

PRACTICE EXAM 7 — MBE SIMULATION (200 QUESTIONS)

Section 1 — Questions 1 through 100 (3 Hours)

1. A manufacturer designs a propane heater for industrial use. The heater includes a standard pressure-relief valve. While the product is in use by a worker at a job site, the valve fails because of a microscopic crack that was not detectable by industry-standard inspection methods. The worker is injured. The worker sues the manufacturer on a strict products liability theory. Which theory presents the worker's strongest claim?

- A. Negligence in inspection procedures
- B. Breach of implied warranty of merchantability with notice given
- C. Strict liability for a manufacturing defect because the heater departed from its intended design when it left the manufacturer's control, regardless of the manufacturer's care
- D. Negligent design because the valve technology was outdated

2. A federal court sitting in diversity hears a state-law tort claim. The state where the federal court sits applies the "most significant relationship" test for choice of law. The defendant argues that the federal court should apply the law of the state with the most contacts to the transaction, regardless of the forum state's choice-of-law rule. Under *Klaxon v. Stentor*, what is the proper analysis?

- A. The federal court applies federal common law on choice of law
- B. Under *Klaxon v. Stentor*, a federal court sitting in diversity applies the choice-of-law rules of the state in which it sits; the forum state's choice-of-law methodology determines which substantive law applies
- C. The federal court applies whichever choice-of-law rule produces uniformity
- D. The federal court applies the law of the state with the most contacts directly, without going through choice-of-law analysis

3. A criminal defendant is charged with conspiracy to distribute narcotics. The prosecution offers evidence that the defendant's alleged co-conspirator made statements implicating the defendant during a recorded phone call. The defendant moves to exclude the statements, arguing that the co-conspirator's statements are inadmissible hearsay because the alleged conspiracy had effectively ended by the time of the call. What is the proper analysis?

- A. The statements are inadmissible because all out-of-court statements are hearsay
- B. The statements are admissible because co-conspirators waive hearsay protections
- C. The statements are admissible regardless of when made
- D. Under FRE 801(d)(2)(E), co-conspirator statements are non-hearsay only when made during the course of AND in furtherance of the conspiracy; statements made after the conspiracy has ended (the "concealment phase") are generally inadmissible unless the concealment itself was an objective of the conspiracy

4. A property owner grants A "a life estate, then to B and her heirs, but if B does not survive A by 10 years, then to C." A dies survived by B and C. B is alive seven years after A's death. C claims a present interest. What is B's interest at this moment?

- A. B holds a fee simple interest subject to an executory limitation; the property is subject to C's executory interest, which would take effect if B fails to survive A by 10 years (still possible until the full 10 years have passed)
- B. B holds a contingent remainder
- C. B holds a vested remainder subject to total divestment
- D. C holds a fee simple absolute because the period has not yet elapsed

5. A state law requires all candidates for federal office on the state's ballot to be U.S. citizens by birth. A naturalized citizen who meets all federal constitutional qualifications for the office is denied a place on the ballot. He challenges the law under the Qualifications Clause and the Supremacy Clause. What result?

- A. The state law is constitutional because states may impose additional qualifications
- B. The state law is constitutional as a regulation of ballot access

C. Under *U.S. Term Limits v. Thornton*, states may not add to the qualifications for federal office set forth in the Constitution; the state's additional citizenship requirement (beyond the federal constitutional minimum) is unconstitutional under the Qualifications Clauses and the Supremacy Clause

D. The state law is constitutional because the Constitution permits states to regulate elections

6. A federal lawsuit involves a plaintiff and three defendants joined under FRCP 20(a)(2). After the case has been pending for two years, one defendant moves to dismiss the claim against it for lack of subject matter jurisdiction because the plaintiff has failed to allege facts sufficient to establish diversity. Has the defendant waived this defense?

A. Yes, because the defendant has been in the case for two years

B. Yes, because the defendant did not raise the defense in its answer

C. Yes, because the case has progressed beyond the pleading stage

D. No; subject matter jurisdiction is non-waivable and may be raised at any time, including by the court sua sponte, even after years of litigation

7. A defendant is charged with murder. The defense seeks to introduce expert testimony from a psychologist regarding the unreliability of cross-racial eyewitness identification. The prosecution objects, arguing the testimony invades the province of the jury on credibility issues. What is the proper analysis?

A. Such testimony is automatically inadmissible because credibility is a jury function

B. Under FRE 702 and *Daubert*, expert testimony on cross-racial identification reliability may be admissible if it satisfies the gatekeeping requirements; the testimony does not invade the jury's province if it provides information beyond common knowledge and helps the jury evaluate identification evidence

C. The testimony is admissible only if the witness consents

D. The testimony is automatically admissible because it concerns identification

8. A buyer enters into a written contract with a seller for the sale of 500 widgets at \$25 each. The contract provides for delivery in 30 days. After 10 days, the seller calls the buyer and says, "The market has shifted; I need \$30 per widget to deliver." The buyer reluctantly agrees. The seller delivers and demands \$30 per widget. The buyer pays under protest and sues for the \$2,500 overcharge. Under the UCC, what result?

A. Under UCC § 2-209 and the good faith principle, contract modifications must be made in good faith; modifications obtained through economic coercion or without a legitimate commercial reason may be unenforceable. The seller's unilateral price increase based on a "market shift" — without more — may not satisfy the good faith requirement, and the buyer may recover the overcharge

B. The modification is enforceable because the buyer agreed

C. The buyer must pay because the buyer accepted delivery

D. The modification is enforceable only with new consideration

9. A state passes a law authorizing the seizure of any vehicle owned by a person convicted of a felony drug offense, regardless of whether the vehicle was used in the offense. A vehicle owner whose car had no connection to his offense challenges the law under the Eighth Amendment's prohibition of excessive fines. What is the proper analysis?

A. The Eighth Amendment does not apply to civil forfeiture

B. Civil forfeiture is automatically constitutional under the police power

C. Civil forfeiture is automatically unconstitutional

D. Under *Timbs v. Indiana*, the Eighth Amendment's prohibition of excessive fines applies to civil forfeitures and has been incorporated against the states; a forfeiture grossly disproportional to the gravity of the offense — including forfeiture of property unconnected to the offense — may violate the Excessive Fines Clause

10. A defendant is on trial for assault and battery. The prosecution offers testimony from the victim that the defendant approached her and said, "I'm going to teach you a lesson," before striking her. The defense objects on hearsay grounds. Should the testimony be admitted?

A. No, because the statement is an out-of-court statement

B. The statement is admissible only as character evidence

C. The statement is not hearsay because it is the defendant's own statement offered against him under FRE 801(d)(2)(A); it is also admissible as a verbal act because it shows intent and the conduct accompanying the battery, regardless of the truth of the matter asserted

D. The statement is admissible only with the defendant's consent

11. A property owner conveys "to A, but if A ever sells alcohol on the premises, the property reverts to the grantor." A operates a restaurant that serves wine with meals. The grantor sues to claim the property. What is the proper analysis?

A. A wine-with-meals service in a restaurant may not constitute "selling alcohol" in the ordinary sense intended by the deed; restrictions in deeds are construed strictly against the grantor, and ambiguous terms are interpreted to favor the grantee's free use of the property. The court will examine the parties' intent at the time of the conveyance and the deed's specific language

B. The grantor automatically reclaims the property because A sells wine

C. The grantor's interest violates the Rule Against Perpetuities

D. The grantor's interest is automatically valid as a possibility of reverter

12. A federal court has jurisdiction over a complex commercial dispute. The plaintiff moves to compel production of documents from the defendant. The defendant claims the documents are protected by the joint defense privilege because they were shared with co-defendants' counsel in a related case. The plaintiff argues the joint defense privilege does not apply. What is the proper analysis?

A. The joint defense privilege never applies to documents shared with others

B. The joint defense privilege automatically applies whenever documents are shared

C. The joint defense privilege applies only when explicitly contracted

D. The joint defense (or common interest) privilege permits parties with a common legal interest to share information without waiving the attorney-client privilege, provided (1) the parties share a common legal (not merely commercial) interest, (2) the communication was made in furtherance of that interest, and (3) the communication was confidential

13. A defendant is convicted of armed robbery. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a warrantless seizure of his personal records held by his bank. Under *United States v. Miller* and the third-party doctrine, what result?

A. The records are inadmissible because they are personal

B. Under *United States v. Miller* and the third-party doctrine, a person has no reasonable expectation of privacy in records voluntarily turned over to a third party (such as a bank); the government may obtain such records without a warrant from the third party, although statutes (such as the Right to Financial Privacy Act) may impose additional requirements

- C. The records are inadmissible because they reveal personal financial information
- D. The records are admissible only with the defendant's consent

14. A buyer enters into a written contract with a seller for the sale of a residential property. The contract includes an integration clause stating that the writing constitutes the entire agreement. After the contract is signed but before closing, the buyer claims that the seller had orally promised, before signing, to leave certain appliances in the home. The seller denies the promise. The contract is silent on appliances. May the buyer introduce evidence of the oral promise?

- A. Yes, because oral promises before signing are always enforceable
- B. Yes, because the contract is silent on the issue
- C. Under the parol evidence rule, evidence of prior or contemporaneous oral agreements that contradict, vary, or add to the terms of a fully integrated written contract is generally inadmissible; the integration clause confirms the contract's status as fully integrated, and the parol evidence is barred
- D. Yes, but only if the seller agrees

15. A federal court is asked to issue a permanent injunction against a state agency. The court must apply the four-factor test from *eBay v. MercExchange*. The plaintiff has shown likelihood of success on the merits and irreparable injury. The defendant argues that the balance of hardships and the public interest favor the state. What is the proper analysis?

- A. Under *eBay v. MercExchange*, the four-factor test for permanent injunctions requires the plaintiff to demonstrate (1) irreparable injury, (2) inadequate remedies at law, (3) balance of hardships favors injunctive relief, and (4) the public interest would not be disserved by the injunction; all four factors must be weighed and balanced before a permanent injunction may issue
- B. The court must defer to the state agency's preferences
- C. The court must issue the injunction automatically once likelihood of success is shown
- D. The court considers only the plaintiff's likelihood of success

16. A defendant is charged with the crime of solicitation to commit murder. The defendant approached an undercover police officer and offered \$10,000 to kill the defendant's business rival. The officer refused. The defense argues that the crime of solicitation requires the solicited person to actually agree. What is the proper analysis?

- A. Solicitation requires the solicited person to agree
- B. Solicitation requires the solicited person to take steps toward the act
- C. Solicitation is a misdemeanor only
- D. Under the common law and Model Penal Code, solicitation is a complete crime when the defendant requests, commands, encourages, or otherwise importunes another person to engage in criminal conduct, regardless of whether the solicited person agrees or acts on the request; the offense is complete upon the act of solicitation

17. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing that the plaintiff must serve a "notice of claim" on the defendant before filing suit. The defendant moves to dismiss because the plaintiff did not serve the notice of claim. The plaintiff argues that federal pleading rules govern. What is the proper outcome?

- A. The federal court applies federal pleading rules
- B. The federal court applies whichever rule produces uniformity
- C. Under Erie, the federal court applies the state's notice-of-claim requirement because it is a substantive precondition to recovery affecting whether the claim can be pursued; failure to serve the notice may bar the claim
- D. The federal court applies federal common law on tort claims

18. A defendant is on trial for the murder of his estranged spouse. The prosecution offers as evidence statements made by the defendant to a private investigator in a deposition taken during the divorce proceedings, six months before the murder. The defendant claims the deposition statements are protected by spousal privileges. What result?

- A. Spousal privileges apply automatically
- B. Under the spousal communications privilege (also called marital communications), confidential communications between spouses during a valid marriage are privileged; however, the privilege protects communications between spouses, not communications between a spouse and a third party (such as a private investigator), and the deposition statements are not protected by spousal privileges
- C. Spousal privileges apply to all marital proceedings
- D. Spousal privileges apply only during the marriage

19. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges that the defendant violated her constitutional rights. The defendant is a private corporation that operates a state-licensed but privately funded school. The plaintiff sues under 42 U.S.C. § 1983. Is the defendant subject to § 1983 liability?

