

PRACTICE EXAM 6: MBE SIMULATION

(200 QUESTIONS)

1. Plaintiff files a federal complaint alleging breach of contract with the elements pleaded but minimal factual detail. Defendant moves to dismiss under Rule 12(b)(6) for failure to satisfy Twombly/Iqbal plausibility. At this stage, the court should:

- A. Deny the motion if, accepting well-pleaded allegations as true and drawing reasonable inferences in Plaintiff's favor, the complaint states a plausible claim
- B. Grant the motion because all federal contract claims are subject to Rule 9(b) particularity rather than ordinary plausibility pleading
- C. Convert the motion to summary judgment and resolve disputed factual issues on the existing pleadings without further discovery
- D. Defer ruling on the sufficiency of the pleading until discovery is complete and dispositive motions have been briefed

2. After full discovery in a federal negligence action, Defendant moves for summary judgment supported by an expert affidavit. Plaintiff opposes with a competing expert report reaching the opposite conclusion on the standard of care. The court should:

- A. Grant summary judgment for Defendant because the moving party's expert evidence shifts the burden to Plaintiff to prove the elements at trial
- B. Grant summary judgment if the court finds Defendant's expert is more credible and persuasive than Plaintiff's competing expert
- C. Order the parties to private mediation before issuing any ruling on the summary judgment motion presently pending
- D. Deny the motion because dueling expert opinions on the standard of care create a genuine dispute of material fact and credibility is for the jury

3. A State A plaintiff sues a Delaware corporation with its principal place of business in State A in State A state court. The amount in controversy exceeds \$75,000. Defendant removes on diversity grounds; Plaintiff moves to remand. The court should:

A. Deny remand because the amount in controversy is satisfied and Defendant has timely invoked diversity jurisdiction in good faith

B. Grant remand because under § 1332(c)(1) Defendant is a citizen of both Delaware and State A, defeating complete diversity with the State A plaintiff

C. Deny remand because Plaintiff originally chose State A and removal merely changes the forum within the same state

D. Grant remand only if Plaintiff demonstrates substantial prejudice from litigating in federal court rather than state court

4. Plaintiff sues a foreign corporation in federal court in State A. Defendant's only contact with State A is occasional online sales shipped to State A residents, including the sale giving rise to the claim. Defendant moves to dismiss under Rule 12(b)(2). The court should:

A. Grant the motion because online sales through a nationwide platform never establish specific personal jurisdiction in any single forum

B. Deny the motion because any sale to a forum resident automatically establishes general personal jurisdiction over the seller

C. Apply *Ford Motor Co. and Walden* — specific jurisdiction requires purposeful availment plus a claim arising out of or relating to the defendant's forum contacts

D. Refer the personal-jurisdiction question to a magistrate judge for an evidentiary hearing before any ruling is made

5. Plaintiff moves for class certification under Rule 23(b)(3) in a consumer-protection action. Defendant opposes, arguing individualized reliance and damages predominate. Plaintiff shows uniform misrepresentation and classwide damages methods. The court should:

A. Deny certification automatically whenever a defendant raises a colorable predominance argument about individualized issues

B. Apply *Wal-Mart and Comcast* — conduct a rigorous analysis of the Rule 23 requirements, examining merits only as necessary to evaluate the certification factors

C. Certify the class without any analysis of the merits even when individualized reliance issues are squarely raised

D. Defer certification until the close of merits discovery and the eve of trial regardless of what the present record establishes

6. Plaintiff serves document requests on Defendant. Defendant objects on attorney-client privilege grounds but produces no privilege log. Plaintiff moves to compel. The court should:

A. Order Defendant to produce a Rule 26(b)(5) privilege log describing the withheld documents sufficiently to allow assessment, with potential waiver for noncompliance

B. Order full production of the withheld documents because asserting attorney-client privilege requires producing the documents first for in camera review

C. Sustain Defendant's privilege objection without further inquiry because the privilege attaches automatically to all communications with counsel

D. Order in camera review of every withheld document without first requiring a privilege log identifying the materials by date and subject

7. Plaintiff files a negligence complaint shortly before limitations expires. After limitations runs but before discovery closes, Plaintiff moves to amend to add a strict-liability theory arising from the same accident. Defendant opposes as futile. The court should:

A. Deny amendment because the limitations period has run on any new theory of recovery added after the original complaint

B. Apply Rule 15(c)(1)(B) — grant amendment if the new claim arises out of the same conduct, transaction, or occurrence; the amendment relates back and escapes limitations

C. Deny amendment because Defendant opposes the addition of a new theory after the limitations period has expired

D. Grant amendment only with Defendant's express consent because amendments after limitations are barred without consent

8. Defendant fails to file an answer within 21 days of service. Plaintiff moves for entry of default and default judgment for unliquidated damages. Defendant later appears, moves to set aside the default, and offers a meritorious defense and excuse. The court should:

- A. Enter judgment for the full requested amount automatically because Defendant's failure to answer waives all defenses to entry of default judgment
- B. Refuse to consider Defendant's appearance because the default has already been entered and the matter is concluded
- C. Conduct a damages hearing on Plaintiff's unliquidated claim without considering Defendant's motion to set aside the default
- D. Apply Rule 55(c)'s good-cause standard — consider culpability, prejudice to Plaintiff, and existence of a meritorious defense; the lenient standard applies pre-judgment

9. At the close of Plaintiff's case-in-chief, Defendant moves under Rule 50(a) for judgment as a matter of law on proximate cause. Plaintiff has produced expert testimony supporting causation. The court should:

- A. Grant the motion because Defendant has not yet presented its case and the motion is premature
- B. Grant the motion if the judge personally finds Plaintiff's expert evidence unpersuasive on the issue of proximate cause
- C. Defer ruling on the motion until after the verdict so that any error can be addressed through Rule 50(b)
- D. Deny the motion — viewing evidence in the light most favorable to the non-movant and drawing all reasonable inferences, a reasonable jury could find for Plaintiff

10. Before trial in a federal negligence case, Defendant moves in limine to exclude evidence of remedial measures taken after the accident. Plaintiff argues it is admissible for impeachment. The court should:

- A. Exclude all evidence of subsequent remedial measures automatically because such evidence is categorically inadmissible at trial
- B. Apply Rule 407 — exclude such evidence to prove negligence but reserve the right to admit for impeachment, ownership, control, or feasibility when controverted
- C. Defer the question until trial without any tentative ruling because evidentiary disputes cannot be resolved in advance
- D. Hold a full evidentiary hearing on the underlying negligence claim before ruling on the admissibility of the remedial measures

11. Plaintiff sues Defendant in the Southern District of New York. Most witnesses and evidence are in the Northern District of Texas, where the events occurred. Defendant moves to transfer under § 1404(a). The court should:

- A. Deny transfer because Plaintiff's choice of forum is dispositive in all venue analyses and overrides convenience considerations
- B. Grant transfer only with Plaintiff's express consent because § 1404(a) transfers require both parties to agree to the new venue
- C. Apply § 1404(a) — transfer to any district where the action could have been brought, balancing private-interest and public-interest factors of convenience and justice
- D. Dismiss for improper venue rather than transfer because the suit was filed in an inconvenient district outside the events

12. Defendant repeatedly fails to appear for noticed depositions and refuses to produce documents subject to a court order compelling production. Plaintiff moves for sanctions under Rule 37(b). The court should:

- A. Award only attorney's fees because monetary sanctions are the sole permitted response to discovery violations under federal rules
- B. Dismiss the action without considering proportionality because repeated discovery violations always warrant the case-dispositive sanction
- C. Apply Rule 37(b)(2) — proportional graduated sanctions including deemed-established matters, evidence preclusion, monetary sanctions, contempt, dismissal, or default
- D. Refer the matter to private mediation rather than imposing judicial sanctions because mediated resolution is preferred

13. The district court denies Defendant's motion to dismiss for failure to state a claim. Defendant seeks immediate appellate review. On the interlocutory appeal, the court of appeals should:

- A. Review the denial of a 12(b)(6) motion under an abuse-of-discretion standard appropriate for interlocutory rulings of this type
- B. Conduct a fresh evidentiary hearing on the underlying merits of the claim before deciding whether the dismissal was warranted

C. Refer the appeal to mediation rather than deciding the legal question presented by the interlocutory ruling on appeal

D. Dismiss the appeal — under § 1291's final-judgment rule, denial of a 12(b)(6) motion is not final and falls within no recognized exception

14. Plaintiff serves document requests covering trade secrets. Defendant moves for a protective order under Rule 26(c). The court should:

A. Deny the order because trade secrets are commercial information not protected from discovery under federal rules

B. Apply Rule 26(c) — issue a tailored protective order limiting disclosure to designated persons, restricting use, and imposing confidentiality balancing need against competitive harm

C. Deny the order without further analysis because broad discovery is the default in federal civil litigation

D. Order complete withholding of all trade-secret materials without conditions or restrictions on use

15. The court of appeals reviews a district court's interpretation of a federal statute and the district court's factual findings after a bench trial. The appropriate standards of review are:

A. De novo for the statutory interpretation; clear error under Rule 52(a) for factual findings; mixed questions reviewed on a sliding scale

B. Abuse of discretion for both the statutory interpretation and the factual findings made after the bench trial proceeding

C. Clear error for both because the district court is the primary factfinder and entitled to deference on its rulings

D. De novo review for both the statutory interpretation and the factual findings made after the bench trial proceeding

16. Plaintiff serves Defendant Corp. by handing the summons and complaint to a part-time receptionist at the corporate office. Defendant moves to dismiss under Rule 12(b)(5). The court should:

A. Apply Rule 4(h) — service on a corporation requires delivery to an officer, managing or general agent, authorized agent, or compliance with forum-state service rules; quash or dismiss without prejudice

B. Sustain service automatically because the summons was delivered to the corporate office during business hours

C. Sustain service because the receptionist accepted physical delivery of the summons on behalf of the corporation

D. Order substituted service through publication in a newspaper of general circulation in the corporation's home jurisdiction

17. A proposed class-action settlement is submitted for the court's approval under Rule 23(e). The court should:

A. Approve the settlement automatically because the named parties and class counsel have negotiated and agreed to its terms

B. Approve based on class counsel's recommendation alone because counsel's professional judgment is dispositive on settlement fairness

C. Approve once the named representatives indicate their personal agreement to all terms of the proposed settlement

D. Apply Rule 23(e) — review for fairness, reasonableness, and adequacy after notice and hearing, weighing strength of case, complexity, class reaction, and risks

18. After trial and judgment in federal court, Defendant appeals raising for the first time that the district court lacked subject-matter jurisdiction. The appellate court should:

A. Address the challenge — under Rule 12(h)(3) and constitutional principles, subject-matter jurisdiction may be raised at any time, including for the first time on appeal

B. Reject the challenge because Defendant did not raise the jurisdictional question at any point during the proceedings in the district court

C. Reject the challenge because the parties' implied consent through litigation supplies subject-matter jurisdiction sufficient for federal court

D. Remand for further factual development before addressing the jurisdictional issue raised for the first time on appeal

19. Defendant files a motion to dismiss containing factual representations that, after discovery, prove materially false. Plaintiff seeks Rule 11 sanctions. The court should:

- A. Award sanctions automatically because false factual representations to the court in any motion are per se sanctionable conduct
- B. Refuse sanctions because all motion practice involves advocacy and zealous representation requires factual claims supportive of the client
- C. Apply Rule 11(b) — assess whether representations were made without reasonable inquiry or for improper purpose; observe Rule 11(c) safe-harbor before imposing sanctions
- D. Refer the matter solely to the state bar disciplinary authority without imposing any judicial sanctions under federal rules

20. Plaintiff files suit in U.S. federal court for events occurring entirely in a foreign country, with foreign witnesses, evidence, and applicable law. Defendant moves to dismiss on forum non conveniens grounds. The court should:

- A. Grant the motion automatically because the events giving rise to the claim occurred entirely in a foreign country abroad
- B. Deny the motion because Plaintiff has chosen this forum and Plaintiff's choice is dispositive in federal practice
- C. Apply Piper Aircraft — balance private and public interest factors; the foreign plaintiff's choice receives less deference; dismiss if an adequate alternative forum exists
- D. Order transfer to a different federal district court rather than dismissal under forum non conveniens analysis

21. A jury returns a verdict for Plaintiff. Defendant files a renewed Rule 50(b) motion for judgment as a matter of law. The court should:

- A. Grant the motion automatically because Defendant has invoked the renewed Rule 50 procedure following the jury verdict
- B. Apply Rule 50(b) — review evidence in the light most favorable to the non-movant; grant only if no reasonable jury could have reached the verdict
- C. Conduct an entirely new bench trial on the merits to determine the correct outcome of the underlying dispute
- D. Refer the renewed motion to the trial judge for reconsideration of the original Rule 50(a) ruling at trial

22. After verdict, Defendant moves for a new trial under Rule 59, arguing the verdict is against the weight of the evidence. The court should:

- A. Apply Rule 59(a) — grant when the verdict is against the great weight of evidence; the standard permits some weighing of evidence and credibility
- B. Deny the motion automatically because once a jury has returned its verdict the result is final and unreviewable
- C. Conduct an entirely new bench trial on the merits to reach the correct conclusion on the disputed facts and law
- D. Grant the motion only if Plaintiff expressly consents to a new trial on the merits of the disputed claims

23. Defendant's answer contains scandalous and immaterial allegations about Plaintiff's private life unrelated to the claim. Plaintiff moves to strike under Rule 12(f). The court should:

- A. Deny the motion as a matter of course because Rule 12(f) is invoked sparingly and only in exceptional circumstances
- B. Grant the motion only with Defendant's consent because the answer represents Defendant's chosen presentation of defenses
- C. Apply Rule 12(f) — strike redundant, immaterial, impertinent, or scandalous matter; the rule is applied conservatively but supports striking gratuitous prejudicial material
- D. Strike Defendant's entire answer because any scandalous allegations require dismissal of the responsive pleading altogether

24. Defendant Corp. removes a state-court action to federal court more than 30 days after service of the initial pleading. Plaintiff moves to remand. The court should:

- A. Sustain removal because diversity jurisdiction exists on the merits and the slight procedural delay does not affect federal subject-matter jurisdiction
- B. Apply § 1446(b) — the 30-day removal window is procedural; untimely removal is a defect subject to remand under § 1447(c) on timely motion
- C. Permit removal because the procedural defect is minor and the court has discretion to overlook short delays in removal

D. Sustain removal and grant Defendant additional time to perfect the procedural requirements through later filings

25. Plaintiff sues two parties to a joint venture; joinder of a third joint venturer would destroy diversity. Defendant moves to dismiss under Rule 19. The court should:

A. Dismiss automatically because the absent party is required and joinder would destroy diversity in this case

B. Permit joinder despite the resulting destruction of complete diversity in order to bring all interested parties into the litigation

C. Apply Rule 19 — first determine whether the absent party is required under 19(a); if joinder destroys jurisdiction, apply 19(b)'s equity-and-good-conscience analysis

D. Proceed without the absent party automatically because the existing parties can present their dispute adequately without joinder

26. The district court denies summary judgment and certifies the order for interlocutory appeal under § 1292(b). The court of appeals must decide whether to accept the appeal. The court should:

A. Apply § 1292(b) — discretionary review when the order involves a controlling question of law with substantial ground for difference and immediate appeal materially advances litigation

B. Accept the appeal automatically once the district court has issued a § 1292(b) certification of the controlling legal question

C. Decline the appeal automatically because interlocutory appeals are categorically disfavored in federal appellate practice and rarely accepted

D. Refer the question to the en banc court rather than the regular three-judge panel for initial consideration of the interlocutory issue

27. Plaintiff sues Defendant in the Southern District of New York. None of the events occurred in New York, and Defendant has no New York contacts. Defendant moves to dismiss under Rule 12(b)(3). The court should:

A. Sustain venue automatically because the district was selected by Plaintiff for filing of the original complaint

B. Sustain venue because Plaintiff's voluntary choice of forum is presumptively entitled to substantial deference in venue disputes

C. Refer the matter to a magistrate judge for findings and recommendations on the proper venue under federal venue statutes

D. Apply § 1391(b) — proper venue is where defendants reside if same state, where events substantially occurred, or fallback; otherwise dismiss or transfer under § 1406

28. Plaintiff sues Defendant for negligence after a prior action between the same parties resulted in a verdict on duty. Defendant moves to dismiss based on collateral estoppel. The court should:

A. Grant the motion automatically because collateral estoppel always bars relitigation between the same parties on any related issue

B. Deny the motion because parties may always relitigate claims in subsequent actions involving the same underlying conduct between them

C. Defer the issue-preclusion question until trial because preclusion defenses are typically resolved after factual development

D. Apply issue preclusion — the issue must have been actually litigated, necessarily decided on the merits, in a final judgment, with full and fair opportunity

29. Plaintiff seeks a declaratory judgment regarding the parties' rights under a contract. Defendant moves to dismiss, arguing the request is not ripe. The court should:

A. Apply the Declaratory Judgment Act and Article III ripeness — declaratory judgment requires an actual controversy of sufficient immediacy; discretion to decline jurisdiction exists under Wilton

B. Grant the declaratory request automatically because Plaintiff has properly invoked the Declaratory Judgment Act

C. Dismiss the request automatically because declaratory relief is disfavored and rarely granted in federal practice

D. Refer the matter to private mediation rather than addressing the declaratory judgment request on its merits

30. Plaintiff sues a federal agency challenging a regulation, alleging only generalized concern about agency action without specific personal injury. Defendant moves to dismiss for lack of standing. The court should:

- A. Sustain standing because Plaintiff has alleged genuine concern with agency regulatory action affecting government policy
- B. Sustain standing for any concerned citizen because public-policy challenges by citizens may proceed without specific injury
- C. Refer the matter to Congress rather than the courts because policy concerns are properly addressed legislatively
- D. Apply Lujan — dismiss for lack of standing because generalized grievances about government conduct without personal injury fail Article III standing

31. A state statute criminalizes "false statements about elections." Plaintiff brings a facial First Amendment challenge. At the motion-to-dismiss stage, the court should:

- A. Sustain the statute as a legitimate state interest in election integrity that justifies prohibitions on false electoral speech
- B. Dismiss the challenge as premature because facial First Amendment challenges generally require concrete enforcement
- C. Apply strict scrutiny — content-based speech regulations are presumptively unconstitutional; under Alvarez, categorical bans on false political speech generally fail
- D. Dismiss for lack of standing because Plaintiff has not yet been prosecuted under the statute being challenged here

32. A state university uses race as one of several factors in admissions. A challenger brings an Equal Protection claim. The state moves to dismiss, arguing diversity is a compelling interest. The court should:

- A. Dismiss because diversity has long been recognized as a compelling interest justifying race-conscious admissions decisions
- B. Apply rational-basis review because educational admissions decisions are entitled to substantial deference from courts

C. Apply intermediate scrutiny to race-conscious classifications in higher education admissions decisions under modern doctrine

D. Apply strict scrutiny under *Students for Fair Admissions v. Harvard* — race-conscious classifications require narrow tailoring with measurable, time-bound endpoints

33. A state law allegedly discriminates against out-of-state commerce by imposing additional fees on out-of-state producers. After discovery, the out-of-state producer moves for summary judgment under the Dormant Commerce Clause. The court should:

A. Deny because state taxation is a core state function entitled to deference under federalism principles in commerce disputes

B. Apply the Dormant Commerce Clause — facially discriminatory laws receive strict scrutiny; facially neutral laws with discriminatory effect get Pike balancing

C. Apply rational-basis review because state economic regulations are presumed valid in the absence of fundamental rights concerns

D. Refer the matter to the state legislature rather than judicially deciding the commerce clause challenge

34. A neutral, generally applicable health regulation incidentally burdens a religious practice. A religious adherent brings a Free Exercise challenge. The defendant moves to dismiss. The court should:

A. Sustain the Free Exercise challenge automatically because any burden on religious practice violates the First Amendment

B. Dismiss only if the regulation has explicit religious purpose evident on the face of the statutory text being challenged

C. Apply *Employment Division v. Smith* — neutral, generally applicable laws receive rational-basis review under the Free Exercise Clause

D. Apply strict scrutiny automatically to any law that incidentally burdens religious practice regardless of neutrality

35. A state agency terminates an employee with a property interest in continued employment without any pre-termination procedure. The employee seeks summary judgment on procedural due process grounds. The court should:

