ongoing violence inside the residence justify warrantless entry to prevent harm.

**95. D** — Embezzlement is the fraudulent conversion of property by one who is lawfully in possession of it. A bank teller entrusted with customer funds in her official capacity commits embezzlement when she misappropriates them, because she had lawful possession at the outset.

**96. C** — Under *Kirby v. Illinois*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings, including indictment. A post-indictment lineup is a critical stage requiring counsel's presence regardless of formal arraignment status.

**97. B** — An attempt is complete when the defendant takes a substantial step toward the commission of a crime with the requisite intent. Under the majority common-law view, voluntary abandonment after the substantial step is reached is not a defense to attempt.

**98. A** — Under *Franks v. Delaware*, a search warrant must be invalidated if the defendant shows the affidavit contained deliberate or reckless material misrepresentations and probable cause is absent without them. Deliberate falsity in the supporting affidavit defeats the warrant regardless of facial validity.

**99. D** — Under the M'Naghten test, the defendant must show that, at the time of the act, he did not know the nature and quality of the act or did not know it was wrong. A defendant who understood the wrongfulness of his act cannot establish insanity under M'Naghten regardless of compulsion.

**100. C** — Under *Michigan v. Mosley*, when a suspect invokes the right to silence, police may resume questioning after a significant time lapse, with fresh warnings, and on a different subject matter. The "scrupulously honored" standard permits later questioning that respects the initial invocation.

**101. B** — Under *County of Riverside v. McLaughlin*, a probable-cause determination for a warrantless arrest must occur within 48 hours of arrest to be presumptively reasonable. Statements made within that window are admissible absent some other constitutional violation.

**102. D** — Voluntary manslaughter is murder reduced by adequate provocation that would cause a reasonable person to lose self-control. Discovering a spouse in flagrante is the classic example of adequate provocation supporting heat-of-passion reduction.

**103. C** — Under *Arizona v. Gant*, a vehicle search incident to arrest is permissible only when the arrestee is within reaching distance of the vehicle or it is reasonable to believe evidence of the offense of arrest is inside. A secured arrestee cannot access the vehicle, so the incident-to-arrest justification fails.

**104. A** — Larceny by trick occurs when the defendant obtains possession of property through fraudulent misrepresentation while the owner retains title. A defendant who induces the transfer of possession by lying about his intent to return commits larceny by trick.

**105. C** — Under *Wong Sun* and its progeny, evidence derived from a Fourth Amendment violation is excluded as fruit of the poisonous tree unless the connection is sufficiently attenuated, independently obtained, or inevitably would have been discovered. The court must analyze the degree of taint before excluding derivative testimony.

**106. B** — Under accomplice liability, the accomplice is liable for the planned offense and for any reasonably foreseeable additional offenses committed in furtherance of the underlying plan. A death during an armed robbery is a foreseeable consequence supplying accomplice liability for the murder.

**107. D** — Under *Crawford v. Washington*, testimonial hearsay is barred by the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. A police interrogation statement is paradigmatically testimonial and inadmissible absent prior cross-examination.

**108. A** — Common-law burglary requires the breaking and entering of a dwelling at night with the intent to commit a felony inside. The offense is complete at the moment of entry with the required intent; actual completion of the underlying felony is not required.

**109. C** — Under *Illinois v. Gates*, probable cause is determined by the totality of the circumstances, including informant veracity, reliability, and basis of knowledge, all assessed in light of independent corroboration. The totality test replaces the rigid two-prong *Aguilar-Spinelli* framework.

**110. B** — Involuntary manslaughter is an unintentional killing resulting from criminally negligent or reckless conduct. Firing celebratory gunshots into the air, knowing the bullets will eventually descend, constitutes the gross negligence required for involuntary manslaughter.

**111. D** — Double jeopardy bars retrial after acquittal but not after a hung jury, because a hung jury does not result in a verdict on that charge. Retrial of the deadlocked second-degree charge is permitted, and the prior acquittal of first-degree does not bar trying the distinct lesser offense on which the jury never reached a verdict.

