

PRACTICE EXAM 8 — MBE SIMULATION (200 QUESTIONS)

1. A plaintiff who is a citizen of Oregon sued a defendant who is a citizen of Florida in federal district court in Oregon, alleging a contract dispute. The defendant has never been to Oregon and has no business operations there. However, the defendant sent three emails and made two phone calls to the plaintiff in Oregon to negotiate the contract at issue. The defendant moved to dismiss for lack of personal jurisdiction. The court should:

- A. Grant the motion because the defendant has never been physically present in Oregon
- B. Deny the motion because federal courts have nationwide personal jurisdiction over diverse defendants
- C. Grant the motion because email and telephone contacts alone never establish minimum contacts
- D. Deny the motion if the defendant purposefully directed contract negotiations toward the forum giving rise to the claim

2. A plaintiff in a federal civil action mailed the defendant a request to waive service of process along with two copies of the complaint and a prepaid return envelope. The defendant did not respond and was later served personally at additional expense. The plaintiff moved for an award of the costs of personal service against the defendant. Under Rule 4(d), the court should:

- A. Deny the motion because cost-shifting in service of process violates due process rights
- B. Grant the motion because a defendant who declines to waive service without good cause must bear the expenses of formal service
- C. Deny the motion because Rule 4(d) is permissive and cannot be used to impose costs on the defendant
- D. Grant the motion only if the defendant had actual notice of the lawsuit before the waiver request was sent

3. A corporation incorporated in Delaware operates manufacturing plants in five states. Its corporate headquarters, executive offices, and senior management are located in California. Its largest

manufacturing facility is in Texas. For purposes of federal diversity jurisdiction under 28 U.S.C. § 1332(c)(1), the corporation is a citizen of:

- A. Delaware and California, because corporations are citizens of their state of incorporation and principal place of business
- B. Delaware only, because the state of incorporation controls absent dual citizenship by election
- C. Texas only, because the principal place of business is determined by the location of the largest physical operations
- D. All five states where the corporation operates manufacturing plants on a continuous basis

4. A plaintiff filed a complaint in federal court against "Smith Corporation" within the statute of limitations. After the limitations period expired, the plaintiff sought to amend the complaint to substitute "Smith & Sons LLC" as the correct defendant. The LLC had received actual notice of the original action within the Rule 4(m) period and knew or should have known that the action would have been brought against it but for a mistake concerning identity. The amendment:

- A. Does not relate back because the limitations period expired before the amendment was filed
- B. Relates back only if the original defendant consents in writing to be substituted by the proper party
- C. Relates back under Rule 15(c)(1)(C) because the proper party had timely notice of the action and the misnomer
- D. Does not relate back because Rule 15 prohibits substitution of new parties after the limitations period

5. A plaintiff filed a federal action against two of three joint owners of a parcel of land, seeking specific performance of an alleged contract for sale of the entire parcel. The third joint owner refused to participate. Joining the third owner would destroy diversity jurisdiction. The court should determine the proper course under Rule 19 by:

- A. Weighing the equitable factors of Rule 19(b) to decide whether to proceed without the absent party or dismiss the action
- B. Proceeding with the action against the two joined owners and severing claims affecting the absent owner
- C. Dismissing the action automatically because joint ownership creates necessary and indispensable parties as a matter of law

D. Permitting joinder regardless of diversity because Rule 19 supersedes the complete diversity requirement

6. Three passengers in a car were injured when a tractor-trailer rear-ended their vehicle. Each suffered different types and degrees of injury. They wish to join their claims in a single federal action against the trucking company. Under Rule 20(a), the passengers:

A. May not join their claims because each passenger suffered distinct types of injuries

B. Must join their claims because Rule 20 makes joinder of all injured parties mandatory

C. May join only if each can independently satisfy the diversity amount-in-controversy requirement

D. May permissively join their claims if they arise out of the same transaction or occurrence and share common questions

7. A federal lawsuit between two parties involves the constitutionality of a state statute. The state itself moved to intervene as of right, claiming an interest in defending the validity of its own law that neither existing party would adequately represent. Under Rule 24(a):

A. The state must be allowed to intervene only after a showing that the existing parties have requested its participation

B. The state may intervene as of right because it has a direct interest in the validity of its own statute that may be impaired