- A. Deny because public employment is a privilege and not a constitutionally protected property interest under modern doctrine
- B. Deny because adequate post-termination procedures provide all the process due under the Constitution to terminated employees
- C. Apply only *Mathews v. Eldridge* balancing without further analysis of the pre-deprivation hearing requirements being raised here
- D. Apply *Loudermill* and *Mathews* — pre-termination notice, explanation of evidence, and opportunity to respond are required; grant summary judgment on the violation

36. A state legislature opens its sessions with prayer. A challenger brings an Establishment Clause action. The state moves to dismiss. The court should:

- A. Sustain prayer practices automatically because religious expression at government functions is protected First Amendment activity
- B. Strike down all government-sponsored prayer practices because any official religious expression violates Establishment Clause principles
- C. Apply *Marsh* and *Town of Greece* — legislative prayer is along-standing tradition not violating the Establishment Clause absent proselytization or coercion
- D. Apply the *Lemon* test exclusively without considering historical practices or modern Establishment Clause developments

37. A government regulation reduces private property value by 70 percent but does not eliminate all economically viable use. The owner brings a regulatory-takings claim. The government moves to dismiss. The court should:

- A. Dismiss automatically because no physical taking has occurred and regulatory takings require complete deprivation of use
- B. Apply *Penn Central* — assess economic impact, interference with reasonable investment-backed expectations, and character of the action through balancing
- C. Apply *Lucas* categorical rule because any substantial diminution constitutes a categorical regulatory taking under the Fifth Amendment
- D. Sustain the takings claim automatically because a 70 percent diminution categorically constitutes an unconstitutional regulatory taking

38. A taxpayer challenges a federal tax expenditure on Establishment Clause grounds, alleging the expenditure violates the Constitution. The government moves to dismiss for lack of standing. The court should:

- A. Grant standing automatically because taxpayers have a direct financial stake in federal expenditures generally
- B. Deny standing automatically because taxpayer standing is categorically barred in all federal constitutional challenges to spending
- C. Apply only generalized-grievance analysis without considering the specific Flast framework for taxpayer standing claims
- D. Apply Flast v. Cohen — taxpayer standing requires challenge to a congressional taxing/spending exercise and a specific constitutional limitation; narrowly construed after Hein/Winn

39. A public employee posts a social-media comment criticizing supervisor conduct unrelated to the employee's official duties. The employer disciplines the employee. The employee seeks summary judgment on First Amendment grounds. The court should:

- A. Grant summary judgment for the employer because public employees give up First Amendment rights as a condition of public employment
- B. Apply Garcetti v. Ceballos exclusively without engaging Pickering balancing or considering the off-duty context of the social-media speech
- C. Apply Pickering — speech protected only if on matter of public concern by employee speaking as private citizen; Garcetti excludes official-duty speech
- D. Apply strict scrutiny automatically to any employment action based on a public employee's speech regardless of context

40. Plaintiff challenges a state policy. While the case is pending, the state repeals the policy. The court of appeals should:

- A. Apply mootness doctrine — case is moot if effective relief is impossible; voluntary cessation must show clearly conduct will not recur; specific exceptions apply
- B. Dismiss the appeal automatically because the state's repeal of the challenged policy eliminates any live controversy in the case

C. Order continued litigation despite the repeal because the policy may be reenacted by the state at some future time

D. Refer the parties to private mediation rather than addressing the mootness question raised by the policy repeal

41. A state regulation burdens a fundamental privacy interest. A challenger brings a substantive-due-process claim. The state moves to dismiss. The court should:

A. Apply strict scrutiny automatically to any substantive-due-process challenge involving privacy or autonomy interests

B. Sustain the regulation under rational basis without further analysis of the historical-tradition framework governing such challenges

C. Apply only Whole Woman's Health framework without considering the impact of recent Supreme Court doctrinal developments

D. Apply Dobbs and Glucksberg — substantive due process protects only rights deeply rooted in history and tradition; otherwise rational-basis review

42. A state law treats men and women differently in a parenting-related context. The challenger moves for summary judgment under Equal Protection. The court should:

A. Apply strict scrutiny because gender-based classifications affecting parenting decisions implicate fundamental rights of substantial weight

B. Apply intermediate scrutiny under VMI and Craig v. Boren — important interest, substantially related means, "exceedingly persuasive justification" untethered to stereotypes

C. Apply rational-basis review because economic and family-law classifications receive deferential review under modern Equal Protection doctrine

D. Apply Skinner v. Oklahoma framework because procreation-related classifications implicate fundamental rights warranting strict scrutiny

43. A state imposes the death penalty for non-homicide rape of an adult. A challenger brings an Eighth Amendment claim. The state moves to dismiss. The court should:

- A. Apply *Coker* and *Kennedy v. Louisiana* — death is categorically disproportionate to non-homicide offenses against individuals; the challenge survives
- B. Sustain the death penalty automatically because rape is a serious offense warranting the most severe punishment available under law
- C. Apply rational-basis review because criminal-sentencing decisions are entrusted to legislative bodies and entitled to substantial deference
- D. Apply *Furman v. Georgia* exclusively without considering the categorical proportionality framework applied in later cases

44. A federal statute requires state law enforcement officers to conduct background checks for federal purposes. A state challenges the federal mandate. The federal government moves to dismiss. The court should:

- A. Sustain the federal statute under the Commerce Clause because federal regulation of firearms commerce extends to background-check requirements
- B. Sustain the federal statute under the Necessary and Proper Clause because background checks are reasonable means to federal regulatory ends
- C. Apply *Printz* — anti-commandeering bars Congress from directly requiring state executives to administer federal programs; the challenge survives
- D. Apply the Supremacy Clause and dismiss because state objections to federal regulatory mandates are precluded by federal preemption

45. Plaintiff seeks summary judgment on a constitutional challenge after demonstrating actual past injury caused by the government. The government argues lack of standing. The court should:

- A. Deny standing automatically because past injuries do not satisfy the imminent-injury requirement of Article III standing
- B. Refer the standing question to a jury because credibility of the injury claims is for the factfinder to resolve
- C. Apply *Lujan* — concrete past injury caused by Defendant and remediable through judicial action satisfies injury, causation, and redressability; grant on standing
- D. Sustain standing for any concerned citizen because government action affecting constitutional interests should be subject to judicial review

46. A state criminalizes burning the state flag in political protest. A protester is prosecuted and moves to dismiss on First Amendment grounds. The court should:

- A. Sustain criminalization because flag burning is conduct rather than speech and falls outside First Amendment protection altogether
- B. Sustain criminalization as a permissible content-neutral time, place, and manner restriction on expressive conduct in public places
- C. Apply rational-basis review because state criminal laws regulating expressive conduct receive deferential constitutional review
- D. Apply *Texas v. Johnson* — flag burning is protected symbolic speech; content-based criminal statutes targeting expressive messages receive strict scrutiny

47. A state imposes voter-identification requirements alleged to have disparate impact on racial minorities. A challenger brings Fifteenth Amendment and Voting Rights Act claims. The state moves to dismiss. The court should:

- A. Apply both constitutional and statutory frameworks — Fifteenth Amendment plus Voting Rights Act protections; post-Shelby County, Section 2 challenges continue with intent and impact analysis
- B. Dismiss the claim automatically because voter-identification requirements are facially neutral measures that do not violate federal voting rights law
- C. Apply only rational-basis review because state election regulations are entitled to substantial deference from federal courts on constitutional review
- D. Refer the matter to Congress because voting-rights questions are policy issues for legislative rather than judicial resolution

48. A government official sues a newspaper for publishing truthful, lawfully obtained information about official conduct. The newspaper moves to dismiss. The court should:

- A. Apply *Florida Star* and *Cox Broadcasting* — the First Amendment precludes liability for publishing truthful, lawfully obtained matters of public concern
- B. Sustain the claim because the publication caused reputational damage to the official and tort liability is appropriate

C. Sustain the claim under strict scrutiny because the official's interest in reputation can survive heightened constitutional review

D. Apply rational-basis review to the publication because press regulations are entitled to substantial deference from courts

49. A state law disadvantages children born outside marriage in inheritance. The challenger moves for summary judgment on Equal Protection grounds. The court should:

A. Apply rational-basis review because inheritance classifications affect economic interests not constitutionally protected as fundamental

B. Apply strict scrutiny because illegitimacy classifications target a discrete and insular minority warranting heightened protection

C. Apply intermediate scrutiny under Mills and Lalli — illegitimacy is quasi-suspect; substantial relationship to important state interest required

D. Sustain the law automatically because state inheritance regimes have traditionally distinguished between marital and non-marital children

50. A state-court jury awards \$100,000 in compensatory and \$20,000,000 in punitive damages. Defendant moves to vacate the punitive award on due process grounds. The court should:

A. Sustain the award automatically because punitive damages are within the jury's discretion to address reprehensible conduct fully

B. Strike all punitive damages because excessive punitive awards always violate due process regardless of the underlying conduct

C. Apply *State Farm v. Campbell* — review reprehensibility, ratio of punitive to compensatory damages, and civil-penalty comparisons; single-digit ratios usually appropriate

D. Refer the punitive-damages question to a special master rather than ruling on the due process challenge directly

51. A municipal police officer violates a citizen's constitutional rights. The citizen brings a § 1983 claim against the city. The city moves to dismiss. The court should:

- A. Apply Monell — municipalities liable under § 1983 only when violation results from official policy, custom, or practice; respondeat superior alone is insufficient
- B. Sustain municipal liability automatically because police misconduct creates direct municipal liability under federal civil rights law
- C. Dismiss the claim because municipalities are categorically immune from federal civil rights liability for officer misconduct
- D. Apply only qualified-immunity analysis without considering the separate Monell framework for municipal liability under § 1983

52. A federal official invokes qualified immunity in a Bivens action. The plaintiff opposes. The court should:

- A. Deny summary judgment automatically because qualified immunity is a fact question reserved for jury determination at trial
- B. Sustain qualified immunity automatically because federal officials acting under color of federal law receive immunity from civil suits
- C. Refer the qualified-immunity question to a jury because reasonableness of official conduct is a factual issue for the factfinder
- D. Apply Harlow — qualified immunity unless conduct violated clearly established law a reasonable official would have known; Pearson allows either prong first

53. A city ordinance bans demonstrations on public sidewalks adjacent to government buildings. A protester challenges the ordinance. The city moves to dismiss. The court should:

- A. Sustain the ordinance automatically as a permissible regulation of expressive conduct on government property near official buildings
- B. Strike down all sidewalk regulations because sidewalks are public forums where expressive activity cannot be regulated by government
- C. Apply Hague and Ward — public sidewalks are traditional public forums; content-neutral time, place, manner regulations get intermediate scrutiny; content-based get strict
- D. Apply strict scrutiny without regard to forum type because all government regulations of expressive activity receive strict scrutiny review

54. Plaintiff environmental group challenges federal agency action affecting wildlife. The government moves to dismiss for lack of standing. The court should:

- A. Sustain standing automatically because environmental groups have well-recognized standing to challenge federal agency actions affecting wildlife policy
- B. Deny standing automatically because environmental groups lack the personal injury required for Article III standing under modern doctrine
- C. Refer the standing question to Congress because environmental disputes are political matters for legislative rather than judicial resolution
- D. Apply *Lujan and Friends of the Earth* — concrete particularized injury, traceability, redressability; recreational/aesthetic injuries support associational standing

55. A juvenile is sentenced to life without parole for a non-homicide offense. The juvenile challenges under the Eighth Amendment. The state moves to dismiss. The court should:

- A. Sustain the sentence automatically because life without parole for serious offenses is a permissible sentencing option for juvenile offenders
- B. Apply *Graham v. Florida* — the Eighth Amendment categorically bars life without parole for juveniles convicted of non-homicide offenses; the challenge survives
- C. Apply rational-basis review because criminal-sentencing decisions for juveniles are entitled to substantial deference from courts
- D. Apply *Roper v. Simmons* exclusively without considering the categorical proportionality rule applied to juvenile non-homicide sentencing

56. A group of members of Congress sue the executive branch over the President's exercise of a discretionary power. The executive moves to dismiss for lack of standing. The court should:

- A. Apply *Raines v. Byrd* — members of Congress lack standing over institutional injuries absent authorization from the body as a whole; case dismissed
- B. Sustain standing automatically because legislators have a direct constitutional interest in challenging executive exercises of authority
- C. Refer the matter to the Speaker of the House rather than judicially deciding the legislative standing question on the merits

D. Apply rational-basis review to the underlying executive action without first addressing the threshold standing question of the legislators

57. A state grants a tax break to religious organizations on the same terms as other charitable organizations. A taxpayer challenges. The state moves to dismiss. The court should:

A. Sustain the tax break under rational basis because charitable tax classifications are entitled to substantial legislative deference

B. Strike down all benefits flowing to religious organizations because government cannot provide any financial benefit to religious entities

C. Apply *Lemon v. Kurtzman* exclusively without considering subsequent developments in Establishment Clause doctrine on charitable accommodations

D. Apply *Walz* — tax exemptions for religious organizations on the same terms as other charities are constitutional; neutral and non-entangling

58. A private actor's conduct is challenged as a constitutional violation under § 1983. The defendant moves to dismiss, arguing lack of state action. The court should:

A. Apply state-action analysis — § 1983 reaches only state action; analyze traditional public function, significant state involvement, or joint participation; dismiss if absent

B. Sustain the claim automatically because constitutional protections extend to private actors who substantially affect citizen rights

C. Refer the state-action question to a jury because the level of governmental involvement in private conduct is a factual issue

D. Apply only the Civil Rights Act framework without engaging the separate state-action requirement under the Fourteenth Amendment

59. Plaintiff alleges Defendant promised to pay \$10,000 in exchange for Plaintiff's prior gratuitous services. Defendant moves to dismiss for lack of consideration. The court should:

A. Sustain the claim because a clear promise was made by Defendant in exchange for the prior services rendered by Plaintiff

B. Apply the past-consideration doctrine — past services do not support a present promise; dismiss unless the moral-obligation exception applies in this jurisdiction

C. Refer the matter to mediation rather than addressing the consideration question on the pleadings as currently before the court

D. Sustain the claim only under quasi-contract or unjust enrichment principles rather than as a breach-of-contract action

60. Plaintiff sues to enforce an oral contract for the sale of land. Defendant moves for summary judgment based on the Statute of Frauds. The court should:

A. Apply the Statute of Frauds — land-sale contracts require writing; grant summary judgment unless part performance (possession plus substantial improvements) or other exception applies

B. Deny summary judgment because oral contracts for land sales are enforceable when the parties' intent is clear and the terms are agreed

C. Sustain the claim under promissory estoppel without further analysis of whether the Statute of Frauds defense applies in the case

D. Refer the analysis to the Statute of Limitations framework rather than the writing requirement of the Statute of Frauds

61. Merchant A sends a purchase order. Merchant B responds with an acknowledgment containing additional terms. A does not object and both perform. A sues to enforce its terms. At summary judgment, the court should:

A. Sustain A's purchase-order terms automatically because A's terms predate B's responsive acknowledgment and govern the contract

B. Sustain B's acknowledgment terms automatically because B's terms came last and constitute the final expression of the contract

C. Find no contract was formed because the writings contain different terms and lack the mirror-image required at common law

D. Apply UCC § 2-207 — definite acceptance forms contract even with different terms; between merchants, additional terms enter unless material alteration, objection, or offer limits

62. Plaintiff seeks to introduce evidence of pre-contract negotiations to vary the terms of a fully integrated written contract. Defendant moves in limine to exclude. The court should:

- A. Admit all pre-contract evidence because parties' negotiations always inform the proper interpretation of contractual terms
- B. Refer the question to a jury rather than ruling on the admissibility of the parol-evidence dispute as a matter of law
- C. Apply only the integration clause without engaging the substantive parol-evidence rule analysis governing extrinsic evidence here
- D. Apply the parol-evidence rule — bar evidence varying express terms of an integrated writing; permit for interpretation, fraud, duress, or condition precedent

63. Plaintiff alleges Defendant breached an express warranty in a sale of goods. Defendant moves to dismiss, arguing no warranty was created. The court should:

- A. Apply UCC § 2-313 — express warranties are created by affirmation of fact, promise, description, or sample becoming part of the basis of the bargain
- B. Dismiss because express warranties require a formal disclaimer of liability before they may be enforced against the seller
- C. Dismiss because oral warranties for goods are categorically unenforceable under the Statute of Frauds and UCC writing requirements
- D. Refer the warranty claim to specific performance because warranty remedies require equitable rather than legal relief

64. At the close of evidence, Defendant moves for JMOL arguing Plaintiff failed to prove anticipatory repudiation. The evidence shows Defendant unequivocally communicated before performance that it would not perform. The court should:

- A. Grant JMOL because Plaintiff bears the burden of proof on anticipatory repudiation and Defendant's mere statement is insufficient
- B. Apply UCC § 2-610 and Restatement § 250 — unequivocal indication of inability or unwillingness before performance; reasonable jury could find repudiation; deny JMOL

C. Refer the anticipatory-repudiation question to mediation rather than resolving the JMOL motion at the close of evidence

D. Convert the motion to summary judgment rather than ruling on the JMOL standard under the procedural rules

65. Plaintiff seeks summary judgment on its contract claim. Defendant raises impracticability with evidence of an unforeseen event making performance impracticable. The court should:

A. Grant summary judgment for Plaintiff because impracticability defenses are disfavored and rarely successful in contract litigation

B. Apply Restatement § 261 and UCC § 2-615 — unforeseen event, basic assumption, risk not assumed; if elements create genuine dispute, deny summary judgment

C. Refer the impracticability question to a special master rather than resolving it on the existing summary-judgment record

D. Grant summary judgment for Defendant automatically because the impracticability defense is asserted with supporting evidence

66. Plaintiff seeks to introduce evidence of the parties' course of performance under a long-term sales contract. Defendant moves in limine to exclude. The court should:

A. Exclude all course-of-performance evidence because course-of-performance evidence is inadmissible to interpret contractual terms

B. Admit only with both parties' express consent because contract-interpretation evidence requires mutual agreement to admit

C. Refer the course-of-performance question to a jury without first making any preliminary ruling on admissibility

D. Apply UCC § 1-303 — admit course-of-performance, course-of-dealing, and trade-usage evidence to interpret terms and supplement express terms

67. Plaintiff sues for breach of contract. Defendant moves to dismiss, arguing recovery depends on a condition that did not occur. The court should:

- A. Sustain the claim automatically because conditions are disfavored in modern contract interpretation and rarely enforced strictly
- B. Sustain the claim if the failed condition was a reasonable condition on which Plaintiff's recovery substantively depends
- C. Refer the condition question to mediation rather than resolving the motion to dismiss on the pleadings as filed here
- D. Apply express-conditions doctrine — strict satisfaction required for conditioned duty; if condition unmet and not waived or excused, duty not matured

68. Plaintiff sues for breach of implied warranty. Defendant moves for summary judgment based on a written warranty disclaimer in fine print that does not mention "merchantability." The court should:

- A. Grant summary judgment for Defendant because the parties' written contract includes a disclaimer of implied warranties
- B. Refer the disclaimer's effectiveness to a jury rather than resolving the disclaimer question on the summary-judgment record
- C. Apply UCC § 2-316 — implied-warranty disclaimers must be conspicuous and merchantability disclaimers must mention "merchantability"; deny summary judgment
- D. Apply UCC § 2-314 exclusively without engaging the separate disclaimer-effectiveness analysis under § 2-316 governing the issue

69. Plaintiff seeks consequential damages for special losses Defendant did not specifically know about at contract formation. Defendant moves for JMOL on consequential damages. The court should:

- A. Award all consequential damages automatically because Plaintiff has demonstrated actual losses from Defendant's contractual breach
- B. Bar all consequential damages because Plaintiff cannot prove specific reliance on the contract's terms at the time of formation
- C. Refer the question to expert testimony rather than ruling on the consequential-damages question on the existing JMOL record
- D. Apply Hadley v. Baxendale — consequential damages require reasonable contemplation at formation; without notice, only ordinary consequential damages recoverable

70. A third party brings a contract claim against the promisor as an intended third-party beneficiary. The promisor moves for summary judgment, arguing incidental beneficiary status. The court should:

- A. Sustain third-party rights automatically because all known beneficiaries to contracts acquire enforceable rights against the promisor
- B. Apply Restatement § 302 — distinguish intended (creditor/donee) from incidental beneficiaries based on intent; assess relationship and purpose at contracting
- C. Refer the beneficiary question to mediation rather than resolving the third-party claim at the summary-judgment stage of litigation
- D. Strike down the contract because third-party beneficiary claims undermine contractual privity essential to enforcement

