

PRACTICE EXAM7: MBE SIMULATION

(200 QUESTIONS)

1. A citizen of State A sues a citizen of State B in federal district court in State A on a state-law tort claim. The amount in controversy exceeds \$75,000. The defendant has never physically entered State A but, over the past three years, sold approximately \$200,000 worth of consumer goods through its website to residents of State A, including the plaintiff. The defendant moves to dismiss for lack of personal jurisdiction. The court should:

- A. Find personal jurisdiction because diversity jurisdiction confers nationwide service of process
- B. Find personal jurisdiction because the defendant purposefully availed itself of State A's market
- C. Dismiss because the defendant never physically entered the forum state at any time
- D. Dismiss because online sales alone cannot establish constitutional minimum contacts

2. A city ordinance prohibits any speech in public parks that "may offend others or disturb the peace." A protester is arrested under the ordinance for chanting political slogans at an organized rally. He challenges the ordinance on First Amendment grounds. Which of the following is the strongest basis for striking down the ordinance?

- A. The ordinance violates the Equal Protection Clause by treating different protesters unequally
- B. The ordinance is a valid time, place, and manner restriction because it is content-neutral
- C. The ordinance is unconstitutionally overbroad and vague in violation of the First Amendment
- D. The ordinance fails strict scrutiny because the city lacks any compelling regulatory interest

3. A merchant sends a buyer a signed written offer to sell 1,000 widgets at \$5.00 each, stating that the offer will remain open for 30 days. Ten days later, before the buyer has accepted, the merchant sends a written revocation. The buyer accepts in writing within the original 30-day period. Under the UCC, what is the legal effect of the merchant's revocation?

- A. The revocation is ineffective because the firm offer is irrevocable for the stated period
- B. The revocation is effective because no consideration was given for the merchant's option
- C. The buyer's acceptance is untimely because the revocation terminated the offer before acceptance
- D. The buyer must show detrimental reliance to enforce the offer against the merchant

4. Three men plan and carry out an armed robbery of a liquor store. During the robbery, the store owner draws a lawful firearm and shoots and kills one of the robbers in self-defense. The two surviving robbers are prosecuted for felony murder for the death of their accomplice. Under the majority "agency theory" of felony murder, what is the correct result?

- A. Both robbers are guilty because death occurred during the commission of an enumerated felony
- B. Both robbers are guilty because the death was foreseeable consequence of the armed robbery
- C. Both robbers are guilty because the accomplice's death proximately resulted from the felony
- D. Neither robber is guilty because the killing was not committed by them or their agent

5. In a civil negligence suit arising from a car accident, the plaintiff seeks to introduce a statement made by a now-deceased eyewitness who told a police officer at the scene, "The blue car ran the red light." The statement was made approximately five minutes after the collision while the witness was still visibly shaken and trembling. The defendant objects on hearsay grounds. The statement is most likely:

- A. Inadmissible hearsay because the declarant is unavailable and no exception applies
- B. Admissible as an excited utterance because it concerned a startling event made under stress
- C. Admissible as a present sense impression because the witness perceived the event firsthand
- D. Inadmissible because the statement was not made with sufficient indicia of reliability

6. A landowner's neighbor began using a footpath across the landowner's property to reach a public beach, without permission or any prior conversation. The neighbor used the path openly, continuously, and without interruption for 22 years. The relevant state statute of limitations for adverse possession and prescriptive easements is 20 years. The landowner has now died, and her heir wishes to block the path. Which doctrine best supports the neighbor's right to continued use?

- A. Easement by prescription, because the use was open, continuous, and adverse for the statutory period

- B. Easement by necessity, because the path provides the only practical access to the public beach
- C. Easement by implication, because the prior owner originally intended the use to continue indefinitely
- D. Easement by estoppel, because the neighbor reasonably relied on the prior owner's continued silence

7. A homeowner hired an independent contractor to repair her front steps. The contractor finished the work but negligently left a sledgehammer on the front porch. That night, a burglar broke into the home, picked up the sledgehammer from the porch, and used it to attack the homeowner. The homeowner sues the contractor for negligence. The contractor's strongest defense is that:

- A. Independent contractors are generally not liable for torts during the course of their work
- B. The homeowner assumed the risk by hiring an unsupervised contractor on her property
- C. The criminal act of the burglar was an unforeseeable superseding cause of the harm
- D. There was no duty owed because the contract did not specifically require tool removal

8. In a federal diversity action, the defendant moves for summary judgment after the close of discovery. The plaintiff has produced no admissible evidence to support an essential element of her negligence claim. In opposition to the motion, the plaintiff submits only an affidavit asserting in conclusory fashion that "the defendant was negligent and caused my injuries." How should the court rule?

- A. Deny the motion because credibility determinations are reserved for the jury at trial
- B. Deny the motion because affidavits are themselves sufficient to create a triable issue
- C. Grant the motion only if the defendant produces affirmative evidence of non-negligence
- D. Grant the motion because the plaintiff failed to support an essential element of her claim

9. Congress enacts a statute prohibiting the knowing possession of any firearm within 1,000 feet of any public elementary or secondary school. The statute applies even to purely intrastate possession unconnected to any commercial activity. A defendant convicted under the statute challenges it as exceeding Congress's constitutional authority. Which argument is strongest for striking down the statute?

- A. The statute exceeds Congress's Commerce Clause power because possession near schools is non-economic

B. The statute violates the Tenth Amendment by commandeering state law enforcement resources unconstitutionally

C. The statute violates the Second Amendment by prohibiting firearm possession in personal defense zones

D. The statute violates substantive due process by infringing fundamental rights without compelling justification

10. A buyer and seller execute a fully integrated written contract for the sale of a used car for \$10,000 "as is, with no warranties." After delivery, the buyer discovers that the transmission is severely defective and sues, claiming the seller orally promised before signing that "the transmission has been completely rebuilt last month." The seller objects to evidence of the oral statement on parol evidence grounds. The buyer's strongest argument for admission is that:

A. The statement is admissible to vary the terms of the written agreement under modern theory

B. The statement is admissible because "as is" disclaimers do not extend to known material defects

C. The statement is admissible to prove fraud in the inducement, an exception to the parol evidence rule

D. The statement is admissible as a collateral agreement concerning a separate subject matter

11. A man enters a department store intending to lawfully purchase a sweater. He selects a sweater, enters a fitting room, and tries it on. While in the fitting room, he decides to keep the sweater without paying. He puts his coat on over the sweater and walks out of the store without going through any checkout. He is charged with larceny. Which of the following is the most accurate analysis?

A. He is not guilty of larceny because the original entry into the store was lawful

B. He is guilty of larceny because he formed the intent to permanently deprive while in mere custody

C. He is guilty of embezzlement because he was lawfully entrusted with the sweater while trying it on

D. He is not guilty of theft because he never took the item from the seller's actual custody

12. In a criminal prosecution for assault, the defendant calls a witness who testifies that the defendant has a reputation in the community for being a peaceful and non-violent person. On cross-examination, the prosecutor wishes to ask the witness, "Did you know that the defendant was convicted of battery five years ago?" Under the Federal Rules of Evidence, the prosecutor's question is:

- A. Improper because prior convictions can only be introduced through certified court records
- B. Improper because specific instances cannot be inquired about during character witness cross-examination
- C. Proper only if the prosecution provides advance notice to the defense before trial begins
- D. Proper to test the witness's familiarity with the defendant's reputation if asked in good faith

13. In a notice jurisdiction, O conveys Blackacre to A by valid deed; A does not record. O then conveys Blackacre to B, who pays fair value and has no actual or constructive notice of the prior conveyance to A. B does not record immediately. A then records his deed. B then records his deed. In a subsequent dispute between A and B, who prevails?

- A. B prevails because B was a bona fide purchaser without notice at the time of conveyance
- B. A prevails because A recorded first after the second conveyance occurred between O and B
- C. A prevails because B never recorded before A did, defeating B's priority interest
- D. B prevails because B recorded after A, satisfying the race component of the statute

14. A homeowner keeps a fully tamed pet raccoon that she raised from infancy. The raccoon has never bitten anyone and shows no signs of aggression. A neighbor visiting the home sees the raccoon and reaches over to pet it. The raccoon unexpectedly bites her, causing serious injury. She sues the homeowner under a theory of strict liability for harm caused by a wild animal. The court should rule that:

- A. The homeowner is not strictly liable because the raccoon was not known to be dangerous
- B. The homeowner is strictly liable because raccoons are wild animals regardless of domestication
- C. The homeowner is not strictly liable because the neighbor voluntarily interacted with the animal
- D. The homeowner is strictly liable only if negligence in confining the animal can be shown

15. A plaintiff sues a defendant in federal district court on the basis of diversity jurisdiction, alleging a state-law tort claim. The state's statute of limitations for the claim is two years, which has run. A federal procedural rule, the defendant concedes, would arguably permit later filing. The defendant moves to dismiss the action as time-barred. Under the Erie doctrine, the court should apply:

- A. The federal procedural rule because federal courts apply federal procedural law in diversity cases

- B. Whichever rule is most consistent with the federal policy of liberal pleading and substantive justice
- C. The federal rule if it represents a valid exercise of congressional rulemaking authority under the REA
- D. The state statute of limitations because it is substantive law affecting the outcome of the case

16. A state university dismisses a student for cheating on an examination without providing notice of the specific charges or any opportunity for the student to be heard before the dismissal takes effect. The student sues the university under 42 U.S.C. § 1983, claiming a violation of procedural due process. Which of the following analyses is most likely to succeed?

- A. There is no protected interest because students have no constitutional right to enroll in public universities
- B. The dismissal violates substantive due process because the university lacked good cause for the action
- C. The student has a property interest in continued enrollment requiring notice and an opportunity to be heard
- D. The dismissal is permissible because academic and disciplinary decisions are inherently unreviewable by courts

17. A homeowner orally agrees to pay a builder \$50,000 to renovate her kitchen, with all work to be completed within six months. The builder begins work and the homeowner makes a \$10,000 down payment. After roughly half the work is done, the homeowner refuses to pay any more and bars the builder from the property. The builder sues to enforce the oral agreement and recover the contract price. The agreement is:

- A. Enforceable because it can be performed within one year and is not within the Statute of Frauds
- B. Unenforceable because contracts for services exceeding \$5,000 must be in writing under the UCC
- C. Unenforceable because partial performance does not satisfy the Statute of Frauds for service contracts
- D. Enforceable only to the extent of the value of services already performed under quantum meruit

18. A suspect is arrested on suspicion of burglary, is given Miranda warnings, and immediately invokes his right to remain silent. Two hours later, a different officer investigating an unrelated murder approaches the suspect, gives fresh Miranda warnings, and asks questions about the murder. The suspect waives his rights and confesses to the murder. In a motion to suppress, the confession is:

- A. Inadmissible because once a suspect invokes silence, all subsequent questioning is barred
- B. Inadmissible because the second interrogation was an end-run around the suspect's initial invocation
- C. Admissible because the second interrogation concerned a different crime after fresh warnings were given
- D. Admissible only if the suspect signed a written waiver before the second interrogation began

19. A client consults an attorney about potential securities fraud charges being investigated by the SEC. During the consultation, the client tells the attorney, "I plan to shred all the financial records tomorrow morning before the SEC investigators arrive at my office." The attorney is later called to testify in a perjury and obstruction proceeding against the client. The attorney's testimony about the client's statement is:

- A. Privileged because it was made in the course of seeking legal advice from the attorney
- B. Not privileged because the statement was made in furtherance of a future crime or fraud
- C. Privileged unless the client expressly waived attorney-client confidentiality on the official record
- D. Not privileged because attorneys must report all serious client misconduct to the authorities

20. A tenant signs a one-year residential lease for an apartment in a multi-unit building. Six months into the lease, the heating system fails during a severe winter, and the landlord refuses to repair it despite the tenant's repeated written requests. The apartment becomes unsafely cold and uninhabitable. The tenant moves out and stops paying rent. The landlord sues for the remaining six months of rent. The tenant's strongest defense is:

- A. The doctrine of waste excuses rent obligations when the premises deteriorate during the term
- B. The lease is voidable because the landlord materially breached an express covenant of quiet enjoyment
- C. The tenant exercised a contractual right to terminate due to landlord's failure to maintain heating
- D. The doctrine of constructive eviction excuses rent because the premises were rendered effectively uninhabitable

21. A daily newspaper publishes an article falsely stating that a local city council member has accepted thousands of dollars in bribes from a real estate developer in exchange for favorable zoning votes. The article is later proven entirely false. The council member sues the newspaper for defamation. To prevail under the First Amendment, the council member must prove:

- A. That the statement was false and caused him pecuniary harm under common-law defamation standards
- B. That the newspaper acted with actual malice — knowledge of falsity or reckless disregard for the truth
- C. That the newspaper failed to exercise reasonable care in verifying the statement before publication
- D. That the council member's reputation in the community was directly damaged by the publication

22. A plaintiff sues two defendants in federal district court for personal injuries arising from a single multi-car accident. The plaintiff alleges that both defendants negligently contributed to the collision. The claims against both defendants arise from the same transaction or occurrence and share common questions of law and fact. One defendant moves to sever, arguing that joint trial will unfairly prejudice him. The court should:

- A. Deny the motion because the claims satisfy the requirements for permissive joinder of defendants
- B. Grant the motion because joinder of multiple tortfeasors materially prejudices each defendant's case
- C. Grant the motion only if the defendants demonstrate diversity-destroying citizenship in the case
- D. Deny the motion only if the plaintiff stipulates to bifurcated trials for liability and damages

23. A state law restricts admission to its flagship public university and its in-state tuition rates to applicants who have been residents of the state for at least five continuous years immediately preceding the term of enrollment. A recently arrived in-state resident, denied admission, challenges the law as unconstitutional. The strongest constitutional basis for the challenge is:

- A. The law violates the Privileges and Immunities Clause of Article IV by discriminating against new residents
- B. The law violates substantive due process by burdening the fundamental right to higher public education
- C. The law violates equal protection by impermissibly burdening the fundamental right to interstate travel
- D. The law violates the Dormant Commerce Clause by impeding the free movement of citizens between states

24. A buyer contracts to purchase a specific rare antique vase from a seller for \$50,000. The vase is one of only three known to exist in the world. The seller breaches the contract and refuses to deliver the vase, deciding to keep it instead. The buyer has searched the market extensively and cannot find any comparable vase available for purchase. The buyer sues. The most appropriate remedy is:

- A. Reliance damages measured by the buyer's expenditures incurred in preparation for taking delivery
- B. Liquidated damages because antique markets are inherently volatile and uncertain in their pricing
- C. Restitution of any down payment because monetary damages are an inadequate form of compensation
- D. Specific performance because the subject matter is unique and money damages are clearly inadequate

25. A and B agree to rob a local bank. They drive together to the bank parking lot, but as they approach the entrance, A loses his nerve and tells B, "I'm out, I can't do this." A walks back to the car and waits there. B enters the bank alone, commits the robbery, and is captured fleeing the scene. A is later arrested. Under the majority "bilateral" conspiracy rule, A is:

- A. Guilty of conspiracy because the agreement was complete and A's later withdrawal does not undo it
- B. Not guilty of conspiracy because A effectively withdrew before any substantive criminal act was committed
- C. Guilty of both conspiracy and robbery because B's act is imputed to A as a co-conspirator under Pinkerton
- D. Not guilty of either offense because A's withdrawal terminated his participation in the criminal enterprise

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- C. Owes the trespasser no duty because trespassers assume all risks of entry without permission
- D. Owes the trespasser only a duty to refrain from willful, wanton, or intentional harm to entrants

78. A plaintiff is a citizen of State A. She sues two defendants in federal court on state-law claims with \$100,000 in damages. Defendant 1 is a citizen of State A. Defendant 2 is a citizen of State B. The court has:

- A. Diversity jurisdiction because the plaintiff is diverse from at least one defendant in the action
- B. Diversity jurisdiction because the amount in controversy exceeds the \$75,000 statutory threshold
- C. Federal question jurisdiction if the plaintiff voluntarily dismisses Defendant 1 from the suit
- D. No diversity jurisdiction because complete diversity between all plaintiffs and all defendants is required