A. Under § 1983, the defendant must have acted "under color of state law"; while private actors may be considered state actors in narrow circumstances (such as performing a traditional public function, having entwinement with state actors, or being compelled by state action), a private corporation operating a licensed but privately funded school is generally not a state actor under the public function or compulsion tests

B. All licensed entities are state actors

C. Private corporations are never state actors

D. State action exists if the entity provides any public service

20. A defendant is convicted of murder. On appeal, the defendant argues that his confession was inadmissible because the police did not give him Miranda warnings before questioning him in his home. The defendant was free to leave and there was no formal arrest. Under *Miranda* and *Berkemer v. McCarty*, what result?

A. Miranda warnings are required whenever the police question a suspect

B. Miranda warnings are not required

C. Under *Miranda v. Arizona* and *Berkemer v. McCarty*, Miranda warnings are required only when the suspect is (1) in custody and (2) being interrogated; "custody" requires either a formal arrest or restraint on freedom of movement of the degree associated with formal arrest; questioning in one's home where the suspect is free to leave generally does not constitute custody, and Miranda warnings are not required

D. Miranda warnings depend on whether the defendant is given Miranda rights

21. A federal court is asked to certify a class action under FRCP 23(b)(1)(A), which permits certification when prosecuting separate actions would create a risk of inconsistent or varying adjudications. What is the proper analysis?

A. (b)(1)(A) requires only that the defendant request certification

B. (b)(1)(A) requires only that the plaintiffs request certification

C. (b)(1)(A) requires only the FRCP 23(a) requirements

D. Under FRCP 23(b)(1)(A), the plaintiffs must show that prosecuting separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the defendant; the focus is on the defendant's potential for being subject to conflicting requirements

22. A defendant is on trial for the murder of his wife. The defense seeks to introduce evidence of the wife's prior threats against the defendant. The prosecution objects, arguing this is character evidence. What is the proper analysis?

A. The wife's prior threats are inadmissible because they are character evidence

B. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense is at issue; prior specific acts of the victim known to the defendant are admissible to show the defendant's reasonable apprehension of danger, and prior threats are admissible to show motive and intent of the victim

C. The wife's prior threats are inadmissible because they are too remote

D. The wife's prior threats are inadmissible without corroboration

23. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to introduce evidence under FRE 803(6), the business records exception. The defendant objects, arguing that the records were not made in the regular course of business. What is the proper analysis?

A. Under FRE 803(6), business records are admissible if (1) the record was made at or near the time of the event, (2) the record was made by or transmitted from a person with knowledge, (3) the record was kept in the course of a regularly conducted activity of a business, (4) making the record was a regular practice of that activity, and (5) the proponent shows these conditions through testimony of the custodian, qualified witness, or certification

B. Business records are automatically admissible

C. Business records require expert authentication

D. Business records are admissible only with the defendant's consent

24. A defendant is on trial for the federal crime of mail fraud. The prosecution offers evidence that the defendant has committed similar acts in the past. The defense objects under FRE 404(b). The prosecution argues the evidence shows knowledge and absence of mistake. What is the proper analysis?

- A. The evidence is inadmissible because it is character evidence
- B. The evidence is inadmissible because it is too remote
- C. Under FRE 404(b), prior bad acts may be admissible for permissible non-propensity purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; the prior acts must share distinctive features with the charged offense or otherwise be probative on these issues, and the court must balance probative value against unfair prejudice under FRE 403
- D. The evidence is inadmissible because the acts are uncharged

25. A state law prohibits any person from selling marijuana within 1,000 feet of a school. A defendant is convicted of selling marijuana 800 feet from a school. He challenges the conviction, arguing the law is vague. What is the proper standard for vagueness analysis?

- A. Vagueness requires the law be unenforceable
- B. Vagueness requires the law be impossible to apply
- C. Vagueness analysis requires only the law's silence on a particular issue
- D. Under the Due Process Clause and the void-for-vagueness doctrine, a criminal statute is unconstitutionally vague if it (1) fails to provide adequate notice of the prohibited conduct or (2) authorizes arbitrary enforcement; a "1,000 feet" distance requirement provides clear notice and standards for enforcement and is not vague

26. A defendant is on trial for armed robbery. The prosecution offers testimony from a witness who claims to have seen the defendant during the robbery. The defense argues the witness's identification is unreliable because the witness was elderly and the encounter was brief. What is the proper analysis?

- A. Elderly witnesses are automatically excluded
- B. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification; age and brevity of encounter affect weight to be given the testimony but not generally its admissibility
- C. The witness's testimony requires expert corroboration
- D. The witness's identification is automatically excluded

27. A buyer enters into a contract with a seller for the sale of a custom-manufactured machine for \$500,000. The contract specifies that the buyer will use the machine for a specific industrial process. The seller subsequently learns the machine cannot be manufactured. The buyer sues for breach. The seller argues impossibility of performance. What is the proper analysis?

A. Under the doctrine of impossibility, a contractual obligation may be excused when (1) an event occurs after contract formation, (2) the event makes performance objectively impossible, (3) the event was not the obligor's fault, and (4) the parties did not allocate the risk of the event; mere increased difficulty or financial hardship is insufficient

B. Impossibility is never a defense

C. Impossibility requires destruction of the subject matter

D. Impossibility is automatically a defense to all contracts

28. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in self-defense. The prosecution offers as rebuttal evidence the testimony of a witness that the neighbor was generally peaceful, but on cross-examination, the defense asks the witness whether she has heard about the neighbor's prior conviction for assault. The prosecution objects. Is the question allowed?

A. No, because the witness denied the conviction

B. No, because the conviction is unproven by reputation

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

D. Under FRE 405(a), a witness who testifies about the victim's character may be cross-examined about specific instances of conduct (including prior convictions or arrests of the victim) to test the basis of the reputation testimony; the inquiry tests the witness's knowledge of the victim's actual reputation

29. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to amend the complaint to add a new defendant. The new defendant was originally named but was dismissed for lack of personal jurisdiction in a prior order. The new defendant has since established new contacts with the forum. Under FRCP 15 and the law of the case doctrine, what is the proper analysis?

A. The law of the case doctrine bars all reconsideration

B. The new defendant must consent to be added

C. Under FRCP 15(a)(2) and the law of the case doctrine, a court may reconsider a prior dismissal on personal jurisdiction grounds when there has been a substantial change in circumstances, such as the defendant's establishment of new and substantial contacts with the forum; the law of the case doctrine is discretionary and does not bar reconsideration based on changed circumstances

D. The new defendant cannot be added under any circumstances

30. A defendant is on trial for assault. The defense calls a character witness who testifies that the defendant has a reputation in the community for being peaceful. The prosecution then seeks to introduce evidence that the defendant has a prior conviction for assault from five years ago. The defense objects. May the evidence be admitted?

A. No, because the conviction is too remote

B. Once the defendant places his character in issue by offering reputation evidence of peacefulness, the prosecution may rebut with contrary evidence including prior convictions under FRE 404(a)(2)(A); the defendant's character evidence opens the door to prosecutorial rebuttal even when the defendant has not testified

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

D. Yes, only if the conviction is also a felony

31. A federal court is hearing a state-law breach of contract case in diversity. The defendant counterclaims for fraud. Under the parol evidence rule, the defendant seeks to introduce evidence of pre-contract oral statements made by the plaintiff. The plaintiff argues that the parol evidence rule bars the evidence. What is the proper analysis?

A. The parol evidence rule does not bar evidence of fraud (or other tortious conduct) in the inducement of a contract; while parol evidence may not be used to vary the terms of a fully integrated written contract, evidence of fraudulent misrepresentations made during contract formation is admissible to support a fraud claim, even when those statements contradict the written terms

B. The parol evidence rule bars all evidence of pre-contract statements

C. The parol evidence rule bars only evidence that contradicts the written contract

D. The parol evidence rule applies only to written contracts of sale

32. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by denying his motion to suppress evidence obtained during a search of his home pursuant to a warrant. The

defense alleges that the warrant was issued based on stale information about three-month-old observations. What is the proper analysis?

- A. Stale information automatically invalidates a warrant
- B. Information used in a warrant application is always sufficient if it is in writing
- C. Under the staleness doctrine, probable cause for a search warrant must be based on information that is sufficiently recent to support a reasonable belief that contraband or evidence will be present at the time of the search; what constitutes "staleness" depends on the nature of the items sought, the nature of the suspected criminal activity, and the location to be searched
- D. Three-month-old information is always stale

33. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of the defendant's general policy of conducting safety inspections. The defendant objects under FRE 407. What is the proper analysis?

- A. The evidence is automatically admissible
- B. The evidence is automatically inadmissible
- C. The evidence is admissible only with the defendant's consent
- D. Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning; however, the rule does not bar evidence of routine pre-incident safety inspections or general safety practices, and the rule applies only to measures taken after the alleged harm

34. A defendant is on trial for the murder of his business partner. The defense argues that the defendant acted in self-defense. The prosecution offers as evidence the testimony of a witness who states that the defendant said, three months before the killing, "I'm going to take care of my partner once and for all." The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement; the statement is also relevant under FRE 803(3) as evidence of the defendant's state of mind toward the victim and under FRE 404(b) as evidence of motive and intent, undercutting the self-defense claim

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

35. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff and one defendant are citizens of the same state, but the plaintiff has voluntarily dropped that defendant before any motion practice. The remaining defendants are diverse. Has subject matter jurisdiction been established?

- A. Under *Wheeler v. United States* and related precedent, complete diversity must exist at the time the action is filed and at the time of judgment; voluntary dismissal of a non-diverse defendant before any motion practice may not retroactively create diversity if the case was originally filed without complete diversity. However, when the non-diverse defendant is dropped before the case is "removed" or before any substantive ruling, diversity may be cured. Courts apply a "time-of-filing" rule with limited exceptions
- B. Diversity is automatically established
- C. Diversity is automatically defeated
- D. Diversity requires consent of all parties

36. A defendant is on trial for armed robbery. The prosecution offers testimony from an eyewitness who claims to have seen the defendant during the robbery. The defense argues the witness's identification was tainted by police suggestion. The court must determine whether the identification is admissible. What is the proper procedure?

- A. The court must defer to the police officer's account
- B. The court must exclude all identification testimony
- C. The court conducts a pretrial *Wade* hearing (*United States v. Wade*) to determine whether the identification procedure was suggestive and, if so, whether the identification is nevertheless reliable under the totality of the circumstances per *Manson v. Brathwaite*; if the identification is unreliable, it is suppressed
- D. The court must require the lineup be photographed

37. A state passes a law authorizing the use of toll roads only for vehicles displaying a state-issued electronic transponder. A truck driver who refused to obtain a transponder for personal reasons is fined when she drives on a toll road. She challenges the law under the Dormant Commerce Clause, arguing the law burdens interstate commerce. What is the proper analysis?

- A. The law is automatically constitutional under the police power
- B. Under the Dormant Commerce Clause, a state law that does not discriminate against out-of-state commerce — facially, in purpose, or in effect — is upheld if its benefits outweigh the burden on interstate commerce (*Pike v. Bruce Church* balancing); a transponder requirement that applies equally to in-state and out-of-state vehicles is non-discriminatory, and the benefits of efficient toll collection generally outweigh the burden of obtaining a transponder
- C. The law is automatically unconstitutional
- D. The law violates the Dormant Commerce Clause if any out-of-state vehicle is affected

38. A defendant is on trial for the federal crime of bank robbery. The defense argues that the defendant did not have the specific intent required because he was intoxicated. Under the common law, what is the proper analysis?

- A. Intoxication is never a defense
- B. Intoxication is a complete defense to all crimes
- C. Voluntary intoxication is a defense to all general intent crimes
- D. Under the common law, voluntary intoxication may negate the specific intent required for crimes like burglary or first-degree murder (which require specific intent or premeditation); the intoxication evidence is relevant to whether the defendant could form the specific mental state, but voluntary intoxication is generally not a defense to general intent crimes or to crimes requiring only recklessness

39. A buyer signs a contract to purchase a parcel of land from a seller. The contract specifies marketable title at closing. The seller's title was perfected through adverse possession 20 years ago, but the prior recorded owner has never released his claim. The buyer terminates the contract. May the buyer terminate?

- A. No, because adverse possession 20 years ago is sufficient
- B. No, because the buyer should have investigated before signing
- C. Title acquired through adverse possession may be marketable if the period of adverse possession is sufficient under the applicable statute of limitations AND the adverse possession has been perfected through legal proceedings (such as a quiet title action) that establish the title of record; an unrecorded adverse possession claim where the prior owner has not released his claim renders title unmarketable
- D. Yes, because the seller's adverse possession is invalid

40. A federal court has jurisdiction over a class action against a corporation. The plaintiffs seek to certify a class. The named plaintiffs have unique defenses to their claims that other class members do not have. The defendant moves to deny class certification. What is the proper analysis?