71. Plaintiff seeks to introduce evidence of the parties' course of dealing in prior similar transactions to interpret an ambiguous term. Defendant objects. The court should:

- A. Exclude all course-of-dealing evidence because prior transactions between the parties are not admissible to interpret contractual terms
- B. Admit only with the trial judge's specific discretion exercised on a transaction-by-transaction basis without standardized framework
- C. Refer the course-of-dealing question to a special master for findings rather than ruling on the admissibility issue
- D. Apply UCC § 1-303(b) — admit course-of-dealing evidence to interpret ambiguous terms or supplement express terms; admissibility not dependent on consent

72. Defendant raises frustration of purpose as a defense to a contract claim. Plaintiff moves to dismiss the defense. The court should:

- A. Apply Restatement § 265 — substantial frustration of principal purpose, unforeseen event, basic assumption, risk not assumed; narrowly construed; assess pleadings
- B. Sustain the defense automatically because frustration of purpose is a recognized defense to all contractual obligations
- C. Strike the defense automatically because frustration is rarely accepted and is disfavored in modern contract enforcement doctrine

D. Refer the case to private settlement rather than ruling on the frustration-of-purpose defense raised by Defendant in its pleading

73. Plaintiff sues on promissory estoppel for a promise made by Defendant. Defendant moves to dismiss. The court should:

A. Apply Restatement § 90 — binding promise without consideration if promisor reasonably expects to induce action, does induce action, and injustice can be avoided only by enforcement

B. Dismiss because promissory estoppel is disfavored and rarely accepted as a substitute for consideration in modern contract law

C. Refer the question to specific performance rather than treating the claim as a promissory-estoppel cause of action on its own

D. Strike the claim automatically because promissory estoppel requires a written promise to be enforceable against the promisor

74. At the close of Plaintiff's case, Defendant moves for JMOL arguing no offer was made. The evidence shows Defendant placed a classified advertisement reading "for sale: car at fair price." Plaintiff attempted to purchase. The court should:

A. Sustain the offer because Defendant clearly published an advertisement seeking buyers for the described item under typical contract analysis

B. Apply Restatement § 24 — advertisements are generally invitations to deal, not offers, unless specific enough to be offers; "fair price" is too indefinite

C. Refer the question to private mediation rather than resolving the offer/invitation question on the existing JMOL record

D. Sustain the offer with corroborating evidence such as testimony from any individuals who saw the published advertisement

75. Plaintiff alleges acceptance of Defendant's offer. Defendant moves to dismiss, arguing the offer was revoked before acceptance. The court should:

A. Apply revocation rules — offers revocable before acceptance unless consideration (option), § 87 reliance, or UCC § 2-205 firm offer; revocation effective on receipt

B. Sustain the contract automatically because Plaintiff has alleged acceptance of Defendant's offer in a manner consistent with formation

C. Refer the revocation question to settlement rather than addressing the pleadings on Defendant's motion as currently filed

D. Strike the defense automatically because revocation is rarely effective once the offeree has substantially relied on the offer

76. Buyer seeks specific performance of a real-estate contract. Seller moves to dismiss, arguing money damages are adequate. The court should:

A. Deny specific performance automatically because money damages are presumptively the appropriate remedy in modern contract law

B. Apply only the damages framework without engaging the equitable specific-performance analysis applicable to land-sale contracts

C. Apply specific-performance doctrine for real estate — land is unique, money damages inadequate; deny dismissal and order conveyance if contract is valid

D. Refer the matter to mediation rather than ruling on the specific-performance question raised by Buyer's request for equitable relief

77. Buyer rejects goods after delivery citing non-conformity. Seller seeks summary judgment, arguing the non-conformity was insubstantial. The court should:

A. Apply UCC § 2-601 perfect-tender rule for single-delivery contracts — buyer may reject if goods fail in any respect, subject to § 2-508 cure right

B. Sustain the rejection automatically because Buyer's rejection of non-conforming goods is always within Buyer's discretion under federal law

C. Convert the summary-judgment motion to a bench trial on the substantiality of the non-conformity at the close of discovery

D. Apply only § 2-612 installment-contracts framework without engaging § 2-601 governing single-delivery contracts for sale of goods

78. Plaintiff seeks consequential damages. Defendant moves to introduce evidence that Plaintiff failed to mitigate damages. The court should:

- A. Exclude all mitigation evidence because mitigation arguments require pleading mitigation as an affirmative defense before introducing evidence
- B. Refer the mitigation question to a jury without first making any preliminary ruling on the admissibility of the evidence
- C. Sustain admission only with Plaintiff's express consent because mitigation evidence prejudices the plaintiff's damages presentation at trial
- D. Apply mitigation doctrine — admit evidence of reasonable mitigation efforts; breaching party bears the burden of proving failure; mitigation reduces damages

79. Plaintiff sues for the full amount of a debt. Defendant raises accord and satisfaction. Plaintiff moves to dismiss the defense. The court should:

- A. Strike the defense automatically because accord and satisfaction is disfavored and rarely accepted in modern debt-collection disputes
- B. Sustain the original debt automatically because creditors are entitled to recover the full amount of any contractual obligation owed
- C. Apply accord and satisfaction — bona fide dispute, debtor's offer of different performance, creditor's understanding, acceptance through performance; assess elements
- D. Refer the accord question to private mediation rather than resolving the motion to dismiss the defense on the existing pleadings

80. Plaintiff sues a merchant seller for breach of implied warranty of merchantability. Defendant moves to dismiss. The court should:

- A. Apply UCC § 2-314 — merchant seller impliedly warrants merchantability (fit for ordinary purposes, passes without objection in trade, fair average quality)
- B. Dismiss because implied warranties require express creation in the contract before they may be enforced by the buyer against the merchant seller
- C. Refer the matter to specific performance rather than treating the dispute as a warranty claim governed by the UCC commercial framework
- D. Apply only § 2-315 fitness-for-particular-purpose analysis without engaging the separate § 2-314 framework on merchantability requirements

81. Plaintiff sues in court. Defendant moves to compel arbitration under a contract arbitration clause. Plaintiff opposes, arguing unconscionability. The court should:

- A. Compel arbitration automatically because federal policy strongly favors arbitration and unconscionability challenges are categorically rejected in court
- B. Deny arbitration because Plaintiff filed in court and forum selection is established by the plaintiff's voluntary choice to proceed there
- C. Apply FAA and gateway-question framework — arbitration agreements presumptively enforceable; courts decide validity; unconscionability assessed under state law
- D. Refer the unconscionability question to a state court even though federal jurisdiction has been properly invoked in the matter

82. Buyer and Seller are both merchants. Buyer's purchase order is silent on warranties. Seller's acknowledgment adds a one-year warranty period. Buyer accepts the goods without objecting. The court should:

- A. Sustain Buyer's purchase-order terms automatically because Buyer's terms came first and govern the contract under federal rules of construction
- B. Apply UCC § 2-207(2) — additional terms between merchants enter contract unless offer limits acceptance, terms materially alter, or offeror objects in time
- C. Sustain the warranty automatically because Seller's acknowledgment created a binding express warranty term in the contract between the parties
- D. Refer the warranty question to a jury without first making any preliminary ruling on the battle-of-forms analysis under the UCC

83. Plaintiff sues for restitution after conferring a benefit on Defendant. Defendant moves to dismiss. The court should:

- A. Dismiss automatically because contracts require formal formation before restitution remedies become available in commercial disputes
- B. Refer the matter to specific performance rather than treating the dispute as an unjust-enrichment claim outside the contract framework

C. Apply unjust enrichment — Defendant received benefit, Plaintiff conferred non-officiously and not as gift, retention without payment is unjust; restitution available

D. Strike the claim automatically because restitution claims require both contractual privity and consideration to support recovery

84. Plaintiff alleges Defendant's signed written firm offer is binding. Defendant moves for JMOL, arguing the firm offer requires consideration. The court should:

A. Grant JMOL for Defendant automatically because all contractual promises require consideration to be enforceable under common-law doctrine

B. Sustain the firm offer automatically because Plaintiff has demonstrated Defendant's signed written firm offer to a merchant counterparty

C. Apply UCC § 2-205 — merchant's signed written firm offer binding for stated period (≤ 3 months) without consideration; if terms established, deny JMOL

D. Refer the matter to private mediation rather than ruling on the firm-offer question at the close of evidence as procedurally required

85. Plaintiff seeks lost-profit damages following Defendant's breach. Defendant moves for summary judgment, arguing Plaintiff failed to mitigate. The court should:

A. Grant summary judgment automatically because the plaintiff's failure to mitigate bars all recovery in modern contract damages analysis

B. Apply mitigation principle — duty to take reasonable steps; defendant bears burden of proving failure; if plaintiff produces evidence of efforts, deny SJ

C. Sustain damages automatically because Plaintiff has alleged contractual breach by Defendant and seeks to recover for losses caused by that breach

D. Refer the damages question to expert testimony rather than ruling on the summary-judgment motion based on the existing record

86. Plaintiff seeks to introduce trade-usage evidence to interpret a contract term. Defendant objects. The court should:

- A. Exclude all trade-usage evidence because trade practices are not relevant to interpretation of the parties' specific contractual undertakings
- B. Apply UCC § 1-303(c) — trade usage is admissible to interpret ambiguous terms or supplement express terms; parties presumed to know industry usage
- C. Sustain trade-usage admission only with mutual consent of the parties because evidence of industry practice requires parties' specific agreement
- D. Refer the trade-usage question to a special master rather than ruling on the admissibility issue on the existing record before the court

87. Plaintiff sues based on Defendant's pre-performance statement that Defendant "may not be able" to perform. Defendant moves to dismiss, arguing the statement is not unequivocal repudiation. The court should:

- A. Sustain repudiation automatically because Defendant's expression of doubt about future performance creates an immediate breach of the contractual obligation
- B. Apply only § 2-609 adequate-assurance framework without considering the separate § 2-610 anticipatory-repudiation requirements applicable to the case
- C. Apply UCC § 2-610 and Restatement § 250 — anticipatory repudiation requires unequivocal statement; equivocal statements may support § 2-609 demand but not repudiation
- D. Refer the matter to private mediation rather than addressing the repudiation question on the pleadings as raised by Defendant's motion

88. Police search Defendant's home without a warrant and find evidence of drug possession. Defendant moves to suppress under the Fourth Amendment. The prosecution argues exigent circumstances. The court should:

- A. Sustain the search automatically because police have inherent authority to conduct warrantless searches when investigating drug-trafficking offenses
- B. Apply warrant requirement and analyze exigency — *Kentucky v. King's* hot-pursuit, evidence-destruction, emergency-aid exceptions; suppress if no genuine exigency
- C. Sustain the search if any consent was given by anyone present at the time of the warrantless entry into the residence
- D. Refer the question to a magistrate judge for an evidentiary hearing on the existence of probable cause before ruling on suppression

89. Defendant in custody is questioned by police without Miranda warnings. Defendant confesses. The defense moves to suppress the confession. The court should:

- A. Apply *Miranda v. Arizona* — custodial interrogation requires advance warnings; un-Mirandized statements presumptively inadmissible in prosecution's case-in-chief
- B. Sustain the confession because the defendant spoke voluntarily without the explicit invocation of any constitutional right to silence or counsel
- C. Refer to the voluntariness standard exclusively without engaging the separate Miranda framework requiring custodial-interrogation warnings
- D. Sustain the confession if defendant was an educated adult capable of understanding the implications of speaking with police interrogators

90. Defendant moves to dismiss the indictment, arguing the grand jury was improperly instructed on the elements of the charged offense. The court should:

- A. Grant dismissal automatically because any improper instruction to a grand jury invalidates the indictment under federal criminal procedure
- B. Refer the question to the prosecutor for assessment rather than engaging the substantive challenge to the grand jury's instructional accuracy
- C. Apply Fifth Amendment grand-jury jurisprudence and *Costello* — narrow review; structural defects require dismissal but instructional errors generally do not
- D. Convert the motion to a probable-cause hearing rather than addressing the grand-jury challenge as raised by Defendant in the motion before the court

91. The prosecution seeks to impeach Defendant with prior convictions. Defense counsel moves in limine to exclude. The court should:

- A. Exclude all prior convictions because impeachment with prior crimes prejudices the jury against the defendant's testimony substantively
- B. Apply Rule 609 — automatic admission under 609(a)(2) for crimes involving dishonesty/false statement; 609(a)(1) felonies need Rule 403 balancing; 609(b) limits old convictions
- C. Refer the impeachment question to the prosecution's discretion rather than ruling on the in limine motion as a matter of evidentiary law

D. Sustain all impeachment automatically because Defendant's choice to testify subjects the defendant's character to broad impeachment by the prosecution

92. Defense counsel moves for a change of venue under Rule 21 due to pretrial publicity. The court should:

A. Apply Rule 21(a) — venue change if pretrial publicity prevents an impartial jury; voir dire often resolves the issue without venue change

B. Deny venue change automatically because pretrial publicity is rarely sufficient to support a constitutional venue-change request

C. Refer the venue question to the federal courts rather than the state-court system where the case is currently pending and proceeding

D. Order all jurors to refrain from media exposure without further analysis of the pretrial-publicity question raised by the defense

93. Defendant moves to suppress an eyewitness identification arising from a suggestive pretrial procedure. The court should:

A. Suppress automatically because any suggestive pretrial identification procedure violates due process and requires automatic exclusion of the identification

B. Sustain the identification because eyewitness identifications by witnesses present at the scene are entitled to substantial deference from the court

C. Apply *Manson v. Brathwaite* and *Neil v. Biggers* — totality of circumstances analysis of reliability (opportunity, attention, accuracy, certainty, time)

D. Refer the identification question to a jury without first conducting any judicial assessment of the underlying reliability factors at issue

94. Defendant's confession follows extended interrogation under harsh conditions. Defense counsel moves to suppress on Fifth Amendment voluntariness grounds. The court should:

A. Apply voluntariness totality of circumstances — age, education, length and intensity of detention, pressure, Miranda compliance; *Colorado v. Connelly* requires police coercion

B. Sustain the confession automatically because defendants who voluntarily speak with police after Miranda warnings have waived all constitutional protections

C. Refer the voluntariness question to a polygraph examination rather than judicially determining the suppression motion on the existing record

D. Apply Miranda exclusively without engaging the separate due-process voluntariness analysis governing the confession suppression motion before the court

95. Defendant has been awaiting trial for two years without justification. Defense counsel moves to dismiss on Sixth Amendment speedy-trial grounds. The court should:

A. Deny the motion because two years of pretrial delay is reasonable in federal criminal proceedings involving complex factual or legal issues

B. Apply *Barker v. Wingo* — four-factor analysis: length of delay, reason, defendant's assertion of the right, and prejudice (impaired defense, oppressive incarceration)

C. Refer the speedy-trial question to the prosecution for assessment rather than ruling judicially on the constitutional question raised by the defense

D. Sustain the trial automatically because the speedy-trial right does not bar prosecution after the defendant has been formally indicted and charged

96. Police arrest Defendant for a traffic violation and search the vehicle's passenger compartment. Defendant moves to suppress. The court should:

A. Sustain the search automatically because vehicle searches incident to arrest are categorically permitted under federal Fourth Amendment doctrine

B. Apply *Arizona v. Gant* — search permitted only if arrestee unsecured and within reach OR reasonable belief vehicle contains evidence of the offense of arrest

C. Apply *Belton's* bright-line rule exclusively without considering the modifications to vehicle search-incident-to-arrest doctrine made by subsequent cases

D. Refer the suppression motion to mediation rather than ruling judicially on the constitutional question raised by Defendant's motion to suppress

97. Defendant is acquitted in state court. The same state then seeks to retry Defendant on the same facts under a different statute. The court should:

- A. Sustain retrial automatically because the second prosecution involves a different statute even if the underlying conduct is the same as before
- B. Apply the dual-sovereignty doctrine without considering the separate same-elements analysis applicable in single-sovereign retrials following acquittal
- C. Apply Blockburger same-elements test — same offense if each does not require proof of a fact the other does not; double jeopardy bars retrial
- D. Refer the matter to the appellate court for resolution rather than ruling on the motion to dismiss the retrial as currently filed

98. Defendant moves to dismiss based on ineffective assistance of trial counsel after conviction. The court should:

- A. Apply Strickland v. Washington — counsel's performance objectively unreasonable AND prejudice (reasonable probability of different result); strategic choices receive deference
- B. Grant dismissal automatically because any allegation of ineffective assistance of counsel warrants reversal of the underlying criminal conviction
- C. Refer the matter to bar discipline rather than addressing the post-conviction ineffective-assistance claim on the merits as filed by Defendant
- D. Sustain the conviction automatically because the trial has been completed and no further review is available in post-conviction proceedings

99. Defendant files a federal habeas petition under 28 U.S.C. § 2254 after exhausting state remedies. The court should:

- A. Apply AEDPA § 2254(d) — relief only if state-court decision was contrary to or unreasonable application of clearly established federal law, or unreasonable facts
- B. Grant habeas relief automatically because Defendant has properly invoked the federal habeas procedure after exhausting state-court remedies as required
- C. Sustain the state conviction automatically because federal habeas review is rare and rarely successful for state-court convictions properly entered
- D. Refer the matter to plain-error review rather than addressing the habeas petition on the merits under the federal habeas framework

100. The prosecution seeks to introduce evidence of Defendant's prior bad acts to prove identity. Defense counsel moves in limine to exclude. The court should:

- A. Exclude all prior bad acts automatically because prior conduct of any kind cannot be used to prove subsequent criminal conduct of the same character
- B. Admit all prior bad acts automatically because Defendant's character is at issue once Defendant has been charged with the present offense and is on trial
- C. Apply Rule 404(b)(2) — admit for non-character purposes (motive, opportunity, intent, plan, knowledge, identity, absence of mistake); subject to Rule 403 balancing
- D. Refer the question to private settlement rather than ruling on the in limine motion as it pertains to prior bad acts being introduced at trial

101. Defendant has been indicted but has not retained counsel. Police elicit incriminating statements without counsel present. Defense counsel moves to suppress. The court should:

- A. Sustain the statements if Miranda warnings were given at the time of interrogation because Miranda compliance defeats all Sixth Amendment claims
- B. Sustain the statements because Defendant did not affirmatively request counsel at the time the police elicited the incriminating statements at issue
- C. Apply *Massiah v. United States* — Sixth Amendment right to counsel attaches at indictment; government may not deliberately elicit incriminating statements without counsel
- D. Apply *Miranda* exclusively without engaging the separate Sixth Amendment *Massiah* analysis applicable once judicial proceedings have commenced against Defendant

102. Defense counsel discovers that the prosecution failed to disclose material exculpatory evidence. The court should:

- A. Dismiss the entire prosecution automatically because *Brady* violations result in dismissal of all charges as a categorical remedy required by due process
- B. Apply *Brady v. Maryland* and *Strickler v. Greene* — grant new trial if evidence favorable, suppressed, and material (reasonable probability of different result)
- C. Refer the matter to bar discipline rather than ordering substantive relief in the criminal proceeding for the failure to disclose exculpatory material

D. Sustain the conviction automatically because Brady applies only when the defendant has specifically requested the exculpatory evidence from the prosecution

103. Defendant moves for a new trial after a forensic analyst's report was admitted without the analyst's testimony. The court should:

A. Apply Melendez-Diaz and Bullcoming — forensic reports prepared for prosecution are testimonial; analyst must testify; admission without testimony violates Confrontation

B. Sustain the verdict automatically because forensic analysts' reports are admissible business records under federal rules regardless of testimony requirement

C. Refer the matter to the AEDPA standard rather than the direct Confrontation Clause analysis applicable to the case in the present procedural posture

D. Refer the verdict-review question to mediation rather than ruling on the motion for new trial as filed by the defense in this matter

104. A jury convicts Defendant. Defense counsel moves for judgment of acquittal under Rule 29 post-verdict. The court should:

A. Grant automatically because Defendant has lost at trial and is entitled to acquittal pending appellate review of the underlying conviction

B. Apply Jackson v. Virginia — evidence in light most favorable to prosecution; any rational trier could find essential elements beyond reasonable doubt

C. Refer the matter to appellate review rather than ruling on the post-verdict Rule 29 motion as filed by the defense in this matter

D. Sustain the verdict automatically because the jury's determination of guilt is final once the verdict has been formally entered by the court