C. The state may intervene only with the consent of all existing parties to the lawsuit

D. The state must seek permissive intervention because constitutional challenges do not give rise to intervention as of right

8. A defendant in a federal civil action was properly served but failed to file an answer within 21 days. The plaintiff requested entry of default by the clerk under Rule 55(a), which was entered. The plaintiff then moved for default judgment under Rule 55(b). The damages sought are unliquidated. The court should:

A. Enter default judgment in the amount stated in the complaint without further proceedings

B. Deny the motion entirely because Rule 55(b) does not authorize judgments on un

liquidated damages

C. Conduct a hearing to determine the appropriate amount of damages before entering judgment

D. Enter judgment for nominal damages only because the defendant did not contest liability

9. An attorney signed and filed a federal complaint asserting claims that lacked any factual basis after only minimal investigation. The opposing party moved for Rule 11 sanctions, properly serving the safe-harbor notice 21 days before filing the motion. The attorney did not withdraw the complaint. The court should:

A. Deny sanctions because Rule 11 applies only to factual misrepresentations made by parties themselves

B. Deny sanctions because Rule 11 violations require proof of subjective bad faith

C. Impose sanctions only if the opposing party suffered measurable monetary damages from the filing

D. Impose appropriate sanctions because the attorney violated the duty of reasonable inquiry into factual support

10. In a federal civil action, a defendant served a request for production seeking copies of all witness statements obtained by the plaintiff's attorney in anticipation of litigation. The plaintiff objects on the basis of the work product doctrine. The defendant claims substantial need and inability to obtain equivalent material without undue hardship. The court should:

A. Order production of fact work product upon a showing of substantial need and undue hardship, while protecting opinion work product

B. Deny production of all work product material because the doctrine creates absolute protection

C. Order production of all witness statements because the work product doctrine does not extend to factual material

D. Deny production unless the plaintiff voluntarily agrees to waive work product protection

11. A defendant in a federal civil action seeks a protective order limiting the use of confidential business documents produced in discovery. The plaintiff opposes the order, arguing that the public has a right of access to all discovery materials. The defendant has shown specific harm that would result from disclosure. Under Rule 26(c):

- A. Protective orders are presumptively disfavored and require an extraordinary showing of irreparable harm
- B. Protective orders may be issued only when the parties stipulate to confidentiality in advance
- C. The court may issue a protective order on good cause shown to protect a party from annoyance, embarrassment, or undue burden
- D. Protective orders are limited to trade secrets and may not extend to other forms of confidential information

12. A defendant moved for summary judgment in a federal civil action. The defendant submitted a properly supported motion showing the absence of any genuine dispute of material fact. The plaintiff filed only an unsworn statement asserting that material facts remained in dispute, with no supporting evidence. The court should:

- A. Deny the motion because the plaintiff has the burden to disprove the defendant's evidence at trial
- B. Grant the motion because the plaintiff has not met the burden of producing competent evidence to create a genuine dispute
- C. Deny the motion to permit the parties to develop a fuller factual record at trial
- D. Grant the motion only if the defendant first establishes the absence of any disputed material facts beyond reasonable doubt

13. A plaintiff sued in federal court seeking both legal damages for breach of contract and equitable relief in the form of specific performance. The plaintiff timely demanded a jury trial. The defendant argues that the entire case must be tried by the court because it involves equitable claims. Under the Seventh Amendment and Rule 38:

- A. The plaintiff is entitled to a jury trial on the legal claim for damages, while the equitable claim is tried by the court
- B. The plaintiff loses the right to a jury trial by joining a legal claim with an equitable claim in the same action
- C. The entire action must be tried by the court because the request for equitable relief makes the case equitable
- D. The plaintiff is entitled to a jury trial on all claims because demand for jury trial controls the mode of trial

14. During jury selection in a federal civil case, the plaintiff used three of her peremptory challenges to strike all three African-American jurors. The defendant raised a Batson challenge. The plaintiff offered race-neutral reasons that the court found pretextual. The court should:

- A. Allow the strikes because Batson applies only in criminal cases where the prosecution exercises strikes
- B. Allow the strikes because peremptory challenges may be exercised for any reason in civil cases
- C. Reseat the stricken jurors only if all three are required to be present for a fair trial
- D. Disallow the racially motivated strikes because Batson applies to civil cases as established in Edmonson