79. A state agency revokes a driver's license after a single hearing officer reviews documentary evidence and renders a decision without an in-person hearing. The licensee challenges the procedure as violating procedural due process. Under the *Mathews v. Eldridge* balancing test, the court should consider:

- A. Only the state's interest in administrative efficiency and prompt revocation of unsafe drivers
- B. The private interest, risk of erroneous deprivation, and the government's interest in current procedure
- C. Whether the procedure provides notice and an opportunity to be heard before any deprivation occurs
- D. Whether the licensee was provided with a full evidentiary hearing prior to revocation actions

80. A contract for the sale of land provides that "closing is conditioned upon the buyer obtaining financing on commercially reasonable terms." The buyer applies in good faith but cannot obtain financing despite making genuine efforts. The buyer notifies the seller and cancels the contract. The seller sues for breach. The buyer:

- A. Is in breach because the buyer assumed the risk of obtaining financing under the agreement
- B. Is in breach because financing conditions only excuse performance when no lender will lend at any rate
- C. Is excused from performance because a condition precedent to closing has not been satisfied
- D. May recover damages from the seller for the seller's failure to assist in obtaining financing

81. A husband comes home unexpectedly and finds his wife in bed with her lover. He immediately grabs a baseball bat and beats the lover to death in a rage. He is charged with murder. Under common law, his strongest argument to reduce the charge is:

- A. Provocation reducing murder to voluntary manslaughter because the discovery caused adequate provocation
- B. Self-defense because his discovery of the affair created a reasonable apprehension of bodily harm
- C. Insanity because the emotional shock rendered him temporarily incapable of forming criminal intent
- D. Diminished capacity because his judgment was substantially impaired by extreme emotional distress

82. In a personal injury action, the plaintiff alleges that the defendant ran a stop sign. The defendant seeks to introduce testimony from his neighbors that he "always comes to a complete stop at every stop sign" he encounters during his daily commute. Under the Federal Rules of Evidence, the testimony is:

- A. Inadmissible character evidence because it implies the defendant has a careful personality trait
- B. Admissible as evidence of habit demonstrating the defendant's routine response to the stop sign
- C. Inadmissible because habit evidence requires expert testimony to establish the regular practice
- D. Admissible only if the defendant first introduces his good character as a careful driver in case

83. A homeowner takes out a mortgage on her house. After three years of payments, she defaults on the loan. The lender initiates a non-judicial foreclosure under a power-of-sale clause in the mortgage. State law permits non-judicial foreclosure if specific procedures are followed. The homeowner challenges the foreclosure for lack of due process. The challenge is:

- A. Successful because non-judicial foreclosures violate procedural due process under the Fifth Amendment
- B. Successful because mortgage foreclosures always require full judicial review before any property sale
- C. Unsuccessful because the homeowner cannot raise due process objections to private bank action
- D. Unsuccessful because non-judicial foreclosures generally involve no state action under the Constitution

84. A plaintiff is injured in a car accident and is found to be 40% responsible for her own injuries. The defendant is 60% responsible. The plaintiff's total damages are \$100,000. In a pure comparative negligence jurisdiction, the plaintiff may recover:

- A. Nothing because her own negligence contributed substantially to causing the accident and injuries
- B. \$40,000 because the plaintiff's recovery is reduced by the defendant's percentage of fault here
- C. \$60,000 because her recovery is reduced by her own percentage of fault in causing the harm
- D. \$100,000 because pure comparative negligence permits full recovery regardless of fault allocation

85. A plaintiff sues a defendant in federal court for breach of contract. After a final judgment on the merits in favor of the defendant, the plaintiff files a new lawsuit against the same defendant for fraud arising from the same transaction. The new lawsuit is:

- A. Barred by claim preclusion because the fraud claim arises from the same transaction as the contract suit

- B. Permitted because the fraud claim involves different legal theories from the prior contract claim
- C. Barred only if the federal court ruled on the merits of fraud claims in the original judgment
- D. Permitted if the plaintiff did not raise fraud allegations during the prior federal proceeding

86. A state law requires anyone hired to work on state-funded construction projects to be a resident of the state. A nonresident worker is denied employment based on the law. He challenges the residency requirement. The strongest constitutional basis for challenge is:

- A. The Privileges and Immunities Clause of Article IV prohibits discrimination against nonresidents in employment
- B. The Dormant Commerce Clause prohibits states from imposing residency requirements on workers
- C. The Equal Protection Clause requires the state to apply identical employment laws to all workers
- D. The Tenth Amendment reserves to the federal government exclusive control over labor laws

87. A contractor agrees to build a house for \$200,000. Halfway through construction, the contractor demands an additional \$30,000, claiming that material costs have unexpectedly risen. The homeowner reluctantly agrees in writing. Under the common law pre-existing duty rule, the additional \$30,000 promise is:

- A. Enforceable because the homeowner agreed in writing to the contract modification voluntarily
- B. Enforceable because the contractor faced genuine and unforeseen difficulties in performing the contract
- C. Unenforceable because the contractor was already legally obligated to complete the work for \$200,000
- D. Unenforceable only if the homeowner can prove the contractor used economic duress or coercion

88. Police obtain a search warrant based on an affidavit later determined to lack probable cause. The officers execute the warrant in objectively reasonable reliance on it and seize evidence. The defendant moves to suppress the evidence. The evidence is:

- A. Inadmissible because warrants lacking probable cause are constitutionally defective at the outset
- B. Admissible under the good-faith exception because the officers reasonably relied on the warrant
- C. Inadmissible because the exclusionary rule applies whenever any evidence is unlawfully obtained

D. Admissible only if the officers can show they personally investigated the underlying probable cause

89. In a federal product liability case, the plaintiff seeks to call an expert to testify that exposure to a chemical caused the plaintiff's cancer. The expert's theory is based on a study not yet peer-reviewed and using methodology not generally accepted in the scientific community. Under Daubert, the trial judge must:

A. Admit the testimony because experts are permitted broad latitude in their opinions and theories

B. Exclude the testimony because expert opinions on causation always require peer-reviewed support

C. Admit the testimony if the jury has the ability to weigh the credibility of the expert witness

D. Act as a gatekeeper to determine whether the methodology is reliable and the testimony helpful

90. O conveys Blackacre "to A, but if A ever sells alcohol on the property, then O may re-enter and retake the property." What interest does O retain in Blackacre?

A. A right of entry, which O must affirmatively exercise upon the occurrence of the stated condition

B. A possibility of reverter, which automatically vests in O upon any breach of the express condition

C. An executory interest, which immediately divests A and reverts the property to O by operation of law

D. A reversion in fee simple absolute, which O may convey freely to a third party at any time

91. A small-town private citizen is falsely accused in a newspaper article of having an affair with a married city council member. The citizen sues the newspaper for defamation. Under *Gertz v. Robert Welch*, the citizen must prove the newspaper acted with:

A. Actual malice — knowledge of falsity or reckless disregard for the truth of the statement

B. Strict liability for the publication of any false statement of fact about any private citizen

C. At least negligence as to the falsity of the published statement under the Constitution

D. Intentional malice with specific intent to harm the citizen's reputation in the community

92. An insurance company holds a \$500,000 life insurance policy. After the insured's death, the company receives competing claims from the decedent's estranged wife and adult children. The company is uncertain who is entitled to the proceeds. The company should file:

- A. A motion to deposit funds with the court and await a class action filing from the rival claimants
- B. A complaint in interpleader to require all claimants to litigate their respective rights to the proceeds
- C. A motion for summary judgment on grounds that the policy benefits remain undisputedly owed
- D. A declaratory judgment action requesting the court to interpret the contract's beneficiary provisions

93. A protester burns a U.S. flag at a political rally to express opposition to government policies. He is prosecuted under a state law making it a crime to "knowingly desecrate any national flag." He challenges the conviction on First Amendment grounds. The law is:

- A. Constitutional because flag burning constitutes conduct rather than protected expressive speech
- B. Constitutional because the state has a compelling interest in preserving symbolic national unity
- C. Constitutional if the conviction is supported by the protester's intent to incite violent reactions
- D. Unconstitutional because flag burning is protected expressive conduct under the First Amendment

94. A buyer purchases a used lawnmower from a private seller for \$200 with no written warranty. The seller is not a merchant of lawnmowers and sold the mower casually. The mower fails to start after one week. The buyer sues for breach of warranty. The buyer:

- A. May recover for breach of the implied warranty of merchantability under UCC Article 2 provisions
- B. May recover for breach of the implied warranty of fitness for a particular purpose under the UCC
- C. May not recover because implied warranties of merchantability apply only to merchant sellers
- D. May not recover because the UCC does not apply to sales of used consumer goods at all

95. A man enters a department store during business hours intending to steal a watch from a display case. He grabs the watch and is apprehended before leaving the store. He is charged with burglary under a statute defining burglary as the breaking and entering of a building with intent to commit a felony therein. The defendant is:

- A. Not guilty of burglary because his lawful entry during business hours does not constitute a breaking
- B. Guilty of burglary because he formed the intent to steal at the time he entered the store premises
- C. Guilty of burglary because the watch theft constituted a felony committed within the building
- D. Not guilty of burglary because department stores are open to the public and cannot be burglarized

96. In a will contest, the proponent of a will seeks to introduce testimony that the testator stated, the week before signing the will, "I intend to leave everything to my daughter and nothing to my son." The statement is:

- A. Inadmissible hearsay because it relates to past events and intentions of a now-deceased declarant
- B. Admissible as a statement of the declarant's then-existing state of mind regarding future conduct
- C. Inadmissible because statements of intent are unreliable predictors of subsequent testamentary action
- D. Admissible only if corroborated by other independent evidence of the testator's testamentary plans

97. An easement holder has used a roadway across an adjacent landowner's property for 15 years. The holder then expressly tells the servient owner, "I no longer need this easement and won't use it anymore." For five years thereafter, the holder uses an alternative route and makes no use of the original easement. The original easement is:

- A. Extinguished by merger because the holder's unilateral abandonment terminates servitudes by operation of law
- B. Extinguished by adverse possession because the servient owner used the property exclusively afterwards
- C. Not extinguished because easement holders may resume use after any temporary period of nonuse
- D. Extinguished by abandonment because the holder both stated intent to abandon and ceased using

98. A neighbor enters the plaintiff's garage without permission and moves the plaintiff's car several feet to the side to reach a different vehicle. The car is not damaged in any way. The plaintiff sues for trespass to chattels. The plaintiff is entitled to:

- A. Nominal or actual damages only if she can prove some impairment or interference with the chattel

- B. Punitive damages because any unauthorized contact with personal property is actionable per se
- C. Statutory damages calculated as the rental value of the vehicle during the brief period of movement
- D. Treble damages because trespass to chattels under common law mandates enhanced compensation

99. A multinational corporation is incorporated in Delaware and has its principal place of business in California. The corporation sells products throughout the country, including small online sales in State X. A plaintiff from State X sues the corporation in State X court for a claim unrelated to its State X sales. Under *Daimler AG v. Bauman*, State X courts:

- A. Have specific personal jurisdiction because the corporation does business in the state regularly
- B. Have general personal jurisdiction because the corporation conducts continuous activities in the state
- C. Lack general personal jurisdiction because the corporation is not "at home" in State X under *Daimler*
- D. Lack jurisdiction because corporations may only be sued in the state of their actual incorporation

100. A city ordinance prohibits all amplified sound in public parks between 10:00 p.m. and 7:00 a.m. A musician is cited for using a loudspeaker at a midnight protest in a park. He challenges the ordinance on First Amendment grounds. The ordinance is:

- A. Unconstitutional because it categorically prohibits expressive speech in a traditional public forum
- B. Constitutional as a content-neutral time, place, and manner restriction serving an important interest
- C. Unconstitutional because the city has less restrictive means available to address noise concerns
- D. Constitutional only if the city can show the ordinance serves a compelling government interest

101. A buyer rents a hotel room overlooking a parade route specifically to watch a coronation procession. After the contract is signed but before the parade, the parade is canceled. The buyer refuses to pay. The hotel sues. Under the doctrine of frustration of purpose, the buyer:

- A. Must pay because the hotel still made the room available as contractually promised under the agreement
- B. Must pay because frustration of purpose requires the parties to have explicitly bargained for that purpose
- C. Is excused only if the parties' contract expressly conditioned payment on the parade occurring

D. Is excused because the principal purpose of the contract was substantially frustrated by the cancellation

102. A defendant approaches a victim on the street and says, "Give me your wallet or I'll punch you in the face." The victim hands over his wallet. The defendant is charged with robbery. The most accurate analysis is:

- A. The defendant is guilty of robbery because property was taken by force or threat of imminent force
- B. The defendant is guilty only of larceny because no actual physical force was used to take the wallet
- C. The defendant is guilty only of assault because the wallet was handed over voluntarily by the victim
- D. The defendant is not guilty of robbery because the threat involved only a non-deadly type of force

103. In a civil action for fraud, the plaintiff seeks to introduce a statement made by a third party who has died. The third party allegedly told a friend, "I helped the defendant prepare false documents to deceive investors." The statement is:

- A. Inadmissible hearsay because the third party is unavailable and there is no recognized exception
- B. Admissible as an admission against the defendant because it implicates him in the fraudulent scheme
- C. Admissible as a statement against penal and pecuniary interest by an unavailable declarant
- D. Admissible as a present sense impression because it reflects the declarant's contemporaneous knowledge

104. A tenant installs custom-built bookshelves in her rented apartment, securing them to the wall with screws. The bookshelves can be removed without significant damage to the apartment walls. At the end of the lease, the tenant wishes to take the bookshelves with her. The landlord claims they have become fixtures and must remain. The tenant:

- A. May not remove the bookshelves because they have become fixtures attached to the realty by screws
- B. May remove the bookshelves because trade and tenant-installed fixtures may generally be removed at lease end
- C. Must compensate the landlord for any decrease in property value caused by removing the shelves
- D. May remove the bookshelves only if the original lease expressly permitted removal at termination

105. A passenger boards an elevator that suddenly drops two floors, causing serious injuries. The passenger sues the building owner for negligence. The passenger has no direct evidence of any specific defect or maintenance lapse. The passenger should:

- A. Invoke *res ipsa loquitur* because elevator failures of this kind do not ordinarily occur without negligence
- B. Lose because the plaintiff must produce direct evidence of negligence to survive a directed verdict
- C. Invoke negligence *per se* based on the building's apparent violation of state elevator safety regulations
- D. Lose because elevator accidents are often caused by unknown mechanical failures beyond owner control

106. A defendant moves for summary judgment, arguing that no genuine dispute exists about a material fact. The plaintiff opposes with affidavits creating credibility questions about a key witness's testimony. The court should:

- A. Grant summary judgment because credibility issues are properly resolved by the court at this stage
- B. Grant summary judgment because affidavit-based credibility disputes cannot defeat a Rule 56 motion
- C. Deny summary judgment because all factual disputes must be resolved against the moving party
- D. Deny summary judgment because credibility determinations are reserved for the jury at trial

107. A private citizen sues a state government in federal court, seeking damages for an alleged constitutional violation by the state. The state moves to dismiss the action. Under the Eleventh Amendment, the citizen's suit is:

- A. Permitted because constitutional violations create an exception to state sovereign immunity in federal court
- B. Permitted only if the citizen first exhausts all administrative remedies available within the state
- C. Barred because the Eleventh Amendment prohibits suits by private citizens against states in federal court
- D. Permitted only if the state has consented to be sued by the citizen in its own legislative body

108. A buyer and seller enter into a requirements contract under which the buyer agrees to purchase "all of its requirements" for widgets from the seller for one year. After three months, the buyer dramatically

increases its operations and orders ten times the quantity it has historically purchased. The seller refuses to supply the increased quantity. Under UCC § 2-306, the seller:

- A. Is in breach because the requirements contract obligates the seller to fulfill all of the buyer's needs
- B. May refuse the increased quantity if it is unreasonably disproportionate to prior requirements estimates
- C. Is in breach because requirements contracts must accommodate any commercially reasonable buyer increase
- D. May refuse only if the original written contract included a quantity cap on the seller's obligations

109. A suspect voluntarily walks into a police station and asks to speak with detectives. He is not under arrest. The detectives sit him in an interview room and begin asking questions about a murder. After two hours, the suspect makes incriminating statements. He was not given Miranda warnings. The statements are:

- A. Admissible because the suspect was not in custody when he voluntarily came to the police station
- B. Inadmissible because all police station interrogations require Miranda warnings under the Constitution
- C. Admissible only if the suspect was permitted to leave the interview room at any time during questioning
- D. Inadmissible because two hours of questioning in any police setting constitutes custodial interrogation

110. In a criminal trial, the prosecution seeks to authenticate a recorded telephone conversation by calling a witness who claims to recognize the defendant's voice on the recording. The witness has spoken with the defendant only twice before, both times briefly. Under FRE 901(b)(5), the witness's voice identification is:

- A. Inadmissible because voice identification requires expert analysis of the recording's audio frequencies
- B. Inadmissible because the witness has insufficient familiarity with the defendant's voice to identify it
- C. Admissible because identification of a voice may be based on hearing the voice under any circumstances
- D. Admissible only if the witness has spoken to the defendant at least five times before identifying him

111. O conveys Blackacre "to A and her heirs, so long as the land is used for residential purposes, then to B and her heirs." The interest given to B violates which rule, if any?