105. Police execute a search warrant in objectively reasonable reliance on the magistrate's probable-cause determination. The warrant is later found defective. The court should:

A. Suppress automatically because any defective warrant requires exclusion of all evidence obtained during the warrantless search as a categorical matter

B. Sustain the search if the officers conducting it were experienced and trained in proper Fourth Amendment search-and-seizure procedures

C. Apply *United States v. Leon* — good-faith exception admits evidence obtained in objectively reasonable reliance on facially valid warrants later found defective

D. Refer the matter to the chief judge for resolution rather than ruling on the suppression motion as filed in the present procedural posture

106. Defense counsel discovers post-verdict that a juror conducted independent internet research about the case. Counsel moves for a new trial. The court should:

A. Sustain the verdict automatically because juror misconduct claims are rarely sufficient to warrant new trials under federal criminal procedure

B. Apply Rule 33 and Sixth Amendment impartiality — assess whether extraneous information probably affected verdict; *Remmer/Tanner* may require evidentiary hearing

C. Refer the matter to bar discipline rather than judicial action on the motion for new trial based on the alleged juror misconduct during deliberations

D. Dismiss the action entirely because juror misconduct compromises the entire integrity of the proceedings and requires complete dismissal

107. The prosecution seeks to introduce a co-conspirator's statement against Defendant at trial. Defense counsel moves in limine to exclude. The court should:

A. Exclude as hearsay automatically because co-conspirator statements are out-of-court statements offered for their truth and barred by the hearsay rules

B. Sustain admission automatically because co-conspirator statements are categorically admissible against any defendant alleged to be a member of the conspiracy

C. Refer the matter to the residual exception rather than engaging the specific co-conspirator framework applicable to the in limine motion

D. Apply Rule 801(d)(2)(E) — non-hearsay; requires conspiracy, membership, and statement during and in furtherance; *Crawford* issues if testimonial

108. Police stop a vehicle on probable cause that it contains contraband. Officers search the trunk and find evidence. The court should:

- A. Suppress because warrants are required for all vehicle searches and the prosecution has failed to obtain proper judicial authorization for the search
- B. Suppress because trunk searches require special justification beyond probable cause and the prosecution has not shown the requisite additional grounds
- C. Apply the automobile exception under *Carroll* and *California v. Acevedo* — warrantless searches on probable cause permitted, extending to all containers
- D. Refer the matter to the consent doctrine rather than analyzing the warrantless search under the automobile exception as raised in the suppression motion

109. Defendant files a federal habeas petition raising claims not properly exhausted in state court. The court should:

- A. Grant relief automatically because federal courts have jurisdiction to address constitutional challenges to state-court convictions regardless of state exhaustion
- B. Deny habeas relief automatically because federal habeas claims must be exhausted in state court without any exceptions to that exhaustion requirement
- C. Apply procedural-default doctrine — habeas review barred unless cause and prejudice or fundamental miscarriage of justice; *Coleman/Maples*; assess record
- D. Refer the matter to direct review rather than addressing the procedurally defaulted claims on the merits in the federal habeas petition

110. Defendant is charged with attempted burglary. At the close of the prosecution's case, defense counsel moves for JMOL. The evidence shows Defendant gathered tools but never approached the target. The court should:

- A. Sustain the prosecution because gathering burglary tools manifests sufficient criminal intent for the attempt offense to be sustained at the JMOL stage
- B. Apply the substantial-step / proximity-to-completion test — attempt requires intent and substantial step strongly corroborative; mere preparation insufficient; grant JMOL
- C. Refer the matter to private mediation rather than ruling on the JMOL motion as filed by the defense at the close of the prosecution's case
- D. Apply only specific-intent analysis without engaging the substantial-step framework applicable to the attempt question raised by Defendant's motion

111. Police observe smoke and hear cries from inside a home. They enter without a warrant. Defense counsel moves to suppress evidence found during entry. The court should:

- A. Apply the emergency-aid exception under *Brigham City* and *Mincey* — police may enter without warrant to render aid; supported by objective articulable facts
- B. Suppress automatically because warrantless entry into homes is categorically barred regardless of the circumstances at the time of entry
- C. Refer the matter to the consent doctrine rather than analyzing the warrantless entry under the emergency-aid exception applicable to the situation
- D. Apply only the exigent-circumstances framework for evidence destruction rather than the separate emergency-aid analysis applicable to entries to render aid

112. Defense counsel challenges peremptory strikes used by the prosecution as racially discriminatory under *Batson v. Kentucky*. The court should:

- A. Sustain peremptory strikes automatically because peremptory challenges are categorically within the prosecution's discretion in criminal trials
- B. Refer the matter to a jury rather than judicially ruling on the constitutional challenge to the prosecution's exercise of peremptory strikes
- C. Apply *Batson v. Kentucky*'s three-step analysis — prima facie case, race-neutral reason, determination of purposeful discrimination; *J.E.B.* extends to gender
- D. Apply Sixth Amendment fair-cross-section analysis without engaging the separate Equal Protection framework governing peremptory-strike challenges

113. Post-conviction, defense counsel discovers evidence that was not available at trial through reasonable diligence. The court should:

- A. Sustain the verdict automatically because post-verdict discovery of new evidence is rare grounds for reversal of properly entered criminal convictions
- B. Refer the matter to bar discipline rather than ordering substantive relief on the motion for new trial based on the newly discovered evidence by defense
- C. Order a new trial automatically because newly discovered evidence not available at trial supports automatic reversal of the underlying criminal conviction

D. Apply Rule 33 — new trial for newly discovered evidence requires post-trial discovery, due diligence, material non-cumulative evidence, probable acquittal

114. Defendant raises insanity as a defense. The prosecution moves to dismiss the defense. The court should:

A. Apply only Durham product test without considering the M'Naghten or MPC frameworks applicable in most jurisdictions for the insanity defense

B. Apply only diminished-capacity doctrine rather than the broader insanity defense raised by Defendant in the present criminal proceeding

C. Apply the jurisdictional insanity test — M'Naghten cognitive or MPC § 4.01 substantial capacity; defendant bears burden of proof in most jurisdictions

D. Refer the matter to medical experts only without engaging the substantive legal framework governing the insanity defense raised by Defendant

115. Police conduct a brief investigative stop and pat-down based on observed nervous behavior in a high-crime area. Defense counsel moves to suppress evidence. The court should:

A. Apply *Terry v. Ohio* — assess reasonable suspicion under totality of circumstances; frisk requires reasonable suspicion person is armed; *Illinois v. Wardlow* supports

B. Suppress automatically because brief investigative stops always require probable cause rather than the lower reasonable-suspicion standard for valid seizures

C. Sustain automatically because nervous behavior in high-crime areas is categorically sufficient to support investigative stops and protective frisks for weapons

D. Refer the matter to the consent doctrine rather than analyzing the stop under the separate *Terry* investigative-stop framework applicable to brief seizures

116. Defense counsel moves in limine to bar the prosecution from commenting on Defendant's post-arrest, post-Miranda silence. The court should:

A. Sustain prosecution comment automatically because the defendant's choice to remain silent is fair game for prosecutorial argument at trial under federal rules

B. Refer the matter to the trial court's discretion rather than ruling on the constitutional question raised by the defense in the in limine motion

C. Sustain prosecution comment only with the defendant's consent because the defendant may choose to permit comment on the post-arrest silence in argument

D. Apply *Doyle v. Ohio* — bar prosecution from using post-arrest, post-Miranda silence to impeach defendant; Miranda warnings carry implicit assurance silence will not be used

117. A party seeks to introduce a non-testifying declarant's out-of-court statement for its truth. The opposing party moves in limine to exclude as hearsay. The court should:

A. Admit if relevant because relevant statements are presumptively admissible at trial regardless of the source of the statement or its proponent

B. Admit under the residual exception automatically because all statements may be admitted under Rule 807 when not otherwise covered by enumerated exceptions

C. Refer the matter to a special master rather than the trial court for the hearsay determination as raised by the in limine motion

D. Apply Rules 801–807 — hearsay generally inadmissible unless an exception applies; proponent must identify specific exception and establish foundation

118. A party seeks to introduce relevant but prejudicial evidence. The opposing party moves in limine under Rule 403. The court should:

A. Admit all relevant evidence because relevance is the only criterion for admission under federal evidence law and prejudice is not a basis for exclusion

B. Exclude all prejudicial evidence because evidence that prejudices any party should be excluded as a categorical matter under federal evidence rules

C. Apply Rule 403 — exclude only if probative value substantially outweighed by unfair prejudice, confusion, misleading, delay, waste, or cumulativeness

D. Refer the Rule 403 question to a jury rather than the trial court for resolution of the balancing test under federal evidence rules

119. A party offers expert testimony based on scientific methodology. The opposing party moves in limine to exclude under *Daubert*. The court should:

- A. Admit all qualified expert testimony because expertise is the sole criterion for admission under federal evidence rules governing expert witness testimony
- B. Apply Daubert and Rule 702 — gatekeeper function; assess reliability through testability, peer review, error rate, controlling standards, general acceptance
- C. Refer the Daubert question to a jury rather than the court for resolution of the expert-evidence reliability question under federal evidence rules
- D. Apply Frye general-acceptance test exclusively without considering Daubert's separate reliability framework adopted in federal court evidence practice

120. A party seeks to introduce a record of a regularly conducted activity. The opposing party objects on hearsay grounds. The court should:

- A. Exclude automatically because business records are hearsay subject to the general inadmissibility rule under federal evidence law on hearsay statements
- B. Refer the matter to the residual exception rather than engaging the specific business-records framework under Rule 803(6) governing the record's admissibility
- C. Apply Rule 803(6) — record made at/near time by person with knowledge, kept in regular course, regular practice, authenticated; trustworthiness assessment
- D. Apply only Rule 901 authentication without engaging the substantive business-records framework under Rule 803(6) applicable to the offered records

121. A party seeks to introduce character evidence regarding a witness's truthfulness. The court should:

- A. Apply Rule 608 — reputation or opinion testimony of truthfulness; specific instances inadmissible on direct; available on cross if probative; admissible after attack
- B. Admit all character evidence because character witnesses are entitled to provide full testimony about other witnesses in federal court proceedings
- C. Exclude all character evidence because witness character is not a permissible subject for testimony under federal rules of evidence governing impeachment
- D. Refer the matter to Rule 404(a) rather than the separate Rule 608 framework governing character evidence as it pertains to witness truthfulness specifically

122. A witness made a statement about an event she perceived. The prosecution offers the statement; the defense objects on hearsay grounds. The court should:

- A. Exclude automatically because all out-of-court statements made by witnesses about events they perceived are inadmissible hearsay under federal rules
- B. Apply Rules 803(1) and 803(2) — present sense impression requires contemporaneity; excited utterance requires stress from startling event; court determines elements
- C. Refer the matter to the residual exception rather than the specific present-sense-impression or excited-utterance frameworks governing the statement
- D. Admit automatically because witness statements made at or near the time of events are presumptively admissible at trial under federal evidence law

123. In a homicide case, the prosecution offers a statement by the victim shortly before death identifying the assailant. The defense objects on hearsay grounds. The court should:

- A. Exclude automatically because all out-of-court statements made by victims of crimes are inadmissible hearsay under federal evidence rules generally
- B. Apply Rule 804(b)(2) — dying declaration requires (1) belief death imminent, (2) statement concerns cause/circumstances, (3) declarant unavailable; admissible
- C. Refer the matter to the excited-utterance exception rather than the separate dying-declaration framework applicable in the homicide prosecution
- D. Admit automatically because victims' statements identifying assailants are categorically admissible under the dying-declaration exception in all cases

124. A party offers a witness's prior inconsistent statement to impeach. The opposing party objects. The court should:

- A. Exclude automatically because prior inconsistent statements by witnesses are inadmissible hearsay under federal evidence rules in all circumstances
- B. Admit only with notice to the witness because prior statements require advance notice to be admissible against the witness as impeachment material
- C. Apply Rules 613 and 801(d)(1)(A) — admit for impeachment; substantive use only if given under penalty of perjury at proceeding or in deposition

D. Refer the matter to the residual exception rather than engaging the specific framework governing prior inconsistent statements under the federal evidence rules

125. A party seeks to introduce communications between attorney and client. The opposing party invokes the privilege. The court should:

A. Sustain admission automatically because attorney-client communications are admissible whenever they are relevant to a disputed issue in the case

B. Apply attorney-client privilege — protect confidential communications for legal advice; client holds privilege; crime-fraud exception applies; assess waiver

C. Refer the matter to the work-product doctrine rather than the separate attorney-client privilege framework applicable to the communications at issue

D. Admit if relevant because relevance is the controlling criterion for admission of communications regardless of any claim of attorney-client privilege

126. A witness cannot recall an event but made a record when fresh. The prosecution offers the record. The court should:

A. Exclude automatically because the witness's inability to recall makes the record inadmissible regardless of when the record was originally created

B. Sustain the witness's recollection rather than admitting the record because witness testimony is preferred over documentary evidence in federal court

C. Refer the matter to the present-recollection-refreshed framework rather than the past-recollection-recorded framework as applied to the record in question

D. Apply Rule 803(5) — recorded recollection admits writing when witness once had knowledge but cannot recall, record made/adopted when fresh, accurate

127. A party seeks to prove the content of a writing without producing the original. The opposing party objects under Rule 1002. The court should:

A. Admit secondary evidence automatically because federal evidence rules permit secondary evidence of writings without requiring the original document

B. Apply Rule 1002 — require original or Rule 1003 duplicate to prove content; Rule 1004 exceptions for lost, unobtainable, opponent-held, or collateral

C. Refer the question to a jury rather than the trial court for resolution of the best-evidence-rule issue under federal evidence rules

D. Refer the matter to expert testimony rather than the trial court for resolution of the best-evidence-rule issue under federal evidence rules

128. A party seeks to introduce evidence of a person's habit or organization's routine practice. The opposing party objects. The court should:

A. Exclude all habit evidence because evidence of a person's habit is not admissible to prove conduct on any particular occasion under federal evidence rules

B. Apply Rule 406 — habit evidence admits to prove conduct in accordance with habit/routine on a particular occasion; differs from character in specificity and routine

C. Refer the matter to the character-evidence framework rather than the separate habit-evidence rule under Rule 406 governing the evidence at issue

D. Refer the matter to the residual exception rather than the specific Rule 406 framework governing habit evidence in federal court proceedings

129. A witness is asked to testify against her spouse in a criminal case. The defense raises the spousal privilege. The court should:

A. Compel testimony automatically because the spousal privilege has been abolished in modern federal practice and no longer applies in criminal trials

B. Sustain absolute spousal privilege because all communications between spouses are categorically privileged in federal court proceedings regardless of context

C. Refer the matter to the marital-communications privilege only without engaging the separate testimonial spousal privilege applicable to the case at issue

D. Apply Trammel — testimonial spousal privilege belongs to testifying spouse, who chooses whether to testify; marital-communications privilege protects confidences

130. The prosecution offers Defendant's prior statement against Defendant at trial. The defense objects on hearsay grounds. The court should:

- A. Exclude as hearsay automatically because all prior statements by criminal defendants are inadmissible against the defendant under federal evidence rules
- B. Apply Rule 801(d)(2)(A) — admit as non-hearsay; opposing party's statement offered against that party is categorically excluded from hearsay definition
- C. Refer the matter to the residual exception rather than the specific opposing-party-statement framework under Rule 801(d)(2)(A) governing the case
- D. Apply only the present-sense-impression exception rather than the separate opposing-party-statement framework under Rule 801(d)(2)(A) governing the case

131. The prosecution offers a non-testifying witness's statement against the defendant in a criminal case. The defense objects on Confrontation Clause grounds. The court should:

- A. Admit if the statement is reliable because reliability is the controlling criterion for admission of out-of-court statements under federal evidence rules
- B. Admit under the residual exception rather than engaging the separate Confrontation Clause framework applicable to testimonial hearsay against criminal defendants
- C. Apply *Crawford v. Washington* — testimonial hearsay requires unavailability AND prior cross-examination opportunity; Davis primary-purpose test for testimonial
- D. Refer the matter to Rule 403 rather than the separate Confrontation Clause framework applicable to the statement offered against the defendant

132. A party seeks to introduce evidence of a defendant's remedial measures taken after an accident. The defendant moves in limine to exclude. The court should:

- A. Exclude all remedial-measures evidence because such evidence is categorically inadmissible under federal evidence rules and exclusion is automatic
- B. Refer the matter to a jury for resolution of the admissibility question rather than the trial court ruling on the in limine motion as filed
- C. Apply Rule 407 — exclude to prove negligence/culpable conduct/defect; admit for impeachment, ownership, control, or feasibility when controverted
- D. Admit automatically because remedial measures are relevant to show the defendant's recognition of the danger that caused the plaintiff's injuries

133. A party offers evidence of the opposing party's settlement offer to prove liability. The opposing party objects. The court should:

- A. Admit if relevant because settlement offers are probative of the offering party's view of the merits and are relevant to liability disputes between the parties
- B. Refer the matter to the residual exception rather than the separate compromise-offer framework under Rule 408 governing the evidence offered at trial
- C. Sustain the offer because evidence of compromise offers is admissible against the offering party to prove the validity or amount of disputed claims
- D. Apply Rule 408 — bar evidence of compromise offers and statements in negotiations to prove validity or amount; admissible for other purposes (bias)

134. A party offers records of a public office. The opposing party objects on hearsay grounds. The court should:

- A. Exclude as hearsay automatically because all public records are out-of-court statements offered for their truth and are inadmissible hearsay under federal rules
- B. Refer the matter to Rule 803(6) only rather than the separate Rule 803(8) framework governing public records as it applies to the offered records
- C. Refer the matter to the original keeper's testimony rather than admitting the public records themselves under the federal evidence rules governing hearsay
- D. Apply Rule 803(8) — admit public records of office activities, matters observed with duty to report (excluding law enforcement in criminal cases), factual findings

135. A witness offers opinion testimony based on personal observation. The opposing party objects. The court should:

- A. Exclude all opinion testimony because federal evidence rules limit witness testimony to factual observations rather than opinions or conclusions
- B. Admit any opinion automatically because witnesses are entitled to provide opinions on any subject they have observed in federal court proceedings
- C. Apply Rule 701 — lay opinion if rationally based on perception, helpful to fact determination, not based on specialized knowledge; expert otherwise

D. Refer the matter to the residual exception rather than the separate Rule 701 framework governing lay opinion testimony in federal court evidence law

136. A party seeks to introduce evidence claimed to be relevant. The opposing party objects under Rule 401. The court should:

A. Apply Rule 401 — relevant if any tendency to make a material fact more or less probable; low threshold; admit subject to other exclusionary rules

B. Exclude all evidence as irrelevant because federal evidence rules require strict relevance standards beyond the basic Rule 401 standard for admission

C. Refer the matter to expert testimony rather than the trial court for resolution of the relevance issue raised by the opposing party's objection

D. Defer to the parties' agreement on relevance because admissibility is a matter of agreement between counsel under federal practice in evidence law

137. A party seeks to introduce character evidence for propensity purposes. The opposing party objects. The court should:

A. Apply Rule 404(a) — generally exclude character evidence for propensity; admit for non-character purposes under 404(b)(2) (motive, intent, knowledge, identity)

B. Admit all character evidence because character witnesses are entitled to provide full testimony about parties in federal court proceedings on relevant matters

C. Refer the matter to Rule 405 governing methods of proving character rather than the substantive Rule 404 framework governing admissibility of character evidence

D. Exclude all opinion evidence rather than engaging the character-evidence framework under Rule 404 governing the propensity inference at issue here

138. A party seeks to introduce a defendant's statements made during plea negotiations. The opposing party objects. The court should:

A. Admit automatically because plea-negotiation statements are admissible whenever they are relevant to a disputed issue in the case being tried

B. Refer the matter to the prosecution's discretion rather than judicially ruling on the admissibility of plea-negotiation statements in the case

C. Sustain admission because statements made by defendants during plea negotiations are admissible against the defendant in subsequent proceedings

D. Apply Rule 410 — bar evidence of withdrawn pleas, nolo contendere, plea negotiation statements; applies in civil/criminal cases against defendant

139. In a sexual-misconduct case, a party seeks to introduce evidence of the victim's prior sexual behavior. The opposing party objects under Rule 412. The court should:

A. Admit if relevant because evidence of a victim's prior sexual conduct is relevant to consent issues in sexual-misconduct cases under federal evidence law

