

# **PRACTICE EXAM 8: CALIFORNIA ESSAY EXAM SIMULATION (50 QUESTIONS)**

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1. What should the examinee do during the first few minutes of a California Bar essay session?
  - A. Begin drafting the introduction paragraph immediately to save time
  - B. Write the conclusion first to anchor the analysis backward
  - C. Memorize the entire fact pattern before any written work begins
  - D. Read the call of the question and outline the issues raised
  
2. A California Bar essay may test which of the following combinations of subjects within a single question?
  - A. Only one subject area at a time on every essay administered
  - B. Multiple subjects, such as Contracts crossed with Remedies
  - C. Only the thirteen subjects listed individually, never combined
  - D. Only subjects also tested on the MBE portion exclusively
  
3. When the call asks "What rights does the plaintiff have against the defendant?" the examinee should:
  - A. Identify each cause of action and analyze its elements
  - B. Conclude no rights exist without performing any analysis
  - C. Discuss only the defendant's affirmative defenses on this call
  - D. Address only the most lucrative claim available to plaintiff
  
4. A California essay on Real Property involving a future interest typically requires:

- A. Application of federal common law on future interests generally
- B. Skipping the analysis when title appears clear from the facts
- C. Classification of the interest and analysis of vesting rules
- D. Application of the modern abolition of future interests in property

5. A "red herring" issue in a bar essay fact pattern is best described as:

- A. The most important issue worth the largest share of rubric points
- B. A fact that suggests an issue but turns out not to apply here
- C. A defense the grader is instructed to disregard during scoring
- D. An issue raised only in the conclusion paragraph of the answer

6. In a cross-over essay involving Torts and Civil Procedure, the examinee should:

- A. Address the tort claims and the procedural issues separately
- B. Apply only tort doctrine because procedure is secondary always
- C. Apply only procedure doctrine because it controls the outcome
- D. Combine the analyses into one continuous unstructured narrative

7. When analyzing a hearsay issue in a California Evidence essay, the examinee should first determine:

- A. Whether the declarant is available to testify at the upcoming trial
- B. Whether the statement is more probative than unfairly prejudicial
- C. Whether any privilege would bar the statement's admission into evidence
- D. Whether the statement is being offered for the truth of the matter

8. What is the proper approach to analyzing the defense of laches in a Remedies essay?

- A. Conclude laches always bars any equitable claim without analysis
- B. Apply laches only to legal claims for monetary damages alone
- C. Identify unreasonable delay and resulting prejudice to the defendant
- D. Apply the analogous statute of limitations period to the equitable claim

9. A California essay involving a landlord-tenant dispute typically applies:

- A. Federal common law on commercial leasing arrangements
- B. The Uniform Residential Landlord and Tenant Act provisions nationally
- C. The Restatement (Second) of Property landlord-tenant rules
- D. California statutory and common law landlord-tenant rules

10. The "analysis" portion of IRAC is best characterized by:

- A. Application of the rule's elements to the specific facts given
- B. Recitation of the rule of law in expanded form a second time
- C. Statement of the conclusion before any factual application begins
- D. Discussion of public policy without any reference to specific facts

11. A typical California Performance Test task might require the examinee to:

- A. Argue a case orally before a panel of appellate judges
- B. Memorize and recite a statutory framework from a commercial outline
- C. Draft a memorandum, brief, or other written legal work product
- D. Take a multiple-choice exam on California substantive law topics

12. When a Constitutional Law essay raises a takings clause issue, the examinee should:

- A. Conclude no taking has occurred without performing further analysis
- B. Analyze whether a regulatory or physical taking has occurred
- C. Apply only state constitutional takings principles applicable in California
- D. Conclude the regulation is per se invalid in every case presented

13. What is the proper approach to negligence defenses in a California torts essay?

- A. Apply California's pure comparative fault doctrine to apportion liability
- B. Apply contributory negligence as a complete defense in every case
- C. Apply only the assumption of risk defense without other doctrines
- D. Conclude no defenses apply without analyzing them at all in writing

14. A California essay involving an ademption of a specific bequest in a will tests:

- A. Whether the testator was competent at the time of signing the will
- B. Whether the will was properly witnessed by two competent persons
- C. Whether the residuary clause includes the property in question
- D. Whether the specific gift property remains in the estate at death