- A. The rule against restraints on alienation because B's interest restricts how A may use the property
- B. The doctrine of merger because A's conditional fee and B's executory interest cannot coexist in time
- C. No rule because the conveyance creates valid present and future interests in identifiable parties
- D. The Rule Against Perpetuities because B's executory interest may vest beyond lives in being plus 21 years

112. Two defendants are found jointly and severally liable for the plaintiff's \$100,000 in damages. The plaintiff collects the entire judgment from Defendant A. Defendant A then seeks contribution from Defendant B. Under traditional joint and several liability rules, Defendant A:

- A. May recover the full \$100,000 from Defendant B because each tortfeasor is liable for the entire amount
- B. May recover from Defendant B that defendant's pro rata share or proportionate share of fault
- C. Has no right of contribution because Defendant A satisfied the entire judgment voluntarily after suit
- D. May recover only if Defendant B was the more culpable of the two co-defendants at trial

113. A plaintiff sues in federal court on a state-law claim. The state recognizes a tort cause of action that federal substantive law does not. Under Erie, the federal court should:

- A. Apply the state's substantive law and recognize the state-created cause of action in the diversity case
- B. Apply federal common law because federal courts develop their own jurisprudence in diversity matters
- C. Dismiss the action because federal courts cannot adjudicate causes of action unique to state law
- D. Apply whichever law better serves the interest of uniform application across the federal court system

114. A state law explicitly classifies residents by race for purposes of distributing state contracts. The state argues the classification remedies past discrimination against minority contractors. To survive constitutional challenge, the law must:

- A. Bear a rational relationship to a legitimate governmental interest in remedying past discrimination
- B. Be substantially related to an important government objective in remedying past discriminatory acts
- C. Bear a substantial relationship to a compelling state interest narrowly applied to the classification

D. Be narrowly tailored to serve a compelling government interest in remedying identified past discrimination

115. A seller and buyer reach an oral agreement for the sale of a parcel of land for \$300,000. The buyer pays a \$30,000 down payment and takes possession, making substantial improvements to the property over the next year. The seller then refuses to transfer title and asserts the Statute of Frauds. The buyer:

- A. Cannot enforce the oral agreement because all land sales must be in writing without any exceptions
- B. May enforce the oral agreement only if the seller signed a written acknowledgment of the contract
- C. May enforce the agreement under the part performance doctrine due to possession and improvements
- D. Cannot enforce the agreement, but may recover the \$30,000 down payment under quasi-contract theory

116. A defendant shoots a victim, intending to kill him. The victim is rushed to a hospital, where medical staff begin proper treatment but the victim contracts a fatal infection from a grossly contaminated needle. The victim dies. The defendant is charged with murder. The defendant's strongest argument on causation is that:

- A. The infection from contaminated medical equipment was a superseding cause breaking the chain of causation
- B. The shooting did not cause the death because the infection from the needle was unforeseeable
- C. The hospital staff committed minor negligence that did not break the causal chain to defendant's act
- D. The defendant lacked the specific intent to kill because he expected the victim to survive the wound

117. A witness on direct examination cannot remember the date of a meeting. The attorney shows the witness a calendar entry to refresh her recollection. After looking at the entry, the witness remembers and testifies about the date. Under FRE 612, the opposing counsel:

- A. May not see the calendar entry because it was used only as a memory aid for the testifying witness
- B. May see the calendar entry and may use it during cross-examination of the witness's testimony
- C. May object to admission of the calendar entry because it was never admitted into evidence
- D. May see the entry only if she shows the witness's recollection was insufficient before refreshment

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

- A. B owns the entire property by right of survivorship because the joint tenancy was unaffected by the deed
- B. A's heirs own A's half because the deed to C was invalid without B's express consent to the transfer
- C. B and C own the property as tenants in common because the conveyance severed the joint tenancy
- D. C owns the entire property because A's deed transferred his interest including any survivorship rights

119. A defendant points an unloaded gun at the plaintiff and shouts, "I'm going to kill you!" The plaintiff is reasonably terrified, believing the gun is loaded. The plaintiff sues for assault. The defendant is:

- A. Not liable because the gun was unloaded and incapable of inflicting actual physical harm on the plaintiff
- B. Not liable because assault requires actual contact or imminent capability of inflicting harm
- C. Liable only if the plaintiff also suffered some physical injury resulting from the encounter
- D. Liable because the defendant intentionally placed the plaintiff in reasonable apprehension of imminent harm

120. A defendant files a counterclaim against the plaintiff arising from the same transaction or occurrence as the plaintiff's claim. The defendant fails to assert this counterclaim. Under Federal Rule of Civil Procedure 13(a), the counterclaim is:

- A. Waived because compulsory counterclaims must be asserted in the same action as the original claim
- B. Preserved for a future lawsuit because counterclaims may always be asserted in a separate proceeding
- C. Permitted only if the defendant first obtains leave of court to assert it in a later separate action
- D. Waived only if the plaintiff explicitly objects to the omission during the pleading stage

121. After the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, a state enacts a law banning all abortions after six weeks of pregnancy. A challenge to the law claiming a federal constitutional right to abortion will most likely fail because:

- A. The Constitution expressly prohibits judicial review of laws regulating reproductive medical procedures
- B. The state has demonstrated a compelling government interest in protecting potential human life
- C. The Constitution does not protect a federal right to abortion under any of its express provisions
- D. The state may regulate medical procedures performed within its borders without federal oversight

122. A construction contract provides that "in the event of any delay in completion, the contractor shall pay \$10,000 per day as liquidated damages." Actual damages from delay would typically be in the range of \$1,000 to \$2,000 per day. After delay, the owner sues to collect the \$10,000-per-day amount. The clause is:

- A. Enforceable because both parties freely negotiated and agreed to the liquidated damages provision
- B. Enforceable because liquidated damage clauses are presumed valid absent fraud in their formation
- C. Unenforceable because the stipulated amount appears to be a penalty grossly disproportionate to harm
- D. Unenforceable because liquidated damages clauses violate public policy against punitive contract damages

123. A man approaches a hitman and offers him \$10,000 to kill his business partner. The hitman, however, is an undercover police officer who pretends to agree to take the job. The man is arrested. He is charged with both solicitation and conspiracy to commit murder. Under common law, the man is:

- A. Guilty of both solicitation and conspiracy because he agreed with another to commit the crime
- B. Guilty of solicitation only, because the hitman's lack of genuine agreement defeats conspiracy
- C. Not guilty of either offense because the officer never intended to commit the murder personally
- D. Guilty of conspiracy only because solicitation merges into the underlying conspiracy upon agreement

124. In a homicide prosecution, the prosecution seeks to introduce a statement made by the victim just before her death, identifying the defendant as her killer. The victim believed her death was imminent. Under FRE 804(b)(2), the statement is:

- A. Inadmissible because dying declarations are not recognized exceptions in modern federal practice

- B. Admissible in any criminal or civil proceeding without limitation by the rules of evidence
- C. Inadmissible because the victim cannot be cross-examined about her perceptions and beliefs
- D. Admissible in homicide cases and civil actions if the declarant believed her death was imminent

125. A landowner subdivides his property and sells the back parcel to a buyer. The back parcel has no direct access to a public road. The only practical access is across the seller's retained front parcel. No easement was expressly granted in the deed. The buyer claims an easement by implication. The buyer:

- A. Should prevail under the doctrine of easement by necessity because the back parcel lacks any other access
- B. Should prevail only if the parties' deed expressly references a future access easement to be granted
- C. Should lose because easements over real property must be created by express grant in writing
- D. Should lose unless the buyer can show the seller specifically intended to provide future access

126. A demolition company uses dynamite to bring down an old building. The blast inadvertently damages a neighboring property despite the company's exercise of reasonable care. The neighbor sues. Under the Restatement (Second) of Torts § 519, the demolition company is:

- A. Not liable because reasonable care during demolition operations was exercised in this case
- B. Strictly liable because blasting with explosives is an abnormally dangerous activity in residential areas
- C. Liable only if the demolition company can be shown to have acted negligently in its blasting work
- D. Not liable because the neighbor assumed the risk by living near an old building scheduled for demolition

127. A plaintiff files a state-court complaint asserting only state-law claims against a diverse defendant for damages exceeding \$75,000. Thirty-five days after being served with the complaint, the defendant files a notice of removal to federal court. The plaintiff moves to remand. The court should:

- A. Deny remand because diversity jurisdiction was independently satisfied at the time of removal
- B. Deny remand if the defendant had a legitimate reason for missing the original filing deadline
- C. Grant remand only if the plaintiff can show prejudice from the late removal of the case

D. Grant remand because notices of removal must generally be filed within 30 days of service

128. A state law prohibits all advertising of prescription drug prices by pharmacies. A pharmacy challenges the law on First Amendment grounds. Under the Central Hudson test for commercial speech, the state must show:

- A. The law was supported by overwhelming legislative findings about consumer behavior in drug purchasing
- B. The advertising restriction serves a compelling state interest in narrowly tailored regulatory action
- C. The restriction directly advances a substantial government interest and is no more extensive than necessary
- D. The restriction is reasonable and not arbitrary, given the state's broad authority over pharmacies

129. A creditor assigns his right to collect \$50,000 from a debtor to a third party. The debtor is properly notified of the assignment in writing. The debtor then pays the original creditor instead of the assignee. The debtor's payment is:

- A. Ineffective to satisfy the debt because the debtor was notified of the assignment before paying
- B. Effective because debtors may always pay the original creditor under principles of contract privity
- C. Effective only if the original creditor returns the funds to the debtor or pays the assignee directly
- D. Ineffective only if the assignee took steps beyond mere notification to enforce his rights to payment

130. A bank teller authorized to handle customer deposits steals \$5,000 from the cash drawer for her personal use. She is charged with both larceny and embezzlement. The most accurate analysis is:

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

131. A witness in a contract dispute testifies, "I'm sure the defendant signed the document on Tuesday because I saw him do it with my own eyes." The defendant's attorney objects, asserting that the witness lacks personal knowledge. Under FRE 602, the witness's testimony is:

- A. Inadmissible because witnesses must establish personal knowledge before any direct examination
- B. Inadmissible because eyewitness testimony alone is insufficient to authenticate a signed legal document
- C. Admissible only if the witness corroborates her statement with additional documentary evidence
- D. Admissible because the witness's own testimony establishes that she has personal knowledge of the event

132. An easement grants the dominant tenant "the right to use the existing path across the servient property for ingress and egress." Years later, the dominant tenant wants to widen the path to allow vehicles. The servient owner objects. The court should rule that:

- A. The widening exceeds the scope of the easement because the original grant contemplated only existing use
- B. The widening is permitted because easements are construed broadly to accommodate the dominant estate's needs
- C. The widening is permitted only if the dominant tenant compensates the servient owner for the additional burden
- D. The widening exceeds the scope only if it would cause physical damage to the servient property

133. A doctor in a small rural town treats a patient using procedures that conform to local medical practice but fall below the standard of care in major urban hospitals. The patient suffers harm and sues for malpractice. Under the modern majority approach, the doctor is held to:

- A. The standard of care of medical practitioners in the patient's home community at the time of treatment
- B. The standard of care of an ordinary lay person under similar circumstances of evaluating treatment
- C. A national standard of care of similarly qualified physicians under similar circumstances generally
- D. The highest standard of care available in the field, regardless of the doctor's actual qualifications

134. A plaintiff files a complaint. Twenty days after the complaint was served, the plaintiff seeks to amend her complaint to add a new claim. The defendant has not yet filed a responsive pleading. Under Federal Rule of Civil Procedure 15(a), the plaintiff:

- A. Must obtain leave of court to amend at any time after the original complaint has been filed and served
- B. May amend the complaint once as a matter of course before being served with a responsive pleading
- C. Must obtain the defendant's written consent or leave of court to make any pleading amendment
- D. May amend without restriction at any time during the pendency of the federal civil action

135. Congress conditions a state's receipt of federal highway funds on the state raising its drinking age to 21. A state challenges the condition as exceeding Congress's authority. Under *South Dakota v. Dole*, the condition is:

- A. Constitutional if it serves the general welfare, is unambiguous, and relates to the federal interest in highway safety
- B. Unconstitutional because Congress lacks authority to regulate the drinking age in any state directly
- C. Constitutional only if the federal interest in highway safety substantially outweighs the state's autonomy interests
- D. Unconstitutional because the condition coerces states into surrendering an essential sovereign power

136. A buyer contracts to purchase a particular parcel of land for \$250,000. The seller breaches by refusing to convey title. The buyer sues for specific performance. The seller objects, arguing the buyer can recover money damages instead. The court should:

- A. Award damages because monetary remedies generally make plaintiffs whole in land transactions
- B. Award specific performance only if the buyer can show no comparable land is available for purchase
- C. Award damages because specific performance is disfavored in modern contract law for land sales
- D. Award specific performance because every parcel of land is considered legally unique in equity

137. A police officer stops a person on the street based on reasonable suspicion that the person is involved in a recent armed robbery nearby. The officer pats down the outside of the person's clothing. During the

pat-down, the officer feels a hard object and removes it; it turns out to be a wallet. The officer opens the wallet and finds drugs inside. The drugs are:

- A. Admissible because the officer had reasonable suspicion to conduct the original initial stop
- B. Admissible because all evidence found during a lawful Terry stop is properly admissible against the suspect
- C. Inadmissible because the officer exceeded the scope of a Terry frisk by opening and searching the wallet
- D. Inadmissible because Terry frisks require both reasonable suspicion and a separate finding of probable cause

138. At trial, a plaintiff asks the court to take judicial notice that Christmas Day fell on a Friday in 2020. Under FRE 201, the court:

- A. May not take judicial notice without first having both parties present sworn evidence on the issue
- B. May take judicial notice because the fact is generally known and capable of accurate verification
- C. May take judicial notice only if both parties consent to the use of judicial notice in the case
- D. May not take judicial notice because calendar dates are not matters within the court's general knowledge

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

- A. A prevails because B took with actual notice of A's prior interest in the property and cannot recover
- B. B prevails because B recorded first, which is the controlling factor under race statute principles
- C. A prevails because race statutes always include exceptions for bad-faith subsequent purchasers
- D. B prevails only if B can establish bona fide purchaser status without any notice of A's interest

140. A car owner lends his vehicle to a friend for a single day. The friend keeps the car for two weeks despite the owner's repeated demands to return it. When the friend finally returns the car, the owner sues for conversion. The friend's conduct is:

- A. Conversion because the friend's two-week retention substantially interfered with the owner's possession
- B. Trespass to chattels but not conversion because the friend eventually returned the car undamaged
- C. Not actionable because the friend was originally given lawful permission to possess the vehicle
- D. Conversion only if the car was damaged or its value was diminished during the friend's possession

141. A plaintiff brings a federal claim against a defendant in federal court. The plaintiff also asserts a state-law claim against the same defendant arising from the same transaction. Under 28 U.S.C. § 1367, the federal court has:

- A. Jurisdiction over the state-law claim only if the parties are completely diverse and the amount exceeds \$75,000
- B. No jurisdiction over the state-law claim because federal courts may hear only claims arising under federal law
- C. Jurisdiction over the state-law claim only if the federal claim itself involves a constitutional question
- D. Supplemental jurisdiction over the state-law claim because both claims share a common nucleus of fact

142. A state legislature enacts a law that retroactively voids all existing private mortgages within the state if the borrower lives below the poverty line. A bank challenges the law under the Contract Clause. The law is:

- A. Constitutional because state legislatures have broad authority to regulate private mortgage contracts
- B. Constitutional because the law serves a legitimate public welfare purpose to protect needy borrowers
- C. Unconstitutional because the law substantially impairs existing contractual obligations without justification
- D. Unconstitutional only if the bank can establish that it has been financially harmed by the law's impact

143. A buyer sends a purchase order to a seller for goods. The seller responds with an acknowledgment that contains an additional term requiring arbitration of all disputes. Both parties are merchants, and neither expressly objects to the new term. Under UCC § 2-207, the arbitration clause:

- A. Becomes part of the contract unless it materially alters the agreement between the merchant parties

- B. Does not become part of the contract because all additional terms in acceptance require express assent
- C. Becomes part of the contract automatically because both parties are merchants regardless of materiality
- D. Does not become part of the contract because acceptances must mirror the original offer in all respects

144. A man sees a stranger being violently attacked in an alley. He intervenes and seriously injures the attacker. The attacker, it turns out, was actually a plainclothes police officer attempting a lawful arrest. The man is charged with assault. Under the majority "reasonable belief" rule, his defense of others claim is:

- A. Successful only if the stranger being attacked actually had the right to use force in self-defense
- B. Successful if the man reasonably believed the stranger needed protection from unlawful force
- C. Unsuccessful because the attacker was a police officer engaged in a lawful official arrest
- D. Unsuccessful because defense of others requires a pre-existing relationship between the parties

145. On cross-examination, a witness's testimony is attacked as a recent fabrication motivated by a deal with the prosecution. The witness made a consistent statement before the alleged motive arose. On redirect, the prosecution seeks to introduce the prior consistent statement. Under FRE 801(d)(1)(B), the statement is:

- A. Inadmissible because all prior statements by witnesses are considered hearsay under federal evidence rules
- B. Inadmissible because prior consistent statements may only be used to refresh a witness's recollection
- C. Admissible only if the witness expressly adopts the prior statement during direct examination
- D. Admissible as non-hearsay to rebut a charge of recent fabrication or improper influence on testimony

146. A grants B an easement to use a driveway across A's property for ingress and egress. Several years later, B purchases A's property in fee simple from A. The easement:

- A. Continues in effect because B's purchase of the servient estate does not affect the existing easement rights
- B. Continues only if B records a separate document confirming the easement's continued existence after merger

- C. Is extinguished by merger because the same person now owns both the dominant and servient estates
- D. Becomes a tenant by entirety estate because both interests are now held by the single owner alone

147. A seller of a used car tells the buyer that the car "runs perfectly and has had no major repairs." In fact, the engine had been rebuilt three months earlier, and the seller knew this. The buyer relies on the statement and buys the car. The engine fails shortly after the sale. The buyer sues for fraud. The buyer must prove all of the following EXCEPT:

- A. That the seller intended to permanently deprive the buyer of the purchase price for personal use
- B. That the seller made a material misrepresentation of fact knowing it was false at the time
- C. That the buyer justifiably relied on the seller's statement when deciding to purchase the car
- D. That the buyer suffered actual damages as a result of relying on the seller's false statement

148. A defendant fails to file an answer to a federal complaint within the required time. The clerk enters default. Two weeks later, the defendant moves to set aside the default, claiming his attorney made a calendaring mistake. Under Federal Rule of Civil Procedure 55(c), the court should:

- A. Deny the motion because mistakes by an attorney are not a recognized basis for vacating defaults
- B. Deny the motion because the defendant must demonstrate exceptional circumstances to vacate
- C. Grant the motion automatically because attorney calendaring errors are excusable under federal practice
- D. Grant the motion upon a showing of good cause, considering willfulness, prejudice, and meritorious defense

149. A state legislature enacts a law prohibiting any person previously convicted of a felony from holding public office in the state. A current officeholder with a 30-year-old felony conviction challenges the law. The strongest argument against the law is that it violates:

- A. The Equal Protection Clause by discriminating against persons with old felony convictions on their record
- B. The Ex Post Facto Clause by imposing a new punishment for past conduct already adjudicated as a crime
- C. Substantive due process by infringing the fundamental right to participate in democratic governance

D. The Privileges and Immunities Clause by restricting the political participation of long-standing citizens

150. An employer wrongfully terminates an employee with two years left on a five-year employment contract. The employee makes no effort to seek comparable employment elsewhere. He sues the employer for the remaining two years of salary. The employer argues for reduction of damages. The court should:

- A. Award the employee the full remaining contract amount because the employer wrongfully breached
- B. Award nothing because the employee bears the entire burden of demonstrating reasonable mitigation efforts
- C. Reduce the damages by what the employee could have earned through reasonable mitigation efforts
- D. Award the employee only nominal damages because he failed to seek any comparable work post-termination

151. Police illegally enter a suspect's home and observe contraband in plain view. They leave without seizing anything. Later, they apply for a warrant based on entirely independent information from an unconnected tip and surveillance. They obtain the warrant and seize the contraband. The contraband is:

- A. Inadmissible because the police gained their initial knowledge from the illegal entry into the home
- B. Inadmissible because subsequent warrants based on illegal observations are tainted by the original entry
- C. Admissible only if the police can establish that they would have inevitably discovered the evidence
- D. Admissible under the independent source doctrine because the warrant rested on untainted evidence

152. In a personal injury suit, the plaintiff seeks to introduce a statement made by the defendant to a friend, "I knew the brakes were bad, but I drove anyway." The statement was made outside of court. Under FRE 801(d)(2), the statement is:

- A. Inadmissible because all out-of-court statements by parties are hearsay requiring an applicable exception
- B. Admissible as a statement by an opposing party offered against that opposing party in litigation
- C. Inadmissible because the friend who heard the statement is not available to be cross-examined
- D. Admissible only if the defendant first testifies at trial and is subject to cross-examination on the statement

153. O conveys Blackacre "to A so long as the land is used for charitable purposes." After A receives the property and uses it for charitable purposes for 10 years, A converts the property to a commercial use. What interest, if any, does O have?

- A. A possibility of reverter, which automatically returns the property to O upon breach of the condition
- B. A right of entry, which O must affirmatively exercise to retake the property after breach occurs
- C. An executory interest in fee simple absolute that operates automatically by force of the conveyance
- D. No interest because the condition has been violated for too long to permit O's recovery of property

154. A homeowner operates a small kennel in her backyard. The kennel produces strong odors and loud barking that interfere with her next-door neighbor's reasonable enjoyment of his home. The neighbor sues for private nuisance. The homeowner's strongest defense is that:

- A. Her kennel operations are licensed by the state and therefore constitute a permitted activity by law
- B. The neighbor moved into the home after she had already been operating her kennel business
- C. The neighbor's use of his property is unusually sensitive and would not bother an ordinary person
- D. Operating a kennel for animals is not the type of activity that can constitute a nuisance under common law

155. A defendant files a Rule 12(b)(6) motion to dismiss but does not raise lack of personal jurisdiction. After the court denies the 12(b)(6) motion, the defendant attempts to file a separate motion challenging personal jurisdiction. The court should:

- A. Permit the personal jurisdiction motion because it raises a constitutional issue of fundamental importance
- B. Permit the motion if the defendant promptly raises the issue before any other substantive filing
- C. Deny the motion because personal jurisdiction can only be raised in the original answer to the complaint
- D. Deny the motion because personal jurisdiction was waived by not being raised in the first Rule 12 motion

156. A state law requires all children to attend school until age 16. Amish parents challenge the law as applied to their children after eighth grade, arguing it interferes with their religious upbringing of their children. Under *Wisconsin v. Yoder*, the law as applied is:

- A. Constitutional because compulsory education is a neutral law of general applicability under *Smith*
- B. Unconstitutional as applied because of the combined burden on religion and parental rights to direct child upbringing
- C. Constitutional because the state has a compelling interest in universal child education that overrides religion
- D. Unconstitutional only if the Amish demonstrate that compulsory school attendance would destroy their faith

157. A homeowner is unconscious when a fire breaks out in her house. A passing private contractor uses his own equipment to extinguish the fire, preventing major damage. The contractor later bills the homeowner \$5,000 for his time and equipment. The contractor is:

- A. Not entitled to payment because no contract was formed between the parties before the firefighting work
- B. Entitled to payment only if the homeowner expressly ratifies the firefighting services after the emergency
- C. Entitled to payment under quasi-contract because the homeowner received a substantial necessary benefit
- D. Not entitled to payment because the contractor acted as an officious intermeddler without prior authority

158. A defendant is charged with larceny for taking a coat from a restaurant coat check. He claims that he genuinely believed the coat was his own because it looked similar to his. The jurisdiction treats larceny as a specific intent crime. The defendant's mistake of fact is:

- A. A complete defense because he lacked the specific intent to deprive another of property he believed was his
- B. A complete defense only if his mistake was both honest and objectively reasonable in the circumstances
- C. Not a defense because mistake of fact is irrelevant to property crimes under common law

D. A partial defense reducing larceny to a lesser-included property offense not requiring specific intent

159. In a copyright dispute, the plaintiff seeks to introduce a photocopy of a contract to prove its contents. The original is in the defendant's possession. The plaintiff has demanded the original, but the defendant refuses to produce it. The photocopy is:

- A. Inadmissible because the best evidence rule requires production of the original document for proof
- B. Inadmissible unless the photocopy is authenticated by the original drafter of the contract
- C. Admissible only after the court issues a formal contempt order against the defendant for noncompliance
- D. Admissible because the original is in the opposing party's control and was not produced upon request

160. A neighbor takes possession of a 10-acre parcel based on a defective deed describing the entire parcel. She actually farms only 4 acres and leaves the rest untended for the statutory period. After 20 years, to how much land does she have title under adverse possession with color of title?

- A. The 4 acres she actually farmed, because color of title cannot expand actual physical occupation rights
- B. The entire 10 acres described in the defective deed under the doctrine of constructive adverse possession
- C. The 4 acres she farmed plus a reasonable buffer of additional surrounding unoccupied land
- D. None of the land because color of title requires actual occupation of every described parcel

161. A railroad employee negligently pushes a passenger boarding a train, causing the passenger to drop a package containing fireworks. The fireworks explode, knocking over scales at the other end of the platform, which fall on a bystander. The bystander sues the railroad. Under *Palsgraf v. Long Island Railroad*, the bystander's negligence claim should:

- A. Succeed because the railroad employee's negligence was the proximate cause of the bystander's injuries
- B. Succeed because all reasonably foreseeable consequences of negligent conduct are compensable in tort
- C. Fail because the bystander was not within the foreseeable zone of danger from the employee's conduct
- D. Fail because the explosion of fireworks was an unforeseeable intervening superseding cause of harm

162. A federal district court denies a defendant's motion to dismiss for lack of personal jurisdiction. The defendant immediately seeks to appeal the denial. The court of appeals should:

- A. Hear the appeal because personal jurisdiction challenges raise constitutional issues warranting immediate review
- B. Hear the appeal under the collateral order doctrine for orders affecting fundamental jurisdictional issues
- C. Refuse to hear the appeal only if the defendant has not preserved the personal jurisdiction issue properly
- D. Refuse to hear the appeal because the denial of the motion is not a final appealable judgment

163. A welfare recipient's benefits are terminated by a state agency without any prior hearing. The recipient sues, claiming a violation of procedural due process. Under *Goldberg v. Kelly*, the recipient is entitled to:

- A. A pre-termination evidentiary hearing because welfare benefits are a protected statutory entitlement
- B. Only a post-termination hearing because welfare benefits are gratuities the government may freely revoke
- C. No hearing because government benefits are not protected interests under the Due Process Clause
- D. A full trial-type hearing before any agency takes any action affecting public assistance benefits

164. A seller mails an offer to a buyer on Monday. On Wednesday, the buyer mails an acceptance. On Tuesday (before the buyer mails her acceptance), the seller mails a revocation. The buyer receives the revocation on Thursday. The acceptance reaches the seller on Friday. Under the mailbox rule, a contract:

- A. Was formed on Monday when the seller mailed the offer to the buyer for her consideration
- B. Was formed on Wednesday when the buyer mailed her acceptance, before receiving the revocation
- C. Was not formed because the buyer received the revocation before the acceptance reached the seller
- D. Was formed on Friday when the seller received the buyer's acceptance through the regular mail service

165. A defendant is tried for armed robbery in state court and acquitted. The federal government then prosecutes him for the same conduct under a federal bank robbery statute. The defendant moves to dismiss on double jeopardy grounds. Under the dual sovereignty doctrine, the prosecution is:

- A. Barred because double jeopardy prohibits successive prosecutions for the same conduct in any forum
- B. Barred only if the federal charges arise from the same statutory elements as the state offense
- C. Permitted only if the state government consents to the federal prosecution for the same conduct
- D. Permitted because each sovereign may prosecute for the same conduct violating its own laws

166. A witness in a civil deposition is asked about a transaction that may also constitute a crime. The witness invokes the Fifth Amendment privilege against self-incrimination. The opposing party argues that the privilege does not apply in civil cases. The witness's invocation is:

- A. Invalid because the Fifth Amendment privilege only applies in formal criminal proceedings against defendants
- B. Invalid in civil depositions but valid only in criminal trials where defendants are subject to criminal exposure
- C. Valid in any proceeding where the witness's testimony could reasonably incriminate her in a future criminal case
- D. Valid only if criminal charges have already been formally filed against the witness for the conduct

167. A city condemns a private home to construct a public school. The owner objects, arguing that her home has unique sentimental value to her family. Under the Fifth Amendment, the city must:

- A. Refrain from taking the property because sentimental value cannot be adequately compensated
- B. Compensate the owner for the fair market value of the property taken for the school construction
- C. Compensate the owner for the fair market value plus a premium reflecting the property's sentimental value
- D. Demonstrate a compelling public interest justifying the taking of private property for school construction

168. A photographer takes a candid photograph of a celebrity at a public event without her permission. The photographer then sells the photograph to a company that uses it without permission in advertising for its product. The celebrity sues the company for invasion of privacy. The most likely claim is:

- A. Intrusion upon seclusion because the photograph was taken without the celebrity's explicit permission

- B. Public disclosure of private facts because her image was disseminated without authorization
- C. False light because the company's use suggested the celebrity endorsed the advertised product
- D. Appropriation because her name or likeness was used commercially without her consent

169. A defendant in a federal action wishes to raise the statute of limitations as a defense. To preserve this defense, the defendant must:

- A. Plead the statute of limitations as an affirmative defense in the answer to the original complaint
- B. File a separate motion to dismiss specifically based on the statute of limitations before pleading
- C. Wait until trial to raise the defense through testimony from witnesses about timing of events
- D. Notify the plaintiff in writing of intent to assert the defense at least 30 days before trial begins

170. A state university opens a designated public forum by inviting all student groups to use a campus auditorium for political speakers. The university then denies a particular group's request because of disagreement with the group's political views. The denial is:

- A. Permissible because universities have broad discretion to regulate speech on their own campus property
- B. Permissible if the group's views are unpopular among the majority of the campus community
- C. Impermissible because viewpoint discrimination in a designated public forum violates the First Amendment
- D. Impermissible only if the group can show its views were entirely accurate and noncontroversial

171. A buyer rejects nonconforming goods shipped by a seller. The contract's delivery period has not yet expired. Under UCC § 2-508, the seller may:

- A. Demand the buyer accept the goods as delivered because mere nonconformity does not justify outright rejection
- B. Cure the nonconformity by notifying the buyer and tendering conforming goods within the contract time
- C. Sue immediately for breach because the buyer's rejection is itself a breach of the original sales contract
- D. Cancel the contract entirely without further obligation to deliver replacement goods to the buyer