**112. C** — The M'Naghten test is a purely cognitive test that asks whether the defendant knew the nature or wrongfulness of his act. It does not recognize volitional impairment or irresistible-impulse defenses, so a defendant who knew his act was wrong fails the M'Naghten test regardless of self-control.

**113. A** — Under *Argersinger v. Hamlin*, the right to appointed counsel attaches in any prosecution—felony or misdemeanor—where actual imprisonment is imposed. A conviction resulting in imprisonment without counsel is constitutionally invalid.

**114. B** — Embezzlement is the fraudulent conversion of property lawfully entrusted to the defendant. A rental car lawfully obtained becomes the subject of embezzlement when the renter fails to return it and instead converts it to permanent use.

**115. C** — Under Federal Rule of Evidence 803(2), an excited utterance is admissible if it relates to a startling event and was made while the declarant was still under the stress of the event. A statement made within seconds of a collision while the declarant remains visibly shaken satisfies the requirement.

**116. D** — Under Federal Rule of Evidence 801(d)(2), a statement made by an opposing party is not hearsay and is admissible against that party for any purpose. The defendant's own admission of intent not to perform is admissible without any further hearsay exception.

**117. A** — Federal Rule of Evidence 404(b)(1) prohibits the use of prior bad acts to prove a defendant's propensity to commit similar acts. Such evidence may be admitted only for non-propensity purposes like motive, intent, or identity, none of which is presented here.

**118. C** — Federal Rule of Evidence 407 excludes subsequent remedial measures when offered to prove negligence or culpable conduct but permits their use for other purposes such as ownership, control, or feasibility. The exclusionary rule has a limited scope and admits the evidence for specified non-propensity purposes.

**119. B** — Federal Rule of Evidence 901(a) requires only sufficient evidence to support a finding that the item is what its proponent claims. Distinctive characteristics, including content known only to the alleged author and identifiable source addresses, satisfy the authentication standard.

**120. D** — The attorney-client privilege survives the termination of the attorney-client relationship and even the client's death. The privilege belongs to the client, who may continue to assert it through her former attorney even when she has chosen to testify on other matters.

**121. C** — Federal Rule of Evidence 609(b) permits impeachment with convictions older than ten years only when the probative value substantially outweighs the prejudicial effect, with advance notice provided. The age of the conviction triggers heightened scrutiny rather than automatic exclusion.

**122. A** — Federal Rule of Evidence 1003 makes a duplicate admissible to the same extent as the original unless there is a genuine question about authenticity or it would be unfair to admit the duplicate. The destruction of the original under Rule 1004 also independently justifies admission of secondary evidence.

**123. B** — Federal Rule of Evidence 701 permits lay opinion testimony that is rationally based on the witness's perception and helpful to determining a fact in issue. Intoxication is a classic subject of permissible lay opinion based on observed conduct.

**124. D** — Under Federal Rule of Evidence 803(2), an excited utterance made while under the stress of a startling event is admissible regardless of the declarant's availability. A 911 call made immediately after a stabbing satisfies the spontaneity requirement.

**125. C** — Under *Daubert v. Merrell Dow* and Federal Rule of Evidence 702, the trial judge serves as a gatekeeper assessing whether expert methodology is reliable and whether the testimony will assist the trier of fact. Reliability is determined by factors including testability, peer review, error rate, and acceptance.

**126. A** — Federal Rule of Evidence 612 permits a witness to use a writing to refresh recollection, with the opposing party entitled to inspect, cross-examine on, and introduce relevant portions. The document itself is not admitted as evidence unless offered separately.

**127. B** — Under Federal Rule of Evidence 803(3), a statement of the declarant's then-existing state of mind is admissible to prove that state of mind when it is relevant to an issue in the case. The victim's fear of the defendant may be relevant where the defendant raises a defense placing her state of mind in issue.

**128. D** — Under federal common law, the marital communications privilege protects confidential communications made during marriage, and the privilege belongs to both spouses. Either spouse may assert the privilege to prevent disclosure of the marital communication, even if the testifying spouse wishes to disclose.