15. What is the proper way to address an issue the examinee initially overlooks but later spots?

- A. Ignore the issue rather than disrupt the flow of analysis already written
- B. Erase all prior work and restart the essay from the beginning entirely
- C. Address the issue at the appropriate point in the analysis structure
- D. Add the issue only to the conclusion paragraph at the end of the essay

16. In a California community property essay, the general presumption is that property acquired during marriage is:

- A. Separate property of the acquiring spouse exclusively in every case
- B. Community property absent contrary tracing or characterization evidence
- C. Joint tenancy property of both spouses with right of survivorship
- D. Quasi-community property regardless of the source of acquisition

17. When a Contracts essay raises an issue of consideration, the examinee should analyze:

- A. Whether each party gave a bargained-for legal detriment to the other
- B. Whether the consideration was adequate in monetary value to be valid
- C. Whether the moral obligation to perform was sufficient consideration
- D. Whether past consideration supports the present promise made by parties

18. A California essay involving the cy pres doctrine in a charitable trust requires:

- A. Termination of the trust upon failure of the originally specified purpose
- B. Distribution of the trust assets to the settlor's heirs by intestate succession
- C. Modification to a similar charitable purpose if the original purpose fails
- D. Distribution to a court-appointed charitable receiver for redirection

19. A California essay on Civil Procedure involving a demurrer tests:

- A. The federal motion to dismiss for failure to state a claim filed timely
- B. The federal summary judgment standard applied to the moving party
- C. The federal motion for judgment on the pleadings filed after answering
- D. The California procedural challenge to the sufficiency of pleadings

20. When a California essay involves a homicide charge, the examinee should analyze:

- A. Each possible degree of homicide and its required elements
- B. Only the most serious charge initially filed by the prosecution
- C. Only voluntary manslaughter as the most likely available outcome
- D. Only the affirmative defenses without addressing the underlying charges

21. In a Civil Procedure essay raising subject matter jurisdiction, the examinee should:

- A. Conclude the federal court has jurisdiction in every case automatically
- B. Apply only state subject matter jurisdiction principles to the analysis
- C. Analyze diversity, federal question, and supplemental jurisdiction grounds
- D. Skip the jurisdictional analysis when the parties are clearly identified

22. A California essay involving piercing the corporate veil tests:

- A. Whether the corporation has filed all its annual reports on time
- B. Whether the corporate form was abused to commit fraud or injustice
- C. Whether the corporation paid all franchise taxes owed to California
- D. Whether the corporation has only one shareholder remaining currently

23. When a California essay raises a First Amendment free speech issue, the examinee should determine:

- A. Whether the plaintiff is a public figure or a private citizen for damages
- B. Whether the speech occurred in California or another state for jurisdiction
- C. Whether the speaker had a political motivation for the speech in question
- D. Whether the restriction is content-based or content-neutral on its face

24. A California essay on Evidence involving an expert witness tests:

- A. Whether the expert's testimony will assist the trier of fact in deciding
- B. Whether the expert holds a professional license currently active in state
- C. Whether the expert is being paid for the testimony at the trial proceeding
- D. Whether the expert has testified previously in similar cases on the issue

25. When a Remedies essay involves rescission, the examinee should analyze:

- A. Whether the plaintiff has filed a timely answer to the underlying complaint
- B. Whether the contract was performed in full by both contracting parties
- C. The grounds for rescission such as fraud, mistake, duress, or undue influence
- D. The amount of compensatory damages the plaintiff would otherwise recover

26. A California Professional Responsibility essay involving client confidentiality requires:

- A. Disclosure to opposing counsel under federal evidence and discovery rules
- B. Disclosure when ordered by any court regardless of the asserted privilege
- C. Application of both ABA Model Rules and California Rules of Professional Conduct
- D. Application of only the attorney work product doctrine without other rules

27. When a California Wills essay involves a pretermitted child, the examinee should:

- A. Conclude the child takes the entire estate without performing any analysis
- B. Analyze whether the child was unintentionally omitted from the will provisions
- C. Conclude the child takes nothing without performing further analysis
- D. Apply only federal estate tax rules to the pretermitted child's claim

28. The Performance Test "file" in a California Bar PT contains:

- A. The complete statutory framework needed for the answer to be drafted
- B. Only published case law and legal treatises available for reference
- C. The official answer key for the assigned legal task to be performed
- D. Facts, documents, and other materials relevant to the assigned task