172. A defendant grabs a victim on the street, forces her into his car at knifepoint, and drives her one block before stopping. He demands that she remove her jewelry, which she does. He then releases her unharmed. The defendant is charged with kidnapping. The most accurate analysis is:

- A. The defendant is not guilty of kidnapping because the asportation was only one block in distance
- B. The defendant is not guilty of kidnapping because the victim was released unharmed quickly after
- C. The defendant is guilty of robbery only because the movement was incidental to taking jewelry
- D. The defendant is guilty of kidnapping because confinement and movement satisfy the offense elements

173. In a fraud prosecution, the prosecution seeks to introduce evidence that the defendant has committed similar fraudulent schemes against other victims using the same modus operandi. Under FRE 404(b), the evidence is:

- A. Inadmissible because prior acts may never be introduced to show a defendant's criminal disposition
- B. Inadmissible because all prior bad acts are excluded from criminal trials as unfair propensity evidence
- C. Admissible to show common scheme, modus operandi, or identity rather than mere propensity
- D. Admissible only if the defendant first introduces evidence of his good character as truthful

174. In a notice jurisdiction, O conveys Blackacre to A; A records the deed. O then conveys Blackacre to B, who also records. B had actual knowledge of A's prior conveyance at the time of his purchase. As between A and B:

- A. A prevails because B had actual notice of A's prior interest at the time of his subsequent purchase
- B. B prevails because B recorded after A, which is sufficient under notice statute requirements
- C. A prevails because notice statutes always protect the first grantee regardless of recording timing
- D. B prevails because A's earlier recordation cannot defeat B's status as a subsequent purchaser

175. Two hunters negligently fire their rifles simultaneously in the direction of a third hunter. The third hunter is struck by a single bullet, but it cannot be determined which hunter fired it. The third hunter sues both. Under *Summers v. Tice*, the court should:

- A. Dismiss the case because the plaintiff cannot establish which defendant caused the injury directly
- B. Shift the burden to the defendants to prove which one's bullet caused the plaintiff's injury here
- C. Apportion damages equally between the two defendants regardless of which one actually caused harm
- D. Hold neither defendant liable because the plaintiff cannot satisfy traditional causation requirements

176. A plaintiff sues a defendant in federal court alleging \$80,000 in damages for breach of contract. The parties are completely diverse. After discovery, the defendant moves to dismiss for lack of jurisdiction, arguing the plaintiff's actual damages cannot exceed \$50,000. The court should:

- A. Dismiss the action because the plaintiff's actual damages will not exceed \$75,000 at trial
- B. Dismiss the action because the plaintiff bears the burden of proving the amount at the pleading stage
- C. Retain jurisdiction because the amount-in-controversy requirement is only a minimum threshold
- D. Retain jurisdiction unless it appears to a legal certainty that the claim is for less than the threshold

177. A famous celebrity is described in a tabloid magazine as having engaged in scandalous behavior. The article is false. The celebrity sues for defamation. Under *New York Times v. Sullivan*, the celebrity must prove the tabloid:

- A. Failed to use reasonable care in investigating the truth of the claims published in the magazine
- B. Published the false statements with negligence regarding the truth or falsity of the assertions
- C. Acted with actual malice — knowledge that the statements were false or reckless disregard of truth
- D. Acted with malicious intent to inflict emotional distress on the celebrity for personal reasons

178. A 17-year-old minor purchases an expensive watch from a jeweler for \$5,000. Two months later, while still a minor, he returns the watch and demands his money back. The watch has been worn but remains in good condition. The minor:

- A. Cannot disaffirm the contract because the watch has been used during the two months of possession
- B. May disaffirm the contract and recover the purchase price, returning the watch to the seller
- C. Must wait until reaching the age of majority to disaffirm contracts entered into as a minor

D. May not disaffirm because watches are necessities for which minors are bound under contract law

179. A man is angry at his neighbor. He pours gasoline on his neighbor's unoccupied commercial warehouse and ignites it. The fire causes substantial damage to the warehouse. The man is charged with arson. Under common law arson, which required the burning of a "dwelling house of another," the man is:

- A. Guilty of arson because all buildings owned by others are considered protected dwelling structures
- B. Guilty of arson because his intentional setting of fire to property of another satisfies the offense
- C. Not guilty of arson because commercial warehouses are within the curtilage of business property
- D. Not guilty of common law arson but guilty under modern statutes covering all property burning

180. A witness testifies that she once knew the details of a complex transaction but no longer remembers them. She prepared a written memo of the transaction shortly after it occurred when her memory was fresh. Under FRE 803(5), the memo may be:

- A. Read into evidence as a recorded recollection if the witness made it when the matter was fresh in her memory
- B. Admitted as an exhibit and given to the jury for review during deliberations on the witness's testimony
- C. Used only to refresh the witness's recollection of the transaction but cannot be read to the jury
- D. Excluded entirely because written memos by witnesses are inadmissible hearsay in federal court

181. Three siblings inherit a parcel of land as tenants in common. One sibling wishes to sell her interest but the others refuse. She sues for partition of the property. The court should:

- A. Deny partition because tenants in common must obtain unanimous consent before selling joint property
- B. Award partition only if the requesting sibling can establish that the other siblings have acted unreasonably
- C. Award partition by sale or partition in kind, as any cotenant has a right to seek partition of the estate
- D. Deny partition unless the requesting sibling first attempts to mediate the dispute with her siblings

182. A grocery store customer slips on a puddle of water in the produce aisle. The puddle had been there for 30 minutes, but no store employee had cleaned it up. The customer sues the store for negligence. Under premises liability for business invitees, the store owes the customer:

- A. No duty because business invitees assume the ordinary risks of shopping at any retail establishment
- B. A duty of reasonable care to discover and warn of or remedy dangerous conditions on the premises
- C. A duty only to warn of conditions actually known to store employees at the time of the incident
- D. The highest duty of care because business invitees pay for goods and services on the property

183. A plaintiff sues a defendant in federal court in State X. The defendant lives in State Y but committed a tort by sending a fraudulent email to the plaintiff in State X. The defendant has no other contacts with State X. Under *International Shoe* and its progeny, the court has personal jurisdiction:

- A. Only if State X has a long-arm statute that expressly authorizes jurisdiction over email senders
- B. Always because federal courts have nationwide service of process in federal question cases
- C. Only if the email caused significant economic damage in State X exceeding statutory thresholds
- D. If the defendant purposefully directed his activity at State X, creating sufficient minimum contacts

184. A state law prohibits same-sex couples from adopting children, while allowing different-sex couples to adopt. A same-sex couple challenges the law. Under modern Supreme Court doctrine, the law most likely violates:

- A. Substantive due process because adoption is a fundamental right protected against state interference
- B. The Establishment Clause by adopting a religious view of family structure in public policy
- C. Equal protection because the law discriminates based on sexual orientation without sufficient justification
- D. The Privileges and Immunities Clause by restricting parental rights based on personal characteristics

185. A homeowner contracts with a contractor to paint her house for \$5,000, payment due "upon completion." The contractor completes the work but uses paint of a slightly different shade than specified. The homeowner refuses to pay anything. Under the doctrine of substantial performance:

- A. The contractor may recover the contract price minus damages for the deviation from specifications
- B. The contractor may not recover anything because the contract was not strictly performed exactly
- C. The contractor may recover only the cost of materials and labor under quantum meruit principles
- D. The homeowner must pay the full contract price because the deviation is too minor to matter

186. A suspect is held in a police interrogation room for 24 hours without food, water, or sleep. Officers repeatedly tell him they will release him only if he confesses. He eventually confesses. The confession's admissibility turns on:

- A. Whether the suspect was given Miranda warnings before the interrogation began at any point
- B. Whether the officers had probable cause to suspect the defendant of any criminal offense
- C. Whether the suspect ultimately confessed truthfully and accurately about the underlying crime
- D. Whether the confession was voluntarily made under the totality of the circumstances analysis

187. A witness testifies on direct examination about events that occurred on June 1, 2024. On cross-examination, opposing counsel seeks to ask about events on June 15, 2024, that were not addressed during direct examination. Under FRE 611(b), the cross-examination is:

- A. Permitted because cross-examination may always cover any topic relevant to the witness's testimony
- B. Limited to the subject matter of direct examination and matters affecting witness credibility
- C. Prohibited because cross-examination is limited only to the precise topics covered during direct
- D. Permitted only with prior approval of the trial court and a showing of good cause for departure

188. A grantor conveys real property by a general warranty deed. The grantee later discovers an existing easement on the property that was not disclosed in the deed. Under the typical warranty deed covenants, the grantor has breached:

- A. The covenant of further assurances because additional acts were required to remove the easement
- B. The covenant of quiet enjoyment because the easement actually interferes with possession of the property
- C. The covenant against encumbrances because the easement existed at the time of the conveyance

D. The covenant of seisin because the easement establishes that the grantor lacked complete title

189. A pedestrian crosses against a red light and is struck by a speeding driver. In a traditional contributory negligence jurisdiction (without comparative fault), the pedestrian:

- A. May recover full damages because the driver's speeding was the proximate cause of the accident
- B. May recover reduced damages proportionate to her percentage of fault in causing the accident
- C. May recover damages only if the driver acted with reckless or wanton disregard for safety
- D. Is barred from recovery because her own contributory negligence is a complete defense to her claim

190. A plaintiff files a state-court complaint that alleges only state-law claims but anticipates a federal defense from the defendant. The defendant files a notice of removal based on the anticipated federal defense. The court should:

- A. Remand the action because federal-question jurisdiction is determined by the well-pleaded complaint rule
- B. Retain the action if the federal defense is substantial and clearly presented in the answer
- C. Remand the action only if the plaintiff explicitly disclaims any federal cause of action in her pleading
- D. Retain the action because anticipated federal defenses create federal-question jurisdiction for removal

191. Congress enacts a law requiring state law enforcement officers to perform background checks for federal firearm sales. A state challenges the law as unconstitutional. Under *Printz v. United States*, the law is:

- A. Constitutional because Congress has broad authority under the Commerce Clause to regulate firearms
- B. Unconstitutional because Congress cannot commandeer state executive officers to enforce federal law
- C. Constitutional if Congress provides federal funding for the state officers conducting the background checks
- D. Unconstitutional only if the state can demonstrate concrete harm caused by the federal requirement

192. A buyer orally agrees to purchase 100 widgets from a seller for \$50 per widget. After receiving the buyer's request, the seller manufactures 50 specially designed widgets to fulfill the order. The buyer then attempts to cancel. The seller sues to enforce the contract. The contract is:

- A. Unenforceable because UCC § 2-201 requires writing for any sale of goods exceeding \$500 in value
- B. Enforceable only to the extent of the 50 widgets the seller has already manufactured for the buyer
- C. Unenforceable because oral contracts for goods are never enforceable under UCC Article 2 provisions
- D. Enforceable under the specially manufactured goods exception to the UCC Statute of Frauds requirement

193. A man is approached by an armed assailant who threatens to kill him unless he robs a convenience store. Believing the threat to be credible, the man robs the store at gunpoint. He is charged with armed robbery. Under common law, his duress defense:

- A. Is unavailable because duress is never recognized as a defense to armed robbery offenses
- B. Is fully successful because any imminent threat of death excuses any subsequent criminal act
- C. Is available because duress generally excuses crimes other than murder under common law principles
- D. Is available only if the defendant first attempted to escape the threatening situation before complying

194. A witness for the prosecution testifies that she saw the defendant commit a robbery. On cross-examination, defense counsel wishes to ask the witness whether she received a plea deal from the prosecution in exchange for her testimony. The question is:

- A. Improper because plea deals between witnesses and prosecutors are protected information from cross
- B. Proper to show bias on the part of the witness toward the prosecution that produced her testimony
- C. Proper only with prior approval of the trial court and a showing of good faith basis for the question
- D. Improper because impeachment by prior bad acts is limited to specific types of crimes only

195. The owner of two adjoining lots uses a path on one lot to access a public road from the other lot. The owner sells the back lot to a buyer. The deed does not mention the path. The buyer claims an easement implied by prior use. The buyer's claim is most likely:

- A. Successful because the prior use was apparent, continuous, and reasonably necessary at severance
- B. Unsuccessful because easements cannot be implied when the deed expressly omits any mention of them
- C. Successful only if the buyer can establish absolute necessity for the path to the public road
- D. Unsuccessful because implied easements require express written acknowledgment by both parties

196. A pedestrian observes a drowning swimmer in a public pool. The pedestrian is an excellent swimmer and could easily rescue the drowning person at no risk to himself. He does nothing, and the swimmer drowns. In most American jurisdictions, the pedestrian:

- A. Is liable for negligent failure to act because rescuing the swimmer would have been a reasonable response
- B. Is liable because moral obligations create legally enforceable duties when one can prevent serious harm
- C. Is liable only if the pedestrian had a special relationship with the swimmer creating a duty to act
- D. Is not liable because there is generally no legal duty to rescue strangers from peril in common law

197. A plaintiff sues two contractors who jointly performed work on her house, alleging defective performance. The plaintiff names only one contractor as a defendant, omitting the other. The named contractor moves to require joinder of the omitted contractor. Under Federal Rule of Civil Procedure 19, the court should:

- A. Deny the motion because plaintiffs have complete discretion to choose which defendants to sue
- B. Deny the motion because joinder is required only in class actions involving numerous parties
- C. Grant the motion if the omitted contractor's absence would prejudice the parties or prevent complete relief
- D. Grant the motion only if the omitted contractor consents to being added as a co-defendant in the action

198. A state agency seeks to terminate a tenured public school teacher for incompetence. The agency provides the teacher with written notice of the charges, the evidence against her, and an opportunity to respond at an informal hearing before a neutral administrator. The teacher challenges the procedure as inadequate. Under *Mathews v. Eldridge*, the procedure is:

- A. Insufficient because tenured teachers always require formal evidentiary hearings before termination

- B. Sufficient because it provides notice, an opportunity to be heard, and a neutral decisionmaker
- C. Insufficient because terminations of government employment require judicial review before action
- D. Sufficient only if the teacher has access to legal counsel during the entire administrative proceeding

199. A consumer signs a take-it-or-leave-it loan agreement with terms heavily favoring the lender, including a clause waiving the borrower's right to sue in court. The borrower defaults, and the lender attempts to enforce the waiver. The court may refuse to enforce the agreement based on:

- A. Unconscionability because the contract terms appear procedurally and substantively unfair to the consumer
- B. Lack of consideration because the lender's loan represented a one-sided benefit to the borrower
- C. Frustration of purpose because the borrower's default substantially changes the contract's circumstances
- D. Mutual mistake because the borrower was unaware of all the consequences of the waiver provision

200. A defendant offers \$1,000 to a friend if the friend will burn down a competitor's warehouse. The friend immediately refuses the offer and walks away. The defendant has not taken any further steps toward the arson. He is charged with solicitation of arson. Under common law, the defendant is:

- A. Guilty of solicitation because the offense is complete when the request is made with criminal intent
- B. Not guilty because the friend's refusal to commit the arson defeats the solicitation charge
- C. Not guilty because no overt act in furtherance of the planned arson was actually undertaken
- D. Guilty of attempted arson because his offer constituted a substantial step toward burning the warehouse

Practice Exam 7: Answer Key with Explanations

1. B — Purposeful availment establishes minimum contacts. The defendant's deliberate sale of \$200,000 in goods to State A residents over three years constitutes purposeful availment of the forum state's market. Under *International Shoe* and its progeny, physical presence is not required when the defendant has systematically directed commercial activity at the forum state.

2. C — Overbreadth and vagueness invalidate content-based speech regulations. The phrase "may offend others" sweeps in vast amounts of protected expression and fails to give clear notice of what is prohibited.

Such standardless restrictions in a traditional public forum (a park) cannot survive First Amendment scrutiny.

3. A — UCC § 2-205 makes firm offers by merchants irrevocable for the stated period (up to three months) without consideration. The merchant's signed written offer to keep the offer open for 30 days created a firm offer. The mid-period revocation was legally ineffective, and the buyer's timely acceptance formed a binding contract.