**129. C** — Under Federal Rule of Evidence 803(5), past recollection recorded is admissible by reading the writing into evidence, but the document itself is received as an exhibit only if offered by an adverse party. The procedure preserves the writing's evidentiary effect without giving it disproportionate weight as a jury exhibit.

**130. A** — Under Federal Rule of Evidence 404(a)(2), a criminal defendant may offer evidence of a pertinent character trait, and the prosecution may then rebut. Honesty is pertinent in a fraud prosecution, so the defendant may open the door to character evidence in his defense.

**131. B** — Federal Rule of Evidence 407 excludes subsequent remedial measures to prove negligence but allows their use to prove ownership, control, or feasibility of precautionary measures if those are disputed. The rule's policy is to encourage safety improvements without converting them into proof of fault.

**132. D** — Federal Rule of Evidence 106 (the rule of completeness) permits an adverse party to require introduction of any other part of a writing or recorded statement that in fairness ought to be considered contemporaneously. The rule prevents misleading partial introduction.

**133. C** — Multiple-level hearsay (double hearsay) requires each level to independently satisfy an exception or exclusion to be admissible. Without the testifying third party qualifying under an exception, the inner statement of the declarant cannot reach the jury through the outer declarant.

**134. A** — Federal Rule of Evidence 602 requires that a witness testify only to matters of which the witness has personal knowledge. Testimony based on second-hand reports about events the witness did not personally perceive must be stricken on motion.

**135. B** — Federal Rule of Evidence 803(6) admits business records but does not transform statements within them by non-business actors into admissible evidence. A patient's statement within a medical record is double hearsay and requires its own independent exception to be admissible.

**136. D** — Under the Hillmon doctrine and Federal Rule of Evidence 803(3), a declarant's statement of intent to perform a future act is admissible to prove that the declarant subsequently took that act. The statement proves the declarant's own subsequent conduct even when a third party is mentioned in the statement.

**137. A** — Federal Rule of Evidence 613(b) permits impeachment with extrinsic evidence of prior inconsistent statements, provided the witness is given an opportunity to explain or deny and the opposing party may examine the witness about it. The statement need not be under oath to be useful for impeachment.

**138. C** — Federal Rule of Evidence 501 provides that state law on privileges governs in federal court when state law supplies the rule of decision for the claim or defense. In a diversity case applying state substantive law, the state physician-patient privilege controls.

**139. B** — Under Federal Rule of Evidence 804(b)(2), a dying declaration is admissible in a homicide prosecution or civil case only when the declarant believed her death was imminent. The belief in imminent death is essential to the reliability rationale that supports the exception.

**140. D** — Chain of custody is established by reasonable certainty that the evidence has not been tampered with or altered. Gaps or irregularities affect the weight of the evidence rather than its admissibility, and absolute proof from every handler is not required.

**141. C** — Federal Rule of Evidence 404(b) prohibits use of prior accidents to prove a propensity for negligence but permits them for limited purposes such as causation, where prior incidents bear on whether the current injuries existed before. Propensity inference remains barred.

**142. A** — Federal Rule of Evidence 201 permits judicial notice of facts not subject to reasonable dispute because they are either generally known within the territorial jurisdiction or capable of accurate determination from reliable sources. The direction of sunrise is a generally known fact requiring no proof.

**143. B** — Under Federal Rule of Evidence 801(d)(2), a statement made by an opposing party is admissible against that party as a non-hearsay opposing-party statement. The defendant's own statement about his intent to drive while intoxicated is admissible without further qualification.

**144. D** — Federal Rule of Evidence 901(b)(2) authorizes authentication of handwriting by a non-expert witness familiar with the writing, provided the familiarity was not acquired for purposes of litigation. Lay familiarity through ordinary contact suffices to identify a person's handwriting.

**145. C** — A vested remainder is a presently existing future interest that is freely transferable, devisable, and descendible. The daughter's vested remainder in fee simple may be sold immediately even though possession is postponed until the life estate ends.