29. A California Contracts essay involving an anticipatory repudiation tests:

- A. Whether the repudiating party clearly indicated a refusal to perform
- B. Whether the nonrepudiating party paid the full consideration up front
- C. Whether the parties had a written contract signed by both sides
- D. Whether the breach occurred after the time for performance had passed

30. When a California Real Property essay involves a mortgage and foreclosure, the examinee should analyze:

- A. Whether the lender filed a federal tax lien on the property in question
- B. The type of mortgage and the applicable foreclosure procedures
- C. Whether the borrower has filed for federal bankruptcy protection currently
- D. Whether the property has been listed for sale on the open real estate market

31. A California essay involving the characterization of a business started during marriage requires:

- A. Conclusion that the business is community property without further analysis
- B. Conclusion that the business is separate property without further analysis
- C. Application of the federal common law on marital business interests generally
- D. Application of the Pereira or Van Camp accounting approach

32. A California Torts essay involving strict products liability tests:

- A. Whether the manufacturer was negligent in the design and testing process
- B. Whether the consumer signed a waiver of liability before purchasing the product
- C. Whether the product was defective and caused the plaintiff's injury
- D. Whether the manufacturer had actual notice of the defect filed in writing

33. When a California Criminal Procedure essay raises a confession issue, the examinee should analyze:

- A. Voluntariness, Miranda compliance, and right to counsel violations
- B. Only whether the confession was reduced to writing before any trial
- C. Only whether the suspect's family members were present during questioning
- D. Only whether the suspect was physically restrained during the interview

34. A California essay on Evidence involving a privilege claim requires:

- A. Application of only the federal privilege rules to the analysis presented
- B. Conclusion that all privileges have been waived by any prior disclosure
- C. Conclusion that no privilege applies in California state court matters
- D. Identification of the privilege and analysis of its elements and exceptions

35. When a California Trusts essay involves a trustee's investment decisions, the examinee should apply:

- A. The trustee's personal investment preferences and good faith judgment alone
- B. The prudent investor rule and the duty of diversification of trust assets
- C. Only the duty of loyalty without any prudence or diversification analysis
- D. The federal Investment Company Act regulatory provisions as authority

36. A California essay on Business Associations involving director duties tests:

- A. The director's personal financial wealth and individual assets disclosed
- B. The director's professional licensing requirements within California state
- C. The duties of care and loyalty owed to the corporation and its shareholders
- D. The director's voting record on prior unrelated corporate matters reviewed

37. When a California Constitutional Law essay raises a due process question, the examinee should:

- A. Determine whether procedural or substantive due process applies to the claim
- B. Conclude due process is satisfied without performing any further analysis
- C. Apply only the California Constitution's due process clause to the claim
- D. Apply only the Fifth Amendment without the Fourteenth Amendment analysis

38. A California essay on Real Property involving a covenant running with the land requires:

- A. Conclusion that all covenants run with the land automatically by default
- B. Application of only federal property law on covenants and servitudes
- C. Conclusion that covenants never run with the land in California ever
- D. Analysis of horizontal and vertical privity plus touch and concern

39. A California Civil Procedure essay involving claim preclusion (res judicata) requires:

- A. Conclusion that all prior judgments preclude all future claims automatically
- B. Analysis of identity of claims, parties, and a final judgment on the merits
- C. Application of only the federal full faith and credit clause to the dispute
- D. Conclusion that preclusion never applies in California state court matters

40. A California Contracts essay involving the parol evidence rule requires:

- A. Exclusion of all evidence outside the four corners of the writing without exception
- B. Admission of all extrinsic evidence regardless of the integration status shown
- C. Analysis of integration and the purpose for which the evidence is offered
- D. Application of only the federal rules of evidence on parol matters generally

41. When a California Remedies essay involves restitution, the examinee should analyze:

- A. Whether the defendant was unjustly enriched at the plaintiff's expense
- B. Whether the plaintiff suffered emotional distress from the underlying events
- C. Whether the defendant has the present ability to pay any monetary judgment
- D. Whether the plaintiff filed within the applicable limitations period generally