4. D — Under the agency theory (majority rule), felony murder applies only when the killing is committed by the felons or their agent. The victim was killed by a non-felon (the store owner) acting in self-defense. The surviving robbers are not guilty of felony murder for the death of their own accomplice under the agency approach.

5. B — Excited utterance under FRE 803(2) applies to statements about a startling event made while the declarant was under the stress of excitement. The witness was visibly shaken five minutes after the collision, satisfying the stress requirement. The Confrontation Clause does not apply in civil cases.

6. A — Prescriptive easement requires open, notorious, continuous, and adverse use for the statutory period. The 22-year unpermitted use of the path exceeded the 20-year period, with the use being open and continuous. Because the use was without permission, it satisfies the hostility requirement.

7. C — Criminal acts by third parties are generally considered superseding causes that break the chain of proximate causation. A reasonable contractor would not foresee that leaving a tool on the porch would enable a burglar's attack. The unforeseeable criminal intervention cuts off the contractor's liability for the homeowner's injuries.

8. D — Under *Celotex Corp. v. Catrett*, summary judgment is appropriate where the non-movant fails to establish an essential element on which she bears the burden of proof. A conclusory affidavit lacking factual specificity does not create a genuine dispute. Where an essential element cannot be supported, the moving party is entitled to judgment as a matter of law.

9. A — *United States v. Lopez* held that mere possession of a firearm in a school zone is non-economic activity that does not substantially affect interstate commerce. Congress cannot regulate purely intrastate non-economic conduct under the Commerce Clause without aggregation principles. The Gun-Free School Zones Act exceeded Congress's commerce power.

10. C — Fraud in the inducement is a recognized exception to the parol evidence rule. The rule bars only evidence offered to vary the terms of an integrated writing, not evidence that the contract was procured by fraudulent misrepresentation. The buyer may introduce the oral statement to prove the seller induced the contract through fraud.

11. B — The mere custody doctrine recognizes that when a customer holds merchandise in a fitting room, the store retains constructive possession while the customer has mere custody. When the defendant formed the intent to permanently deprive while in custody, his subsequent carrying of the sweater out constituted trespassory taking, completing larceny.

12. D — Under FRE 405(a), once a character witness testifies to a person's reputation, the cross-examiner may inquire about specific instances of conduct to test the witness's knowledge and credibility. The "Did you know" form is permitted if asked in good faith. The cross-examiner need not prove the underlying act actually occurred.

13. A — In a pure notice jurisdiction, a subsequent bona fide purchaser without notice prevails over a prior unrecorded grantee. B took without actual, constructive, or inquiry notice of A's interest and paid value. B's status as a BFP at the time of conveyance is what matters; B need not record first under a notice statute.

14. B — Wild animals create strict liability regardless of their actual disposition. Raccoons are classified as wild (*ferae naturae*) even when raised in captivity. The owner is strictly liable for harm caused by characteristics typical of the species, including unpredictable biting.

15. D — Statutes of limitations are substantive law under *Guaranty Trust Co. v. York* because they are outcome-determinative — a federal court applying a different limitations period would produce a different result than a state court. Federal courts sitting in diversity must apply the forum state's limitations period to state-law claims.

16. C — Public school students have a property interest in continued enrollment arising from state law guaranteeing free public education. Under *Goss v. Lopez*, due process requires notice of the charges and an opportunity to be heard before disciplinary dismissal. Even informal procedures must include these basic protections.

17. A — Service contracts capable of performance within one year fall outside the one-year provision of the Statute of Frauds. A six-month renovation is fully performable within that period, so no writing is required. The oral agreement is enforceable on its terms.

18. C — *Michigan v. Mosley* permits re-interrogation about a different crime after the suspect's right to silence has been "scrupulously honored" — typically meaning a reasonable break in time, fresh *Miranda* warnings, and a different subject. All three conditions were satisfied here, so the confession is admissible.

19. B — The crime-fraud exception strips attorney-client privilege from communications made in furtherance of a future or ongoing crime or fraud. The client's stated plan to destroy evidence before a federal investigation falls squarely within this exception. The attorney may testify about the statement in subsequent proceedings.

20. D — Constructive eviction excuses a tenant's rent obligations when the landlord's breach of duty (failure to repair essential heating) renders the premises uninhabitable, forcing the tenant to vacate. The tenant must give notice and leave within a reasonable time, both of which occurred here.

21. B — Public officials suing for defamation must prove "actual malice" under *New York Times v. Sullivan* — that the defendant published with knowledge of falsity or reckless disregard for the truth. This heightened standard protects robust debate about public affairs. Mere negligence is insufficient.

22. A — FRCP 20(a)(2) permits permissive joinder of defendants when the claims arise from the same transaction or occurrence and share common questions of law or fact. Both criteria are clearly satisfied where multiple defendants caused a single accident. Severance would frustrate the efficient resolution of related claims.

23. C — Durational residency requirements that burden the fundamental right to interstate travel trigger strict scrutiny under the Equal Protection Clause (*Shapiro v. Thompson*; *Saenz v. Roe*). A five-year waiting period for university admission cannot be justified as narrowly tailored to a compelling state interest.

24. D — Specific performance is available when the subject matter is unique and money damages are inadequate. A rare antique vase with only three known examples worldwide is precisely the kind of unique subject matter equity protects. The buyer cannot obtain comparable performance through the marketplace.

25. A — Conspiracy is complete upon agreement plus (in most jurisdictions) an overt act. Withdrawal after the agreement is formed does not undo conspiracy liability; it only protects against liability for future acts of co-conspirators under *Pinkerton*. A is still guilty of the conspiracy itself even though he avoided liability for the robbery.

26. C — FRE 1004(1) permits secondary evidence of a writing's contents when the original is lost or destroyed, provided the proponent did not lose it in bad faith. The proponent satisfied this condition. Oral testimony is therefore admissible to prove the contract's contents.

27. B — Tenancy by the entirety can be severed or conveyed only by joint action of both spouses. Neither spouse may unilaterally convey the property or any portion of it without the other's consent. The husband's solo conveyance was entirely ineffective.

28. A — Negligence per se applies when (1) the defendant violated a statute, (2) the statute was designed to protect against the type of harm that occurred, and (3) the plaintiff is within the class the statute was designed to protect. Headlight statutes protect pedestrians from low-visibility collisions, satisfying all elements.

29. D — Complete diversity exists between citizens of different states with \$200,000 in controversy, exceeding \$75,000. The forum-defendant rule (28 U.S.C. § 1441(b)(2)) bars removal only when a defendant is a citizen of the state where the action is brought. The State Y defendant in State X court does not trigger that bar.

30. B — Under the *Lemon* test and its progeny, legislative purpose remains a critical factor in Establishment Clause analysis. *Wallace v. Jaffree* struck down an Alabama moment-of-silence statute precisely because legislative history showed an intent to return prayer to schools. Legislative purpose evidence provides the strongest constitutional basis.

31. C — Forbearance from a legal right constitutes valid consideration. The classic case *Hamer v. Sidway* held that giving up the legal right to smoke, drink, or gamble in exchange for a promise of payment is sufficient bargained-for detriment. The agreement is enforceable.

32. A — Deadly force in self-defense is justified only against threats of death or serious bodily injury. Unarmed punches generally do not justify the use of deadly force such as a knife. The disproportionate response undermines the defendant's self-defense claim.

33. D — FRE 609(a)(2) makes crimes involving dishonesty or false statement automatically admissible to impeach any witness, with no Rule 403 balancing. Perjury is a quintessential crime of dishonesty. The seven-year-old conviction is within the ten-year window of FRE 609(b) and is automatically admissible.

34. C — In foreclosure, sale proceeds are distributed in order of priority: senior liens first, then subordinate liens, with any surplus going to the borrower. The \$280,000 sale price is less than Bank A's \$300,000 senior debt. Bank B's junior mortgage receives nothing because no surplus exists.

35. B — A minor deviation from work duties for personal purposes is a "detour," which generally keeps the employee within the scope of employment. A four-block deviation is typically a detour, not a "frolic." The employer remains vicariously liable under respondeat superior.

36. D — Rule 4(e)(2)(B) requires service at the defendant's dwelling on someone "of suitable age and discretion who resides there." Courts routinely hold that 12-year-olds lack the requisite age and discretion. Actual notice alone does not cure defective service.

37. A — Under Penn Central Transportation Co. v. New York City, a regulatory taking analysis considers economic impact, interference with investment-backed expectations, and character of government action. A diminution from \$2 million to \$1.2 million still leaves substantial economically beneficial use. This is not a per se Lucas taking.

38. C — Intended third-party beneficiaries have direct standing to enforce contracts made for their benefit. The contract named the son and identified him as the recipient of the completed house, making him an intended beneficiary (not merely incidental). He may sue the breaching party directly.

39. B — Under the Model Penal Code § 5.01(4), voluntary and complete renunciation of criminal purpose is an affirmative defense to attempt. The defendant's abandonment must be motivated by a change of heart, not by fear of detection. Feeling overwhelmed by guilt reflects voluntary renunciation.

40. A — FRE 901(a) requires only "evidence sufficient to support a finding" that the item is what the proponent claims — a low threshold satisfied by circumstantial evidence such as contents, context, distinctive characteristics, or reply doctrine. Expert testimony or original metadata is not required. Authentication is a question of conditional relevance for the jury.

41. D — A class gift to "A's children" creates a vested remainder subject to open in any child alive at the conveyance, with the class remaining open during the life tenant's lifetime under the rule of convenience. D, born during A's life, takes a vested remainder subject to open along with the other children.

42. C — Intentional infliction of emotional distress requires conduct that is extreme and outrageous — exceeding all bounds of decency tolerated in a civilized community. Workplace retaliation involving public humiliation, ridicule, and demeaning tasks over an extended period can meet this standard, particularly given the employer's abuse of a position of power.

43. B — Under FRCP 23(b)(3), superiority is satisfied when individual recovery amounts are too small to justify separate litigation, making the class action the only realistic vehicle for redress. Small-claim consumer class actions are the paradigm case for (b)(3) certification.

44. A — Constitutional standing under *Lujan v. Defenders of Wildlife* requires (1) concrete and particularized injury, (2) traceability to the challenged conduct, and (3) redressability. Aesthetic or recreational interests of members who use the affected forest can satisfy injury-in-fact if pleaded with specificity.

45. D — Under UCC § 2-509(1)(a), in a shipment contract (FOB shipping point), risk of loss passes to the buyer when the seller duly delivers the goods to the carrier. The seller fulfilled its obligations by tendering to the common carrier. The buyer bears the loss from the fire in transit.

46. C — The M'Naghten test asks whether, at the time of the act, the defendant due to mental disease could not know the nature and quality of the act or did not know it was wrong. Inability to appreciate the moral wrongfulness of the killing satisfies the second prong, justifying acquittal by reason of insanity.

47. A — FRE 407 bars evidence of subsequent remedial measures when offered to prove negligence or culpable conduct, in order to encourage remedial action without fear of litigation consequences. The rule permits such evidence for other purposes such as impeachment or feasibility if disputed, but the rule bars use to prove negligence.

48. B — Most jurisdictions apply an objective standard to hostility for adverse possession: the use must be without permission, regardless of the possessor's subjective belief about title. The neighbor's mistaken belief does not negate hostility. Twenty-five years of open, continuous occupation satisfies all elements.

49. D — Strict products liability under Restatement (Second) § 402A requires that the product be in a defective condition unreasonably dangerous when it left the manufacturer's control. The plaintiff need not prove negligence or knowledge — only the defect, causation, and damages.

50. C — Rule 37(b)(2) authorizes a range of sanctions including striking pleadings, prohibiting claims or defenses, designating facts as established, dismissal, default, and attorney's fees. Imposing a fixed jail sentence as pure punitive incarceration on counsel is not among the Rule 37 enumerated sanctions, though contempt remedies exist separately.

51. B — Facial discrimination against interstate commerce triggers virtually per se invalidity under the Dormant Commerce Clause. Requiring in-state processing of milk facially favors local processors over out-of-state ones. The state cannot easily justify such overt discrimination without showing no nondiscriminatory alternatives exist.

52. A — Mutual mistake about a basic assumption that materially affects the agreed exchange permits rescission, provided the adversely affected party did not assume the risk. Both parties believed the painting was a copy, and the actual identity is a basic assumption affecting value. Rescission is the proper remedy under Restatement (Second) § 152.

- 53. D** — The plain view doctrine permits seizure of incriminating evidence discovered during a lawful search, provided the officer is lawfully present, has lawful access to the item, and its incriminating character is immediately apparent. All conditions are satisfied when officers find cocaine while lawfully searching a desk drawer pursuant to a valid warrant.
- 54. C** — Under FRE 701, lay opinion is admissible if rationally based on the witness's perception and helpful to the trier of fact. Speed estimation by an ordinary observer is a paradigmatic example of permissible lay opinion. No special qualifications are required.
- 55. C** — The doctrine of changed conditions excuses enforcement of a covenant when the character of the neighborhood has so changed that the original purpose of the covenant can no longer be substantially achieved. Dramatic changes in surrounding uses defeat the equitable basis for enforcement.
- 56. A** — The shopkeeper's privilege permits a merchant to detain a suspected shoplifter for a reasonable time in a reasonable manner to investigate, provided there is reasonable cause. The guard observed conduct giving rise to reasonable suspicion. A 30-minute on-premises detention for investigation typically falls within the privilege.
- 57. B** — 28 U.S.C. § 1331 grants federal district courts subject matter jurisdiction over civil actions arising under federal law. A claim under a federal civil rights statute is a quintessential federal question. No amount-in-controversy requirement applies to federal question jurisdiction.
- 58. D** — *Griswold v. Connecticut* established that the Due Process Clause protects a fundamental right to marital privacy, including the right to use contraception. A blanket ban on contraceptive use intrudes on this protected zone. Substantive due process provides the strongest basis for invalidating the law.
- 59. A** — Anticipatory repudiation by clear and unequivocal statement that the promisor will not perform allows the non-breaching party to treat the contract as immediately breached and sue for damages without awaiting the performance date. The contractor's letter was unambiguous, triggering the homeowner's immediate remedies.
- 60. B** — Under the natural and probable consequences doctrine (majority rule), an accomplice is liable not only for crimes he intentionally aided but also for any crime that was a foreseeable consequence of the planned crime. Death during an armed robbery is a foreseeable consequence even without prior knowledge of the weapon.
- 61. C** — FRE 803(6) admits business records made at or near the time by someone with knowledge, kept in the regular course of business, where making the record is a regular practice. The custodian's foundational testimony establishes the necessary elements. The invoice fits squarely within the exception.
- 62. D** — After assignment of a lease without an anti-assignment clause, the original tenant remains liable under privity of contract (his promise to pay rent), while the assignee becomes liable under privity of estate (current possession). The landlord may pursue either party for the unpaid rent.
- 63. B** — The zone of danger rule limits NIED recovery to plaintiffs who were themselves in physical danger from the defendant's negligence and feared for their own safety. The mother on the corner was not

in the path of the vehicle. The majority zone-of-danger test denies recovery for bystander emotional distress in this scenario.

64. A — Twombly and Iqbal require that a complaint contain factual allegations rendering the claim plausible on its face, not merely conceivable. Conclusory legal labels without supporting factual content fail this standard. Dismissal under 12(b)(6) is appropriate.

65. C — Gender classifications trigger intermediate scrutiny under Craig v. Boren — the law must be substantially related to an important governmental objective. A law imposing child support obligations only on fathers is a facial gender classification requiring substantial justification.

66. D — UCC § 2-606 and § 2-601 (perfect tender) give the buyer of nonconforming goods three options: reject the whole, accept the whole, or accept any commercial unit and reject the rest. All three responses are available where, as here, the goods fail to conform.

67. B — Under Massiah v. United States, once the Sixth Amendment right to counsel attaches at formal charging or arraignment, the government may not deliberately elicit incriminating statements from the defendant without counsel present. Use of an undercover informant to elicit statements violates this rule.