B. Apply Rule 412 — bar evidence of prior sexual behavior/predisposition; limited exceptions for source of physical evidence, defendant-victim history, constitutional rights

C. Exclude all such evidence automatically because federal evidence rules categorically bar all evidence of victims' prior sexual conduct in sexual-misconduct cases

D. Refer the matter to Rule 404(b) rather than the separate Rule 412 framework governing rape-shield protections in sexual-misconduct prosecutions

140. A non-testifying declarant made a statement against the declarant's interest. The prosecution offers the statement. The defense objects. The court should:

A. Admit automatically because statements against the declarant's interest are categorically admissible without further analysis of foundational requirements

B. Apply business records rather than the separate statement-against-interest framework under Rule 804(b)(3) governing the offered statement

C. Apply Rule 804(b)(3) — admit if declarant unavailable, statement against pecuniary/proprietary/penal interest, reasonable person would not say unless true

D. Refer the matter to the residual exception rather than the specific Rule 804(b)(3) framework governing statements against interest under federal evidence rules

141. A party offers a document. The opposing party objects under Rule 901 for lack of authentication. The court should:

- A. Admit the document automatically because authentication is a procedural formality not requiring substantive review under federal evidence law
- B. Exclude the document automatically because unauthenticated documents are categorically inadmissible regardless of the proponent's other arguments for admission
- C. Refer the matter to Rule 1002 rather than the separate Rule 901 framework governing authentication of evidence in federal court proceedings
- D. Apply Rule 901 — proponent must produce evidence sufficient to support finding the item is what proponent claims; low threshold; weight for trier of fact

142. A party offers a declarant's statement about then-existing state of mind. The opposing party objects. The court should:

- A. Exclude as hearsay because state-of-mind statements are out-of-court statements offered for their truth and inadmissible under federal evidence rules
- B. Apply Rule 803(3) — admit statement of then-existing state of mind, emotion, sensation, physical condition; not extend to fact remembered or believed (with wills exception)
- C. Apply only the residual exception rather than the separate state-of-mind exception under Rule 803(3) governing the statement offered at trial
- D. Refer the matter to the present-sense-impression rule rather than the separate state-of-mind exception applicable to the statement under Rule 803(3)

143. A party requests judicial notice of an adjudicative fact. The court should:

- A. Refuse all judicial notice because adjudicative facts must be proven at trial through admissible evidence rather than judicial notice under federal evidence rules
- B. Apply Rule 201 — judicial notice of adjudicative facts not subject to reasonable dispute; generally known in territorial jurisdiction or readily determinable
- C. Refer the matter to expert testimony rather than ruling on the judicial-notice request under Rule 201 governing adjudicative facts in federal court
- D. Take notice automatically without requiring the requesting party to satisfy the foundational requirements of Rule 201 governing judicial notice of adjudicative facts

144. A witness refers to a writing to refresh recollection. The opposing party objects. The court should:

- A. Exclude the writing automatically because writings used to refresh recollection are inadmissible hearsay under federal evidence rules governing such writings
- B. Admit the writing as substantive evidence because writings used to refresh recollection become part of the witness's substantive testimony at trial
- C. Refer the matter to Rule 803(5) automatically rather than the separate Rule 612 framework governing present recollection refreshed under federal evidence rules
- D. Apply Rule 612 (refreshed recollection — writing not admitted, witness's testimony controls) and Rule 803(5) (recorded recollection — separate foundation required)

145. Plaintiff sues to quiet title in property she has possessed for the statutory period. Defendant moves for summary judgment. The court should:

- A. Sustain title automatically because Plaintiff's possession of the property for the statutory period establishes adverse possession as a matter of law
- B. Apply only the statute of limitations without engaging the separate substantive adverse-possession framework governing the quiet-title action
- C. Apply adverse-possession elements — actual possession, open and notorious, hostile, exclusive, continuous for statutory period; assess each element
- D. Refer the matter to a special master rather than ruling on the summary-judgment motion based on the existing record at this stage

146. Buyer sues Seller for failure to deliver marketable title. Seller moves to dismiss. The court should:

- A. Apply marketable-title doctrine — title must be free from reasonable doubt and undisclosed defects; assess whether the alleged defect materially affects value
- B. Sustain title automatically because Seller has tendered a deed and the parties' contract has been substantially performed by the seller
- C. Refer the matter to specific performance rather than the marketable-title framework governing Buyer's claim for failure to deliver marketable title
- D. Strike the claim automatically because marketable-title disputes require an evidentiary hearing rather than resolution on the pleadings as currently before the court

147. Plaintiff seeks to enforce an easement appurtenant against the new owner of the servient estate. The court should:

- A. Refuse enforcement automatically because easements terminate when the servient estate is conveyed to a new owner under modern property law
- B. Refer the matter to mediation rather than ruling on the easement-enforcement claim based on the existing record at the present time
- C. Apply easement-running doctrine — easements appurtenant transfer automatically with dominant estate; burden runs to subsequent purchasers with notice
- D. Strike the easement automatically because the easement was extinguished when the original servient owner transferred the property to a new owner

148. Plaintiff and Defendant own property as joint tenants. Plaintiff conveys her interest to a third party. Plaintiff later dies. Defendant claims survivorship. The court should:

- A. Sustain the right of survivorship automatically because joint tenants always retain the right of survivorship until they affirmatively renounce that right
- B. Apply joint-tenancy severance — Plaintiff's conveyance destroyed unity of title and severed the joint tenancy; grantee and Defendant hold as tenants in common
- C. Refer the matter to mediation rather than ruling on the survivorship question based on the existing facts in the present procedural posture
- D. Strike the conveyance because joint tenants cannot convey their individual interests in the joint tenancy property without the consent of the co-tenant

149. In a notice jurisdiction, Plaintiff seeks priority over a subsequent grantee. Defendant subsequent grantee moves to dismiss. The court should:

- A. Sustain prior recording automatically because the first to record always prevails over subsequent purchasers in all recording-statute disputes generally
- B. Apply the notice statute — subsequent BFP for value without notice prevails over prior unrecorded grantee regardless of recording order
- C. Refer to a race-statute analysis rather than the separate notice-statute framework applicable to the recording dispute in the present jurisdiction

D. Apply the race-notice rule rather than the separate notice-statute framework applicable to the recording dispute in the current jurisdiction

150. Plaintiff challenges a future interest as violating the Rule Against Perpetuities. Defendant moves for summary judgment. The court should:

A. Sustain the interest automatically because the Rule Against Perpetuities is rarely applied and the challenge is unlikely to succeed in modern property practice

B. Refer the matter to a jury for resolution of the perpetuities question rather than the trial court ruling on the summary-judgment motion as filed

C. Apply the Rule Against Perpetuities — contingent interest must vest within 21 years after death of life in being; classical "what might happen" analysis

D. Refer the matter to specific performance rather than the separate Rule Against Perpetuities framework applicable to the future-interests dispute

151. Tenant withholds rent and sues Landlord for breach of warranty of habitability. Landlord moves to dismiss. The court should:

A. Apply the implied warranty of habitability — residential leases include implied warranty; substantial breach permits rent withholding, termination, or damages

B. Strike the claim automatically because tenants are not permitted to withhold rent under modern landlord-tenant law regardless of the property's condition

C. Refer the matter to constructive-eviction analysis only without engaging the separate implied-warranty-of-habitability framework applicable to the case

D. Apply only quiet-enjoyment doctrine rather than the separate implied-warranty-of-habitability framework governing residential leases at issue here

152. Buyer and Seller execute a land-sale contract. Before closing, the property is destroyed by fire. Buyer refuses to close. The court should:

A. Sustain Buyer automatically because Buyer is entitled to refuse performance when the property is destroyed before closing under contract principles

B. Apply equitable conversion — Buyer becomes equitable owner at contract; English/majority rule passes risk to Buyer at execution; UVDA places risk on Seller

C. Refer the matter to mediation rather than ruling on the equitable-conversion question raised by Buyer's refusal to close on the contract

D. Strike the contract automatically because the property's destruction extinguishes the parties' contractual obligations as a matter of law

153. Plaintiff's parcel is landlocked due to severance from a larger parcel previously owned by Defendant. Plaintiff seeks an easement of necessity. The court should:

A. Strike the easement automatically because easements of necessity are disfavored and rarely recognized in modern property law on landlocked-parcel disputes

B. Refer the matter to the express-easement framework rather than the separate necessity-easement framework applicable to the landlocked-parcel dispute

C. Sustain the easement automatically because Plaintiff's parcel is landlocked and Plaintiff has demonstrated the need for access to the parcel

D. Apply easement-by-necessity elements — common ownership at severance, strict necessity for access, and necessity arose at severance; deny dismissal if pleaded

154. Plaintiff seeks to enforce a recorded restrictive covenant against a subsequent purchaser who took with notice. The subsequent purchaser moves to dismiss. The court should:

A. Strike the covenant automatically because restrictive covenants are disfavored in modern property law and rarely enforceable against subsequent purchasers

B. Apply equitable-servitude doctrine — enforceable against successors with notice if original parties intended binding and covenant touches and concerns; no horizontal privity needed

C. Refer the matter to nuisance doctrine rather than the separate equitable-servitude framework governing the restrictive-covenant dispute at issue

D. Apply only real-covenant doctrine rather than the separate equitable-servitude framework applicable to the restrictive-covenant enforcement claim presented

155. Plaintiff offers a deed executed by Grantor but never delivered to Plaintiff. Grantor moves to exclude. The court should:

- A. Sustain delivery automatically because the deed has been executed and the execution is sufficient to demonstrate delivery as a matter of property law
- B. Refer the matter to a jury rather than the trial court for resolution of the delivery question raised in the motion in limine at issue
- C. Apply the delivery doctrine — effective delivery requires present intent to pass title evidenced by transfer or conduct; mere execution and retention insufficient
- D. Strike the deed automatically because the deed is unenforceable when the grantor has not affirmatively delivered the deed to the grantee

156. Plaintiff tenant in common moves to partition. Defendant tenant in common moves to dismiss. The court should:

- A. Refuse partition because Defendant's objection to partition is dispositive in tenants-in-common disputes under modern co-tenancy property law
- B. Apply partition doctrine — either cotenant may seek partition; partition in kind preferred where feasible; partition by sale when physical division impracticable
- C. Refer the matter to mediation rather than ruling on the partition motion as raised by Plaintiff in the present procedural posture before the court
- D. Strike the partition action automatically because partition is rarely granted and is disfavored in modern co-tenancy property law generally

157. Landowner challenges a government taking of private property. The government moves to dismiss. The court should:

- A. Apply the Fifth Amendment Takings Clause — public use (broadly under Kelo) and just compensation (fair market value); deny dismissal if challenge plausible
- B. Sustain the taking automatically because the government has invoked eminent domain and the courts must defer to legislative judgment on takings
- C. Refer the matter to the police power rather than the separate Takings Clause framework applicable to the government's seizure of private property
- D. Strike the claim automatically because government takings are presumptively valid and challenges rarely succeed in modern eminent-domain practice

158. Landowner challenges a zoning ordinance as a regulatory taking. The municipality moves to dismiss. The court should:

- A. Apply Penn Central — assess economic impact, interference with investment-backed expectations, character of action; Lucas categorical rule if total deprivation
- B. Sustain the zoning automatically because municipal zoning ordinances are presumptively valid and challenges based on regulatory takings rarely succeed
- C. Strike the challenge automatically because regulatory takings claims are disfavored in modern Takings Clause practice and rarely accepted by courts
- D. Apply rational-basis review only without engaging the separate Penn Central regulatory-takings framework applicable to the zoning challenge presented

159. Mortgagee seeks to foreclose on Mortgagor's default. Mortgagor moves to dismiss. The court should:

- A. Strike foreclosure automatically because mortgagors are entitled to challenge foreclosure as a matter of right under federal mortgage law
- B. Refer the matter to mediation rather than ruling on the foreclosure motion as filed by the mortgagee in the present procedural posture
- C. Apply mortgage foreclosure — assess validity, default, and procedures (judicial foreclosure with sale and redemption, or non-judicial); evaluate priority
- D. Sustain foreclosure automatically because the mortgagor has defaulted and the mortgagee has the right to foreclose on the property as a matter of law

160. Plaintiff seeks to use a title insurance policy to establish title. Defendant objects. The court should:

- A. Apply title-insurance principles — insurance compensates for losses from title defects, encumbrances, or liens at issuance; not conclusive proof; relevance analysis
- B. Sustain admission automatically because title insurance policies are dispositive on questions of title in property-law disputes between adjacent landowners
- C. Refer the matter to the deed framework rather than the separate title-insurance principles applicable to the policy offered to establish title
- D. Strike the policy automatically because title insurance policies are not admissible as evidence of title under federal evidence rules governing property disputes

161. Plaintiff servient owner sues to terminate an easement that has been unused for many years. Defendant easement holder moves to dismiss. The court should:

- A. Sustain termination automatically because easements terminate when they have not been used for an extended period of time under modern property law
- B. Apply easement-termination doctrines — abandonment requires non-use AND affirmative intent; merger if dominant/servient combine; release requires writing
- C. Strike the termination action automatically because easement holders are not subject to termination claims based on non-use under modern property law
- D. Refer the matter to nuisance doctrine rather than the separate easement-termination framework applicable to the unused-easement dispute at issue here

162. Plaintiff and Defendant, who are married, own property as tenants by the entirety. Plaintiff's creditor sues to attach Plaintiff's interest. Defendant intervenes. The court should:

- A. Apply tenancy by the entirety — neither spouse may unilaterally convey or encumber; creditors of one spouse generally cannot reach entirety property
- B. Sustain attachment automatically because creditors have priority over spousal property interests in tenancy-by-the-entirety disputes under modern creditor law
- C. Refer the matter to community-property law rather than the separate tenancy-by-the-entirety framework governing the property at issue between the spouses
- D. Strike Defendant's intervention because tenants by the entirety lack standing to challenge creditor actions against their spouses' interests in entirety property

163. Plaintiff subsequent purchaser claims no notice of a prior interest. The opposing party seeks to introduce evidence of facts that should have triggered inquiry. The court should:

- A. Exclude all inquiry-notice evidence because actual notice is the controlling standard in recording-statute disputes under modern property law generally
- B. Sustain BFP status automatically because subsequent purchasers without actual notice are entitled to BFP protection regardless of any inquiry-triggering facts
- C. Refer the matter to actual notice only without engaging the separate inquiry-notice framework applicable to the recording-statute priority dispute

D. Apply inquiry-notice doctrine — purchaser charged with knowledge from reasonable inquiry; visible possession, gaps in title, suspicious references trigger duty

164. In a race jurisdiction, Plaintiff prior unrecorded grantee seeks to defeat a subsequent grantee. Defendant subsequent grantee recorded first. The court should:

A. Sustain Plaintiff automatically because the first to receive the deed always prevails over subsequent purchasers in all recording-statute disputes

B. Apply notice analysis rather than the separate race-statute framework applicable to the recording-statute priority dispute in the present jurisdiction

C. Refer the matter to race-notice rules rather than the separate pure-race framework applicable in the current recording-statute jurisdiction

D. Apply the race statute — first to record prevails regardless of notice; Defendant's prior recording defeats Plaintiff's claim; Defendant has priority

165. Plaintiff claims a license to use Defendant's land. Defendant moves to dismiss, arguing the license is revocable. The court should:

A. Apply the license doctrine — license is revocable permission to use land; revocable at any time unless coupled with interest or estoppel applies (substantial reliance)

B. Sustain the license automatically because Plaintiff has demonstrated permission to use the land granted by Defendant in the underlying transaction

C. Refer the matter to easement analysis rather than the separate license framework applicable to the revocable-permission dispute at issue here

D. Strike the license automatically because licenses are disfavored in modern property law and rarely enforceable against the licensor in disputes

166. Plaintiff sues for damage to land caused by Defendant's excavation. Defendant moves in limine to exclude lateral-support evidence. The court should:

A. Exclude all lateral-support evidence because lateral-support claims are disfavored in modern property law and rarely successful in excavation-damage disputes

B. Sustain admission automatically because lateral-support evidence is admissible whenever the plaintiff has shown damage to property from excavation activities

C. Refer the matter to nuisance doctrine rather than the separate lateral-support framework applicable to the excavation-damage dispute at issue here

D. Apply lateral-support doctrine — strict liability for damage to land in natural condition from removal of lateral support; negligence for damage to improvements

167. Plaintiff cotenant in possession seeks contribution from other cotenants for maintenance expenses. Defendant cotenants move to dismiss. The court should:

A. Strike the contribution claim automatically because cotenants in possession are not entitled to contribution under modern co-tenancy property law generally

B. Refer the matter to partition rather than the separate cotenant-accounting framework applicable to the contribution claim raised by Plaintiff in this matter

C. Apply cotenant accounting and contribution — no contribution for ordinary use, but contribution for necessary expenses (taxes, mortgage, repairs) proportional to interests

D. Sustain contribution automatically because cotenants are entitled to contribution from other cotenants for any expenses related to the co-tenancy property

168. Plaintiff claims a profit a prendre (right to remove resources) from Defendant's land. Defendant moves to dismiss. The court should:

A. Strike the profit automatically because profits a prendre are disfavored in modern property law and rarely enforceable against the servient landowner

B. Refer the matter to easement analysis rather than the separate profit-a-prendre framework applicable to the resource-removal dispute at issue here

C. Apply the license framework rather than the separate profit-a-prendre framework governing the resource-removal claim raised by Plaintiff in the proceeding

D. Apply the profit a prendre doctrine — non-possessory right to enter and take resources; interest in land subject to Statute of Frauds; runs with land in most jurisdictions

169. Plaintiff seeks to enforce an option contract for real estate against Defendant grantor. Defendant moves in limine to exclude. The court should:

- A. Sustain enforcement automatically because option contracts for real estate are categorically enforceable under modern property law generally without further analysis
- B. Refer the matter to oral contracts rather than the separate option-contract framework applicable to the real-estate option dispute at issue here
- C. Strike the option automatically because real-estate options are disfavored in modern property law and rarely enforceable against the grantor in disputes
- D. Apply option-contract doctrine — irrevocable offer supported by consideration; Statute of Frauds requires writing for real-estate options; assess validity

170. Plaintiff seeks an equitable lien on real property. Defendant moves to dismiss. The court should:

- A. Sustain the lien automatically because Plaintiff has demonstrated the basis for an equitable lien against the defendant's interest in the real property
- B. Strike the claim automatically because equitable liens are disfavored in modern property law and rarely recognized in property-law disputes between parties
- C. Apply equitable-lien doctrine — arises from contract or relationship showing intent to charge property as security; provides priority over creditors; enforceable in equity
- D. Refer the matter to mortgage law rather than the separate equitable-lien framework applicable to the lien-enforcement claim raised by Plaintiff in this matter

171. Plaintiff sues Defendant grantor on covenant of seisin in a warranty deed after discovering Defendant did not own the property at the time of conveyance. The court should:

- A. Apply the covenant of seisin (present covenant) — grantor's promise of ownership; breach at delivery if grantor did not own; runs to immediate grantee only
- B. Strike the deed automatically because the deed is unenforceable when the grantor did not own the property at the time of conveyance to Plaintiff
- C. Refer the matter to future covenants rather than the separate present-covenant framework applicable to the covenant-of-seisin claim raised by Plaintiff
- D. Sustain the deed automatically because warranty deeds carry presumptive validity even when the grantor's title is later determined to be defective

172. Plaintiff seeks to enforce a restrictive covenant. Defendant raises change-of-conditions defense, arguing the neighborhood has fundamentally changed. The court should:

- A. Strike the defense automatically because change-of-conditions defenses are rarely successful and are disfavored in modern restrictive-covenant litigation
- B. Refer the matter to nuisance doctrine rather than the separate change-of-conditions framework applicable to the restrictive-covenant dispute at issue here
- C. Apply the changed-conditions doctrine — unenforceable when conditions have so fundamentally changed that original purpose can no longer be substantially achieved; narrowly construed
- D. Sustain the covenant automatically because restrictive covenants are presumptively valid and enforceable against subsequent owners regardless of changes

173. Plaintiff sues for negligence. Defendant moves to dismiss for failure to state a claim. The court should:

- A. Sustain the claim automatically because negligence claims are properly pleaded whenever the plaintiff identifies the four elements of negligence in the complaint
- B. Strike the action automatically because negligence claims require an evidentiary hearing rather than resolution at the pleadings stage under federal rules
- C. Refer the matter to mediation rather than ruling on the motion to dismiss as filed by Defendant in the present procedural posture before the court
- D. Apply Twombly/Iqbal plausibility to the four elements — duty, breach, causation (factual and proximate), damages; assess whether complaint plausibly alleges each