15. A plaintiff sued the defendant in federal court for breach of contract. The court entered judgment for the defendant after a full trial, finding that the contract was never properly formed. The plaintiff later sued the defendant in a different federal court asserting a quantum meruit claim arising from the same alleged transaction. The defendant moved to dismiss on collateral estoppel grounds. The court should:

- A. Deny the motion because issue preclusion applies only when the parties are identical in both lawsuits
- B. Deny the motion because the second lawsuit asserts a different legal theory than the first
- C. Grant the motion because the issue of whether a contract was formed was actually litigated, necessarily decided, and necessary to the judgment
- D. Grant the motion only if the same evidence would have been required in both actions to prove the claims

16. A federal district court entered an order denying a motion to dismiss based on a novel question of law concerning the scope of personal jurisdiction. The defendant believes immediate appellate review would materially advance the ultimate termination of the litigation. Under 28 U.S.C. § 1292(b), the defendant must:

- A. File a notice of appeal directly with the court of appeals within 14 days of the district court's order
- B. Obtain certification from the district court that the order involves a controlling question of law, then petition the court of appeals for permission to appeal
- C. Wait until final judgment is entered before pursuing any review of the interlocutory ruling
- D. File a writ of mandamus directly with the Supreme Court because personal jurisdiction is a fundamental issue

17. A plaintiff filed a state-court action against three defendants — two citizens of the same state as the plaintiff and one citizen of a different state — asserting state-law claims. The diverse defendant timely removed the case to federal court. The non-diverse defendants did not join in the removal. The plaintiff timely moved to remand. The court should:

- A. Grant remand because removal under diversity jurisdiction requires all properly joined and served defendants to consent and complete diversity
- B. Deny remand because the diverse defendant alone may remove and the others may join later
- C. Deny remand because diversity is determined only by the parties actually seeking removal
- D. Grant remand only if the non-diverse defendants formally object to the removal in writing

18. A plaintiff sued the defendant in federal court for breach of a sales contract. The defendant believed that the plaintiff had defamed her in connection with the same business dealings. The defendant did not assert the defamation claim in the federal action. After judgment was entered for the plaintiff, the defendant filed a separate state-court action for defamation. Under Rule 13(a):

- A. The defamation claim may be pursued because counterclaims are always permissive at the defendant's election
- B. The defamation claim may be pursued because state courts are not bound by federal rules on counterclaims
- C. The defamation claim is barred because it arose out of the same transaction and was therefore a compulsory counterclaim
- D. The defamation claim is barred only if the defendant had actual knowledge of the defamation before the federal trial

19. In a federal action against two defendants, defendant A filed a cross-claim against defendant B alleging that B was responsible for indemnification under a separate contract between A and B. The contract dispute is unrelated to the underlying transaction with the plaintiff. Under Rule 13(g):

- A. The cross-claim is improper because cross-claims must always arise from the same transaction as the plaintiff's claim
- B. The cross-claim is improper because cross-claims may only seek contribution from co-defendants for shared liability

C. The cross-claim is proper only if it asserts a federal-question claim independent of the underlying dispute

D. The cross-claim is improper because cross-claims under Rule 13(g) must arise from the same transaction as the original action or a counterclaim

20. A homeowner sued a general contractor for property damage caused by allegedly defective electrical work. The general contractor wishes to bring the electrical subcontractor into the action, claiming the subcontractor is liable for any damages the contractor is required to pay. Under Rule 14(a):

A. The general contractor cannot implead the subcontractor because Rule 14 applies only to insurance carriers

B. The general contractor may implead the subcontractor as a third-party defendant for derivative or contribution liability

C. The general contractor may not implead because impleader requires the homeowner's consent to join additional parties

D. The general contractor must first obtain a judgment against itself before any impleader action against the subcontractor

21. A plaintiff sued two defendants in federal court based on diversity jurisdiction. The plaintiff seeks \$50,000 from defendant A and \$30,000 from defendant B. The two defendants are unrelated and the claims arise from separate transactions. May the court hear both claims?