42. A California Professional Responsibility essay involving the duty to communicate requires:

- A. Disclosure of only favorable case developments to the client during representation
- B. Disclosure of confidential client information to opposing counsel as needed
- C. Disclosure of the lawyer's personal opinions about the case to the client
- D. Reasonable consultation about the means of pursuing client objectives

43. When a California Wills essay involves an undue influence claim, the examinee should analyze:

- A. Whether the testator's financial advisor approved the will provisions in writing
- B. Whether the will was signed in the presence of a licensed attorney as witness
- C. Whether the influencer had a confidential relationship and benefited
- D. Whether the will was filed with the probate court within the statutory period

44. A California Torts essay involving intentional infliction of emotional distress tests:

- A. Whether the plaintiff filed suit within thirty days of the underlying conduct
- B. Whether the defendant's conduct was extreme and outrageous
- C. Whether the plaintiff sought medical treatment for the distress experienced
- D. Whether the plaintiff was related to the defendant by family or blood ties

45. When a California Criminal Law essay involves an inchoate offense, the examinee should:

- A. Analyze attempt, conspiracy, or solicitation as applicable to the facts
- B. Conclude no inchoate offense applies without performing further analysis
- C. Apply only the federal inchoate offense provisions to the facts presented
- D. Conclude the defendant cannot be charged with both an inchoate and completed crime

46. A California Civil Procedure essay involving venue requires:

- A. Conclusion that venue is proper in any California county at the plaintiff's choice
- B. Application of only the federal venue statute to California state court actions
- C. Conclusion that venue cannot be challenged after answering the complaint timely
- D. Analysis of the proper county under California venue rules

47. The Performance Test "library" in a California Bar PT typically contains:

- A. The bar examinee's personal study materials brought into the testing center
- B. Only the California Code provisions related to the assigned legal task at hand
- C. Cases, statutes, and other legal authorities needed for the task
- D. Only the official California Bar Examiners' outlines for review during the test

48. A California essay involving the characterization of a personal injury recovery received during marriage applies:

- A. The general community property presumption without any applicable exceptions
- B. A specific statutory rule on the characterization of personal injury awards
- C. The federal common law on personal injury recoveries received during marriage
- D. The Restatement of Family Law principles on injury compensation and division

49. When a California essay involves a dormant Commerce Clause issue, the examinee should:

- A. Conclude state regulation is automatically invalid in all cases without analysis
- B. Analyze whether the state law discriminates against or burdens interstate commerce
- C. Apply only the California Constitution to the commerce question at issue
- D. Conclude no Commerce Clause issue exists without performing further analysis

50. What is the single most important habit for success on California Bar essays?

- A. Memorizing the names of all leading appellate cases from each subject
- B. Studying only the subjects the examinee finds difficult to understand
- C. Writing extremely long answers regardless of the issues actually raised
- D. Practicing timed essays with feedback across all tested subjects

## **PRACTICE EXAM 8: CALIFORNIA ESSAY EXAM SIMULATION – ANSWER KEY**

- 1. D** — Read the call and outline the issues raised before drafting. The first few minutes invested in reading the call and outlining produces a roadmap that prevents off-topic analysis and ensures the answer tracks the grader's rubric. Examinees who skip the outline almost always produce disorganized essays that score lower than their substantive knowledge would otherwise support.
- 2. B** — Cross-over essays combining multiple subjects are routinely administered. The California Bar regularly pairs subjects (Contracts with Remedies, Torts with Civil Procedure, Wills with Trusts), and the call may explicitly invite analysis under multiple bodies of law. Preparing only for single-subject essays leaves examinees unprepared for the cross-over format that dominates many administrations.
- 3. A** — A "rights against" call directs the examinee to identify each cause of action and analyze its elements. The word "rights" means enforceable legal claims, so the analysis must address each claim's elements and likelihood of success. Concluding "no rights exist" without claim-by-claim analysis forfeits the issue-spotting and rule-application points.
- 4. C** — Future interest analysis begins with classification and vesting rules. Future interests are tested through classification (reversion, possibility of reverter, right of entry, remainder, executory interest) and analysis under the Rule Against Perpetuities. Without classification, the vesting and validity analysis cannot proceed.
- 5. B** — A red herring is a fact that suggests an issue but does not actually apply. Bar examiners deliberately include red herrings to test whether examinees can recognize and dismiss non-issues, distinguishing strong issue spotters from weaker ones. Briefly noting and rejecting the red herring earns issue-spotting credit without wasting time on full analysis.
- 6. A** — Cross-over essays are graded under separate rubrics for each subject, so each must be addressed separately. The grader scores torts issues under the torts rubric and civil procedure issues under the procedure rubric, and combining them obscures the analysis. Headings that separate the subjects track the grading structure directly.
- 7. D** — Hearsay analysis begins with whether the statement is offered for the truth of the matter asserted. The hearsay definition (FRE 801; Cal. Evid. Code §1200) requires an out-of-court statement offered for its truth, so the purpose of offer is the threshold determination. Statements offered for non-truth purposes (effect on listener, verbal acts) are not hearsay regardless of any exception.
- 8. C** — Laches requires unreasonable delay and resulting prejudice to the defendant. Laches is the equitable analog to a statute of limitations and requires both elements; mere passage of time without prejudice is insufficient. Concluding laches bars the claim without the prejudice analysis misstates the doctrine.
- 9. D** — California has comprehensive statutory and common law governing landlord-tenant relationships. The California Civil Code (§1940 et seq. for residential) and case law govern habitability, eviction,