68. B — The medical record is hearsay (a business record offered for truth), and the patient's embedded statement about fault is also hearsay. Each level requires its own exception. While the record qualifies under the business records exception, statements identifying who is at fault are not pertinent to diagnosis and treatment, so no FRE 803(4) exception applies for the inner layer.

69. A — Marketable title means title reasonably free from doubt and not subject to litigation. An unsatisfied mortgage is curable at closing through an escrow arrangement applying sale proceeds to discharge the lien. The seller's escrow offer renders title marketable as of closing, so the buyer must close.

70. D — Battery is the intentional unconsented touching of another. Consent to one procedure (knee surgery) does not extend to a different procedure (appendectomy) absent emergency. Non-emergency extension beyond the scope of consent constitutes medical battery, regardless of the patient's best interests.

71. C — Under 28 U.S.C. § 1391(b), venue lies in (1) a district where any defendant resides if all defendants reside in the same state, or (2) a district where a substantial part of the events occurred. State Y (defendant's residence) and State Z (events) are both proper venues.

72. A — Employment Division v. Smith held that neutral laws of general applicability do not violate the Free Exercise Clause even if they burden religious practice. A general drug prohibition is neutral and generally applicable. No strict scrutiny applies absent targeting of religion.

73. D — Promissory estoppel under Restatement (Second) § 90 awards damages limited to the extent justice requires — typically reliance damages, not full expectation damages. The candidate may recover for moving expenses and lost wages from her prior job, but not the full salary of the revoked offer.

74. B — Statutory rape is a strict liability offense as to the victim's age in most jurisdictions. Reasonable mistake about age is not a defense, even when the defendant relied on the victim's express representation. The policy is to protect minors regardless of the defendant's subjective belief.

75. C — Under federal common law, the marital communications privilege belongs to the communicating spouse (the non-testifying spouse). The husband, not the wife, may invoke the privilege to prevent disclosure of confidential marital communications. The wife's willingness to testify does not waive his privilege.

76. A — A deed must describe the property with sufficient definiteness to identify it. A street address that adequately identifies the parcel satisfies this requirement; no specific form (metes and bounds, lot and block) is mandatory. The conveyance is valid.

77. D — Under traditional common law, a landowner owes a discovered trespasser only a duty to refrain from willful, wanton, or intentional harm — and to warn of known hidden artificial dangers. The homeowner did warn by posting a sign, so he fulfilled even the limited duty owed.

78. D — Complete diversity under *Strawbridge v. Curtiss* requires that no plaintiff share citizenship with any defendant. The plaintiff and Defendant 1 are both State A citizens, destroying complete diversity. No diversity jurisdiction exists regardless of the amount in controversy.

79. B — *Mathews v. Eldridge* balances (1) the private interest affected, (2) the risk of erroneous deprivation under existing procedures and probable value of additional safeguards, and (3) the government's interest including fiscal and administrative burdens. All three factors must be weighed in any procedural due process analysis.

80. C — A financing condition makes obtaining financing a condition precedent to the buyer's duty to close. When the buyer makes good-faith efforts but cannot obtain financing on reasonable terms, the condition fails, and the buyer is excused from performance. Good-faith effort was required and provided.

81. A — Voluntary manslaughter arises when an intentional killing occurs in the heat of passion upon adequate provocation, with insufficient cooling time. Discovering a spouse in flagrante delicto is the paradigmatic common law example of adequate provocation, reducing murder to voluntary manslaughter.

82. B — FRE 406 admits evidence of a person's habit — a regular, almost reflexive response to a specific situation. Stopping at every stop sign on a daily commute can qualify as habit if sufficiently regular and specific. Habit evidence is distinguished from inadmissible propensity character evidence.

83. D — Non-judicial foreclosure pursuant to a contractual power-of-sale clause generally does not involve state action and therefore does not trigger constitutional due process protections. Private contractual remedies between borrower and lender, even when state law authorizes them, are not state action under current doctrine.

84. C — In pure comparative negligence, the plaintiff's recovery is reduced by her own percentage of fault, but recovery is not barred even at high fault percentages. With 40% fault and \$100,000 damages, the plaintiff recovers \$60,000 (60% of total).

85. A — Claim preclusion (*res judicata*) bars relitigation of claims that were or could have been raised in a prior action between the same parties involving the same transaction. The fraud claim arising from the same contract transaction was available in the first suit and is now precluded under the transactional test.

86. A — The Privileges and Immunities Clause of Article IV prohibits states from discriminating against nonresidents in fundamental economic activities, including the pursuit of common callings. *Hicklin v. Orbeck* struck down Alaska's similar residency requirement for oil pipeline workers. The clause provides the strongest basis for challenge.

87. C — The common law pre-existing duty rule renders unenforceable a promise to pay more for performance the promisee was already legally obligated to provide. Increased material costs alone are not unforeseeable difficulties under the common law (the UCC takes a different approach). Without new consideration, the modification fails.

88. B — Under *United States v. Leon*, evidence obtained by officers in objectively reasonable reliance on a facially valid warrant — even one later determined to lack probable cause — is admissible. The good-faith exception preserves the exclusionary rule's deterrent purpose while not punishing reasonable police conduct.

89. D — Under *Daubert* and FRE 702, the trial judge must serve as a gatekeeper, evaluating whether expert testimony is based on reliable methodology and would assist the trier of fact. Relevant factors include peer review, error rates, and general acceptance. Reliability is the touchstone.

90. A — Language granting a right "to re-enter and retake" creates a fee simple subject to condition subsequent, with the grantor retaining a right of entry (also called power of termination). Unlike a possibility of reverter, a right of entry does not vest automatically — the grantor must affirmatively exercise it.

91. C — *Gertz v. Robert Welch* held that private figures suing for defamation on matters of public concern must prove at least negligence as to falsity. States may impose higher standards but cannot impose strict liability. The actual malice standard applies only to public officials and public figures.

92. B — Interpleader is the proper procedural device when a stakeholder faces multiple competing claims to a single fund or property. Filing a complaint in interpleader requires all claimants to assert their rights in a single action, protecting the stakeholder from multiple inconsistent obligations.

93. D — *Texas v. Johnson* held that flag burning as political protest is expressive conduct protected by the First Amendment. Content-based restrictions on such symbolic speech must satisfy strict scrutiny, which a flag desecration law cannot meet because protecting the flag from disrespect is not a permissible governmental interest.

94. C — The implied warranty of merchantability under UCC § 2-314 applies only to sales by a merchant — one who deals in goods of the kind. A private, non-merchant seller of a used lawnmower does not provide this warranty. The buyer's claim under § 2-314 fails.

95. A — Common law burglary required a "breaking" — some application of force, however slight, to enter. Lawful entry through an open door during business hours involves no breaking. Without that element, no common law burglary occurred regardless of intent, though modern statutes have abolished the breaking requirement.

96. B — FRE 803(3) admits statements of the declarant's then-existing state of mind, including intent to do something in the future. A testator's statement about testamentary intent is admissible to prove subsequent action consistent with that intent (*Mutual Life Insurance Co. v. Hillmon*).

97. D — Abandonment of an easement requires both (1) intent to abandon and (2) conduct manifesting that intent. The explicit statement of intent plus five years of nonuse and reliance on an alternative route together extinguish the easement by abandonment.

98. A — Trespass to chattels (unlike conversion) requires proof of actual damage, impairment, or interference with the owner's possessory interest. Merely moving a chattel without damage typically does not satisfy this element. Nominal damages alone do not lie for trespass to chattels in most jurisdictions.

99. C — *Daimler AG v. Bauman* limits general personal jurisdiction over corporations to states where the corporation is "at home" — paradigmatically the state of incorporation and principal place of business. Minor sales activity in a state does not make the corporation "at home" there.

100. B — Content-neutral time, place, and manner restrictions are constitutional if they (1) are narrowly tailored to serve a significant governmental interest and (2) leave open ample alternative channels. A nighttime amplified sound ban serves the significant interest in protecting residential quiet and is content-neutral on its face.

101. D — *Krell v. Henry* recognized frustration of purpose when an unforeseeable event destroys the principal purpose of a contract known to both parties. The parade was the foundation of the rental agreement, and its cancellation eliminated the value of the room to the buyer. Performance is excused.

102. A — Robbery is larceny from the person by force or threat of imminent force. The threat to punch the victim if he did not surrender his wallet constitutes the requisite threat of imminent bodily harm. Robbery does not require deadly force.

103. C — FRE 804(b)(3) admits statements that, when made, were so contrary to the declarant's pecuniary, proprietary, or penal interest that a reasonable person would not have made them unless true. Statements admitting fraudulent conduct are against the declarant's penal interest, and the declarant's death satisfies unavailability.

104. B — Tenant-installed fixtures (trade fixtures or domestic fixtures attached for the tenant's use) may generally be removed before the end of the lease, provided removal does not cause material damage. Removable bookshelves attached by screws fall within this rule.

105. A — *Res ipsa loquitur* permits an inference of negligence when (1) the event ordinarily does not occur without negligence, (2) the instrumentality was within the defendant's exclusive control, and (3) the

plaintiff did not contribute. Sudden elevator failures meet all three elements, allowing the case to reach the jury.

106. D — Under FRCP 56, summary judgment is inappropriate when material disputes exist about facts requiring credibility determinations. The court does not weigh evidence or assess witness credibility at the summary judgment stage — those functions are reserved for the trier of fact.

107. C — The Eleventh Amendment bars private suits for damages against states in federal court, subject to limited exceptions (state consent, congressional abrogation under § 5 of the Fourteenth Amendment, Ex parte Young actions for prospective relief against state officials). A damages action by a private citizen against a state is barred.

108. B — UCC § 2-306(1) limits requirements contracts to quantities that are not unreasonably disproportionate to any stated estimate or, absent estimate, to comparable prior requirements. A tenfold sudden increase is presumptively unreasonable, allowing the seller to refuse the disproportionate portion.

109. A — Miranda warnings are required only for custodial interrogation. A suspect who voluntarily appears at a police station and is free to leave is not in custody, regardless of the location of questioning. The voluntariness of the visit defeats the custody element.

110. C — FRE 901(b)(5) permits voice identification "based on hearing the voice at any time under circumstances that connect it with the alleged speaker." Even minimal familiarity suffices to authenticate, with the weight of the identification left to the jury.

111. D — The Rule Against Perpetuities voids an interest that may vest beyond lives in being plus 21 years. B's executory interest could vest centuries from now (whenever the land is no longer used residentially). Without a measuring life, the interest is void from the outset, leaving A with a fee simple determinable and O with a possibility of reverter.

112. B — Under traditional contribution rules among joint tortfeasors, a defendant who pays more than his proportionate share may recover contribution from co-defendants in proportion to their fault. Defendant A can recover Defendant B's pro rata share, not the full amount paid.

113. A — Erie Railroad Co. v. Tompkins requires federal courts sitting in diversity to apply state substantive law, including state-created causes of action. Federal courts do not develop independent federal common law in diversity cases. The state cause of action governs.

114. D — Race-based classifications by government trigger strict scrutiny under Adarand Constructors v. Peña — the classification must be narrowly tailored to serve a compelling governmental interest. Remedying identified past discrimination by the specific government actor can be a compelling interest, but the means must be precisely tailored.

115. C — The part performance doctrine permits enforcement of an oral land sale contract when the buyer takes possession, makes improvements, and pays consideration — actions unequivocally referable to the contract. All three indicia are present, taking the oral agreement out of the Statute of Frauds.

116. A — A grossly negligent intervening medical act can constitute a superseding cause that breaks the chain of legal causation under common law. Ordinary medical malpractice is foreseeable and does not break causation, but grossly negligent treatment such as use of a grossly contaminated needle may rise to the level of superseding causation. This is the defendant's strongest framed argument among the choices.

117. B — FRE 612 entitles an adverse party to inspect any writing used to refresh a witness's recollection while testifying, to cross-examine the witness about it, and to introduce relevant portions into evidence. The refreshing document itself need not be admitted, but the adverse party has full access for cross-examination.

118. C — A joint tenant may unilaterally sever the joint tenancy by conveying his interest to a third party. The conveyance destroys the four unities (typically time, title, interest, and possession). After severance, the new owner (C) holds as tenant in common with the remaining cotenant (B).

119. D — Assault requires (1) intent to cause apprehension of imminent harmful or offensive contact, and (2) the plaintiff's reasonable apprehension. The apparent ability to inflict harm (here, the appearance of a loaded gun) is sufficient even when actual ability is lacking. The plaintiff's reasonable fear satisfies the element.

120. A — FRCP 13(a) makes a counterclaim compulsory if it arises out of the same transaction or occurrence as the opposing party's claim. Failure to plead a compulsory counterclaim results in its waiver — the defendant cannot raise it in any future action.

121. C — *Dobbs v. Jackson Women's Health Organization* overruled *Roe v. Wade* and *Planned Parenthood v. Casey*, holding that the Constitution does not confer a right to abortion. Post-*Dobbs*, abortion regulations are subject only to rational basis review, and no fundamental federal abortion right remains.

122. C — Liquidated damages clauses are enforceable only if (1) actual damages are difficult to ascertain, and (2) the stipulated amount is a reasonable forecast of probable harm. An amount five to ten times the likely actual damages functions as a penalty and is unenforceable as a matter of public policy.

123. B — Under the common law bilateral conspiracy rule, conspiracy requires a genuine agreement between two or more persons with criminal intent. When the other party is an undercover officer who feigns agreement without criminal intent, no true agreement exists. Solicitation, by contrast, is a unilateral offense complete upon the request.

124. D — FRE 804(b)(2) admits dying declarations in homicide prosecutions and civil cases when the declarant believed death was imminent and the statement concerned the cause or circumstances of impending death. The exception is narrower than at common law but clearly applies in homicide trials.

125. A — Easement by necessity arises when (1) the dominant and servient parcels were once unified in ownership, (2) severance occurred, and (3) the easement is strictly necessary for access. Landlocked back parcels with no other practical access satisfy the necessity element. An easement is implied by law.

126. B — Blasting and the use of high explosives are paradigmatic abnormally dangerous activities under Restatement (Second) of Torts § 519 and § 520, triggering strict liability for resulting harm. Reasonable care is no defense to strict liability for abnormally dangerous activities.

127. D — 28 U.S.C. § 1446(b)(1) requires removal within 30 days after service of the initial pleading. Late removal is procedurally defective, and timely objection by the plaintiff requires remand. The 35-day filing was untimely.

128. C — *Central Hudson Gas & Electric Corp. v. Public Service Commission* established a four-part test for commercial speech regulation: (1) the speech must concern lawful activity and not be misleading, (2) the asserted governmental interest must be substantial, (3) the regulation must directly advance that interest, and (4) the regulation must be no more extensive than necessary.

129. A — After notice of assignment, the debtor must pay the assignee, not the original creditor. Payment to the original creditor after notice does not discharge the debt — the debtor remains liable to the assignee. Pre-notice payments would have been effective; post-notice payments are not.

130. B — Embezzlement is the fraudulent conversion of property by one lawfully in possession of it. The teller's authorized possession of the cash drawer makes her conversion embezzlement rather than larceny, which requires a trespassory taking from another's possession.

131. D — Under FRE 602, a witness's own testimony may establish the foundation for personal knowledge. The witness's statement that she saw the signing satisfies the personal knowledge requirement, and the trier of fact assesses credibility.

132. A — An easement is construed according to its terms and the parties' intent at the time of grant. A grant of "right to use the existing path" limits the easement to the manner of use contemplated by the grant. Substantially expanding the use (widening for vehicles) exceeds the scope.

133. C — The modern majority approach abandons the strict locality rule and applies a national standard of care for similarly qualified physicians. Specialists are held to the national standard of their specialty; general practitioners are held to the standard of similarly situated practitioners under similar circumstances.

134. B — FRCP 15(a)(1)(A) allows a party to amend its pleading once as a matter of course within 21 days after serving it, or 21 days after a responsive pleading or motion under Rule 12(b), (e), or (f). With no responsive pleading filed and the amendment within the time period, leave of court is not required.

135. A — *South Dakota v. Dole* established that conditional federal spending is permissible if: (1) it pursues the general welfare, (2) conditions are unambiguous, (3) conditions are related to the federal interest in the program, and (4) no other constitutional provision bars the condition. Highway funds conditioned on drinking age satisfies these elements.