A. Yes, because separate claims against multiple defendants always aggregate to satisfy the amount in controversy

B. Yes, because federal diversity jurisdiction requires only minimal diversity in claims involving multiple defendants

C. No, because separate claims against different defendants cannot be aggregated to meet the amount-in-controversy requirement

D. No, because plaintiffs cannot sue multiple defendants in the same action absent express federal authorization

22. A plaintiff filed a federal-question claim against the defendant. The plaintiff also asserted a state-law claim against the same defendant arising from the same transaction, plus a separate state-law claim against

an additional non-diverse defendant arising from the same transaction. May the federal court hear all three claims?

- A. Yes, because supplemental jurisdiction extends to all claims so related that they form part of the same case or controversy
- B. No, because the court loses jurisdiction once a non-diverse party is joined to the action
- C. Yes, but only over the first defendant; the claim against the additional defendant must be severed
- D. No, because supplemental jurisdiction requires complete diversity over all parties at all times

23. A plaintiff seeks to serve a defendant who resides in California. The plaintiff personally delivered the summons and complaint to the defendant's elderly mother at the defendant's primary residence while the defendant was traveling abroad. The mother is competent and resides at the home. Under Rule 4(e)(2)(B), service is:

- A. Improper because individuals must be served personally with no substituted service permitted
- B. Proper only if the plaintiff also mails additional copies to the defendant's last known address
- C. Improper because substituted service must be made on a person of suitable age and discretion living at the residence
- D. Proper because service was made by leaving the documents at the defendant's dwelling with a suitable resident

24. A defendant timely filed a Rule 12(b)(6) motion to dismiss for failure to state a claim. The court denied the motion. The defendant then filed a separate motion to dismiss for lack of personal jurisdiction. Under Rule 12(g) and (h):

- A. The court should consider the second motion because each Rule 12 defense may be raised separately
- B. The court should deny the second motion as waived because personal jurisdiction defenses must be raised in the first Rule 12 motion
- C. The court should consider the second motion because personal jurisdiction may be raised at any time before answer
- D. The court should deny the second motion only if the defendant first answers the complaint on the merits

25. A plaintiff filed a complaint in federal court. The defendant filed a motion to dismiss instead of an answer. The plaintiff wishes to amend the complaint to add a new claim. Under Rule 15(a)(1):

- A. The plaintiff may amend once as a matter of course within 21 days after service of the motion to dismiss
- B. The plaintiff must obtain leave of court or written consent of the defendant before any amendment
- C. The plaintiff may amend only if the new claim is closely related to the claims already pleaded
- D. The plaintiff may amend at any time before the court rules on the motion to dismiss without restriction

26. A plaintiff seeks to serve a foreign corporation that does business in the United States. Under Rule 4(h), service on a corporation may be effected by:

- A. Service on any employee of the corporation, including those without managerial authority
- B. Service on the corporation's chief financial officer at any office location
- C. Delivery of the summons and complaint to an officer, managing or general agent, or any agent authorized by law to receive service of process
- D. Service must be made on the corporation's president personally at the corporation's principal place of business

27. A federal court sitting in diversity in State A must decide which state's substantive law governs a contract dispute. The contract was negotiated in State A but performed in State B. Under *Klaxon v. Stentor*:

- A. The federal court applies federal common law of contracts because no state law preference exists in diversity
- B. The federal court applies the choice-of-law rules of the forum state in which it sits
- C. The federal court applies the law of the state with the most significant relationship to the dispute
- D. The federal court must allow the parties to stipulate to the applicable law before proceeding

28. A federal district court entered an order granting partial summary judgment for the defendant on one of three claims asserted by the plaintiff. Two claims remain pending. The plaintiff wishes to appeal the summary judgment ruling immediately. Under 28 U.S.C. § 1291:

- A. The plaintiff has an unconditional right to appeal any partial summary judgment as an interlocutory order
- B. The plaintiff may appeal only if the trial court declares the order to be the equivalent of final judgment for purposes of appeal
- C. The plaintiff may not appeal until the case is fully resolved, regardless of the importance of the partial ruling
- D. The plaintiff may appeal if the district court certifies the order as final under Rule 54(b), finding no just reason for delay

29. A plaintiff filed a single federal complaint against a single defendant asserting three unrelated claims: breach of contract, negligence in a separate incident, and a federal statutory claim. Under Rule 18(a):