**146. A** — A written easement appurtenant runs with the land and binds successors of the servient estate. Subsequent purchasers take subject to the easement absent a recording-statute defense or other defect in the original grant.

**147. D** — Adverse possession requires actual, open, notorious, hostile, exclusive, and continuous use for the statutory period. The claimant satisfied all elements continuously for more than the 20-year period, so title vests by operation of law without any requirement of payment of taxes or color of title.

**148. B** — Under a notice recording statute, a subsequent bona fide purchaser who takes for value without notice of a prior unrecorded interest prevails over the prior grantee. The unrecorded earlier deed provides no constructive notice and yields to the later BFP's interest.

**149. C** — A unilateral conveyance by one joint tenant severs the joint tenancy as to her interest only, converting it to a tenancy in common with respect to the grantee. The remaining joint tenants continue to hold their original interest as joint tenants between themselves.

**150. A** — Under the recording acts and the general principle of "first in time, first in right," priority among recorded mortgages is determined by the order of recording. The first-recorded mortgage has priority over later-recorded liens at foreclosure.

**151. B** — A contingent remainder is a future interest subject to a condition precedent or held by an unascertained taker. B's interest is contingent because his taking depends on satisfying the condition of reaching age 21.

**152. D** — Under the implied warranty of habitability, a landlord must maintain residential premises in a condition meeting basic standards of habitability. A failure to provide heat during winter breaches the warranty and provides the tenant with remedies including rent abatement, termination, and damages.

**153. C** — Under the doctrine of changed conditions, a court may decline to enforce a restrictive covenant when the character of the surrounding area has changed so substantially that the covenant's original purpose is frustrated. The court weighs whether enforcement would still serve any meaningful protective purpose.

**154. A** — Under a race-notice recording statute, a subsequent bona fide purchaser without notice who records first prevails over a prior unrecorded interest. C took without notice and recorded before B, so C's title is superior despite B's earlier conveyance.

**155. D** — Although an oral easement is normally barred by the Statute of Frauds, the doctrine of easement by estoppel may enforce an oral grant where the grantee reasonably relied on the grant and made substantial improvements. Detrimental reliance prevents revocation despite the lack of writing.

**156. B** — Under the modern law of conveyances, a deed that does not specify a lesser estate is presumed to convey a fee simple absolute. The traditional requirement of words of inheritance such as "and his heirs" has been abolished by statute or common law in most jurisdictions.

**157. C** — An outstanding mortgage is an encumbrance that renders title unmarketable. The seller's contractual obligation to deliver marketable title requires removal of the mortgage at or before closing, and the buyer may refuse to close until the encumbrance is satisfied.

**158. A** — An easement by necessity terminates when the necessity that gave rise to it ceases. Once A acquired an alternative means of access to the public road, the necessity ended and the easement may be terminated.

**159. D** — An assignment transfers the original tenant's rights to the assignee but does not relieve the original tenant of personal liability under the lease absent a novation. The original tenant remains liable on the lease covenants, including the obligation to pay rent.

**160. B** — Under the common-law doctrine of worthier title, an inter vivos conveyance of a remainder to the grantor's own heirs is converted into a reversion in the grantor. The doctrine reflects the historical preference for title taken by descent over by purchase.

**161. C** — Continuous possession is an essential element of adverse possession, and a complete abandonment with no intent to return interrupts the continuity. Resumption of possession after abandonment restarts the statutory period rather than tacking onto prior years.

**162. A** — A fee simple subject to executory limitation arises when the conditional language creates a shifting interest in a transferee rather than a reverter in the grantor. B holds an executory interest that automatically divests A's fee simple upon breach of the condition.

**163. D** — An implied easement by prior use requires common ownership of the dominant and servient tracts before severance, prior continuous and apparent use of the quasi-easement, and reasonable necessity for the enjoyment of the dominant estate. All three elements must be established together.

**164. C** — The original borrower remains personally liable on the promissory note despite a sale of the underlying property, absent a release by the lender. An assumption by the buyer adds the buyer as an additional obligor but does not novate the original obligation.