A. Under FRCP 23(a)(3), the typicality requirement requires that the named plaintiffs' claims be typical of the claims of the class; when the named plaintiffs have unique defenses (such as statute of limitations or election of remedies) that other class members do not have, typicality is generally not satisfied, and class certification may be denied

B. The unique defenses are irrelevant to certification

C. The unique defenses automatically defeat certification regardless of analysis

D. The unique defenses must be resolved before certification

41. A federal court is hearing a state-law tort case in diversity. The plaintiff and defendant are citizens of different states. After the case is filed, the plaintiff moves with the intent to change his domicile to the defendant's state. The defendant moves to dismiss for lack of diversity. What result?

A. The motion is granted because diversity must continue

B. The motion is granted because the plaintiff's relocation defeats diversity

C. The motion is granted because the parties must remain diverse

D. Under the well-established time-of-filing rule, diversity jurisdiction is determined at the time the action is filed; subsequent changes in citizenship by the parties do not defeat jurisdiction, even if they would have defeated diversity if they had occurred before filing

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

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

B. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the witness's basis for the reputation testimony; the inquiry tests her knowledge of the defendant's actual reputation in the community

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

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

43. A federal court is asked to determine whether a state regulation is preempted by federal law. The state regulation requires all energy companies to maintain a minimum percentage of renewable energy sources. The federal Energy Policy Act establishes federal energy standards but does not expressly preempt state requirements. What is the proper analysis?

A. State energy regulations are automatically preempted

B. State energy regulations are never preempted

C. Under the Supremacy Clause, federal law preempts state law in three ways: (1) express preemption, (2) field preemption (when federal law occupies the entire field), and (3) conflict preemption (when state law conflicts with federal law, either making compliance impossible or frustrating the federal purpose); a state regulation supplementing federal standards in a complementary way generally is not preempted, but the analysis depends on the specific federal statute and the nature of the state requirement

D. State energy regulations are preempted only with explicit congressional authorization

44. A defendant is convicted of murder. On appeal, the defendant argues that his Sixth Amendment right to a speedy trial was violated because the trial occurred 18 months after his arrest. Under *Barker v. Wingo*, what factors should the court consider?

A. Under *Barker v. Wingo*, the court considers four factors to determine whether the Sixth Amendment speedy trial right has been violated: (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant; no single factor is dispositive, and the factors are balanced together

B. Under the Speedy Trial Act, trial must occur within 70 days of indictment

C. The Sixth Amendment requires trial within a fixed time

D. The Sixth Amendment is satisfied if the trial begins within two years

45. A federal court is hearing a state-law tort case in diversity. The state has a substantive law allowing punitive damages only where the plaintiff has proven actual malice by clear and convincing evidence. The plaintiff argues that federal law governs the standard of proof. What is the proper outcome?

A. Federal law applies preponderance

- B. Federal law applies clear and convincing for all punitive damages
- C. The federal court applies whichever rule produces uniformity
- D. Under Erie, the federal court applies state substantive law including state-law burden of proof requirements such as clear and convincing evidence for punitive damages; the standard of proof is substantive because it affects the outcome of the case

46. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, two weeks before the killing, "I'd kill him if I could get away with it." The defense objects on hearsay grounds. Should the testimony be admitted?

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

47. A buyer enters into a written contract with a seller for the sale of 500 widgets. After delivery, the buyer discovers that 50 widgets are defective. The buyer notifies the seller within 5 days and seeks to revoke acceptance. Under UCC § 2-608, what is required?

- A. The buyer cannot revoke acceptance after delivery
- B. Revocation of acceptance is automatic upon discovery of defects
- C. Under UCC § 2-608, the buyer may revoke acceptance if (1) the non-conformity substantially impairs the value of the goods to the buyer, (2) acceptance was based on either reasonable assumption that the non-conformity would be cured (and it was not seasonably cured) or difficulty of discovery of the non-conformity at acceptance, AND (3) revocation occurs within a reasonable time after discovery, before any substantial change in the condition of the goods
- D. Revocation is automatic if the buyer notifies the seller

48. A defendant is on trial for the murder of his wife. The defense argues that the defendant was insane at the time of the killing. The jurisdiction applies the American Law Institute (Model Penal Code) test for insanity. What must the defense show?

A. Under the Model Penal Code test for insanity, the defense must show that at the time of the act, the defendant lacked substantial capacity either (1) to appreciate the criminality (wrongfulness) of his conduct or (2) to conform his conduct to the requirements of law, as a result of mental disease or defect; the test incorporates both cognitive and volitional prongs

B. The defendant must show he did not understand the act

C. The defendant must show he had emotional distress

D. The defendant must show he had a learning disability

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

A. Prior bad acts are always admissible

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

C. Prior bad acts are always inadmissible

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

50. A defendant is on trial for the federal crime of conspiracy to commit fraud. The defense argues that the defendant withdrew from the conspiracy before any overt act was committed. Under the common law and Model Penal Code, what is the proper analysis?

A. Withdrawal is never a defense

B. Withdrawal is automatically a defense

C. Withdrawal requires only oral notice

D. Under the common law, withdrawal from a conspiracy is a defense only if it occurs before any conspirator commits an overt act in furtherance of the conspiracy; the withdrawing party must take affirmative action — such as communicating withdrawal to all co-conspirators or notifying authorities — and the withdrawal must be voluntary; the Model Penal Code is more lenient, requiring "thwarting" the conspiracy

51. A federal lawsuit is filed by a plaintiff against multiple defendants. The plaintiff seeks to certify a class action under FRCP 23(b)(1)(B). The plaintiffs argue that prosecuting separate actions would impair other persons' ability to protect their interests. What standard applies?

A. Under FRCP 23(b)(1)(B), the plaintiffs must show that prosecuting separate actions would impair or impede the ability of other persons not parties to the action to protect their interests; this category is appropriate when the action would, as a practical matter, be dispositive of the interests of non-parties, such as in cases involving common funds, estate proceedings, or representative actions

B. (b)(1)(B) requires only the FRCP 23(a) requirements

C. (b)(1)(B) requires only that the defendant request certification

D. (b)(1)(B) requires unanimous consent of class members

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

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

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

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

D. No, because hearsay rules bar the testimony

53. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the attorney-client privilege because they were sent to in-house counsel. The plaintiff argues the documents were sent for business purposes. What is the proper analysis?

A. All emails to in-house counsel are protected

B. Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and counsel made for the purpose of seeking, obtaining, or providing legal advice, including with in-house counsel; the dual-purpose communications (legal advice and business advice) test

requires that obtaining legal advice be the "primary purpose" of the communication, though some circuits have moved toward a "significant purpose" test

C. Emails to in-house counsel are never protected

D. The privilege applies only if the emails are marked "confidential"

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

A. The evidence is admissible because warrants are presumed valid

B. The evidence is automatically excluded

C. The evidence is excluded if any error appears in the affidavit

D. Under *Franks v. Delaware*, the defendant must show by a preponderance that (1) the affidavit contained a deliberately false statement or one made with reckless disregard for the truth, AND (2) the false statement was necessary to a finding of probable cause; if both are shown, the evidence must be excluded

55. A buyer enters into a contract with a seller for the sale of land. The contract requires the seller to deliver a deed conveying marketable title at closing. After signing but before closing, the buyer discovers that the property is subject to a 30-year-old recorded easement granting a utility company access. The buyer terminates the contract. May the buyer terminate?

A. Under modern real estate law, a recorded easement is generally an encumbrance affecting marketability of title; the buyer is typically entitled to terminate a contract requiring marketable title unless the contract specifically provides that title is to be taken subject to such easements (which is common practice in many areas)

B. The buyer cannot terminate because easements are routine

C. The buyer cannot terminate because the easement was recorded

D. The buyer cannot terminate without proving harm

56. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant from a six-person lineup. The defense argues the lineup was unduly

suggestive because the defendant was the only one not wearing a hat. The court must determine whether the identification is admissible. What is the proper analysis?

- A. The identification is automatically excluded
- B. The identification is automatically admitted
- C. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances; the reliability factors include opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification
- D. The court must defer to the police officer's account

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

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

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

- A. The court must find by clear and convincing evidence
- B. The court must find by beyond a reasonable doubt
- C. The court defers to the police officer's account
- D. Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's *Miranda* waiver was voluntary, knowing, and intelligent; the trial court applies this standard at the pretrial suppression hearing

59. A property owner conveys "to A and her heirs in fee simple absolute, provided that the property is used only for residential purposes; if the property is used for non-residential purposes, the grantor or her heirs may re-enter and terminate A's estate." Five years later, A operates a small home-based business with no public access. Has A's estate been terminated?

- A. A's estate is automatically terminated
- B. The grantor's interest violates the Rule Against Perpetuities
- C. A's estate is a fee simple subject to a condition subsequent, where the grantor (or heirs) holds a right of re-entry that must be affirmatively exercised; whether the home-based business constitutes "non-residential" use depends on the specific terms and parties' intent, and the right of re-entry must be exercised within a reasonable time after breach
- D. The grantor's interest is automatically void

60. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff alleges \$80,000 in compensatory damages in good faith. The defendant moves to dismiss for lack of subject matter jurisdiction, arguing that the actual amount in controversy is only \$50,000. What standard applies?

- A. Under *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, the sum claimed by the plaintiff controls if made in good faith; the defendant must show to a "legal certainty" that the claim is for less than the jurisdictional amount to defeat jurisdiction; the strict legal certainty standard makes dismissal difficult based solely on a discrepancy between claimed and actual damages
- B. The plaintiff's allegations are conclusive of jurisdiction
- C. The court must hold an evidentiary hearing
- D. The court must dismiss because the actual amount is less than \$75,000

61. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank showing the robbery. The defense argues the videotape should have been authenticated by the person who recorded it. What is the proper analysis?

- A. Only the person who recorded the videotape can authenticate it
- B. Videotapes are inadmissible unless self-authenticating
- C. Videotapes require expert testimony

D. Under FRE 901(b), authentication may be accomplished by testimony of a witness with knowledge (FRE 901(b)(1)), but the rule provides multiple ways to authenticate evidence; for security camera footage, authentication is often accomplished through testimony establishing the recording system's reliability, time of recording, and chain of custody, rather than testimony from the person who recorded it

62. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. The settlement provides for cash payments and attorney's fees. Some class members object that the settlement is unfair. The court must determine whether to approve the settlement. Under FRCP 23(e), what factors should the court consider?

A. The court considers only the cash payments

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

C. The court considers only the attorney's fees

D. The court considers only the named plaintiffs' preferences

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

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

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

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

D. No, because hearsay rules bar the testimony

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

- A. Under Erie, the federal court applies state substantive law on the measure and propriety of punitive damages, including the admissibility of net worth evidence; in jurisdictions where state law permits net worth evidence in connection with punitive damages, the federal court must apply that rule
- B. Evidence of net worth is automatically inadmissible
- C. Evidence of net worth requires special permission
- D. Evidence of net worth is admissible only with the defendant's consent

65. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting expert testimony from a forensic scientist regarding shoe-print identification. The defense argues the scientist's methodology is not generally accepted in the scientific community. Under Daubert and FRE 702, what is the proper analysis?

- A. The expert testimony is automatically admissible
- B. The expert testimony is automatically inadmissible
- C. The expert testimony is admissible only with consent
- D. Under Daubert v. Merrell Dow Pharmaceuticals and FRE 702, the trial court acts as gatekeeper to determine whether expert testimony is based on reliable principles and methods. The court considers factors including testability, peer review, error rate, general acceptance, and known reliability; "general acceptance" is one factor but is not dispositive under the Federal Rules

66. A buyer enters into a contract with a seller for the sale of 100 widgets. The seller delivers conforming goods. The buyer rejects the goods, claiming the seller misrepresented the goods' performance characteristics. The seller sues for breach. What result?