174. Plaintiff seeks to invoke *res ipsa loquitur*. Defendant moves to exclude. The court should:

- A. Exclude *res ipsa loquitur* because the doctrine is disfavored in modern negligence law and rarely accepted by courts in personal-injury cases generally
- B. Apply only specific-negligence framework rather than the separate *res-ipsa-loquitur* framework applicable to the inferential-negligence claim raised at trial
- C. Refer the matter to expert testimony rather than the trial court's resolution of the *res-ipsa-loquitur* question raised by Defendant's motion in limine

D. Apply *res ipsa loquitur* — assess (1) injury ordinarily not absent negligence, (2) instrumentality under exclusive control, (3) plaintiff did not contribute

175. Plaintiff sues a homeowner for injury occurring on the homeowner's property. The homeowner moves for summary judgment, arguing no duty was owed. The court should:

A. Apply duty framework — under Rowland or traditional invitee/licensee/trespasser categories, assess whether foundational duty is present; foreseeability supports duty

B. Strike the action automatically because homeowners do not owe duties to all persons who enter their property under modern premises-liability law generally

C. Refer the matter to expert testimony rather than the court's resolution of the duty question raised by Defendant in the summary-judgment motion

D. Sustain Defendant automatically because homeowners are entitled to summary judgment whenever the homeowner argues no duty was owed to the plaintiff

176. Plaintiff sues for personal injuries. Defendant moves for summary judgment, arguing Plaintiff cannot prove causation. The court should:

A. Sustain summary judgment automatically because Plaintiff's inability to prove causation defeats the negligence claim as a matter of law

B. Apply causation analysis — but-for requires injury would not have occurred without negligence; proximate cause limits to foreseeable consequences; assess record

C. Refer the matter to a jury without first making any preliminary ruling on the summary-judgment motion as filed by Defendant in the present procedural posture

D. Sustain Plaintiff automatically because Plaintiff has alleged injuries caused by Defendant's negligence and that allegation alone suffices to defeat summary judgment

177. At the close of evidence, Defendant moves for JMOL on the issue of Plaintiff's fault. The court should:

A. Sustain JMOL automatically because Plaintiff's contributory fault bars recovery under modern tort law in personal-injury cases generally without further analysis

B. Refer the matter to a special master rather than the trial court's resolution of the JMOL motion at the close of evidence in the proceedings

C. Strike the defense rather than addressing the JMOL motion as raised by Defendant in the present procedural posture at the close of evidence

D. Apply the applicable fault doctrine — pure contributory bars; modified comparative reduces and bars above threshold; pure comparative reduces only; deny JMOL if reasonable jury

178. Defendant moves in limine to introduce an express written waiver of liability signed by Plaintiff. The court should:

A. Exclude the waiver automatically because pre-injury waivers of liability are disfavored in modern tort law and rarely enforceable in personal-injury disputes

B. Sustain admission automatically because Plaintiff has signed the waiver and the waiver is enforceable against Plaintiff in the present litigation

C. Apply assumption of risk — express waivers enforceable if clear, voluntary, not against public policy; primary assumption may defeat duty; releases do not bar gross negligence

D. Refer the matter to comparative-fault analysis rather than the separate assumption-of-risk framework applicable to the express written waiver of liability

179. Plaintiff invokes negligence per se based on Defendant's statutory violation. Defendant moves for summary judgment. The court should:

A. Apply negligence per se — establish standard of care if statute protects this class against this type of harm; recognized excuses may apply; deny SJ if protected

B. Sustain summary judgment automatically because statutory violations do not establish negligence per se in modern tort law as a matter of standard practice

C. Refer the matter to expert testimony rather than the trial court's resolution of the negligence-per-se question on the summary-judgment record

D. Strike the doctrine automatically because negligence per se is disfavored in modern tort law and rarely accepted in personal-injury litigation generally

180. Plaintiff sues a manufacturer for injuries caused by an allegedly defective product. The manufacturer moves to dismiss. The court should:

- A. Apply Restatement § 402A — commercial seller strictly liable for defective products in unreasonably dangerous condition reaching consumer without change
- B. Sustain liability automatically because Plaintiff has alleged injury from a product manufactured by Defendant in the present products-liability litigation
- C. Refer the matter to negligence framework rather than the separate strict-liability framework applicable to the products-liability claim raised by Plaintiff
- D. Strike the claim automatically because strict products liability is disfavored in modern tort law and rarely accepted in products-liability cases generally

181. Plaintiff sues for IIED. Defendant moves for summary judgment, arguing the conduct was not sufficiently extreme. The court should:

- A. Sustain IIED automatically because Plaintiff has alleged extreme conduct by Defendant in the present litigation between the parties at issue here
- B. Refer the matter to a jury without first making any preliminary ruling on the IIED summary-judgment motion as filed by Defendant in this matter
- C. Sustain summary judgment automatically because IIED claims are disfavored in modern tort law and rarely accepted in personal-injury litigation generally
- D. Apply IIED elements — extreme and outrageous conduct exceeding bounds of decency, intent or recklessness, causation, severe distress; court determines extremity

182. Plaintiff witnesses serious injury to a close family member by Defendant. Plaintiff sues for NIED. Defendant moves to dismiss. The court should:

- A. Sustain NIED automatically because Plaintiff has alleged emotional distress caused by witnessing Defendant's negligent injury of a family member
- B. Strike the claim automatically because bystander NIED claims are disfavored in modern tort law and rarely accepted in personal-injury cases generally
- C. Refer the matter to direct-impact rule only without engaging the separate bystander NIED framework under Dillon v. Legg governing such claims
- D. Apply Dillon v. Legg framework — close relationship, presence and contemporaneous perception, severe distress; assess whether complaint plausibly alleges elements

183. Plaintiff sues Defendant for defamation. Defendant moves to dismiss. The court should:

- A. Strike defamation automatically because defamation claims are disfavored in modern tort law and rarely accepted in cases involving published statements
- B. Apply defamation elements and constitutional framework — defamatory statement of fact, of and concerning Plaintiff, publication, fault depending on Plaintiff status
- C. Sustain defamation automatically because Plaintiff has alleged false statements published by Defendant in the present defamation litigation between the parties
- D. Refer the matter to invasion of privacy rather than the separate defamation framework applicable to the false-statement claim raised by Plaintiff

184. Defendant in a defamation action moves to introduce evidence of qualified privilege. The court should:

- A. Apply qualified-privilege doctrine — protect communications between persons sharing common interest in good faith; defeated by malice, knowing falsity, recklessness
- B. Exclude all privilege evidence because qualified privilege is disfavored in modern defamation law and rarely accepted in defamation cases generally
- C. Refer the matter to the truth defense rather than the separate qualified-privilege framework applicable to the defamation defense raised by Defendant
- D. Strike the defense automatically because qualified privilege is unavailable in defamation cases and Plaintiff is entitled to proceed without such defense

185. Plaintiff sues Defendant for private nuisance. Defendant moves to dismiss, citing compliance with regulatory permits. The court should:

- A. Apply private-nuisance doctrine — substantial and unreasonable interference with use and enjoyment supports nuisance regardless of permit compliance; deny dismissal
- B. Sustain compliance automatically because regulatory permit compliance is a complete defense to private-nuisance claims under modern tort law generally
- C. Refer the matter to trespass doctrine rather than the separate private-nuisance framework applicable to the interference claim raised by Plaintiff in this matter

D. Strike the claim automatically because private-nuisance claims are disfavored in modern tort law and rarely successful in personal-injury cases generally

186. Plaintiff sues Defendant for public nuisance. Defendant moves to dismiss, arguing Plaintiff lacks special injury. The court should:

A. Sustain the claim automatically because Plaintiff has alleged unreasonable interference with public rights caused by Defendant's conduct in the proceedings

B. Refer the matter to private nuisance only without engaging the separate public-nuisance framework applicable to the present litigation between the parties

C. Strike the action automatically because public-nuisance claims by private plaintiffs are disfavored and rarely successful in modern tort law litigation generally

D. Apply public-nuisance doctrine — unreasonable interference with public right; private plaintiff needs special injury distinct in kind from general public; assess

187. Plaintiff sues for conversion. Defendant moves for JMOL, arguing trespass to chattels rather than conversion. The court should:

A. Sustain JMOL automatically because Plaintiff has failed to prove conversion and the proper claim is trespass to chattels in the present circumstances

B. Refer the matter to mediation rather than the trial court's resolution of the JMOL motion as filed by Defendant in the present procedural posture

C. Refer the matter to the Restatement rather than the substantive conversion framework applicable to the JMOL motion raised by Defendant

D. Apply conversion doctrine — intentional exercise of dominion substantially interfering with right of control; assess degree of interference compared to trespass to chattels

188. Plaintiff sues Defendant for trespass to land. Defendant moves to dismiss, arguing no damage occurred. The court should:

A. Sustain trespass automatically because Plaintiff has alleged Defendant's entry on Plaintiff's land in the present litigation between the parties

B. Apply trespass-to-land elements — intentional entry without consent or privilege; no actual damage required; nominal damages available to vindicate possessory right

C. Refer the matter to nuisance rather than the separate trespass-to-land framework applicable to the entry-without-permission claim raised by Plaintiff

D. Strike the claim automatically because trespass requires actual damage and Plaintiff has not alleged any damage in the present litigation between the parties

189. Plaintiff recovers a verdict including substantial pain-and-suffering damages. Defendant moves for a new trial under Rule 59, arguing the damages are excessive. The court should:

A. Apply remittitur framework — if damages shock conscience or unsupported by evidence, order remittitur (reducing with consent) or new trial; standard is excessive prejudice

B. Sustain the verdict automatically because the jury has the discretion to award the damages it deems appropriate in personal-injury cases under federal law

C. Strike all damages automatically because pain-and-suffering damages are disfavored in modern tort law and rarely sustained on post-verdict review

D. Refer the matter to a special master without further analysis of the excessive-damages question raised by Defendant in the post-verdict motion

190. At the close of evidence, Defendant employer moves for JMOL, arguing the employee's tort was outside the scope of employment. The court should:

A. Sustain JMOL automatically because employees acting outside the scope of employment do not create vicarious liability for the employer in modern tort practice

B. Sustain only with the employee's express consent because the scope-of-employment question is a matter of agreement between the employee and employer

C. Refer the matter to mediation rather than ruling on the JMOL motion as raised by Defendant employer in the present procedural posture before the court

D. Apply respondeat superior — employer vicariously liable for torts within scope; scope inquiry examines motive, time, place, employer benefit; deny JMOL if reasonable

191. Plaintiff sues Defendant for damage from blasting operations. Defendant moves to dismiss, arguing it used reasonable care. The court should:

- A. Apply Restatement §§ 519–520 — strict liability for abnormally dangerous activities; reasonable care is not a defense; blasting is the paradigm; deny dismissal
- B. Sustain reasonable-care defense automatically because reasonable care is a complete defense to all tort claims under modern tort law generally
- C. Refer the matter to negligence only without engaging the separate strict-liability framework applicable to the abnormally-dangerous-activity claim
- D. Strike the claim automatically because strict liability for abnormally dangerous activities is disfavored in modern tort law and rarely accepted

192. Plaintiff sues a landowner for injuries caused by an independent contractor's negligence on the landowner's property. The landowner moves to dismiss. The court should:

- A. Sustain dismissal automatically because landowners are not liable for independent contractors' negligence under modern tort law in premises-liability disputes
- B. Refer the matter to respondeat superior only without engaging the separate non-delegable-duty framework applicable to the present litigation between the parties
- C. Apply non-delegable-duty doctrine — certain duties remain with principal despite delegation to contractor; safe premises for invitees, statutory duties, ultrahazardous activities
- D. Strike the claim automatically because non-delegable duties are disfavored in modern tort law and rarely accepted in personal-injury litigation generally

193. Plaintiff sues an employer for negligent hiring after an employee committed an off-duty tort. The employer moves for summary judgment, arguing outside scope. The court should:

- A. Sustain summary judgment automatically because the employee's off-duty conduct is outside the scope of employment in modern tort law generally
- B. Apply negligent hiring/supervision/retention — direct liability when respondeat fails; foreseeability and connection between negligence and injury required; deny if pleaded
- C. Refer the matter to vicarious liability rather than the separate negligent-hiring framework applicable to the present litigation between the parties
- D. Strike the claim automatically because negligent-hiring claims are disfavored in modern tort law and rarely successful in personal-injury cases generally

194. Plaintiff is injured and receives insurance benefits. Defendant moves to introduce evidence of those benefits. The court should:

- A. Admit collateral-source evidence automatically because evidence of insurance benefits is relevant to damages calculation under modern tort law in personal-injury cases
- B. Apply the collateral-source rule — bar evidence of benefits from collateral sources (insurance, government benefits, charity) offered to reduce damages; certain exceptions
- C. Refer the matter to setoff principles only without engaging the separate collateral-source-rule framework applicable to the offered insurance-benefits evidence
- D. Sustain admission automatically because Defendant is entitled to introduce evidence of collateral benefits received by Plaintiff in personal-injury litigation

195. At the close of evidence in a negligence case, Defendant moves for JMOL, arguing an intervening criminal act broke the chain of causation. The court should:

- A. Sustain JMOL automatically because intervening criminal acts always break the chain of legal causation under modern tort law in negligence cases generally
- B. Refer the matter to a jury without first making any preliminary ruling on the JMOL motion as filed by Defendant in the present procedural posture
- C. Strike the defense automatically because intervening-cause defenses are disfavored in modern tort law and rarely accepted in personal-injury cases generally
- D. Apply intervening/superseding-cause analysis — intervening act breaks chain only if unforeseeable AND superseding; foreseeable criminal acts within scope of risk do not absolve

196. Plaintiff brings a wrongful-death claim. Defendant moves to dismiss. The court should:

- A. Sustain wrongful death automatically because Plaintiff has alleged death caused by Defendant's negligence in the present wrongful-death litigation between the parties
- B. Apply applicable wrongful-death statute — survivors recover for their own losses (consortium, support, companionship); elements parallel underlying tort plus statutory requirements
- C. Refer the matter to survival actions only without engaging the separate wrongful-death framework applicable to the survivor losses claim raised by Plaintiff

D. Strike the action automatically because wrongful-death claims are disfavored in modern tort law and rarely accepted in family-based personal-injury cases generally

197. Plaintiff's decedent died from injuries sustained in an accident. Plaintiff brings a survival action. Defendant moves to dismiss. The court should:

A. Apply survival statute — tort actions survive death; estate recovers damages decedent would have recovered (pain and suffering between injury and death, lost wages, medical)

B. Sustain survival automatically because Plaintiff has alleged Defendant's negligent injury of the decedent in the present survival-action litigation between the parties

C. Refer the matter to wrongful death only without engaging the separate survival-action framework applicable to the estate-recovery claim raised by Plaintiff

D. Strike the action automatically because survival actions are disfavored in modern tort law and rarely successful in estate-recovery cases generally

198. Plaintiff sues multiple defendants for an indivisible injury. The defendants jointly move to limit their liability to several-only. The court should:

A. Sustain several-only automatically because joint-and-several liability has been abolished in modern tort law and several-only liability is the rule generally

B. Apply the jurisdiction's joint-and-several liability rules — traditional rule full liability with contribution; modern reforms may modify; assess the applicable framework

C. Refer the matter to mediation rather than ruling on the several-only motion as raised by the defendants in the present procedural posture before the court

D. Strike the action rather than addressing the several-only motion as raised by the defendants in the present procedural posture before the court

199. Plaintiff seeks punitive damages. At the close of evidence, Defendant moves for JMOL on punitive damages. The court should:

A. Sustain JMOL automatically because punitive damages are disfavored in modern tort law and rarely awarded in personal-injury cases generally without further analysis

B. Refer the matter to a jury without first making any preliminary ruling on the JMOL motion as filed by Defendant in the present procedural posture

C. Strike the claim automatically because punitive damages are unavailable in modern tort law and rarely awarded in personal-injury cases generally

D. Apply punitive-damages standards — clear and convincing evidence of qualifying conduct (intentional, willful, malicious, reckless); State Farm due-process limits

200. Defendant A pays a tort judgment and seeks contribution from Defendant B, a joint tortfeasor. Defendant B moves to dismiss. The court should:

A. Apply contribution/indemnification — joint tortfeasors paying more than their share entitled to contribution proportional to fault; indemnification available with special relationship

B. Strike contribution automatically because contribution is disfavored in modern tort law and rarely successful in cases between joint tortfeasors after judgment

C. Refer the matter to mediation rather than ruling on the contribution motion as raised by Defendant A in the present procedural posture before the court

D. Apply only respondeat superior rather than the separate contribution/indemnification framework applicable to the present litigation between the joint tortfeasors

Practice Exam 6 — Answer Explanations

1. A — Rule 12(b)(6) requires accepting well-pleaded factual allegations as true and drawing reasonable inferences for the plaintiff. The court asks whether a plausible claim is stated under Twombly/Iqbal; weighing evidence or credibility is improper at this stage.
2. D — Genuine disputes of material fact preclude summary judgment under Rule 56. Dueling expert opinions on the standard of care create such a dispute, and credibility determinations belong to the jury, not the court at the summary-judgment stage.
3. B — Under 28 U.S.C. § 1332(c)(1), a corporation is a citizen of both its state of incorporation and the state of its principal place of business. Shared State A citizenship destroys complete diversity, requiring remand under § 1447(c).
4. C — Specific personal jurisdiction under *Ford Motor Co. v. Montana Eighth Judicial District Court* requires purposeful availment of the forum plus a claim arising out of or relating to those contacts. The court must analyze both prongs at the Rule 12(b)(2) stage.
5. B — *Wal-Mart v. Dukes* and *Comcast v. Behrend* require a rigorous analysis of Rule 23 requirements at the certification stage. The court may probe the merits as necessary to evaluate predominance and other factors, but only as necessary.

6. A — Rule 26(b)(5) requires a privilege log describing withheld documents sufficiently to assess the claim. Failure to log may warrant waiver, but courts typically afford a cure period before imposing that sanction.
7. B — Rule 15(c)(1)(B) permits relation back when the new claim arises from the same conduct, transaction, or occurrence pleaded in the original complaint. Relation back saves the amended claim from the limitations bar.
8. D — Rule 55(c)'s "good cause" standard governs setting aside an entry of default before judgment is entered. The court considers culpability, prejudice to the plaintiff, and existence of a meritorious defense; the stricter Rule 60(b) standard applies only after judgment.
9. D — Rule 50(a) JMOL is denied when, viewing evidence in the light most favorable to the non-movant and drawing all reasonable inferences in its favor, a reasonable jury could find for the non-movant. Credibility and weighing remain jury functions at this stage.
10. B — Rule 407 excludes subsequent remedial measures offered to prove negligence but allows them for impeachment, ownership, control, or feasibility when controverted. The court tentatively rules in limine, leaving permissible-purpose admission for trial development.
11. C — Section 1404(a) authorizes transfer to any district where the action could have been brought, for convenience of parties and witnesses and in the interest of justice. Courts balance private-interest factors (evidence, witnesses) against public-interest factors (congestion, local interest).
12. C — Rule 37(b)(2) provides a graduated proportional sanctions framework — from monetary sanctions to dismissal or default — calibrated to willfulness, prejudice, and availability of lesser remedies. Sanctions must match the violation's severity.
13. D — Under 28 U.S.C. § 1291, only final judgments are appealable as of right. A denied 12(b)(6) motion is not final and falls within no recognized exception (collateral order, § 1292(b), or otherwise), so the appeal must be dismissed.
14. B — Rule 26(c) authorizes tailored protective orders restricting use of trade-secret material to designated persons and the litigation. The court balances discovery need against competitive harm and shapes the order accordingly.
15. A — Statutory interpretation receives de novo review on appeal; bench-trial factual findings receive clear-error review under Rule 52(a). Mixed questions of law and fact slide on a continuum depending on which predominates.
16. A — Rule 4(h) requires service on a corporation by delivery to an officer, managing or general agent, or other authorized agent — or by following the forum state's rules. Service on a part-time receptionist who is not an authorized agent fails the federal standard.
17. D — Rule 23(e) requires court review of class settlements for fairness, reasonableness, and adequacy after notice and a hearing. The Amchem-derived factors guide the analysis, including strength of case, complexity, class reaction, and risks.
18. A — Subject-matter jurisdiction may be raised at any time under Rule 12(h)(3), including for the first time on appeal. It is non-waivable and cannot be conferred by party consent; a jurisdictional defect requires vacatur.
19. C — Rule 11(b) is assessed by whether representations were made without reasonable inquiry or for an improper purpose. Rule 11(c) safe-harbor requires service of the motion 21 days before filing, giving counsel opportunity to withdraw the offending paper.
20. C — *Piper Aircraft v. Reyno* balances private-interest factors (evidence, witnesses, alternative forums) and public-interest factors (administrative burden, local interest, applicable law). A foreign plaintiff's choice receives less deference, and dismissal is appropriate when an adequate alternative forum exists.