security deposits, and lease terms. Applying federal or uniform act rules misses the California-specific framework being tested.

**10. A** — Analysis under IRAC means applying the rule's elements to the specific facts given. Application connects each element of the rule to the facts that satisfy or fail it, and graders award the largest share of points for this analytical move. Re-reciting the rule or stating conclusions without facts is not analysis.

**11. C** — Performance Test tasks typically require drafting a memorandum, brief, or other written legal work product. Common PT tasks include objective memos, persuasive briefs, client letters, demand letters, and discovery plans, all to be completed using the provided file and library within ninety minutes. The PT measures practical lawyering, not memorized law.

**12. B** — Takings analysis distinguishes between physical takings and regulatory takings. Physical takings (permanent occupations, Loretto) are per se compensable, while regulatory takings are analyzed under Penn Central (multifactor) or Lucas (total deprivation of economic use). Beginning the analysis at this branch point is essential.

**13. A** — California applies pure comparative fault to negligence claims. *Li v. Yellow Cab Co.* (1975) abandoned contributory negligence in favor of pure comparative negligence, which reduces but never bars recovery regardless of plaintiff's percentage of fault. Applying contributory negligence or modified comparative fault misstates California law.

**14. D** — Ademption by extinction tests whether the specifically bequeathed property remains in the estate at death. If the property is no longer in the estate, the specific gift is adeemed and the beneficiary receives nothing under that gift (subject to California Probate Code §21133 exceptions). The analysis focuses on what remains in the estate, not on execution formalities.

**15. C** — An overlooked issue spotted later should be addressed at the appropriate point in the analysis structure. Inserting the issue where it logically belongs preserves the IRAC structure and captures the points; ignoring it or restarting the essay both waste opportunity. Graders score by issue, not by chronological order of writing.

**16. B** — California Family Code §760 creates a community property presumption for property acquired during marriage. The presumption is rebuttable through tracing to a separate property source, a written transmutation agreement, or other recognized exceptions. Beginning with the presumption is the correct analytical posture.

**17. A** — Consideration requires each party to give a bargained-for legal detriment in exchange for the other's promise. Adequacy is generally not reviewed by courts, but the bargain must involve mutual exchange of legal detriment (or forbearance). Past consideration and moral obligations are insufficient under the bargain theory.

**18. C** — The cy pres doctrine permits modification to a similar charitable purpose when the original purpose fails. When a charitable trust's specified purpose becomes impossible, impracticable, or illegal, courts apply cy pres to redirect the trust to the nearest charitable purpose consistent with the settlor's intent. Termination is a last resort, not the default.

**19. D** — The California demurrer challenges the sufficiency of the pleadings as a matter of state procedural law. Although functionally similar to a federal Rule 12(b)(6) motion, the demurrer is procedurally distinct under CCP §430.10 and is the proper challenge to a pleading's legal sufficiency in California state court.

**20. A** — California homicide analysis requires addressing each possible degree and its required elements. The hierarchy includes first-degree murder (premeditation, deliberation, or felony murder), second-degree murder (implied malice or unpremeditated intent), voluntary manslaughter (heat of passion or imperfect self-defense), and involuntary manslaughter (criminal negligence). Each must be analyzed where the facts support it.