**165. B** — A quitclaim deed conveys only whatever interest the grantor possesses, without any covenants or warranties of title. The grantee takes the risk of title defects and has no warranty recourse if the grantor's title proves defective.

**166. A** — Under traditional common law, neither spouse may unilaterally convey or encumber tenancy-by-the-entirety property without the consent of the other. The conveyance of a unilateral interest is void because each spouse holds the entire estate jointly.

**167. D** — Under the common law of fixtures, an item annexed to realty in a manner showing intent to make it permanent becomes part of the realty and may not be removed without the landlord's consent. Bolting an air-conditioning unit such that removal causes substantial damage demonstrates the requisite degree of annexation.

**168. C** — For a real covenant to run with the land at law, it must touch and concern the land, the original parties must be in horizontal privity, the burdened successor must be in vertical privity, and the successor must have notice. All elements are required for enforcement against successors.

**169. B** — When a lease prohibits subleasing without consent and the tenant violates the provision, the landlord may treat the lease as forfeited and pursue eviction of both the tenant and unauthorized subtenant. The sublease itself is not automatically void, but it is voidable by the landlord.

**170. A** — A bona fide purchaser who records properly under a race-notice statute prevails when she took without actual or constructive notice. A deed recorded in the wrong index is generally not within the chain of title and does not provide constructive notice to subsequent purchasers.

**171. D** — A direct restraint on alienation of a fee simple is void as repugnant to the nature of the fee simple. The grantee may freely convey notwithstanding the restraint, and the conveyance is valid against the grantor.

**172. B** — Pure comparative negligence reduces the plaintiff's recovery by the percentage of his own fault but does not bar recovery entirely. The plaintiff may recover even if his fault exceeds the defendant's, with damages reduced proportionally.

**173. C** — Under *New York Times Co. v. Sullivan*, a public official suing for defamation must prove actual malice—knowledge of falsity or reckless disregard for truth—by clear and convincing evidence. This heightened standard protects vigorous public debate about official conduct.

**174. C** — Under the doctrine of strict liability for wild animals, the owner or possessor of a wild animal is liable for harm caused by its dangerous propensities regardless of care exercised. The inherent dangerousness of the species places the risk on the keeper.

**175. D** — Causation in medical malpractice requires both factual and proximate cause: the defendant's breach was a substantial factor in causing the harm, and the harm would not have occurred but for the breach. Both elements must be established to recover.

**176. A** — Assault requires the victim's apprehension of an imminent harmful or offensive contact. A victim unaware of the threat at the time cannot have been placed in apprehension, even if a witness observed the threatening conduct, and no assault has occurred.

**177. B** — *Res ipsa loquitur* permits an inference of negligence when the accident is of a type that ordinarily does not occur without negligence, the instrumentality was under the defendant's exclusive control, and the plaintiff did not contribute to the harm. All elements must be met for the doctrine to apply.

**178. D** — Battery requires only the intent to cause a harmful or offensive contact, not the intent to cause the specific harm that results. The defendant takes the victim as he finds her, and unforeseen consequences flow from the intentional act under the eggshell-skull principle.

**179. C** — Strict products liability requires that the product reach the consumer without substantial change from its condition when sold by the manufacturer. Substantial alteration through intervening use or modification breaks the chain of liability and is a defense available to the manufacturer.

**180. B** — Negligence per se applies when the defendant violates a statute designed to protect against the type of harm that occurred and the plaintiff is in the protected class. Violation of a posted speed limit in a residential area satisfies these conditions for an injured pedestrian.

**181. C** — Conversion is the intentional exercise of dominion or control over the chattel of another so substantial as to require the actor to pay full value. Retention of the lawn mower after demand for its return constitutes the requisite dominion inconsistent with the owner's rights.

**182. A** — A licensee or invitee on the property is owed a duty of reasonable care to discover and remedy or warn of dangerous conditions. A delivery person making a routine delivery falls within this category and is owed the duty of reasonable care.