21. B — Rule 50(b) renewed JMOL applies the same standard as Rule 50(a) — evidence in the light most favorable to the non-movant, no credibility weighing. The court grants only when no reasonable jury could have reached the verdict on the evidence presented.
22. A — Rule 59(a) permits a new trial when the verdict is against the great weight of the evidence or to prevent miscarriage of justice. The standard is more deferential to the trial judge than Rule 50, permitting some weighing of evidence and credibility.
23. C — Rule 12(f) authorizes striking redundant, immaterial, impertinent, or scandalous matter from pleadings. The rule is applied conservatively but supports removing prejudicial material wholly unrelated to the claim.
24. B — Section 1446(b) requires removal within 30 days of service of the initial pleading or amended pleading from which removability is first ascertainable. An untimely removal is a procedural defect subject to remand under § 1447(c) on a motion filed within 30 days.
25. C — Rule 19 applies a two-step analysis: first determining whether the absent party is required under 19(a), then conducting Rule 19(b)'s four-factor equity-and-good-conscience analysis if joinder destroys jurisdiction. The court considers prejudice, ability to shape relief, adequacy, and alternative forums.
26. A — Section 1292(b) authorizes discretionary interlocutory appeal when the order involves a controlling question of law with substantial ground for difference and immediate appeal would materially advance the litigation. The court of appeals retains discretion even after district-court certification.
27. D — Section 1391(b) sets venue: where defendants reside if same state, where events substantially occurred, or fallback to any district with personal jurisdiction. None applying, the court must dismiss for improper venue or transfer under § 1406(a).
28. D — Issue preclusion requires the issue to have been actually litigated, necessarily decided on the merits, in a final judgment, with full and fair opportunity to litigate. Under *Parklane Hosiery*, non-mutual offensive collateral estoppel may apply at the court's discretion.
29. A — The Declaratory Judgment Act and Article III ripeness together require an actual controversy of sufficient immediacy for declaratory relief. Under *Wilton v. Seven Falls Co.*, the court retains discretion to decline jurisdiction even when ripeness is satisfied.
30. D — *Lujan v. Defenders of Wildlife* requires injury in fact that is concrete, particularized, and actual or imminent. Generalized grievances about government conduct without personal injury are categorically insufficient for Article III standing.
31. C — Content-based speech regulations are presumptively unconstitutional and subject to strict scrutiny. Under *United States v. Alvarez*, categorical bans on false political speech generally fail strict scrutiny absent a recognized categorical exception (defamation, fraud, perjury).
32. D — *Students for Fair Admissions v. Harvard* (2023) subjects race-conscious classifications to strict scrutiny, requiring narrow tailoring to a compelling interest with measurable, time-bound endpoints. The challenge survives a motion to dismiss because generalized diversity rationales no longer satisfy this demanding standard.
33. B — Facially discriminatory state laws against interstate commerce receive strict scrutiny under the Dormant Commerce Clause and are almost always invalid. Facially neutral laws with discriminatory effect are evaluated under Pike balancing, weighing local benefits against burdens on commerce.
34. C — *Employment Division v. Smith* holds that neutral, generally applicable laws receive only rational-basis review under the Free Exercise Clause. Religious exemptions are not constitutionally required absent discriminatory intent under *Church of the Lukumi Babalu Aye*.

35. D — *Loudermill and Mathews v. Eldridge* require pre-termination notice, an explanation of the evidence, and an opportunity to respond for public employees with a protected property interest. The complete absence of pre-deprivation procedure violates due process.
36. C — *Marsh v. Chambers* and *Town of Greece v. Galloway* sustain legislative prayer as a long-standing American tradition that does not violate the Establishment Clause. The practice is constitutional absent proselytization, denigration, or coerced participation.
37. B — *Penn Central* balances economic impact, interference with reasonable investment-backed expectations, and the character of the government action. A 70% diminution is significant but does not categorically constitute a taking; only *Lucas's* total-deprivation rule triggers categorical analysis.
38. D — *Flast v. Cohen* creates a narrow taxpayer-standing exception requiring (1) a challenge to congressional taxing/spending and (2) a specific constitutional limitation on that power. *Hein* and *Winn* have narrowly construed *Flast*, leaving most taxpayer challenges foreclosed.
39. C — *Pickering v. Board of Education* balances the employee's free-speech interest against the employer's interest in efficient public services. *Garcetti v. Ceballos* withholds protection from speech made pursuant to official duties, but off-duty social-media speech on public-concern topics may qualify for protection.
40. A — Mootness doctrine applies when intervening events make effective relief impossible. Voluntary cessation does not moot a case unless it is absolutely clear conduct will not recur; recognized exceptions include capable-of-repetition-yet-evading-review and class-action mootness.
41. D — *Dobbs v. Jackson Women's Health Organization* and *Washington v. Glucksberg* confine substantive due process to rights deeply rooted in history and tradition. Failing that test, rational-basis review applies and most regulations are sustained.
42. B — Gender classifications receive intermediate scrutiny under *VMI* and *Craig v. Boren*, requiring "exceedingly persuasive justification" untethered to archaic stereotypes. The means must be substantially related to an important state interest.
43. A — *Coker v. Georgia* and *Kennedy v. Louisiana* hold the Eighth Amendment categorically bars the death penalty for non-homicide offenses against individuals. The challenge succeeds because death is constitutionally disproportionate to non-homicide rape of an adult.
44. C — *Printz v. United States's* anti-commandeering doctrine prohibits Congress from directly requiring state executive officials to administer federal regulatory programs. The Tenth Amendment preserves state sovereignty in these structural respects.
45. C — *Lujan* requires concrete particularized injury, traceability, and redressability. Past actual injury caused by the defendant and remediable through judicial action satisfies all three prongs, supporting summary judgment on standing.
46. D — *Texas v. Johnson* holds flag burning is protected symbolic speech under the First Amendment. A content-based criminal statute targeting the expressive message receives strict scrutiny that the state cannot satisfy.
47. A — The Fifteenth Amendment prohibits voting denial on the basis of race; the Voting Rights Act provides additional protections including Section 2 challenges based on intent and disparate impact. Post-*Shelby County*, federal preclearance no longer applies, but constitutional and statutory challenges remain viable.
48. A — Under *Florida Star v. B.J.F.* and *Cox Broadcasting Corp. v. Cohn*, the First Amendment generally precludes liability for publishing truthful, lawfully obtained information on matters of

public concern. The official's reputational interest cannot overcome the constitutional protection absent a state interest of the highest order.

49. C — Illegitimacy is a quasi-suspect classification under *Mills v. Habluetzel* and *Lalli v. Lalli*, receiving intermediate scrutiny. Laws disadvantaging non-marital children must bear a substantial relationship to an important state interest.
50. C — *State Farm v. Campbell* limits punitive damages under due process by examining (1) reprehensibility, (2) ratio of punitive to compensatory damages, and (3) comparison to civil penalties. Single-digit ratios are generally constitutionally appropriate; a 200:1 ratio is highly suspect.
51. A — *Monell v. Department of Social Services* requires that municipal § 1983 liability arise from an official policy, custom, or practice — not respondeat superior. The complaint survives dismissal if it plausibly alleges a municipal policy or custom causing the constitutional violation.
52. D — *Harlow v. Fitzgerald* protects government officials from civil liability unless their conduct violated clearly established law a reasonable official would have known. *Pearson v. Callahan* permits courts to address the two prongs in either order.
53. C — *Hague v. CIO* and *Ward v. Rock Against Racism* establish that public sidewalks are traditional public forums where content-neutral time, place, and manner restrictions receive intermediate scrutiny — narrowly tailored to a significant government interest with ample alternatives. Content-based restrictions receive strict scrutiny.
54. D — *Lujan and Friends of the Earth v. Laidlaw* establish standing requirements: concrete, particularized injury — including recreational and aesthetic injuries to individual members — that is traceable and redressable. Environmental organizations may establish associational standing through their members.
55. B — *Graham v. Florida* categorically bars life without parole for juveniles convicted of non-homicide offenses under the Eighth Amendment. The sentence is unconstitutional, and the challenge succeeds at the motion-to-dismiss stage.
56. A — *Raines v. Byrd* holds that members of Congress lack standing to sue over institutional injuries absent specific authorization from the body as a whole. Abstract dilution of legislative power is insufficient for legislative standing.
57. D — *Walz v. Tax Commission of New York* sustains tax exemptions available to religious organizations on the same terms as other charitable organizations. The benefit is religiously neutral and avoids excessive entanglement, satisfying the Establishment Clause.
58. A — Section 1983 reaches only state action. The court applies state-action analysis — traditional public function, significant state involvement, or joint participation under *Burton and Lugar* — and dismisses if purely private conduct is alleged.
59. B — Past consideration is no consideration under traditional contract doctrine. A promise made in exchange for prior gratuitous services lacks the bargained-for exchange required to bind the promisor, absent the limited moral-obligation exception recognized in some jurisdictions.
60. A — The Statute of Frauds requires a writing for land-sale contracts. Summary judgment is appropriate unless a recognized exception applies — most commonly part performance through possession plus substantial improvements unequivocally referable to the alleged contract.
61. D — UCC § 2-207 abandons the common-law mirror-image rule. A definite acceptance forms a contract even with additional or different terms; between merchants, additional terms enter unless the offer limits acceptance, the terms materially alter the contract, or the offeror objects in time.

62. D — The parol-evidence rule bars evidence of prior or contemporaneous agreements that contradicts the terms of an integrated writing. The rule does not bar interpretation of ambiguous terms, proof of fraud or duress, or conditions precedent to formation.
63. A — UCC § 2-313 creates an express warranty by any affirmation of fact, promise, description, or sample that becomes part of the basis of the bargain. The court assesses at the pleading stage whether the alleged statements plausibly created an express warranty.
64. B — UCC § 2-610 and Restatement § 250 define anticipatory repudiation as an unequivocal indication of inability or unwillingness to perform before performance is due. Viewing evidence favorably to the non-movant on JMOL, an unequivocal communication supports a reasonable jury finding of repudiation.
65. B — Restatement § 261 and UCC § 2-615 require an unforeseen event, basic-assumption defeat, and risk not borne by the obligor for impracticability. Genuine disputes on these elements preclude summary judgment and require jury determination.
66. D — UCC § 1-303 admits course-of-performance, course-of-dealing, and trade-usage evidence to interpret terms and supplement express terms. Express terms control where consistent, but course-of-performance evidence is generally admissible to give meaning to the parties' agreement.
67. D — Express conditions require strict satisfaction before the conditioned duty arises. If the specified event has not occurred and has not been waived or excused, the duty has not matured and Plaintiff lacks an enforceable contractual claim.
68. C — UCC § 2-316 requires implied-warranty disclaimers to be conspicuous, and a disclaimer of merchantability must specifically mention "merchantability." A non-conspicuous disclaimer lacking the required language is ineffective and leaves the warranty intact.
69. D — Hadley v. Baxendale limits consequential damages to losses within the reasonable contemplation of the parties at contract formation. Absent notice of special circumstances, only ordinary consequential damages — those arising naturally from breach — are recoverable.
70. B — Restatement § 302 distinguishes intended from incidental beneficiaries based on whether the promise was made primarily for the third party's benefit. Intended (creditor and donee) beneficiaries acquire enforceable rights; incidental beneficiaries do not.
71. D — UCC § 1-303(b) admits course-of-dealing evidence to interpret ambiguous terms or supplement express terms. The parties' established conduct in prior similar transactions is relevant and admissible without need for mutual consent.
72. A — Restatement § 265 frustration of purpose requires substantial frustration of principal purpose, an unforeseen event, basic-assumption defeat, and risk not borne by the obligor. The defense is narrowly construed, and the court assesses the pleadings against these elements.
73. A — Restatement § 90 enforces a promise without consideration when the promisor should reasonably expect to induce action, action is induced, and injustice can be avoided only by enforcement. The court evaluates the pleadings for plausible reliance and injustice.
74. B — Under Restatement § 24 and the objective theory of contracts, advertisements are generally invitations to deal rather than offers. An advertisement for sale "at a fair price" lacks the definiteness required to constitute an offer under Lefkowitz-style analysis.
75. A — An offer is generally revocable at any time before acceptance unless supported by consideration (option), made irrevocable by reliance under Restatement § 87, or constituting a merchant's firm offer under UCC § 2-205. Revocation is effective upon receipt by the offeree.
76. C — Real estate is treated as unique for remedial purposes, making money damages inadequate. Specific performance is the ordinary remedy for breach of contracts to convey real property, and equity will compel conveyance.

77. A — UCC § 2-601 imposes a perfect-tender rule for single-delivery sales of goods: the buyer may reject if the goods fail in any respect, subject to the seller's right to cure under § 2-508. The court denies summary judgment absent proof of timely cure or buyer acceptance.
78. D — A plaintiff has a duty to take reasonable steps to mitigate damages. Evidence of mitigation is admissible, with the breaching party bearing the burden of proving failure to mitigate; mitigation reduces recoverable damages but does not bar recovery.
79. C — Accord and satisfaction discharges a debt when (1) a bona fide dispute exists, (2) the debtor offers different performance, (3) the creditor understands the offer, and (4) acceptance occurs through performance. The court assesses the pleadings for these elements before striking the defense.
80. A — UCC § 2-314 implies a warranty of merchantability in every sale of goods by a merchant who deals in goods of that kind. Goods must be fit for ordinary purposes, pass without objection in the trade, and meet other standards; the court assesses the pleadings against these requirements.
81. C — The Federal Arbitration Act presumes arbitration agreements enforceable, with courts deciding gateway questions of validity and scope. Unconscionability is assessed under state-law standards (procedural and substantive), with strong federal policy favoring arbitration under AT&T Mobility.
82. B — UCC § 2-207(2) governs additional terms between merchants: they enter the contract unless the offer expressly limits acceptance, the terms materially alter the contract, or the offeror objects within a reasonable time. Material-alteration analysis is fact-specific and may preclude summary judgment.
83. C — Unjust enrichment / restitution provides recovery when the defendant has been enriched at the plaintiff's expense under circumstances that make retention unjust. The remedy is independent of contract formation and measured by the value of the benefit conferred.
84. C — UCC § 2-205 makes a merchant's signed written firm offer binding for the stated period (not exceeding three months) without consideration. If the firm-offer terms and merchant status are established, the offer is enforceable and JMOL must be denied.
85. B — The duty to mitigate reduces recoverable damages by losses the plaintiff could reasonably have avoided. The breaching party bears the burden of proving failure to mitigate, and evidence of reasonable mitigation efforts creates a genuine dispute precluding summary judgment.
86. B — UCC § 1-303(c) admits trade usage to interpret ambiguous terms or supplement express terms. The parties are presumed to know and contract with reference to trade usage in their industry, and admissibility does not depend on consent.
87. C — UCC § 2-610 and Restatement § 250 require an unequivocal statement of inability or unwillingness to perform for anticipatory repudiation. Equivocal statements may support a § 2-609 demand for adequate assurance but do not themselves constitute repudiation.
88. B — Warrantless home searches violate the Fourth Amendment absent specific exceptions. Exigent circumstances under *Kentucky v. King* (hot pursuit, imminent evidence destruction, emergency aid) require probable cause plus immediate necessity; the court suppresses absent a genuine exigency.
89. A — *Miranda v. Arizona* requires warnings before custodial interrogation. Un-Mirandized statements obtained during custodial interrogation are presumptively inadmissible in the prosecution's case-in-chief, regardless of voluntariness.
90. C — *Costello v. United States* limits review of grand-jury proceedings; courts generally do not review the sufficiency of evidence. Structural defects (such as racial discrimination under *Vasquez v. Hillery*) require dismissal, but instructional errors typically do not.

91. B — Rule 609 governs impeachment by prior conviction: crimes of dishonesty receive automatic admission under 609(a)(2), felonies are subject to Rule 403 balancing with a heightened standard for criminal defendants under 609(a)(1), and old convictions face Rule 609(b) restrictions.
92. A — Rule 21(a) requires a change of venue when pretrial publicity prevents an impartial jury (*Sheppard v. Maxwell*, *Rideau v. Louisiana*). The court examines the extent and nature of publicity, geographic reach, and lapse before trial; voir dire often resolves the issue without venue change.
93. C — *Manson v. Brathwaite* and *Neil v. Biggers* apply a totality-of-circumstances test to suggestive identifications. The court assesses opportunity to view, attention, accuracy of prior description, certainty, and elapsed time; suggestive procedures are constitutional if the identification was nonetheless reliable.
94. A — Voluntariness is assessed under the totality of circumstances. Under *Colorado v. Connelly*, police coercion is required to render a confession involuntary; the court examines age, education, length of detention, pressure, and Miranda compliance.
95. B — *Barker v. Wingo*'s four-factor test for Sixth Amendment speedy-trial claims considers length of delay, reason for the delay, defendant's assertion of the right, and prejudice. A two-year unjustified delay typically triggers full Barker analysis.
96. B — *Arizona v. Gant* limits vehicle searches incident to arrest to circumstances where the arrestee is unsecured and within reaching distance of the passenger compartment, OR where it is reasonable to believe the vehicle contains evidence of the offense of arrest. Routine traffic stops generally fail both prongs.
97. C — The Blockburger same-elements test asks whether each offense requires proof of a fact the other does not. Two state statutes covering the same conduct without distinct elements constitute the same offense, and double jeopardy bars retrial after acquittal.
98. A — *Strickland v. Washington* requires (1) objectively unreasonable performance and (2) prejudice — a reasonable probability of a different result. Strategic choices receive substantial deference, and the defendant bears the burden of proving both prongs.
99. A — AEDPA § 2254(d) limits federal habeas relief to state-court decisions that were contrary to or involved an unreasonable application of clearly established federal law, or based on an unreasonable determination of facts. The standard is highly deferential to state-court decisions.
100. C — Rule 404(b)(2) admits prior bad acts for non-character purposes including motive, opportunity, intent, plan, knowledge, identity, and absence of mistake. The prosecution must articulate a specific permissible purpose, and Rule 403 balancing applies.
101. C — *Massiah v. United States* holds that once adversary judicial proceedings have commenced (indictment, arraignment, preliminary hearing), the Sixth Amendment right to counsel attaches. The government may not deliberately elicit incriminating statements about the charged offense without counsel, regardless of Miranda compliance.
102. B — *Brady v. Maryland* requires the prosecution to disclose material favorable evidence to the accused. A new trial is warranted if the evidence was favorable, suppressed, and material — a reasonable probability the result would have been different.
103. A — *Melendez-Diaz v. Massachusetts* and *Bullcoming v. New Mexico* classify forensic analysts' reports prepared for criminal prosecution as testimonial. The analyst must testify (or a competent witness with personal knowledge), or admission violates the Confrontation Clause.
104. B — *Jackson v. Virginia* requires the court, viewing evidence in the light most favorable to the prosecution, to ask whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. The court does not weigh credibility or resolve evidentiary conflicts.