**21. C** — Federal subject matter jurisdiction requires analysis of diversity, federal question, and supplemental jurisdiction. Diversity (§1332) requires complete diversity and amount in controversy over \$75,000; federal question (§1331) requires a claim arising under federal law; supplemental (§1367) reaches related state claims. Each basis must be addressed where the facts implicate it.

**22. B** — Piercing the corporate veil requires showing the corporate form was abused to commit fraud or injustice. Courts consider factors such as alter ego, undercapitalization, commingling of funds, failure to observe corporate formalities, and use of the corporation to perpetrate fraud. Mere noncompliance with administrative requirements is insufficient.

**23. D** — First Amendment analysis begins by classifying the restriction as content-based or content-neutral. Content-based restrictions trigger strict scrutiny; content-neutral restrictions on time, place, or manner are analyzed under intermediate scrutiny per *O'Brien* and *Ward*. The classification drives the level of scrutiny applied.

**24. A** — Expert testimony is admissible when it will assist the trier of fact under FRE 702 and Cal. Evid. Code §801. The expert must have specialized knowledge that helps the fact-finder understand the evidence or determine a fact in issue, and the testimony must rest on a reliable foundation. Licensure and payment do not control admissibility.

**25. C** — Rescission requires a recognized ground such as fraud, mistake, duress, or undue influence. California Civil Code §1689 lists the grounds, which also include failure of consideration and material breach. Without one of the statutory grounds, rescission is unavailable as a remedy.

**26. C** — California confidentiality essays require application of both ABA Model Rule 1.6 and California Rule 1.6 plus Business and Professions Code §6068(e). California historically imposed a stricter confidentiality duty than the ABA Model Rules, with narrower disclosure exceptions, though the rules have converged after recent revisions. Applying only one set misses California-specific distinctions.

**27. B** — Pretermitted child analysis turns on whether the child was unintentionally omitted from the will. California Probate Code §21620–21623 protects children born or adopted after the will is executed and provides an intestate share unless the omission was intentional, the testator provided for the child outside the will, or the testator left the estate to the other parent. Intent is the controlling question.

**28. D** — The Performance Test file contains the closed-universe factual record for the assigned task. The file typically includes letters, depositions, contracts, witness statements, memoranda, and other documents

that establish the facts the examinee must work from. The file is paired with a separate library of legal authorities.

**29. A** — Anticipatory repudiation requires a clear and unequivocal indication of refusal to perform. The repudiation must be definite (mere doubt or equivocation is insufficient) and made before the time for performance is due, allowing the nonrepudiating party to sue immediately or await performance. Ambiguous statements do not constitute repudiation.

**30. B** — California foreclosure analysis turns on whether the security instrument is a mortgage or deed of trust. Deeds of trust allow nonjudicial foreclosure via trustee's sale under Civil Code §2924; mortgages require judicial foreclosure with rights of redemption. The type of instrument controls the applicable procedure and remedies.

**31. D** — Pereira and Van Camp accounting allocate gains from a separate property business operated during marriage. Pereira awards the community a fair return on the spouse's labor (with excess being separate); Van Camp values the spouse's labor at market rate (with excess being separate). Courts choose the method that achieves substantial justice based on the source of growth.

**32. C** — Strict products liability requires showing the product was defective and the defect caused the plaintiff's injury. Defects fall into three categories — manufacturing, design (consumer expectation or risk-utility test), and warning — and any one can support liability. Negligence is not required because liability is strict.

**33. A** — Confession admissibility requires analysis of voluntariness, Miranda compliance, and right to counsel. Voluntariness is a due process inquiry under the totality of circumstances; Miranda turns on custody and interrogation; the Sixth Amendment right to counsel attaches at formal charging. All three must be addressed.

**34. D** — Privilege analysis requires identifying the specific privilege and analyzing its elements and exceptions. Each privilege (attorney-client, work product, spousal communication, spousal testimonial, doctor-patient, psychotherapist-patient, clergy-penitent) has distinct elements, holders, and exceptions. Generic privilege analysis misses the doctrine-specific points.

**35. B** — California trustees must invest under the prudent investor rule and the duty of diversification. The Uniform Prudent Investor Act, adopted at California Probate Code §16045 et seq., requires trustees to consider risk, return, and diversification across the portfolio as a whole. Personal preferences and single-asset concentration are inconsistent with the duty.