- A. The buyer cannot revoke acceptance after rejection
- B. Under UCC § 2-601 (the perfect tender rule), a buyer may reject goods that fail in any respect to conform to the contract; however, once the buyer has rejected goods, the rejection is final and the buyer cannot revoke. The buyer's claim of misrepresentation may give rise to a separate fraud or warranty claim but does not undo the rejection
- C. The buyer must pay for the goods
- D. The buyer's rejection is automatic upon discovery of defects

67. A federal court is hearing a state-law breach of contract case in diversity. The defendant raises the affirmative defense of impossibility of performance, alleging that a flood destroyed the warehouse holding the goods. The plaintiff argues that this is a force majeure question controlled by federal law. What is the proper outcome?

- A. Under Erie, the federal court applies state substantive law including doctrines of contract performance such as impossibility; impossibility is part of the substantive contract law affecting whether the obligation may be excused, not federal procedural law
- B. Federal law governs all impossibility questions
- C. The federal court applies the parties' choice of law
- D. The court applies whichever rule produces uniformity

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

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

69. A federal court has jurisdiction over a complex commercial litigation. The plaintiff moves to amend the complaint to add a new claim after the deadline for amendments set in the scheduling order. The defendant objects. What is the proper standard?

- A. Leave to amend is freely granted
- B. The plaintiff must show extraordinary circumstances
- C. The plaintiff must show no prejudice to the defendant
- D. Under FRCP 16(b)(4), modifying a scheduling order requires "good cause" shown by the moving party; the moving party must show diligence in attempting to comply with the deadline and may not amend simply by invoking FRCP 15(a)'s liberality after the scheduling deadline has passed

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

- A. No, because the conviction is too remote in time
- B. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the witness's basis for the reputation testimony; extrinsic proof of specific acts is barred but the inquiry is permitted
- C. No, because the question is more prejudicial than probative
- D. No, because the question seeks specific acts

71. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing that the plaintiff must demand a hearing within 30 days of the injury or forfeit the right to recover. The plaintiff missed the demand deadline. The plaintiff argues that federal pleading rules apply. What result?

- A. The federal court applies federal pleading rules and the demand is unnecessary
- B. The federal court applies whichever rule produces uniformity
- C. Under Erie, the federal court applies state substantive law including state-law procedural conditions to recovery; if the state-law demand requirement is substantive (acting as a condition precedent to recovery), the federal court applies it, and the plaintiff's failure to make the demand bars the claim
- D. The federal court applies federal common law on procedural conditions

72. A defendant is on trial for the federal crime of conspiracy. The defense argues that the defendant withdrew from the conspiracy before any overt act. The defense calls a witness to corroborate. The prosecution objects to the witness's testimony. What is the proper analysis?

- A. The witness's testimony is admissible as relevant evidence of withdrawal; under the common law, withdrawal from a conspiracy is a defense if the withdrawing party (1) takes affirmative action to terminate her participation, (2) communicates the withdrawal to all co-conspirators or to authorities, AND (3) the withdrawal occurs before any conspirator commits an overt act in furtherance of the conspiracy
- B. Withdrawal is never a defense
- C. Withdrawal is a defense only when in writing

D. The witness's testimony is automatically excluded

73. A federal court has jurisdiction over a class action against a corporation. The plaintiffs seek certification under FRCP 23(b)(3). The plaintiffs satisfy the FRCP 23(a) requirements. For certification, what is required?

A. (b)(3) certification requires only consent of named plaintiffs

B. (b)(3) certification requires only common questions

C. (b)(3) certification requires only injury to the class

D. Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy; both predominance and superiority must be satisfied, and the court considers factors including (1) class members' interest in controlling their litigation, (2) extent of pending litigation, (3) desirability of concentrating litigation, and (4) likely difficulties in managing the class

74. A defendant is on trial for armed robbery. The prosecution offers testimony from an eyewitness who claims to have seen the defendant during the robbery. On cross-examination, the defense asks the witness about her ability to see in the relevant lighting conditions. The prosecution objects. Is the question allowed?

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

B. The question is permissible because the witness's perceptual abilities — including her vision in the relevant lighting conditions — are directly relevant to the reliability of her identification and observations; perceptual capacity goes to weight as well as admissibility

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

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

75. A federal court is hearing a state-law contract case in diversity. The state has a substantive law requiring that contracts for the sale of goods over \$500 be in writing. The defendant moves to dismiss because the alleged contract was oral. The plaintiff argues that the partial performance exception applies. What is the proper analysis?

A. The partial performance exception is a federal common law doctrine

- B. The state's statute of frauds applies, but federal common law governs exceptions
- C. Under Erie, the federal court applies state substantive law including the statute of frauds AND state-law exceptions to it (such as partial performance); both the rule and the exception are substantive because they affect contract enforceability
- D. The exception is irrelevant under Erie

76. A defendant is on trial for the federal crime of mail fraud. The defense calls a character witness who testifies that the defendant has a reputation in the community for honesty. On cross-examination, the prosecution asks whether the witness has heard about the defendant's prior arrest for forgery. The defense objects. Is the question allowed?

- A. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior arrests, to test the witness's basis for the reputation testimony; the inquiry tests the witness's knowledge of the defendant's actual reputation in the community, but extrinsic proof of the arrest is barred
- B. No, because arrests are unproven
- C. No, because reputation evidence does not open the door
- D. No, because the question is more prejudicial than probative

77. A federal court has jurisdiction over a case under diversity jurisdiction. The defendant moves to transfer venue to a different federal district under 28 U.S.C. § 1404(a). The plaintiff opposes the transfer, arguing that the plaintiff's choice of forum should be respected. What is the proper analysis?

- A. The plaintiff's choice of forum is dispositive
- B. The court must transfer the case automatically
- C. The court must transfer the case if the defendant requests
- D. Under 28 U.S.C. § 1404(a), the court may transfer a case to "any other district or division where it might have been brought" for "the convenience of parties and witnesses, in the interest of justice"; while the plaintiff's choice of forum is given weight, it is one factor among several, and transfer may be appropriate when the balance of convenience and interests favors a different forum

78. A defendant is on trial for the murder of his sister. The defense argues that the killing was committed in self-defense. The prosecution offers as evidence the testimony of a witness who claims the defendant

said, "She has to go" two weeks before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

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

79. A federal court is hearing a complex commercial case. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the work product doctrine because they were prepared by counsel in anticipation of litigation. The plaintiff argues that the documents were prepared in the ordinary course of business. Under FRCP 26(b)(3), what is the proper standard?

- A. Under FRCP 26(b)(3), work product is generally protected from disclosure; however, ordinary work product may be discoverable upon a showing of substantial need AND undue hardship in obtaining the substantial equivalent. Opinion work product (mental impressions, conclusions, legal theories) receives nearly absolute protection. Documents prepared in the ordinary course of business are not protected at all
- B. Work product is absolute
- C. Work product is freely discoverable
- D. Work product applies only to documents prepared by lawyers

80. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant in a photo lineup. The defense argues the lineup was unduly suggestive because the defendant's photo was prominently displayed. The court must determine the admissibility of the identification. What is the proper analysis?

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

circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification

D. The court must require the lineup be photographed

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

A. Settlement evidence is automatically admissible

B. Under FRE 408, evidence of compromise offers, settlements, and conduct or statements made during compromise negotiations is generally inadmissible to prove liability for, invalidity of, or amount of a disputed claim; the rule encourages settlement by ensuring related conduct is not used as evidence at trial. Exceptions exist for bias, prior inconsistent statements, or to negate a contention of undue delay

C. Settlement evidence is admissible only with the defendant's consent

D. Settlement evidence is admissible only to show motive

82. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, "I'd like to kill that bastard" several months before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

A. No, because the statement is hearsay

B. The statement is admissible only as character evidence

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

D. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of remoteness in time which affects weight rather than admissibility; the statement is also admissible under FRE 404(b) as evidence of motive and intent

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

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

reasonable, and adequate considering factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties

- B. The court must obtain unanimous consent of all class members
- C. The court must defer to the parties' agreement
- D. The court must approve the settlement unless objections are unanimous

84. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting expert testimony based on a novel forensic technique not generally accepted in the scientific community. Under *Frye v. United States* and the *Daubert/FRE 702* framework, what is the proper analysis?

- A. Under *Frye*, expert testimony must be based on principles generally accepted in the scientific community
- B. Under *FRE 702*, expert testimony is automatically admissible if relevant
- C. Under *Daubert v. Merrell Dow Pharmaceuticals* and *FRE 702*, the trial court acts as gatekeeper to determine whether the expert testimony is based on reliable principles and methods; "general acceptance" is one factor under the *Daubert* analysis but is not dispositive, and the federal rule is more flexible than *Frye*, allowing admission of novel scientific evidence if it satisfies the gatekeeping requirements
- D. *Frye* still governs in federal court

85. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks punitive damages. The state has a substantive law providing that punitive damages must be proven by clear and convincing evidence. The plaintiff argues that federal law governs the burden of proof. What is the proper outcome?

- A. Federal law applies preponderance for all federal cases
- B. Under *Erie*, the federal court applies state substantive law including state-law burden of proof requirements such as clear and convincing evidence for punitive damages; the burden of proof is substantive because it affects the outcome of the case
- C. The federal court applies federal common law
- D. The federal court applies federal procedural rules

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

- A. Voluntary intoxication is never a defense to murder
- B. Voluntary intoxication is automatically a defense
- C. Voluntary intoxication is a defense to general intent crimes
- D. Under the common law, voluntary intoxication may negate the specific intent required for first-degree murder (which requires premeditation and deliberation); the intoxication evidence is relevant to whether the defendant could form the specific mental state. However, voluntary intoxication generally is not a defense to murder under a depraved heart or felony murder theory, both of which require only general intent or recklessness

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

- A. The court must allow the deposition unconditionally
- B. The court must grant the protective order automatically
- C. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the proponent of the deposition generally bears the burden of justifying it, and a deposition of a CEO may be denied or limited when other corporate witnesses can provide the same information
- D. The court must defer to the defendant's preferences

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

- A. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony; the inquiry tests the witness's knowledge of the defendant's actual reputation in the community
- B. No, because arrests are unproven

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

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

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

90. A defendant is on trial for the federal crime of bank robbery. The prosecution offers a confession given by the defendant during interrogation. The defense argues the confession was obtained in violation of Miranda. The trial court must determine the admissibility of the confession at a pretrial suppression hearing. What standard applies?

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

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

- A. Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court then evaluates the validity of the privilege claim, potentially through in camera review, where the court reviews the documents privately

- B. The defendant must produce all documents
- C. The defendant may refuse all production
- D. The court must order in camera review of all documents

92. A defendant is on trial for the federal crime of mail fraud. The prosecution offers evidence of three similar fraudulent schemes by the defendant from the past 18 months. The defense objects under FRE 404(b). The prosecution argues the evidence shows a common scheme or modus operandi. What is the proper analysis?

- A. Prior crimes are inadmissible to show character
- B. Prior crimes are inadmissible if too remote
- C. Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi, where the prior conduct shares distinctive features with the charged offense; the prosecution must also satisfy FRE 403's balancing of probative value against unfair prejudice
- D. Prior crimes are inadmissible unless charged

93. A buyer enters into a contract with a seller to purchase 1,000 widgets at \$20 each. The seller delivers 1,000 widgets, but 100 are non-conforming. The buyer accepts the conforming 900 and rejects the non-conforming 100. The seller demands payment for the 900. May the buyer pay only for the conforming widgets?

- A. Yes, but only with the seller's consent
- B. No, because the buyer cannot bifurcate the shipment
- C. No, because the contract is integrated
- D. Under UCC § 2-601 and § 2-607, when goods or units thereof fail to conform to the contract, the buyer may (1) accept the whole, (2) reject the whole, or (3) accept any commercial unit or units and reject the rest. Where the buyer has accepted the conforming units and rejected the non-conforming, the buyer must pay only the contract rate for the accepted goods

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

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

95. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained pursuant to a search warrant that was issued based on the tip of a confidential informant. The defense argues that the warrant was not supported by probable cause. Under *Illinois v. Gates*, what is the proper analysis?

- A. Under *Illinois v. Gates*, probable cause for a search warrant based on informant testimony is determined by the totality of the circumstances, considering factors such as the informant's veracity, basis of knowledge, and corroboration of the tip; the magistrate makes a practical, common-sense determination based on the affidavit as a whole
- B. Informant tips are automatically excluded as a basis for probable cause
- C. Informant tips require corroboration by direct observation
- D. Informant tips are automatically sufficient for probable cause

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

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

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

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

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

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

99. A defendant is on trial for assault. The prosecution offers a witness who claims to have seen the defendant attack the victim. On cross-examination, the defense asks whether the witness has been previously convicted of a misdemeanor crime of dishonesty. The witness denies the conviction. The defense seeks to introduce a certified court record of the conviction. Is the evidence admissible?