105. C — *United States v. Leon* excepts from the exclusionary rule evidence obtained in objectively reasonable reliance on a facially valid warrant later found defective. Exceptions apply for knowing falsity, abandoned judicial role, facially deficient warrants, or warrants so lacking probable cause that reliance was unreasonable.
106. B — Rule 33 and Sixth Amendment impartiality principles permit a new trial when extraneous information probably affected the verdict. Under *Remmer v. United States* and *Tanner v. United States*, an evidentiary hearing may be required to determine prejudice.
107. D — Rule 801(d)(2)(E) excludes co-conspirator statements from the hearsay definition as non-hearsay, requiring proof of (1) a conspiracy, (2) defendant's and declarant's membership, and (3) the statement made during and in furtherance of the conspiracy. Crawford concerns apply if the statement is testimonial.
108. C — The automobile exception under *Carroll v. United States* and *California v. Acevedo* permits warrantless searches of vehicles on probable cause, extending to all containers — including the trunk — that may contain the object of the search. The exception is justified by the inherent mobility of vehicles.
109. C — The procedural-default doctrine bars federal habeas review of unexhausted state claims absent cause and prejudice or a fundamental miscarriage of justice (*Coleman v. Thompson*, *Maples v. Thomas*). The court assesses the record for these established excuses.
110. B — Attempt requires intent plus a substantial step strongly corroborative of criminal purpose under the Model Penal Code, or sufficient proximity to completion in other jurisdictions. Mere preparation — gathering tools without conduct directed at the target — is generally insufficient.
111. A — *Brigham City v. Stuart* and *Mincey v. Arizona* recognize the emergency-aid exception: police may enter without a warrant to render aid or to protect against imminent injury. The emergency must be supported by objective articulable facts.
112. C — *Batson v. Kentucky*'s three-step framework requires (1) a prima facie case of discriminatory strikes, (2) a race-neutral reason from the opposing party, and (3) the trial court's determination of purposeful discrimination. *J.E.B. v. Alabama* extends *Batson* to gender.
113. D — Rule 33 permits a new trial based on newly discovered evidence only when the evidence was discovered post-trial through due diligence, is material and non-cumulative, and would probably produce an acquittal. The standard is stringent.
114. C — Insanity defenses follow either the M'Naghten cognitive test (did not know nature/quality or wrongfulness) or the Model Penal Code § 4.01 substantial-capacity test (could not appreciate criminality or conform conduct). The defendant generally bears the burden of proof.
115. A — *Terry v. Ohio* permits a brief investigative stop on reasonable suspicion supported by articulable facts under the totality of circumstances. A frisk is permissible only when officers reasonably suspect the person is armed and dangerous; *Illinois v. Wardlow* supports stops in high-crime areas with evasive behavior.
116. D — *Doyle v. Ohio* bars the prosecution from using a defendant's post-arrest, post-Miranda silence for impeachment. Miranda warnings carry an implicit assurance that silence will not be used adversely, and using silence in this manner violates due process.
117. D — Federal Rules 801–807 govern hearsay: out-of-court statements offered for truth are inadmissible unless a recognized exception applies. The proponent must identify the specific exception and establish the foundational requirements.

118. C — Rule 403 permits exclusion of relevant evidence only if its probative value is substantially outweighed by unfair prejudice, confusion of issues, misleading the jury, undue delay, wasting time, or needlessly cumulative evidence. The rule strongly favors admission.
119. B — *Daubert v. Merrell Dow Pharmaceuticals* (codified in Rule 702) requires the trial court to act as gatekeeper, assessing expert reliability through factors including testability, peer review, error rate, controlling standards, and general acceptance. Frye's general-acceptance test no longer controls in federal court.
120. C — Rule 803(6) admits business records made at or near the time by a person with knowledge, kept in the regular course of business, made as a regular practice, and authenticated by a qualified witness or by Rule 902(11) certification. Trustworthiness concerns may defeat admission.
121. A — Rule 608 governs character for truthfulness: reputation or opinion testimony is admissible, specific instances may not be proved by extrinsic evidence on direct, and specific instances may be inquired into on cross if probative of truthfulness. The witness's character must first be attacked before bolstering.
122. B — Rule 803(1) admits a present sense impression based on contemporaneity, while Rule 803(2) admits an excited utterance based on the stress of a startling event. The court determines which exception applies based on the foundation laid.
123. B — Rule 804(b)(2) admits a dying declaration if (1) the declarant believed death was imminent, (2) the statement concerns the cause or circumstances of impending death, and (3) the declarant is unavailable. The exception applies in homicide prosecutions and civil actions.
124. C — Rule 613 admits a prior inconsistent statement for impeachment. Rule 801(d)(1)(A) permits substantive use only if the statement was given under penalty of perjury at a trial, hearing, other proceeding, or in a deposition.
125. B — The attorney-client privilege protects confidential communications between client and attorney made for the purpose of obtaining legal advice. The client holds the privilege; exceptions include the crime-fraud exception (Zolin) and waiver by disclosure.
126. D — Rule 803(5) admits recorded recollection when the witness once had knowledge but cannot recall sufficiently, the record was made or adopted when fresh, and the record accurately reflects the witness's knowledge. The record is read but received as an exhibit only if offered by the adverse party.
127. B — Rule 1002 requires the original (or Rule 1003 duplicate) to prove the content of a writing. Rule 1004 provides exceptions for lost or destroyed originals, originals not obtainable through judicial process, originals in the opponent's possession, and collateral matters.
128. B — Rule 406 admits habit and routine-practice evidence to prove conduct in accordance with the habit or routine on a particular occasion. Habit differs from character in that it is specific, routine, and semi-automatic.
129. D — *Trammel v. United States* vests the testimonial spousal privilege in the testifying spouse, who may choose whether to testify against her defendant spouse in a criminal case. The separate marital-communications privilege protects confidential spousal communications.
130. B — Rule 801(d)(2)(A) categorically excludes the opposing party's own statement from the hearsay definition when offered against that party. No additional exception is required, and the statement is admissible as non-hearsay.
131. C — *Crawford v. Washington* bars testimonial hearsay against a criminal defendant unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine. *Davis v. Washington's* primary-purpose test determines whether a statement is testimonial.

132. C — Rule 407 excludes subsequent remedial measures offered to prove negligence, culpable conduct, or product defect. The evidence may be admitted for impeachment, ownership or control, or feasibility when controverted; the court reserves judgment on permissible-purpose admission.
133. D — Rule 408 bars evidence of compromise offers and statements in negotiations when offered to prove or disprove validity or amount of a disputed claim or for impeachment by inconsistent statement. The rule does not bar such evidence offered for other purposes (bias, undue delay, obstruction of criminal investigation).
134. D — Rule 803(8) admits public records setting out the office's activities, matters observed by a public officer with a duty to report (excluding law-enforcement observations in criminal cases against the defendant), or factual findings from a legally authorized investigation.
135. C — Rule 701 limits lay opinion testimony to opinions rationally based on perception, helpful to determining a fact, and not based on specialized knowledge governed by Rule 702. Specialized opinions require expert qualification.
136. A — Rule 401 defines relevance as any tendency to make a material fact more or less probable than without the evidence. The threshold is low, and the court generally admits relevant evidence subject to other exclusionary rules.
137. A — Rule 404(a) generally excludes character evidence offered to prove conduct in accordance with character (propensity). Rule 404(b)(2) admits other-acts evidence for non-character purposes — motive, opportunity, intent, plan, knowledge, identity, absence of mistake — subject to Rule 403 balancing.
138. D — Rule 410 bars evidence of withdrawn guilty pleas, nolo contendere pleas, statements made during plea negotiations with prosecutors, and statements in proceedings regarding such pleas. The rule applies in any civil or criminal case against the defendant who made the plea or statement.
139. B — Rule 412 bars evidence of a victim's prior sexual behavior or sexual predisposition in cases involving alleged sexual misconduct, with limited exceptions for source of physical evidence, defendant-victim consent history, and constitutional rights. Probative value is balanced against unfair prejudice.
140. C — Rule 804(b)(3) admits a statement against interest when (1) the declarant is unavailable, (2) the statement was against pecuniary, proprietary, or penal interest at the time made, and (3) a reasonable person would not have made it unless believing it true. Penal-interest statements require corroborating circumstances of trustworthiness.
141. D — Rule 901 requires the proponent to produce evidence sufficient to support a finding that the item is what the proponent claims. Methods include witness testimony based on personal knowledge, comparison with authenticated specimens, distinctive characteristics, or other appropriate means; the threshold is low.
142. B — Rule 803(3) admits a statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition. The exception does not extend to statements proving past conduct, except in narrow contexts involving the declarant's will.
143. B — Rule 201 permits judicial notice of adjudicative facts that are generally known within the trial court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. The court must take notice if requested by a party and supplied with the necessary information.

144. D — Rule 612 governs writings used to refresh recollection — the writing itself is not admitted, and the witness's testimony controls. Rule 803(5) separately admits recorded recollection if the witness cannot recall sufficiently and other foundation elements are met.
145. C — Adverse possession requires (1) actual possession, (2) open and notorious use, (3) hostility (without permission), (4) exclusivity, and (5) continuity for the statutory period. The court denies summary judgment for Defendant only if evidence satisfies each element.
146. A — Marketable title must be free from reasonable doubt and undisclosed defects. An undisclosed easement materially affecting value or use renders title unmarketable, supporting Buyer's claim and defeating dismissal.
147. C — An easement appurtenant transfers automatically with the dominant estate to its new owner. The burden runs to subsequent purchasers of the servient estate with notice (actual, record, or inquiry), and the easement remains enforceable.
148. B — A joint tenant's conveyance to a third party destroys the unity of title and severs the joint tenancy. The grantee and the remaining joint tenant hold as tenants in common, and the right of survivorship between the original joint tenants is extinguished.
149. B — In a notice jurisdiction, a subsequent BFP for value without notice prevails over a prior unrecorded grantee regardless of recording order. The dispositive question is whether the subsequent grantee took without notice (actual, constructive, or inquiry).
150. C — The Rule Against Perpetuities voids a contingent interest if it might fail to vest within 21 years after the death of a measuring life in being at creation. The classical "what might happen" analysis controls absent jurisdictional reforms such as wait-and-see or USRAP.
151. A — The implied warranty of habitability requires landlords to maintain residential premises in habitable condition. Substantial breach permits the tenant to withhold rent, terminate, or seek damages; the warranty is generally non-waivable.
152. B — Equitable conversion treats the buyer as the equitable owner upon execution of an enforceable land-sale contract; the seller's interest becomes personal property. Under the English (majority) rule, risk of loss passes to the buyer at execution; UVDA jurisdictions place risk on the seller until possession.
153. D — Easement by necessity requires (1) common ownership at severance, (2) strict necessity for access, and (3) necessity arising at the time of severance. A landlocked parcel created by severance typically gives rise to an easement of necessity across the remaining parcel.
154. B — Equitable servitudes are enforceable in equity against successors with notice (actual, record, or inquiry) when the original parties intended to bind successors and the covenant touches and concerns the land. *Tulk v. Moxhay* establishes that horizontal privity is not required.
155. C — Effective delivery requires the grantor's present intent to pass title, evidenced by physical transfer, words, or conduct showing relinquishment of control. Mere execution and retention without manifesting present intent to transfer does not pass title.
156. B — Either tenant in common may seek partition. Partition in kind (physical division) is preferred where feasible without disproportionate loss; partition by sale is ordered when physical division is impracticable, with proceeds distributed according to ownership interests.
157. A — The Fifth Amendment Takings Clause permits taking private property for public use upon payment of just compensation. Public use is broadly construed under *Kelo v. City of New London*; compensation is generally fair market value at the time of taking.
158. A — *Penn Central Transportation Co. v. New York City* balances (1) economic impact, (2) interference with reasonable investment-backed expectations, and (3) character of the

government action. Total deprivation of economically viable use triggers categorical analysis under *Lucas v. South Carolina Coastal Council*.

159. C — Mortgage foreclosure requires a valid mortgage, default, and proper procedures (judicial foreclosure with sale and possible redemption, or non-judicial foreclosure under state law). Mortgage priorities are evaluated under recording statutes and any subordination agreements.
160. A — Title insurance compensates for losses arising from defects, encumbrances, or liens existing at policy issuance. The policy provides indemnification but is not conclusive proof of title; admissibility is governed by relevance and Rule 403 balancing.
161. B — Termination by abandonment requires both non-use AND affirmative intent to abandon. Termination by merger occurs when the dominant and servient estates come under common ownership; termination by release requires a written instrument.
162. A — Tenancy by the entirety permits neither spouse to unilaterally convey, encumber, or sever the property without the other's consent. Creditors of one spouse generally cannot reach entirety property to satisfy individual debts.
163. D — Inquiry notice charges a purchaser with knowledge of facts that reasonable inquiry would have revealed. Visible possession, suspicious title gaps, or unusual references trigger a duty to investigate; failure to inquire destroys good-faith-purchaser protection.
164. D — In a pure race jurisdiction, the first to record prevails regardless of notice. Defendant's prior recording defeats Plaintiff's claim even though Plaintiff received the deed first.
165. A — A license is revocable permission to use another's land, freely revocable at any time. Exceptions arise when the license is coupled with an interest or when estoppel applies because the licensee has substantially relied to her detriment.
166. D — Lateral-support doctrine grants landowners an absolute right to lateral support of their land in its natural condition from adjacent land. Strict liability applies for damage to land caused by excavation removing lateral support; damage to artificial improvements is governed by negligence.
167. C — A cotenant in possession generally cannot demand contribution for ordinary use, but may demand contribution from other cotenants for necessary expenses (taxes, mortgage payments, necessary repairs) in proportion to their ownership interests.
168. D — A profit a prendre is a non-possessory right to enter and take resources (timber, minerals, fish, game) from another's land. It is an interest in land subject to the Statute of Frauds, may be appurtenant or in gross, and generally runs with the land.
169. D — A real-estate option is an irrevocable offer supported by consideration that grants the optionee the right to purchase within a specified period. The Statute of Frauds typically requires a writing for real-estate options; the court assesses validity at the in limine stage.
170. C — An equitable lien arises from a contract or relationship between parties demonstrating intent to charge particular property as security. The lien is not legal title but provides priority over creditors and is enforceable in equity.
171. A — The covenant of seisin is a present covenant in which the grantor promises she owns the estate purported to be conveyed. Breach occurs at delivery if the grantor did not in fact own the property; the present covenant runs to the immediate grantee only under traditional doctrine.
172. C — The changed-conditions doctrine renders a restrictive covenant unenforceable when conditions in the area have so fundamentally changed that the covenant's original purpose can no longer be substantially achieved. The doctrine is narrowly construed and requires substantial change.

173. D — Negligence requires (1) duty, (2) breach, (3) causation (both factual and proximate), and (4) damages. Under *Twombly/Iqbal*, the court assesses whether the complaint plausibly alleges each element, drawing reasonable inferences in Plaintiff's favor.
174. D — *Res ipsa loquitur* permits an inference of negligence when (1) the injury ordinarily does not occur in the absence of negligence, (2) the instrumentality was under Defendant's exclusive control, and (3) Plaintiff did not contribute. The doctrine shifts the burden of production to Defendant.
175. A — Under *Rowland v. Christian* or the traditional invitee/licensee/trespasser categories, duty depends on foreseeability of harm to a foreseeable plaintiff. The court assesses whether the foundational duty element is present at the summary-judgment stage.
176. B — Causation analysis requires (1) but-for causation (the injury would not have occurred without Defendant's negligence) and (2) proximate cause (foreseeable consequences within the scope of risk). The court denies summary judgment if Plaintiff has admissible evidence creating a genuine dispute on either element.
177. D — In pure contributory-negligence jurisdictions, any Plaintiff fault bars recovery; in modified comparative-fault jurisdictions, recovery is reduced and barred above the threshold; in pure comparative-fault jurisdictions, recovery is reduced but never barred. Viewing evidence favorably to the non-movant on JMOL, the court denies if a reasonable jury could find for Plaintiff.
178. C — Express written waivers of liability for ordinary negligence are generally enforceable if clear, voluntary, and not against public policy. Primary assumption of risk addresses inherent risks and may defeat duty; releases generally do not bar gross negligence or willful misconduct.
179. A — Negligence per se establishes the standard of care (or a rebuttable presumption of breach) when (1) the statute was designed to protect the class of persons to which Plaintiff belongs and (2) against the type of harm Plaintiff suffered. Recognized excuses (impossibility, emergency) may apply.
180. A — Restatement (Second) § 402A imposes strict liability on commercial sellers of products in defective condition unreasonably dangerous to the user or consumer. The defect may be in manufacturing, design, or warning; due care is not a defense.
181. D — IIED requires (1) extreme and outrageous conduct exceeding all bounds of decency, (2) intent to cause severe emotional distress or recklessness regarding that probability, (3) causation, and (4) severe emotional distress. The court determines whether conduct can reasonably be regarded as extreme.
182. D — The *Dillon v. Legg* bystander framework for NIED requires (1) a close relationship between Plaintiff and the directly injured victim, (2) presence at the scene and contemporaneous sensory perception, and (3) severe emotional distress. The court assesses the pleadings against these elements.
183. B — Defamation requires (1) a defamatory statement of fact, (2) of and concerning Plaintiff, (3) published to a third party, and (4) fault and damages depending on Plaintiff's status. Public officials/figures must prove actual malice under *New York Times v. Sullivan*; private figures on matters of public concern must prove at least negligence under *Gertz*.
184. A — Qualified privilege protects communications between persons sharing a common interest, on subjects of mutual concern, made in good faith. The privilege is defeated by malice, knowing falsity, reckless disregard for truth, or publication exceeding the privileged purpose.
185. A — Private nuisance is defendant's substantial and unreasonable interference with the plaintiff's use and enjoyment of land. Regulatory permit compliance is relevant evidence but not a complete defense to nuisance liability.

186. D — Public nuisance is an unreasonable interference with a right common to the general public. A private plaintiff may sue only if she has suffered special damage distinct in kind from that of the general public; absent special injury, only the government typically has standing to abate.
187. D — Conversion is an intentional exercise of dominion or control over a chattel that so substantially interferes with another's right of control that the actor may justly be required to pay the full value. JMOL is granted only if no reasonable jury could find substantial interference distinguishing conversion from trespass to chattels.
188. B — Trespass to land is the intentional entry on land in possession of another, without consent or privilege. No actual damage is required; nominal damages are available to vindicate the right of exclusive possession.
189. A — Remittitur permits the court to reduce excessive damages with Plaintiff's consent or to order a new trial. The standard is whether the verdict is so excessive as to demonstrate prejudice, passion, or partiality and shocks the conscience.
190. D — Under respondeat superior, an employer is vicariously liable for an employee's torts committed within the scope of employment, regardless of the employer's own fault. The scope-of-employment inquiry examines motive, time, place, and employer benefit; JMOL is denied if a reasonable jury could find the conduct within scope.
191. A — Restatement (Second) §§ 519–520 impose strict liability for abnormally dangerous activities. The factors include high degree of risk, likelihood of great harm, inability to eliminate risk by reasonable care, inappropriateness to location, and dangerous attributes outweighing community value; blasting is the paradigm and reasonable care is not a defense.
192. C — The non-delegable-duty doctrine holds the principal liable for an independent contractor's negligence in performing certain duties — maintaining safe premises for invitees, complying with statutory duties, and conducting ultrahazardous activities. The principal cannot escape liability through delegation.
193. B — Negligent hiring, supervision, and retention provide direct employer liability when respondeat superior fails because the employee acted outside the scope of employment. Liability requires foreseeability of harm and a connection between the employer's negligence and the injury.
194. B — The collateral-source rule bars evidence of benefits received by Plaintiff from collateral sources (insurance, government benefits, charity) when offered to reduce damages. The rule prevents tortfeasors from benefiting from third-party compensation; some jurisdictions have modified the rule by statute.
195. D — An intervening criminal act breaks the chain of legal causation only if both unforeseeable AND superseding. Foreseeable intervening acts — including criminal conduct of the type the defendant's negligence created the risk of — do not absolve the defendant; JMOL is denied if a reasonable jury could find foreseeability.
196. B — Wrongful-death actions are statutory creations compensating designated survivors for their losses from the death (loss of consortium, support, companionship). The elements parallel underlying tort liability plus statutory requirements.
197. A — Survival statutes allow the decedent's estate to recover damages the decedent would have been entitled to recover had she lived — pain and suffering between injury and death, lost wages, medical expenses. Some jurisdictions limit survival recovery for non-economic damages.
198. B — Traditional joint and several liability holds each defendant individually liable for the full amount when defendants concurrently cause an indivisible injury, with contribution among

them. Many jurisdictions have modified this by statute, replacing it with several-only or threshold-based liability.

199. D — Punitive damages require clear and convincing evidence of qualifying conduct (intentional, willful, wanton, malicious, oppressive, fraudulent, or reckless). *State Farm v. Campbell* limits punitive damages under due process by examining reprehensibility, ratio to compensatory damages, and comparison to civil penalties.

200. A — A defendant who pays more than its share of damages has a right of contribution against co-defendants in proportion to fault. Indemnification (full recovery) is available when there is a special relationship between the parties or when one party's liability is purely derivative.