**183. D** — Strict liability applies to abnormally dangerous activities regardless of the care exercised. Blasting is the paradigm abnormally dangerous activity, and the actor is liable for harm characteristic of the risk that makes the activity abnormally dangerous.

**184. B** — Comparative negligence reduces but does not eliminate the plaintiff's recovery when the plaintiff is partially at fault. The pedestrian who crosses against a signal shares some responsibility, but the bicyclist remains liable for his share of the harm.

**185. C** — A possessor of land owes invitees a duty to take reasonable steps to make the premises safe once a dangerous condition is known. Actual knowledge of the water on the floor triggers the duty to remedy the hazard within a reasonable time.

**186. A** — Under traditional joint and several liability, each tortfeasor is fully liable for an indivisible injury, and the plaintiff may recover the entire amount from any one of them. The defendant who pays may then seek contribution from the other tortfeasor.

**187. D** — Publication of truthful information from public records is constitutionally privileged under *Cox Broadcasting v. Cohn* and *Florida Star v. B.J.F.* The First Amendment protects the press from liability for accurate reporting of facts of public record, regardless of the plaintiff's emotional distress.

**188. B** — Intentional infliction of emotional distress requires extreme and outrageous conduct that intentionally or recklessly causes severe emotional distress. Sustained late-night harassment with threats and obscenities crosses the line into the extreme and outrageous, supporting an IIED claim.

**189. C** — Trespass to land is an intentional tort actionable upon entry, and proof of actual damage is not required. The defendant's intentional crossing onto the plaintiff's clearly marked private property is actionable as a trespass even absent any damage.

**190. A** — The common law imposes no general duty to rescue a stranger absent a special relationship, statutory duty, or assumption of duty. A capable bystander who chooses not to act faces no tort liability, however morally reprehensible the inaction may be.

**191. B** — Private necessity privileges the defendant's entry onto another's land when reasonably necessary to protect his own person or property. The defendant may enter to recover his dog, though he remains liable for any actual damage caused by the entry.

**192. D** — Under the eggshell-skull (thin-skull) rule, a tortfeasor takes the victim as he finds her and is liable for the full extent of harm caused, even if the victim's preexisting condition aggravated the injury. The unforeseeability of the magnitude of harm is no defense.

**193. A** — Under respondeat superior, an employer is liable for the torts of an employee committed within the scope of employment. Reckless driving during a delivery on company business remains within the scope, even though the company did not authorize the recklessness.

**194. C** — Modern interpretations of governmental immunity distinguish between governmental and proprietary functions, with cities generally liable for proprietary or maintenance activities. Sidewalk maintenance is typically a proprietary function for which negligence liability may attach.

**195. B** — Under the zone-of-danger or bystander rule, a plaintiff may recover for negligent infliction of emotional distress when she was physically near the accident, closely related to the victim, and

contemporaneously perceived the injury. The plaintiff's proximity and family relationship satisfy these elements.

**196. D** — The shopkeeper's privilege allows a merchant to detain a suspected shoplifter on reasonable suspicion, in a reasonable manner, for a reasonable time, for purposes of investigation. The privilege is the best available defense to a false imprisonment claim arising from in-store detention.

**197. A** — Under the eggshell-skull rule, the tortfeasor takes the victim as found and is liable for the full extent of damages caused, including those flowing from a preexisting condition. The defendant cannot limit liability based on the victim's vulnerability to greater harm.

**198. C** — Fraudulent misrepresentation requires a knowingly false statement of material fact made with intent to induce reliance, justifiable reliance, and resulting damages. A seller who knowingly conceals known water damage commits fraud because all elements are satisfied.

**199. D** — The "coming to the nuisance" doctrine is a factor in the court's analysis but does not automatically bar recovery for substantial interference with the use and enjoyment of land. The court weighs the priority of use along with the nature and severity of the interference.

**200. B** — The defendant remains liable for harm caused by his negligence if the intervening cause is reasonably foreseeable. Wind-driven spread of a negligently set fire to neighboring property is a foreseeable consequence that does not break the chain of causation.