- A. The conviction is inadmissible because the witness denied it
- B. The conviction is inadmissible because misdemeanors are not *crimen falsi*
- C. Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach a witness, regardless of punishment level (felony or misdemeanor), and may be proven by extrinsic evidence (such as a certified court record) when the witness denies them; the automatic admissibility reflects the *crimen falsi* nature
- D. The conviction is admissible only with the witness's consent

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

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

B. Prior bad acts are always admissible

C. Prior bad acts are always inadmissible

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

Section 2 — Questions 101 through 200 (3 Hours)

101. A federal court has supplemental jurisdiction over a state-law claim. The defendant moves to dismiss the state-law claim, arguing that the court should decline supplemental jurisdiction. The federal claim has been dismissed. The court considers whether to retain jurisdiction over the state-law claim. Under 28 U.S.C. § 1367(c) and *Carnegie-Mellon University v. Cohill*, what factors govern?

A. The court must retain jurisdiction over all related claims

B. The court must dismiss the state-law claim automatically

C. The court must transfer the case to state court

D. Under 28 U.S.C. § 1367(c) and *Carnegie-Mellon v. Cohill*, when the federal claim has been dismissed, the court has discretion to decline supplemental jurisdiction; the court considers judicial economy, convenience, fairness, and comity in exercising this discretion, and dismissal of the state-law claim is often appropriate when the federal claim is dismissed before substantial federal proceedings

102. A defendant is on trial for the federal crime of bank robbery. The prosecution offers eyewitness testimony from a teller who identified the defendant. The defense argues the identification was made under suggestive circumstances. The court must determine whether to suppress the identification. Under *United States v. Wade* and *Manson v. Brathwaite*, what is the proper procedure?

A. Under *United States v. Wade* and *Manson v. Brathwaite*, the court conducts a pretrial Wade hearing to determine whether the identification procedure was unduly suggestive and, if so, whether the identification

is nevertheless reliable under the totality of the circumstances; if the identification fails the reliability test, it is suppressed; otherwise, it is admitted and the jury weighs its credibility

- B. The court must defer to the police officer's account
- C. The court must exclude all identification testimony
- D. The court must require the lineup be photographed

103. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing that the plaintiff must prove gross negligence by clear and convincing evidence in cases against state government entities. The plaintiff argues that federal law governs the burden of proof. What is the proper outcome?

- A. The federal court applies federal common law on burden of proof
- B. Under Erie, the federal court applies state substantive law including state-law burden of proof requirements; the state's clear and convincing standard for gross negligence against state entities is substantive because it affects the outcome of the case
- C. The federal court applies the preponderance standard as the federal default
- D. The federal court applies whichever rule produces uniformity

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

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

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

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

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

- A. Under the irresistible impulse test, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect that prevented him from controlling his actions, even though he may have known what he was doing was wrong; this test focuses on volitional capacity rather than cognitive understanding
- B. The defendant must show that he acted in the heat of passion
- C. The defendant must show that he had emotional distress
- D. The defendant must show he had a learning disability

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

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

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

- A. No, because the conviction is too remote in time
- B. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the witness's basis for the reputation testimony; the inquiry tests the witness's knowledge of the defendant's actual reputation in the community
- C. No, because the question is more prejudicial than probative
- D. No, because the question seeks specific acts

109. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to compel production of documents from the defendant. The defendant claims the documents are protected by the work product doctrine. The plaintiff argues that the documents are needed for the case. Under FRCP 26(b)(3), what is the proper standard?

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

110. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because police continued to interrogate him after he said, "I want a lawyer." The prosecution argues the statement was ambiguous. Under *Davis v. United States* and *Edwards v. Arizona*, what result?

- A. Under *Edwards v. Arizona*, once a suspect unambiguously invokes the right to counsel during custodial interrogation, police must cease interrogation until counsel is present; the statement "I want a lawyer" is generally considered an unambiguous invocation, and any statements obtained during continued interrogation must be suppressed regardless of subsequent waiver

- B. The confession is admissible because the statement was ambiguous
- C. The confession is admissible if voluntary
- D. The confession is admissible because the defendant voluntarily spoke

111. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of subsequent remedial measures the defendant took after the alleged harm. The defendant objects under FRE 407. The plaintiff argues that the evidence is offered to prove ownership of the premises. What is the proper analysis?

- A. The evidence is automatically admissible
- B. Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning. However, the rule does not bar evidence offered for other purposes, such as impeachment, ownership, control, or feasibility of precautionary measures, if controverted
- C. The evidence is admissible only with the defendant's consent
- D. The evidence is admissible only to show the existence of damages

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

- A. Flight evidence is inadmissible
- B. Flight evidence is conclusive of guilt
- C. Flight evidence requires direct physical evidence
- D. Flight evidence is admissible as circumstantial evidence of consciousness of guilt; the jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt, and the strength of the inference depends on the surrounding circumstances

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

- A. The court must defer to the parties' agreement

- B. The court must obtain unanimous consent of all class members
- C. Under FRCP 23(e), the court must direct notice to all class members who would be bound by the settlement and approve the settlement only after a fairness hearing finding it fair, reasonable, and adequate; the court evaluates the settlement under specified factors and may approve, reject, or modify the settlement based on its findings
- D. The court must approve the settlement unless objections are unanimous

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

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

115. A federal court is hearing a complex commercial case. The plaintiff moves to compel production of documents from the defendant. The defendant claims the documents are protected by the attorney-client privilege because they were sent to in-house counsel. The plaintiff argues the documents were sent for business purposes. What is the proper analysis?

- A. All emails to in-house counsel are protected
- B. Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and in-house counsel made for the purpose of seeking, obtaining, or providing legal advice; the dual-purpose communications test requires that obtaining legal advice be the primary purpose of the communication, and communications relating purely to business decisions are not protected
- C. Emails to in-house counsel are never protected
- D. The privilege applies only if the emails are marked "confidential"

116. A defendant is on trial for the federal crime of mail fraud. The prosecution offers testimony from a co-conspirator who has agreed to testify in exchange for reduced charges. The defense seeks to introduce evidence of the co-conspirator's plea agreement to show bias. The prosecution objects. Is the evidence admissible?

- A. Plea agreements are inadmissible to prove the witness's truthfulness
- B. Plea agreements are admissible only to show motive
- C. Plea agreements are inadmissible because they prejudice the prosecution
- D. Under FRE 608 and the Confrontation Clause, evidence of a witness's plea agreement, cooperation agreement, or any incentive to testify is admissible to show bias and motivation; cross-examination on these matters is a proper attack on credibility, and the jury must be informed of any inducement the witness received

117. A buyer enters into a contract with a seller for the sale of 100 widgets at \$30 each. The contract specifies delivery within 30 days. The seller delivers 100 widgets in 25 days. The buyer rejects the goods because of an unrelated change in the buyer's business needs. The seller sues for breach. Under the UCC, what result?

- A. Under UCC § 2-601 (the perfect tender rule), a buyer's rejection must be based on a non-conformity of the goods or tender; a rejection based on the buyer's own changed needs (rather than the goods' non-conformity) is not a proper rejection, and the buyer remains liable for the goods. The seller may recover the contract price or pursue resale remedies under § 2-703
- B. The buyer may reject for any reason under the perfect tender rule
- C. The buyer's rejection is automatically valid
- D. The seller is barred from recovery

118. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in self-defense. The prosecution offers as evidence the testimony of a witness who states that the defendant said, three months before the killing, "I'm going to take care of her once and for all." The defense objects on hearsay grounds. Should the testimony be admitted?

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence

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

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

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

A. The court must order production

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

C. The third party may refuse all production

D. The court must defer to the third party's representations

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

A. The search is unconstitutional because all searches require warrants

B. The search is unconstitutional because traffic stops do not establish probable cause

C. The search is unconstitutional because the search exceeded the scope of the stop

D. Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime; the inherent mobility of vehicles and reduced expectation of privacy justify the exception

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

A. Prior bad acts are always admissible

B. Prior bad acts are always inadmissible

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

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

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

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

B. No, because the neighbor's character is irrelevant

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

D. No, because hearsay rules bar the testimony

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

A. The court must defer to the parties' agreement

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

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

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

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

- A. The videotape is inadmissible because it was made without consent
- B. The videotape is inadmissible because security cameras require warrants
- C. The videotape requires expert testimony
- D. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims; testimony establishing the recording system, time of recording, and chain of custody satisfies this standard, and consent of those depicted is not required for security camera footage in commercial spaces

125. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing that contracts must be in writing if they exceed \$5,000. The defendant moves to dismiss because the alleged contract was oral. The plaintiff argues that the partial performance exception applies. What is the proper analysis?

- A. The federal court applies federal common law on contracts
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's statute of frauds AND state-law exceptions to it (such as partial performance); both the rule and the exception are substantive because they affect contract enforceability
- D. The federal court applies whichever rule produces uniformity

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

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

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

- A. The court must allow the deposition unconditionally
- B. The court must grant the protective order automatically
- C. The court must defer to the defendant's preferences
- D. Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available; the proponent of the deposition generally bears the burden of justifying it, and depositions of high-ranking corporate officers may be limited when other witnesses can provide the same information

128. A defendant is on trial for the federal crime of bank robbery. The defense argues that the defendant was insane at the time of the robbery. The jurisdiction applies the M'Naghten test for insanity. What must the defense show?

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

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

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

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

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

A. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification

B. The identification is automatically excluded

C. The identification is admissible because lineups are presumptively reliable

D. The identification is admissible only if the witness is unavailable

131. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for failure to state a claim under FRCP 12(b)(6). The plaintiff's complaint alleges sufficient facts to render the claim plausible on its face. Under *Twombly* and *Iqbal*, what is the proper outcome?

A. The motion is granted because the complaint must include legal conclusions

B. Under *Twombly* and *Iqbal*, when the plaintiff's complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss should be denied; the court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor, and the plausibility standard does not require a showing of probability

C. The motion is granted because the complaint must include evidence

D. The motion is denied automatically

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

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

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

C. No, because reputation evidence is inadmissible

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

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

A. Prior bad acts are always admissible

B. Prior bad acts are always inadmissible

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

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

134. A defendant is convicted of armed robbery. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a search of his home pursuant to a warrant. The defense alleges that the affidavit supporting the warrant contained statements made with reckless disregard for the truth, but the prosecution argues that probable cause existed even excluding those statements. Under *Franks v. Delaware*, what result?

A. Under *Franks v. Delaware*, the defendant must show by a preponderance that the affidavit contained a deliberately false statement or one made with reckless disregard for the truth AND that the false statement was necessary to a finding of probable cause; if the affidavit's remaining content provides probable cause without the false statements, the warrant is upheld and the evidence is admitted

B. The evidence must be excluded if any error appears

C. The evidence is automatically admissible

D. The evidence must be excluded if the defendant proves a false statement

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

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

136. A buyer enters into a written contract with a seller for the sale of a residential property. The contract specifies marketable title at closing. After signing but before closing, the buyer discovers that the seller's title may be subject to a claim by an heir of a previous owner, but the seller has obtained a quitclaim deed from the heir. The buyer terminates the contract. May the buyer terminate?

- A. The buyer may terminate because the quitclaim is insufficient
- B. The buyer may terminate because the title is automatically defective
- C. The buyer may terminate because the heir's claim affects marketability
- D. A quitclaim deed conveys whatever interest the heir has, and if the seller has obtained the quitclaim, the title is generally cured; however, the buyer may terminate if the title is still subject to litigation or uncertainty that affects marketability; the analysis depends on the specific terms of the quitclaim and the state of the title

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

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

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

- A. The federal court applies federal common law on interest
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action; the state's 6% rate is substantive law and must be applied
- D. The federal court applies whichever rule produces uniformity

139. A defendant is on trial for the federal crime of mail fraud. The defense argues that the defendant did not have the specific intent required because he was intoxicated. Under the common law, what is the proper analysis?