136. D — Land is considered legally unique in equity, and specific performance is the traditional remedy for breach of a land sale contract. Money damages are presumed inadequate because no two parcels are interchangeable. The buyer is entitled to specific performance.

137. C — *Terry v. Ohio* and *Minnesota v. Dickerson* limit a protective frisk to a pat-down for weapons; an officer may seize contraband only when its identity is immediately apparent from the touch. Opening a wallet to look inside exceeds the scope of a *Terry* frisk, rendering the drug evidence inadmissible.

138. B — FRE 201(b) permits judicial notice of adjudicative facts that are not subject to reasonable dispute because they are (1) generally known within the trial court's territorial jurisdiction, or (2) capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned. Calendar dates fit the second category.

139. B — Under a pure race statute, the first to record prevails, regardless of notice or good faith. B recorded first and therefore prevails over A even though B had actual notice of A's interest. Race statutes prioritize recording over good faith.

140. A — Conversion is an intentional exercise of dominion or control over a chattel that so seriously interferes with the owner's right of control that the actor may justly be required to pay full value. Retention for two weeks against the owner's demands is a substantial interference, justifying a conversion claim.

141. D — 28 U.S.C. § 1367 grants federal courts supplemental jurisdiction over claims that form part of the same case or controversy as a claim within original jurisdiction, meaning they share a "common nucleus of operative fact" under *United Mine Workers v. Gibbs*. Claims arising from the same transaction satisfy this standard.

142. C — The Contract Clause prohibits states from passing laws that substantially impair existing contractual obligations unless the impairment is reasonable and necessary to serve an important public purpose. A retroactive law voiding all existing mortgages substantially impairs contracts without an adequately tailored justification.

143. A — UCC § 2-207(2) provides that between merchants, additional terms in an acceptance become part of the contract unless (a) the offer expressly limits acceptance to its terms, (b) the new terms materially alter the offer, or (c) notification of objection is given. Whether arbitration clauses materially alter a contract is determined case-by-case.

144. B — The majority "reasonable belief" rule for defense of others allows the defender to use force if he reasonably believes the person being aided is entitled to use force in self-defense. A genuine and reasonable mistake about the lawfulness of the apparent attack is excused, even if the mistake turns out to be wrong.

145. D — FRE 801(d)(1)(B) classifies prior consistent statements as non-hearsay when offered to rebut an express or implied charge of recent fabrication, improper influence, or motive, provided the statement was made before the alleged motive arose. This precise scenario satisfies the rule.

146. C — When the same person acquires ownership of both the dominant and servient estates in fee simple, the easement is extinguished by merger. Easements cannot exist when both parcels are under unified ownership because one cannot have an easement over one's own land.

147. A — Common law fraud requires: (1) misrepresentation of material fact, (2) knowledge of falsity (scienter), (3) intent to induce reliance, (4) justifiable reliance, and (5) damages. "Intent to permanently deprive" is an element of larceny, not fraud, and is not required for the civil tort.

148. D — FRCP 55(c) permits the court to set aside an entry of default for "good cause." Courts consider whether the default was willful, whether the opposing party would be prejudiced by setting it aside, and whether the defaulting party has a meritorious defense. Attorney calendaring mistakes often constitute excusable neglect.

149. B — Among the four options, the Ex Post Facto Clause provides the most concrete constitutional framework for challenging a retroactive criminal-related disability. The argument is that disqualifying long-ago felons from office imposes a new consequence for past conduct. Whether the challenge ultimately succeeds depends on whether courts deem the disqualification regulatory or punitive — a contested doctrinal question.

150. C — A non-breaching party has a duty to mitigate damages by making reasonable efforts to avoid loss. Failure to seek comparable employment reduces recovery by the amount the employee could have reasonably earned. The employer bears the burden of proving available comparable work.

151. D — The independent source doctrine (*Murray v. United States*) admits evidence obtained through a source genuinely independent of any prior illegality. Where police obtain a warrant based entirely on untainted information unconnected to the illegal entry, the resulting seizure is admissible.

152. B — FRE 801(d)(2) classifies statements by a party opponent as non-hearsay when offered against that party. The defendant's own admission about knowing of brake defects is admissible against him without any hearsay exception, because party admissions are categorically excluded from the hearsay definition.

153. A — Language "so long as" creates a fee simple determinable, with the grantor retaining a possibility of reverter. Upon breach of the condition, the property automatically reverts to the grantor without any affirmative act required. The conversion to commercial use triggered the automatic reversion.

154. C — Private nuisance is judged by the standard of ordinary persons in the community, not unusually sensitive plaintiffs. If a reasonable person would not be substantially disturbed by the activity, no nuisance exists. The plaintiff's unusual sensitivity defeats the claim under the objective standard.

155. D — FRCP 12(g)(2) and 12(h)(1) require that defenses listed in 12(b)(2)-(5) — including lack of personal jurisdiction — be raised in the first Rule 12 motion or in the responsive pleading, or they are waived. The defendant's failure to include personal jurisdiction in the initial 12(b)(6) motion waived the defense.

156. B — *Wisconsin v. Yoder* recognized a limited exception to neutral laws of general applicability where the burden on religion combines with another fundamental right (here, parental rights to direct children's upbringing). The hybrid-rights rationale survived *Smith* and supports the Amish exemption from compulsory education laws.

157. C — Quasi-contract (unjust enrichment) permits recovery when one party confers a non-officious benefit on another in an emergency where the recipient cannot consent, and a reasonable person would have wanted the assistance. Emergency intervention to prevent fire damage to an unconscious homeowner satisfies these elements.

158. A — Specific intent crimes require the defendant to act with the specific mental state defined by the offense (here, intent to permanently deprive another of property). An honest mistake of fact — even if unreasonable — that negates this specific intent is a complete defense. Reasonableness is not required for specific-intent crimes.

159. D — FRE 1004(3) makes secondary evidence admissible when the original is in the possession of the opposing party, who has been notified of intent to introduce it and fails to produce. The defendant's refusal to produce the original upon demand satisfies this exception.

160. B — Color of title under a defective deed allows the doctrine of constructive adverse possession: actual possession of a portion of the described tract is treated as possession of the entire tract described in the deed, provided the unused portions are not in someone else's actual possession. The neighbor obtains title to all 10 acres described.

161. C — *Palsgraf v. Long Island Railroad* held that a defendant owes a duty of care only to plaintiffs within the foreseeable zone of danger. A bystander far from the original negligent act is not a foreseeable plaintiff. Without a duty owed to this plaintiff, no negligence claim lies under Cardozo's majority opinion.

162. D — Under 28 U.S.C. § 1291, federal courts of appeals have jurisdiction only over final decisions of district courts. Denial of a motion to dismiss is interlocutory and not appealable, even on personal jurisdiction grounds. The collateral order doctrine does not apply to personal jurisdiction denials.

163. A — *Goldberg v. Kelly* held that welfare benefits are property interests protected by procedural due process, and recipients are entitled to a pre-termination evidentiary hearing before benefits are terminated. The severity of the deprivation (loss of subsistence) requires pre-termination process.

164. B — Under the mailbox rule, acceptance is effective upon dispatch (when properly mailed), while revocation is effective only upon receipt. The buyer's acceptance was effective Wednesday when mailed; the revocation was not yet effective because it had not yet been received. A contract was formed at the moment of acceptance.

165. D — The dual sovereignty doctrine (*Heath v. Alabama*; *Gamble v. United States*) permits successive prosecutions by separate sovereigns (state and federal) for the same conduct without violating double jeopardy. Each sovereign vindicates its own laws, and double jeopardy bars only successive prosecutions by the same sovereign.

166. C — The Fifth Amendment privilege against self-incrimination applies in any proceeding — civil, criminal, administrative, legislative — where the witness's answers could be used against her in a future criminal prosecution. No prior criminal charge is required; only a reasonable possibility of future incrimination.

167. B — The Just Compensation Clause of the Fifth Amendment requires payment of fair market value for property taken. Sentimental value is not legally cognizable for compensation purposes; the law looks to objective market value. The homeowner is entitled to fair market value only.

168. D — Appropriation of name or likeness — the commercial use of a person's identity without consent — is one of the four classic privacy torts. Unauthorized use of a celebrity's image in advertising is the paradigmatic appropriation claim, also known as the right of publicity.

169. A — FRCP 8(c) requires a party to affirmatively plead enumerated defenses, including statute of limitations, in the responsive pleading. Failure to plead an affirmative defense in the answer generally waives it, although courts may permit late amendment under Rule 15.

170. C — Once a state actor creates a designated public forum, content-based and viewpoint-based restrictions are subject to strict scrutiny. Viewpoint discrimination — excluding a speaker because of disagreement with their views — is presumptively unconstitutional and almost never survives review (*Rosenberger v. Rector*).

171. B — UCC § 2-508(1) gives the seller the right to cure a nonconforming tender if the time for performance has not yet expired, by seasonably notifying the buyer and tendering conforming goods within the contract time. The seller's right to cure protects against opportunistic rejection.

172. D — Kidnapping requires confinement plus some movement (asportation), regardless of distance, against the victim's will. The forced confinement in the car and one-block movement satisfy the elements, though some modern jurisdictions hold that asportation incidental to another crime cannot independently support kidnapping.

173. C — FRE 404(b) permits evidence of other crimes, wrongs, or acts when offered for purposes other than propensity, such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake. Common scheme or modus operandi is a recognized non-propensity purpose, particularly to prove identity.

174. A — In a notice jurisdiction, a subsequent purchaser must take without notice (actual, constructive, or inquiry) to prevail. B's actual knowledge of A's prior conveyance disqualifies B as a BFP, regardless of B's recording. A prevails because B is not a protected purchaser.

175. B — *Summers v. Tice* held that when multiple negligent defendants make causation uncertain through their concurrent conduct, the burden shifts to each defendant to disprove causation. This alternative liability doctrine prevents two clearly negligent defendants from escaping liability simply because the plaintiff cannot identify which one caused the harm.

176. D — Under *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, the amount in controversy alleged in good faith controls unless it appears to a legal certainty that the claim is for less than the jurisdictional minimum. The court should retain jurisdiction unless the legal certainty test is met.

177. C — *New York Times v. Sullivan* (extended to public figures in *Curtis Publishing Co. v. Butts*) requires public officials and public figures to prove actual malice — knowing falsity or reckless disregard

for the truth. A famous celebrity is a public figure for purposes of this standard, and mere negligence is insufficient.

178. B — Minors generally have the right to disaffirm contracts before reaching majority and within a reasonable time after, recovering the consideration paid even if the item has been used. Reasonable wear does not bar disaffirmance for ordinary goods (non-necessaries). The watch must be returned, and the purchase price refunded.

179. D — Common law arson required the malicious burning of a dwelling house of another. Commercial warehouses are not dwellings, so the conduct does not constitute common law arson. Modern statutes have broadened arson to cover virtually all real property, under which the defendant would be guilty.

180. A — FRE 803(5) admits a recorded recollection when the witness once had knowledge, now has insufficient memory to testify fully, and made or adopted the record when the matter was fresh in memory and accurately reflected the witness's knowledge. The record may be read into evidence but, if offered by the proponent, is not received as an exhibit.

181. C — Any cotenant in a tenancy in common (or joint tenancy) has the absolute right to seek partition, either in kind (physical division) or by sale (with proceeds divided proportionally). Partition is a fundamental incident of concurrent ownership that no cotenant can defeat.

182. B — Business invitees are owed a duty of reasonable care to inspect for, discover, and either warn of or remedy dangerous conditions on the premises. A 30-minute-old puddle that should have been discovered with reasonable inspection breaches this duty. Constructive notice from elapsed time is sufficient to establish breach.

183. D — Under *Calder v. Jones* and its progeny, specific personal jurisdiction exists when the defendant purposefully directs activity at the forum and the litigation arises from that activity. A fraudulent email targeting a forum resident constitutes purposeful availment of the forum's laws and creates the necessary minimum contacts.

184. C — Following *Obergefell v. Hodges* and related decisions, classifications based on sexual orientation that burden fundamental family rights face heightened scrutiny. A law denying same-sex couples the right to adopt — when different-sex couples may adopt — discriminates without sufficient justification and violates equal protection.

185. A — Substantial performance allows a contractor who has performed the essential purposes of the contract — with only minor or technical deviations — to recover the contract price minus damages caused by the deviation. A slightly off-shade paint color is a minor deviation that does not bar recovery, though the homeowner may offset cost-of-correction damages.

186. D — The voluntariness of a confession is determined by the totality of the circumstances, including the duration of interrogation, deprivation of basic needs, promises, threats, and the defendant's individual vulnerabilities. Twenty-four hours without food, water, or sleep, plus coercive promises, strongly suggest involuntariness, requiring suppression.

187. B — FRE 611(b) limits cross-examination to the subject matter of the direct examination and to matters affecting witness credibility. To inquire about unrelated topics, counsel must conduct the examination as if on direct, with the court's permission to call the witness for that purpose.

188. C — The covenant against encumbrances warrants that the property is free of mortgages, liens, easements, and other encumbrances at the time of conveyance. An undisclosed pre-existing easement breaches this covenant immediately upon conveyance, regardless of whether the grantee has yet been disturbed in possession.

189. D — In traditional contributory negligence jurisdictions, any negligence by the plaintiff that contributes to the injury is a complete bar to recovery, regardless of the relative degrees of fault. The pedestrian's crossing against a red light is contributory negligence that defeats the claim entirely.

190. A — The well-pleaded complaint rule limits federal question jurisdiction to claims that arise under federal law on the face of the plaintiff's complaint. Anticipated federal defenses do not create federal jurisdiction. The action must be remanded for lack of subject matter jurisdiction over removal.

191. B — *Printz v. United States* held that Congress cannot commandeer state executive officials to enforce federal regulatory programs. Requiring state law enforcement to conduct federal background checks impermissibly conscripts state officials into federal service, violating principles of dual sovereignty.

192. D — UCC § 2-201(3)(a) recognizes an exception to the writing requirement for specially manufactured goods not suitable for sale to others in the ordinary course of the seller's business, where the seller has made either a substantial beginning or commitments for procurement. The 50 specially designed widgets fit this exception.

193. C — Duress is generally a defense to crimes committed under threat of imminent death or serious bodily harm to oneself or another, where a person of reasonable firmness would have yielded. Duress is not a defense to intentional murder under common law, but it is available for robbery and most other crimes.

194. B — Bias and motive to fabricate are always proper subjects of cross-examination, even when not formally listed in the rules of evidence. A witness's plea deal with the prosecution is highly probative of bias and may be explored on cross to allow the jury to assess credibility (*Davis v. Alaska*).

195. A — Easement implied by prior use (quasi-easement) arises when (1) common ownership existed before severance, (2) the use was apparent and continuous at severance, and (3) the use is reasonably necessary for enjoyment of the dominant estate. All three elements are satisfied here.

196. D — Under traditional common law, there is no general legal duty to rescue strangers from peril, even when rescue would be easy and risk-free. A duty to rescue arises only from special relationships, voluntary undertakings, or statutes — none of which existed here. The bystander is not liable.

197. C — FRCP 19(a) requires joinder of a party whose absence would prejudice the existing parties, leave them subject to inconsistent obligations, or prevent complete relief. When that party cannot be joined and the action cannot proceed in equity and good conscience, Rule 19(b) factors govern dismissal.

198. B — Under *Mathews v. Eldridge* as applied in *Cleveland Board of Education v. Loudermill*, a tenured public employee facing termination is entitled to oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity to respond before termination. A full trial-type hearing is not required pre-termination.

199. A — Unconscionability has both procedural (unfair bargaining process) and substantive (one-sided terms) components. A take-it-or-leave-it consumer contract with terms heavily favoring the lender — including a waiver of the right to sue — may exhibit both. Courts may refuse enforcement of unconscionable terms under UCC § 2-302 and common law.

200. A — Solicitation is complete the moment one person requests, encourages, or commands another to commit a crime with the specific intent that the crime be committed. No overt act in furtherance of the underlying crime is required, and the solicited person's refusal does not negate the offense.