**36. C** — Directors owe the corporation and its shareholders the duties of care and loyalty. The duty of care requires informed, good faith decisionmaking (evaluated under the business judgment rule); the duty of loyalty prohibits self-dealing without proper procedural cleansing. These two duties frame all director liability analysis.

**37. A** — Due process analysis begins by classifying the claim as procedural or substantive. Procedural due process requires notice and an opportunity to be heard before deprivation of life, liberty, or property;

substantive due process protects fundamental rights (strict scrutiny) and otherwise requires rational basis. The classification determines the doctrinal framework.

**38. D** — Real covenants run with the land when horizontal privity, vertical privity, touch and concern, intent, and notice are satisfied. Equitable servitudes drop the privity requirements but still require touch and concern, intent, and notice. The element-by-element analysis is required for either form.

**39. B** — Claim preclusion requires identity of claims, identity of parties (or privity), and a prior final judgment on the merits. California uses the primary rights theory rather than the transactional approach for claim identity, while federal courts follow Restatement (Second) §24. Each element must be analyzed for preclusion to apply.

**40. C** — Parol evidence analysis turns on integration and the purpose for which the evidence is offered. The court first determines whether the writing is fully or partially integrated, then assesses whether the proffered evidence contradicts, supplements, or interprets the writing. California's Pacific Gas & Electric standard admits extrinsic evidence to show latent ambiguity even with facially clear terms.

**41. A** — Restitution requires showing the defendant was unjustly enriched at the plaintiff's expense. The measure is the benefit conferred on the defendant (disgorgement), not the plaintiff's loss, which distinguishes restitution from compensatory damages. Without unjust enrichment, restitution is unavailable.

**42. D** — The duty to communicate requires reasonable consultation about the means of pursuing client objectives. ABA Model Rule 1.4 and California Rule 1.4 obligate lawyers to keep clients reasonably informed, promptly respond to inquiries, and consult about means used to accomplish the client's goals. The duty extends beyond reporting and includes meaningful dialogue.

**43. C** — Undue influence requires a confidential relationship, active procurement, and undue benefit. California courts apply a presumption of undue influence when these factors converge, shifting the burden to the proponent of the will to rebut. Without a confidential relationship and benefit, the claim typically fails.

**44. B** — IIED requires extreme and outrageous conduct beyond the bounds of decency. The conduct element is the highest-scoring threshold because most cases fail at this step; the conduct must be such that an average member of the community would exclaim "Outrageous!" Mere insults or rudeness do not qualify.

**45. A** — Inchoate offenses include attempt, conspiracy, and solicitation. Attempt requires specific intent plus a substantial step (or in California, an overt act beyond mere preparation); conspiracy requires an agreement plus an overt act in California (Penal Code §184); solicitation requires asking, encouraging, or commanding another to commit a crime. Each must be analyzed where the facts support it.

**46. D** — California venue is governed by CCP §395 et seq., which generally lays venue in the defendant's county of residence with subject-specific exceptions. Contract actions may be tried where the contract was made or performed; real property actions in the county where the property is located. Federal venue rules do not apply in state court.

**47. C** — The Performance Test library contains the cases, statutes, and other legal authorities needed for the assigned task. The library is a closed universe — examinees must work from the provided authorities only, applying them to the file's facts. Outside authority and personal study materials are not permitted.

**48. B** — California Family Code §780–781 governs the characterization of personal injury recoveries received during marriage. Recoveries are generally community property when received during marriage but are awarded to the injured spouse at dissolution under Family Code §2603, with limited exceptions. The general community property presumption alone misses the personal-injury-specific framework.

**49. B** — Dormant Commerce Clause analysis asks whether the state law discriminates against or unduly burdens interstate commerce. Discriminatory laws face a virtually per se rule of invalidity (unless serving a compelling state interest unachievable by less restrictive means); nondiscriminatory laws that burden commerce are reviewed under *Pike v. Bruce Church* balancing. The classification drives the standard of review.

**50. D** — Practicing timed essays with feedback across all tested subjects builds both substantive recall and pacing discipline. Timed practice simulates exam conditions and identifies weak areas before exam day; substantive feedback reveals issue-spotting gaps and analytical weaknesses. No other single habit produces comparable score improvements on the essay portion.