- A. Intoxication is never a defense
- B. Under the common law, voluntary intoxication may negate the specific intent required for crimes like mail fraud (which requires specific intent to defraud); the intoxication evidence is relevant to whether the defendant could form the specific mental state, but voluntary intoxication is not a defense to lesser included offenses requiring only general intent or recklessness
- C. Voluntary intoxication is a complete defense
- D. Voluntary intoxication is a defense to general intent crimes

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

- A. The defendant has no obligation
- B. The plaintiff's recovery is reduced
- C. The defendant is liable for the plaintiff's costs
- D. Under FRCP 68, when a defendant's offer of judgment is rejected by the plaintiff and the plaintiff fails to obtain a more favorable result at trial, the plaintiff is liable for the defendant's costs incurred after the offer was made; the rule encourages settlement and shifts post-offer costs

141. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the joint defense privilege. The plaintiff argues that the joint defense privilege does not apply because the parties have not entered into a formal joint defense agreement. What is the proper analysis?

- A. Under the joint defense (or common interest) privilege, parties with a common legal interest may share information without waiving the attorney-client privilege; while many courts require a "common interest agreement" — either oral or written — to invoke the privilege, the requirements for a formal agreement vary by jurisdiction. The substantive test focuses on (1) the parties' common legal interest, (2) the communication in furtherance of that interest, and (3) the confidential nature of the communication
- B. The joint defense privilege automatically applies whenever parties share legal interests
- C. The joint defense privilege requires a formal written agreement
- D. The joint defense privilege never applies without explicit consent

142. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank. The defense argues the videotape was made without the depicted persons' consent. Should the videotape be admitted?

- A. The videotape is inadmissible because it was made without consent
- B. The videotape is inadmissible because security cameras require warrants
- C. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy in such spaces
- D. The videotape is inadmissible because it is hearsay

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

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

- C. Prior bad acts are always inadmissible
- D. Prior bad acts are admissible only with the defendant's consent

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

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

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

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

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

- A. No, because the statement is hearsay

B. The statement is admissible only as character evidence

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

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

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

A. The court must order in camera review of all documents

B. Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court then evaluates the validity of the privilege claim, potentially through in camera review

C. The defendant must produce all documents

D. The defendant may refuse all production

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

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

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

C. No, because the question seeks specific acts

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

149. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory damages for emotional distress without accompanying physical injury. The state has a substantive law allowing such damages only when the plaintiff witnessed a close relative being injured. The defendant argues that the federal court should apply the state rule. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery; the state's restriction on emotional distress damages applies
- D. The federal court applies whichever rule produces uniformity

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

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

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

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

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

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

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

- A. Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy; both predominance and superiority must be satisfied
- B. The plaintiffs must show that all class members consent
- C. The plaintiffs must show that the defendant has acted on grounds applicable to the entire class
- D. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications

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

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

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

- A. The federal court applies federal common law on contracts
- B. Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability; the state-law writing requirement for sales of land applies, and an oral contract is unenforceable absent an applicable exception
- C. The federal court applies federal procedural rules
- D. The federal court applies whichever rule produces uniformity

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

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

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

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

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

- A. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue; in armed robbery, however, the victim's violent reputation is generally not pertinent unless the defendant raises self-defense or initial-aggressor defenses; if the defendant raises such a theory, the evidence becomes admissible
- B. The victim's reputation is automatically admissible
- C. The victim's reputation is automatically inadmissible
- D. The victim's reputation requires advance notice from the defendant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166. A defendant is on trial for the federal crime of mail fraud. The prosecution offers evidence of three similar fraudulent schemes by the defendant from the past two years. The defense objects under FRE 404(b). What is the proper analysis?

- A. Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi, where the prior conduct shares distinctive features with the charged offense; three similar schemes within two years are probative of intent, knowledge, and scheme
- B. Prior crimes are inadmissible to show character
- C. Prior crimes are inadmissible if too remote
- D. Prior crimes are inadmissible unless charged

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

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

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

- A. The identification is automatically excluded
- B. The identification is automatically admitted
- C. The identification is admissible only if the witness is unavailable
- D. Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification

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

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

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

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

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

- A. The federal court applies federal common law on contracts
- B. Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability; the writing requirement for goods over \$500 is substantive and must be applied
- C. The federal court applies federal procedural rules
- D. The federal court applies whichever rule produces uniformity

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

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

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

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

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

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

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

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

176. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained pursuant to a search warrant. The defense alleges that the warrant was issued based on an affidavit containing inaccurate information made with reckless disregard for the truth. Under *Franks v. Delaware*, what result?

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

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

- A. The defendant has no obligation
- B. The plaintiff's recovery is reduced
- C. The defendant is liable for the plaintiff's costs
- D. Under FRCP 68, when a defendant's offer of judgment is rejected by the plaintiff and the plaintiff fails to obtain a more favorable result at trial, the plaintiff is liable for the defendant's costs incurred after the offer was made

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

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

D. No, because hearsay rules bar the testimony

179. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents from a third party. The third party objects, arguing the documents are unduly burdensome. Under FRCP 45, what is the proper standard?

A. Non-parties must comply with all discovery requests

B. Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege; the court must quash or modify a subpoena that subjects a person to undue burden, and may also condition production on cost-shifting or other protective measures

C. Non-parties may refuse all discovery

D. Non-parties must obtain consent of all parties before objecting

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

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

B. No, because the statement is hearsay

C. The statement is admissible only as character evidence

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

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

A. Evidence of net worth is automatically inadmissible

B. Evidence of net worth requires special permission

C. Under Erie, the federal court applies state substantive law on the measure and propriety of punitive damages; evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages

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

182. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because police continued to interrogate him after he said, "I want a lawyer." Under *Davis v. United States* and *Edwards v. Arizona*, what result?

A. The confession is admissible if voluntary

B. Under *Edwards v. Arizona*, once a suspect unambiguously invokes the right to counsel during custodial interrogation, police must cease interrogation until counsel is present; the statement "I want a lawyer" is generally an unambiguous invocation, and any statements obtained during continued interrogation must be suppressed regardless of subsequent waiver

C. The confession is admissible because the defendant later spoke voluntarily

D. The confession is admissible because *Edwards* has been overruled

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

A. The court considers only the cash payments

B. The court considers only the attorney's fees

C. The court considers only the named plaintiffs' preferences

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

184. A defendant is on trial for the murder of his wife. The prosecution offers testimony from a witness who claims the defendant said, "I want her out of my life" several months before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

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

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

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

186. A defendant is on trial for the federal crime of mail fraud. The defense calls a character witness who testifies that the defendant has a reputation for honesty. On cross-examination, the prosecution asks whether the witness has heard about the defendant's prior arrest for forgery. The defense objects. Is the question allowed?

- A. No, because arrests are unproven
- B. Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony; the inquiry tests the witness's knowledge of the defendant's actual reputation in the community, but extrinsic proof of the arrest is barred
- C. No, because reputation evidence does not open the door
- D. No, because the question is more prejudicial than probative

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

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

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

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

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

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

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

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

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

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

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

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

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

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

194. A defendant is on trial for armed robbery. The prosecution offers a security videotape from the bank. The defense argues the videotape was made without consent. Should the videotape be admitted?

- A. The videotape is inadmissible because it was made without consent
- B. The videotape is inadmissible because security cameras require warrants
- C. Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims; security camera videos in public or semi-public commercial spaces generally do not require consent of those depicted because there is no reasonable expectation of privacy
- D. The videotape requires expert testimony

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

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

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

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

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

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

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

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

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

- A. The defendant has no obligation
- B. Under FRCP 68, when a defendant's offer of judgment is rejected by the plaintiff and the plaintiff fails to obtain a more favorable result at trial, the plaintiff is liable for the defendant's costs incurred after the offer was made
- C. The plaintiff's recovery is reduced
- D. The defendant is liable for the plaintiff's costs

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

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

PRACTICE EXAM 7 — ANSWER KEY WITH FULL EXPLANATIONS

1. C — Strict products liability for a manufacturing defect requires only that the product depart from its intended design when it left the manufacturer's control, regardless of the level of care exercised. Because the defect was undetectable by industry-standard methods, negligence-based theories fail, but strict liability succeeds because liability does not depend on the manufacturer's care.

2. B — Under *Klaxon v. Stentor*, a federal court sitting in diversity must apply the choice-of-law rules of the state in which it sits, not federal common law or independent analysis. This rule preserves the Erie doctrine's goals of avoiding forum-shopping and inequitable administration of laws.

3. D — Under FRE 801(d)(2)(E), co-conspirator statements are non-hearsay only when made during the course of AND in furtherance of the conspiracy. Statements made after the conspiracy has ended (the "concealment phase") are generally inadmissible unless concealment itself was an objective of the conspiracy.

4. A — A grant "to B and her heirs, but if B does not survive A by 10 years, then to C" creates a fee simple subject to an executory limitation. Until the 10-year period elapses, B's interest remains subject to C's executory interest, which would divest B if she fails to survive A by 10 years.

5. C — Under *U.S. Term Limits v. Thornton*, states may not add to the qualifications for federal office set forth in the Constitution. A state requirement that candidates be U.S. citizens by birth (beyond the federal minimum) impermissibly modifies the federal qualifications and violates the Qualifications Clauses and Supremacy Clause.

6. D — Subject matter jurisdiction is non-waivable and may be raised at any time, including by the court sua sponte, even after years of litigation. Unlike personal jurisdiction, venue, or service objections, lack of subject matter jurisdiction goes to the court's power to hear the case and cannot be cured by waiver or estoppel.

7. B — Under FRE 702 and *Daubert*, expert testimony on cross-racial identification reliability may be admissible if it satisfies the gatekeeping requirements. The testimony does not invade the jury's province on credibility; it provides information beyond common knowledge that helps the jury evaluate identification evidence.

8. A — Under UCC § 2-209 and the good faith principle, contract modifications must be made in good faith; modifications obtained through economic coercion or without a legitimate commercial reason may be unenforceable. A unilateral price increase based on a "market shift" without commercial justification may fail the good faith requirement, permitting the buyer to recover the overcharge.

9. D — Under *Timbs v. Indiana*, the Eighth Amendment's prohibition of excessive fines applies to civil forfeitures and has been incorporated against the states. A forfeiture grossly disproportional to the gravity of the offense — including forfeiture of property unconnected to the offense — may violate the Excessive Fines Clause.

10. C — The defendant's statement is not hearsay under FRE 801(d)(2)(A) as an opposing party's statement. It is also admissible as a verbal act demonstrating intent and the conduct accompanying the battery, regardless of the truth of the matter asserted, because it goes to the act itself, not the truth of its content.

11. A — Restrictions in deeds are construed strictly against the grantor, and ambiguous terms are interpreted to favor the grantee's free use of the property. Whether wine-with-meals service constitutes "selling alcohol" within the meaning of the deed depends on the parties' intent and the deed's specific language, and the court will not lightly impose forfeiture.

12. D — The joint defense (or common interest) privilege permits parties with a common legal interest to share information without waiving the attorney-client privilege. It requires (1) a common legal interest, (2) the communication in furtherance of that interest, and (3) confidentiality maintained throughout.

13. B — Under *United States v. Miller* and the third-party doctrine, a person has no reasonable expectation of privacy in records voluntarily turned over to a third party. The government may obtain such records (such as bank records) without a warrant, although statutes like the Right to Financial Privacy Act may impose additional requirements.

14. C — Under the parol evidence rule, evidence of prior or contemporaneous oral agreements that contradict, vary, or add to the terms of a fully integrated written contract is generally inadmissible. The integration clause confirms the contract's status as fully integrated, and parol evidence on appliances (a term not addressed in the writing) cannot supply that omission.

15. A — Under *eBay v. MercExchange*, the four-factor test for permanent injunctions requires the plaintiff to demonstrate (1) irreparable injury, (2) inadequate remedies at law, (3) balance of hardships favors injunctive relief, and (4) the public interest would not be disserved. All four factors must be weighed and balanced before a permanent injunction may issue.

16. D — Under the common law and Model Penal Code, solicitation is a complete crime when the defendant requests, commands, encourages, or otherwise importunes another person to engage in criminal conduct. The offense is complete upon the act of solicitation, regardless of whether the solicited person agrees or acts on the request.

17. C — Under *Erie*, the federal court applies state substantive law including state-law notice-of-claim requirements that act as preconditions to recovery. The notice-of-claim requirement is substantive because failure to comply may bar the claim outright.

18. B — Under the spousal communications privilege, confidential communications between spouses during a valid marriage are privileged; however, the privilege protects communications between spouses, not communications between a spouse and a third party. Statements made to a private investigator are not protected by spousal privileges regardless of the marital context.

19. A — Under § 1983, the defendant must have acted "under color of state law." While private actors may be considered state actors in narrow circumstances (such as performing a traditional public function, having entwinement with state actors, or being compelled by state action), a private corporation operating a licensed but privately funded school generally does not meet these tests.

20. C — Under *Miranda v. Arizona* and *Berkemer v. McCarty*, Miranda warnings are required only when the suspect is (1) in custody AND (2) being interrogated. "Custody" requires either a formal arrest or restraint on freedom of movement of the degree associated with formal arrest; questioning in one's home where the suspect is free to leave generally does not constitute custody.

21. D — Under FRCP 23(b)(1)(A), the plaintiffs must show that prosecuting separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for

the defendant. The focus is on the defendant's potential for being subject to conflicting requirements, not just any risk of inconsistent results.

22. B — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense is at issue. Prior specific acts of the victim known to the defendant are admissible to show the defendant's reasonable apprehension of danger, and prior threats are admissible to show motive and intent of the victim.

23. A — Under FRE 803(6), business records are admissible if (1) the record was made at or near the time of the event, (2) made by or transmitted from a person with knowledge, (3) kept in the course of regularly conducted activity, (4) making the record was a regular practice, AND (5) the conditions are shown through testimony of the custodian or qualified witness, or by certification.

24. C — Under FRE 404(b), prior bad acts may be admissible for permissible non-propensity purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake. The prior acts must be probative on these issues and must satisfy the balancing requirement of FRE 403.

25. D — Under the Due Process Clause and the void-for-vagueness doctrine, a criminal statute is unconstitutionally vague if it (1) fails to provide adequate notice of the prohibited conduct or (2) authorizes arbitrary enforcement. A "1,000 feet" distance requirement provides clear notice and standards for enforcement and is not vague.

26. B — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. Age and brevity of encounter affect the weight given the testimony, but generally not its admissibility.

27. A — Under the doctrine of impossibility, a contractual obligation may be excused when (1) an event occurs after contract formation, (2) the event makes performance objectively impossible, (3) the event was not the obligor's fault, AND (4) the parties did not allocate the risk of the event. Mere increased difficulty or financial hardship is insufficient.

28. D — Under FRE 405(a), a witness who testifies about the victim's character may be cross-examined about specific instances of conduct (including prior convictions or arrests of the victim) to test the basis of the reputation testimony. The inquiry tests the witness's knowledge of the victim's actual reputation.

29. C — Under FRCP 15(a)(2) and the law of the case doctrine, a court may reconsider a prior dismissal on personal jurisdiction grounds when there has been a substantial change in circumstances, such as the defendant's establishment of new and substantial contacts with the forum. The law of the case doctrine is discretionary, not jurisdictional.

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

31. A — The parol evidence rule does not bar evidence of fraud (or other tortious conduct) in the inducement of a contract. Even when a contract is fully integrated, evidence of fraudulent misrepresentations made during contract formation is admissible to support a fraud claim, because the rule protects contractual terms, not against tortious conduct.

32. C — Under the staleness doctrine, probable cause for a search warrant must be based on information that is sufficiently recent to support a reasonable belief that contraband or evidence will be present at the time of the search. What constitutes "staleness" depends on the nature of the items sought, the nature of the suspected criminal activity, and the location to be searched.

33. D — Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning. However, the rule does not bar evidence of routine pre-incident safety inspections or general safety practices, and the rule applies only to measures taken after the alleged harm.

34. B — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also relevant under FRE 803(3) as evidence of the defendant's state of mind toward the victim and under FRE 404(b) as evidence of motive and intent, undercutting any self-defense claim.

35. A — Under the well-established time-of-filing rule, diversity must exist at filing; however, where a non-diverse defendant has been voluntarily dismissed before any substantive ruling and the case has not been removed, courts may find that diversity exists. The "time-of-filing" rule has limited exceptions, and the analysis depends on the specific procedural posture.

36. C — Under *United States v. Wade* and *Manson v. Brathwaite*, the court conducts a pretrial Wade hearing to determine whether the identification procedure was unduly suggestive and, if so, whether the identification is nevertheless reliable. If unreliable, the identification is suppressed; otherwise, it is admitted and the jury weighs credibility.

37. B — Under the Dormant Commerce Clause, a state law that does not discriminate against out-of-state commerce — facially, in purpose, or in effect — is upheld if its benefits outweigh the burden on interstate commerce (*Pike v. Bruce Church* balancing). A non-discriminatory toll-collection requirement generally satisfies this test.

38. D — Under the common law, voluntary intoxication may negate the specific intent required for crimes like burglary or first-degree murder. Intoxication evidence is relevant to whether the defendant could form the specific mental state, but voluntary intoxication is generally not a defense to general intent crimes or to crimes requiring only recklessness.

39. C — Title acquired through adverse possession may be marketable if the period of adverse possession is sufficient under the applicable statute of limitations AND the adverse possession has been perfected through legal proceedings (such as a quiet title action) that establish the title of record. An unrecorded adverse possession claim where the prior owner has not released his claim generally renders title unmarketable.

40. A — Under FRCP 23(a)(3), the typicality requirement demands that the named plaintiffs' claims be typical of the claims of the class. When the named plaintiffs have unique defenses that other class members do not face, typicality is generally not satisfied, and class certification may be denied because the named plaintiff's litigation focus would not benefit absent class members.

41. D — Under the well-established time-of-filing rule, diversity jurisdiction is determined at the time the action is filed. Subsequent changes in citizenship by the parties do not defeat jurisdiction, even if they would have defeated diversity if they had occurred before filing.

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

43. C — Under the Supremacy Clause, federal law preempts state law in three ways: (1) express preemption, (2) field preemption when federal law occupies the field, and (3) conflict preemption when state law conflicts with federal law. A state regulation supplementing federal standards in a complementary way is generally not preempted, but the analysis depends on the specific federal statute.

44. A — Under *Barker v. Wingo*, the court considers four factors to determine whether the Sixth Amendment speedy trial right has been violated: (1) length of delay, (2) reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to the defendant. No single factor is dispositive, and the factors are balanced together.

45. D — Under *Erie*, federal courts in diversity apply state substantive law including state-law burden of proof requirements such as clear and convincing evidence for punitive damages. The standard of proof is substantive because it affects the outcome of the case.

46. B — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of whether the statement was hypothetical or conditional. The statement is also relevant under FRE 404(b) as evidence of motive and intent.

47. C — Under UCC § 2-608, the buyer may revoke acceptance if (1) the non-conformity substantially impairs the value of the goods to the buyer, (2) acceptance was based on either reasonable assumption that the non-conformity would be cured or difficulty of discovery, AND (3) revocation occurs within a reasonable time after discovery, before any substantial change in the condition of the goods.

48. A — Under the Model Penal Code test for insanity, the defense must show that at the time of the act, the defendant lacked substantial capacity either (1) to appreciate the criminality of his conduct or (2) to conform his conduct to the requirements of law, as a result of mental disease or defect. The test incorporates both cognitive and volitional prongs.

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

50. D — Under the common law, withdrawal from a conspiracy is a defense only if it occurs before any conspirator commits an overt act in furtherance of the conspiracy. The withdrawing party must take affirmative action (such as communicating withdrawal to all co-conspirators or notifying authorities), and the withdrawal must be voluntary; the Model Penal Code is more lenient, requiring "thwarting" the conspiracy.

51. A — Under FRCP 23(b)(1)(B), the plaintiffs must show that prosecuting separate actions would impair or impede the ability of other persons not parties to the action to protect their interests. This category is appropriate when the action would, as a practical matter, be dispositive of the interests of non-parties, such as in common fund or estate proceedings.

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

53. B — Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and counsel made for the purpose of seeking legal advice. The dual-purpose communications test requires that obtaining legal advice be the "primary purpose" of the communication (though some circuits use "significant purpose"), and communications purely for business advice are not protected.

54. D — Under *Franks v. Delaware*, the defendant must show by a preponderance that (1) the affidavit contained a deliberately false statement or one made with reckless disregard for the truth, AND (2) the false statement was necessary to a finding of probable cause. If both prongs are shown, the evidence must be excluded.

55. A — A recorded easement is generally an encumbrance affecting marketability of title; the buyer is typically entitled to terminate a contract requiring marketable title unless the contract specifically provides that title is to be taken subject to such easements. The seller's failure to disclose the recorded encumbrance affects marketability.

56. C — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. Reliability factors include opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

57. B — Under *Erie*, federal courts in diversity apply state substantive law on the availability of specific performance because remedies for breach of contract are substantive law affecting the measure of recovery. The state-law limitation on specific performance for personal service contracts applies.

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

59. C — A's estate is a fee simple subject to a condition subsequent, where the grantor (or heirs) holds a right of re-entry that must be affirmatively exercised. Whether the home-based business constitutes "non-

residential" use depends on the parties' intent and the deed's specific terms, and re-entry must be exercised within a reasonable time after breach.

60. A — Under *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, the sum claimed by the plaintiff controls if made in good faith; the defendant must show to a "legal certainty" that the claim is for less than the jurisdictional amount to defeat jurisdiction. The strict legal certainty standard makes dismissal difficult based solely on a discrepancy between claimed and actual damages.

61. D — Under FRE 901(b), authentication may be accomplished by testimony of a witness with knowledge or by other means provided in the rule. For security camera footage, authentication is often accomplished through testimony establishing the recording system's reliability, time of recording, and chain of custody, rather than testimony from the person who recorded it.

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

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

64. A — Under *Erie*, federal courts in diversity apply state substantive law on the measure and propriety of punitive damages, including the admissibility of net worth evidence. In jurisdictions where state law permits net worth evidence in connection with punitive damages, the federal court must apply that rule.

65. D — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court acts as gatekeeper to determine whether expert testimony is based on reliable principles and methods. "General acceptance" is one factor under the *Daubert* analysis but is not dispositive, and the federal rule is more flexible than *Frye*.

66. B — Under UCC § 2-601 (the perfect tender rule), a buyer may reject goods that fail in any respect to conform to the contract; however, once the buyer has rejected goods, the rejection is final and the buyer cannot revoke. Claims of misrepresentation may support a separate fraud or warranty claim but do not undo the rejection.

67. A — Under *Erie*, federal courts in diversity apply state substantive law including doctrines of contract performance such as impossibility. Impossibility is part of substantive contract law affecting whether the obligation may be excused, not federal procedural law.

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

69. D — Under FRCP 16(b)(4), modifying a scheduling order requires "good cause" shown by the moving party. The moving party must show diligence in attempting to comply with the deadline and may not amend simply by invoking FRCP 15(a)'s liberality after the scheduling deadline has passed.

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

71. C — Under Erie, the federal court applies state substantive law including state-law procedural conditions to recovery. If the state-law demand requirement is substantive (acting as a condition precedent to recovery), the federal court applies it, and the plaintiff's failure to make the demand bars the claim.

72. A — The witness's testimony is admissible as relevant evidence of withdrawal. Under the common law, withdrawal from a conspiracy is a defense if the withdrawing party (1) takes affirmative action to terminate her participation, (2) communicates the withdrawal to all co-conspirators or to authorities, AND (3) the withdrawal occurs before any conspirator commits an overt act in furtherance of the conspiracy.

73. D — Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy. The court considers factors including class members' interests in controlling their litigation, extent of pending litigation, desirability of concentration, and manageability.

74. B — The question is permissible because the witness's perceptual abilities — including her vision in the relevant lighting conditions — are directly relevant to the reliability of her identification and observations. Perceptual capacity goes to weight as well as admissibility, and cross-examination on these matters is a proper attack on credibility.

75. C — Under Erie, the federal court applies state substantive law including the statute of frauds AND state-law exceptions to it (such as partial performance). Both the rule and the exception are substantive because they affect contract enforceability.

76. A — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior arrests, to test the witness's basis for the reputation testimony. The inquiry tests the witness's knowledge of the defendant's actual reputation in the community, but extrinsic proof of the arrest is barred.

77. D — Under 28 U.S.C. § 1404(a), the court may transfer a case to "any other district or division where it might have been brought" for "the convenience of parties and witnesses, in the interest of justice." While the plaintiff's choice of forum is given weight, it is one factor among several, and transfer may be appropriate when convenience and justice favor a different forum.

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

79. A — Under FRCP 26(b)(3), work product is generally protected from disclosure. Ordinary work product may be discoverable upon a showing of substantial need AND undue hardship in obtaining the substantial equivalent; opinion work product (mental impressions, conclusions, legal theories) receives nearly absolute protection. Documents prepared in the ordinary course of business are not protected at all.

80. C — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

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

82. D — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of remoteness in time which affects weight rather than admissibility. The statement is also admissible under FRE 404(b) as evidence of motive and intent.

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

84. C — Under *Daubert v. Merrell Dow Pharmaceuticals* and FRE 702, the trial court acts as gatekeeper to determine whether expert testimony is based on reliable principles and methods. "General acceptance" is one factor under the *Daubert* analysis but is not dispositive, and the federal rule is more flexible than the older *Frye* test.

85. B — Under *Erie*, the federal court applies state substantive law including state-law burden of proof requirements such as clear and convincing evidence for punitive damages. The burden of proof is substantive because it affects the outcome of the case.

86. D — Under the common law, voluntary intoxication may negate the specific intent required for first-degree murder (which requires premeditation and deliberation). However, voluntary intoxication generally is not a defense to murder under a depraved heart or felony murder theory, both of which require only general intent or recklessness.

87. C — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it, and depositions of high-ranking officers may be limited when other witnesses can provide the same information.

88. A — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony. The inquiry tests her knowledge of the defendant's actual reputation in the community.

- 89. B** — Specific performance is the remedy of choice for breach of a contract for a unique chattel (such as antiques, art, or one-of-a-kind goods) because monetary damages are inadequate. The uniqueness of the subject matter justifies equitable relief, and the buyer is entitled to specific performance.
- 90. D** — Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent. The trial court applies this standard at the pretrial suppression hearing.
- 91. A** — Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed. The court then evaluates the validity of the privilege claim, potentially through in camera review.
- 92. C** — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi, where the prior conduct shares distinctive features with the charged offense. The prosecution must also satisfy FRE 403's balancing of probative value against unfair prejudice.
- 93. D** — Under UCC § 2-601 and § 2-607, when goods or units thereof fail to conform to the contract, the buyer may (1) accept the whole, (2) reject the whole, or (3) accept any commercial unit or units and reject the rest. The buyer here properly accepted the conforming 900 widgets and rejected the non-conforming 100 and must pay only the contract rate for accepted goods.
- 94. B** — Under *Erie*, the federal court applies state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.
- 95. A** — Under *Illinois v. Gates*, probable cause for a search warrant based on informant testimony is determined by the totality of the circumstances, considering factors such as the informant's veracity, basis of knowledge, and corroboration of the tip. The magistrate makes a practical, common-sense determination based on the affidavit as a whole.
- 96. C** — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. This principle is well-established in equity and applies in federal court under *Erie*.
- 97. B** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the defendant's then-existing state of mind toward the victim and under FRE 404(b) for motive and intent.
- 98. D** — Under FRCP 23(b)(2), the plaintiffs must show that the defendant has acted on grounds generally applicable to the class, making final injunctive or declaratory relief (not primarily monetary damages) appropriate for the class as a whole. This category is typical for civil rights and discrimination cases.
- 99. C** — Under FRE 609(a)(2) and FRE 613(b), prior convictions for crimes of dishonesty or false statement are automatically admissible to impeach a witness, regardless of punishment level (felony or

misdemeanor), and may be proven by extrinsic evidence when the witness denies them. The automatic admissibility reflects the *crimen falsi* nature.

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

101. D — Under 28 U.S.C. § 1367(c) and *Carnegie-Mellon v. Cohill*, when the federal claim has been dismissed, the court has discretion to decline supplemental jurisdiction over state-law claims. The court considers judicial economy, convenience, fairness, and comity, and dismissal is often appropriate when the federal claim is dismissed before substantial federal proceedings.

102. A — Under *United States v. Wade* and *Manson v. Brathwaite*, the court conducts a pretrial Wade hearing to determine whether the identification procedure was unduly suggestive and, if so, whether the identification is nevertheless reliable under the totality of the circumstances. If unreliable, the identification is suppressed.

103. B — Under *Erie*, the federal court applies state substantive law including state-law burden of proof requirements. The state's clear and convincing standard for gross negligence is substantive because it affects the outcome of the case.

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

105. D — Under FRCP 15(c)(1)(C), an amendment changing or adding parties relates back when (1) the claim arose from the same conduct as the original pleading, (2) the new party received notice within the time for service such that no prejudice results, AND (3) the new party knew or should have known the action would have been brought against him absent a mistake concerning identity.

106. A — Under the irresistible impulse test, the defense must show that at the time of the act, the defendant suffered from a mental disease or defect that prevented him from controlling his actions, even though he may have known what he was doing was wrong. This test focuses on volitional capacity rather than cognitive understanding.

107. C — Under *Erie*, the federal court applies state law on treble damages because such damages are substantive law affecting the measure of recovery for the underlying state-created cause of action. The federal court must apply state-law remedies including statutory enhancements.

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

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

110. A — Under *Edwards v. Arizona*, once a suspect unambiguously invokes the right to counsel during custodial interrogation, police must cease interrogation until counsel is present. The statement "I want a lawyer" is generally considered an unambiguous invocation, and any statements obtained during continued interrogation must be suppressed.

111. B — Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning. However, the rule does not bar evidence offered for other purposes, such as impeachment, ownership, control, or feasibility of precautionary measures, if controverted.

112. D — Flight evidence is admissible as circumstantial evidence of consciousness of guilt. The jury may consider flight along with other evidence in determining whether the defendant committed the offense beyond a reasonable doubt, and the strength of the inference depends on the surrounding circumstances.

113. C — Under FRCP 23(e), the court must direct notice to all class members who would be bound by the settlement and approve the settlement only after a fairness hearing finding it fair, reasonable, and adequate. The court evaluates the settlement under specified factors and may approve, reject, or modify the settlement.

114. A — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue. The evidence is admissible to support the defendant's claim that the victim was the initial aggressor, and the defendant may offer reputation or opinion testimony.

115. B — Under *Upjohn Co. v. United States*, the attorney-client privilege protects communications between corporate employees and in-house counsel made for the purpose of seeking, obtaining, or providing legal advice. The dual-purpose test requires that obtaining legal advice be the primary purpose of the communication, and communications purely for business decisions are not protected.

116. D — Under FRE 608 and the Confrontation Clause, evidence of a witness's plea agreement, cooperation agreement, or any incentive to testify is admissible to show bias and motivation. Cross-examination on these matters is a proper attack on credibility, and the jury must be informed of any inducement.

117. A — Under UCC § 2-601 (the perfect tender rule), a buyer's rejection must be based on a non-conformity of the goods or tender; rejection based on the buyer's own changed needs (rather than the goods' non-conformity) is not a proper rejection. The buyer remains liable for the goods, and the seller may recover the contract price or pursue resale remedies.

118. C — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. Under FRE 803(3), the statement is also admissible as evidence of the

defendant's then-existing state of mind toward the victim and under FRE 404(b) as evidence of motive and intent.

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

120. D — Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime. The inherent mobility of vehicles and reduced expectation of privacy in vehicles justify the exception.

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

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

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

124. D — Under FRE 901, authentication requires evidence sufficient to support a finding that the videotape is what the proponent claims. Testimony establishing the recording system, time of recording, and chain of custody satisfies this standard, and consent of those depicted is not required for security camera footage in commercial spaces.

125. C — Under *Erie*, the federal court applies the state's statute of frauds AND state-law exceptions to it (such as partial performance). Both the rule and the exception are substantive because they affect contract enforceability.

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

127. D — Under the apex deposition doctrine, courts evaluate whether the executive has unique personal knowledge of relevant facts and whether less burdensome alternatives are available. The proponent of the deposition generally bears the burden of justifying it, and depositions of high-ranking corporate officers may be limited.

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

129. C — Under Erie, the federal court applies state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

130. A — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

131. B — Under *Twombly* and *Iqbal*, when the plaintiff's complaint pleads factual content sufficient to render the claim plausible on its face, the motion to dismiss should be denied. The court accepts factual allegations as true and draws reasonable inferences in the plaintiff's favor, and the plausibility standard does not require a showing of probability.

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

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

134. A — Under *Franks v. Delaware*, the defendant must show by a preponderance that the affidavit contained a deliberately false statement or one made with reckless disregard for the truth AND that the false statement was necessary to a finding of probable cause. If the affidavit's remaining content provides probable cause without the false statements, the warrant is upheld.

135. B — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, and the relative bargaining power of the parties, as well as any potential conflicts of interest with class counsel.

136. D — A quitclaim deed conveys whatever interest the heir has; if the seller has obtained the quitclaim, the title is generally cured. However, the buyer may terminate if the title is still subject to litigation or uncertainty affecting marketability, and the analysis depends on the specific terms of the quitclaim and the state of the title.

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

138. C — Under Erie, the federal court applies state substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action. The state's 6% rate is substantive law and must be applied.

139. B — Under the common law, voluntary intoxication may negate the specific intent required for crimes like mail fraud (which requires specific intent to defraud). Intoxication evidence is relevant to whether the defendant could form the specific mental state, but is not a defense to lesser included offenses requiring only general intent or recklessness.

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

141. A — Under the joint defense (or common interest) privilege, parties with a common legal interest may share information without waiving the attorney-client privilege. The substantive test focuses on (1) the parties' common legal interest, (2) the communication in furtherance of that interest, and (3) the confidential nature of the communication; the requirements for formal agreements vary by jurisdiction.

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

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

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

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

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

147. B — Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed. The court then evaluates the validity of the privilege claim, potentially through in camera review.

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

149. C — Under *Erie*, the federal court applies state substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery. The state's restriction applies.

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

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

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

153. A — Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy. Both predominance and superiority must be satisfied.

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

155. B — Under *Erie*, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability. The state-law writing requirement for sales of land applies, and an oral contract is unenforceable absent an applicable exception.

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

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

158. A — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense or related defenses are at issue. In armed robbery, the victim's violent reputation is generally not pertinent unless the defendant raises self-defense or initial-aggressor defenses; if such a theory is raised, the evidence becomes admissible.

159. B — Under *Erie*, the federal court applies state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

160. D — Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime. The inherent mobility of vehicles and reduced expectation of privacy in vehicles justify the exception.

161. C — Under FRCP 23(b)(2), the plaintiffs must show that the defendant has acted on grounds generally applicable to the class, making final injunctive or declaratory relief (not primarily monetary damages) appropriate for the class as a whole. This category is typical for civil rights and discrimination cases.

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

163. D — Under FRCP 26(c), a party may obtain a protective order limiting discovery, including provisions for confidential treatment of trade secrets and other sensitive information. The court balances the need for discovery against the burden of disclosure and may impose conditions such as confidentiality designations, attorneys'-eyes-only restrictions, or in camera review.

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

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

166. A — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi, where the prior conduct shares distinctive features with the charged offense. Three similar schemes within two years are probative of intent, knowledge, and scheme.

167. B — Under *Erie*, the federal court applies state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

168. D — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances using factors including opportunity to view, attention, accuracy of prior description, certainty, and time between crime and identification.

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

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

171. B — Under Erie, the federal court applies the state's statute of frauds because it is substantive law affecting contract enforceability. The writing requirement for goods over \$500 is substantive and must be applied.

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

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

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

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

176. A — Under *Franks v. Delaware*, the defendant must show by a preponderance that the affidavit contained a deliberately false statement or one made with reckless disregard for the truth AND that the false statement was necessary to a finding of probable cause. If both are shown, the evidence must be excluded.

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

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

179. B — Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege. The court must quash or modify a subpoena that subjects a person to undue burden, and may also condition production on cost-shifting or other protective measures.

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

181. C — Under *Erie*, the federal court applies state substantive law on the measure and propriety of punitive damages. Evidence of the defendant's net worth may be admissible under state law as it bears on the deterrent function of punitive damages.

182. B — Under *Edwards v. Arizona*, once a suspect unambiguously invokes the right to counsel during custodial interrogation, police must cease interrogation until counsel is present. The statement "I want a lawyer" is generally an unambiguous invocation, and any statements obtained during continued interrogation must be suppressed.

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

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

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

186. B — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony. The inquiry tests the witness's knowledge of the defendant's actual reputation in the community, but extrinsic proof of the arrest is barred.

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

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

189. B — Under *Erie*, the federal court applies the state's joint and several liability rule because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery. The state's rule on liability allocation must be applied.

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

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

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

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

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

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

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

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

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

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

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