- A. The plaintiff may join as many claims as she has against the defendant, related or unrelated
- B. The plaintiff may join only claims that arise from the same transaction or occurrence
- C. The plaintiff may join only claims that share common questions of law or fact
- D. The plaintiff must file separate actions for each unrelated claim asserted against the defendant

30. A state law authorizes the state's department of motor vehicles to suspend a driver's license without a prior hearing if the licensee fails to maintain liability insurance. The licensee may request a post-suspension hearing within 30 days. A driver whose license was suspended challenges the procedure under the Due Process Clause. Under *Mathews v. Eldridge*:

- A. The procedure is invalid because all property interests require a hearing before any deprivation
- B. The procedure is valid because driving is a privilege rather than a property interest protected by due process
- C. The procedure must be evaluated by balancing the private interest, risk of erroneous deprivation, and government interest
- D. The procedure is invalid because driver's licenses are fundamental rights requiring strict scrutiny review

31. A state law criminalizes the possession of contraceptives by unmarried persons. A challenge has been brought under the Due Process Clause. Under *Eisenstadt v. Baird* and *Griswold v. Connecticut*:

- A. The law is valid because states have plenary authority to regulate matters of public morality
- B. The law is invalid because the right to make decisions regarding contraception is fundamental and protected by substantive due process
- C. The law is invalid only as applied to married couples; restrictions on the unmarried may be upheld
- D. The law is valid because rational-basis review applies to all state morals legislation

32. A privately owned restaurant refuses service to a customer based on the customer's race. The restaurant operates entirely independently of any government program or subsidy and is not located on government property. The customer files a federal civil rights action under § 1983 alleging Fourteenth Amendment violations. The court should:

- A. Allow the claim because civil rights laws prohibit racial discrimination by any business serving the public
- B. Allow the claim under public function doctrine because restaurants traditionally serve the general public
- C. Allow the claim if the state has enforced any nondiscrimination ordinance affecting the restaurant
- D. Dismiss because Fourteenth Amendment protections apply only to state action, not purely private conduct

33. A state law charges out-of-state residents triple the in-state fee for hunting licenses, while in-state residents pay a lower fee. An out-of-state resident challenges the law under the Privileges and Immunities Clause of Article IV. The court should:

- A. Strike down the law if hunting is considered a fundamental right; uphold if a recreational privilege
- B. Strike down the law because all differential treatment of nonresidents is unconstitutional under Article IV
- C. Uphold the law because states have plenary authority to manage wildlife and natural resources
- D. Uphold the law because Article IV's protection applies only to commercial activities, not recreational ones

34. Congress enacted a statute specifically barring three named individuals from holding any position in federal employment because they were members of a particular political party. The named individuals challenge the statute. Under *United States v. Lovett*:

- A. The statute is valid because Congress has plenary authority over conditions of federal employment
- B. The statute is valid because political party membership is not a protected status under federal law
- C. The statute is invalid as a bill of attainder because it inflicts legislative punishment on named individuals without judicial trial
- D. The statute is invalid only if the named individuals can show specific economic harm from the exclusion

35. A state legislature passed a law modifying the terms of existing private contracts between residential landlords and tenants by extending lease periods and capping rent increases at 3% annually. Landlords challenge the law under the Contracts Clause. The court should evaluate the law by:

- A. Applying rational basis review because the Contracts Clause applies only to public contracts
- B. Striking down the law because any modification of private contracts is per se unconstitutional
- C. Upholding the law as a valid exercise of state police power without further constitutional review
- D. Asking whether the law substantially impairs contractual relationships and whether it is reasonable and necessary to serve a legitimate public purpose

36. A state statute provides that only mothers may be awarded primary physical custody of children under age three in divorce proceedings, on the theory that mothers are better caregivers. A father challenges the statute under the Equal Protection Clause. The court should:

- A. Uphold the statute because parental custody decisions are matters of state family law beyond federal review
- B. Strike down the statute under intermediate scrutiny because gender-based classifications must serve important objectives and be substantially related to those objectives
- C. Strike down the statute under strict scrutiny because gender is a suspect classification subject to the highest level of review
- D. Uphold the statute because mothers traditionally serve as primary caregivers and the law reflects this reality

37. A state statute denies inheritance rights to children born outside of marriage unless their paternity is legally established before the father's death. A child whose father died without acknowledging paternity challenges the statute. Under intermediate scrutiny applied to illegitimacy classifications:

- A. The statute survives if the state demonstrates a substantial connection between the law and a legitimate state interest such as orderly estate administration
- B. The statute must satisfy strict scrutiny because inheritance is a fundamental right protected by the Constitution
- C. The statute is valid because states retain plenary authority over inheritance and intestate succession matters
- D. The statute is invalid because all classifications based on illegitimacy violate the Equal Protection Clause

38. A municipal ordinance prohibits any person from engaging in "annoying or objectionable conduct" in public parks. A street performer cited under the ordinance challenges it on First Amendment grounds. The court should:

- A. Uphold the ordinance under the secondary effects doctrine, which permits regulation of annoying public behavior
- B. Uphold the ordinance because municipalities have broad authority to regulate park behavior
- C. Strike down the ordinance only as applied to speech, not as applied to non-speech conduct
- D. Strike down the ordinance because terms like "annoying" and "objectionable" are unconstitutionally vague and overbroad

39. A federal district court issued an injunction prohibiting a newspaper from publishing information about ongoing military operations on the grounds that publication would harm national security. The newspaper challenges the injunction. Under *Near v. Minnesota* and *New York Times v. United States*:

- A. The injunction is valid because national security justifies temporary restraints on press freedom
- B. The injunction must be evaluated under the substantial-evidence standard applied to executive branch determinations
- C. The injunction is presumptively unconstitutional as a prior restraint requiring a showing that publication will surely result in grave and irreparable harm
- D. The injunction is valid only if the newspaper obtained the information through illegal means

40. A high school student wore a t-shirt to school depicting a political message. School administrators ordered the student to remove the shirt, citing potential disruption. Under *Tinker v. Des Moines*:

- A. The school's action is valid because public schools have broad authority to regulate student attire
- B. The school's action is invalid unless the school can show that the speech caused or was likely to cause material and substantial disruption
- C. The school's action is invalid because political speech receives absolute First Amendment protection
- D. The school's action is valid because schools may prohibit any speech the administration considers inappropriate

41. A state employee was discharged for criticizing the agency's policies in a letter published in a local newspaper. The employee was speaking as a private citizen on a matter of public concern. The employee sues for First Amendment violations. Under *Pickering v. Board of Education* and *Garcetti v. Ceballos*:

- A. The discharge violates the First Amendment if the employee was speaking as a citizen on a matter of public concern and the speech does not unduly disrupt government operations
- B. The discharge is valid because government employees have no free speech protections when criticizing their own employer
- C. The discharge is invalid because all employee speech outside the workplace is constitutionally protected
- D. The discharge is valid because the government as employer has unlimited control over employee public statements

42. A state law of general applicability prohibits the use of certain hallucinogenic substances. A member of a Native American religious group is fired from his job after testing positive for the substance, which he ingested during a religious ceremony. He sues claiming Free Exercise protection. Under *Employment Division v. Smith*:

- A. The state law is invalid because the Free Exercise Clause requires religious exemptions from generally applicable laws
- B. The state law is invalid because the prohibition is not narrowly tailored to a compelling interest
- C. The state law is invalid only when religious practice is substantial and central to the practitioner's faith
- D. The state law is valid because neutral laws of general applicability do not require Free Exercise exemptions

43. A public school district adopted a policy of opening each school day with a moment of silence "for prayer or other contemplative reflection." A parent challenges the policy under the Establishment Clause. The court should:

- A. Uphold the policy because moments of silence do not involve any government speech endorsing religion
- B. Strike down the policy if its purpose or primary effect is to advance religion, particularly if it favors prayer
- C. Uphold the policy because the moment is neutral as between religious and non-religious students
- D. Strike down the policy because all religious activity in public schools violates the Establishment Clause

44. A citizen of one state filed a federal civil rights suit for damages against another state in federal court, alleging that the state's officials violated his constitutional rights. The state moves to dismiss on Eleventh Amendment grounds. The court should:

- A. Deny the motion because civil rights actions can always proceed in federal court regardless of immunity
- B. Grant the motion only if the plaintiff's claims allege purely state-law violations
- C. Grant the motion because the Eleventh Amendment bars suits for damages against states by citizens absent state consent or congressional abrogation
- D. Deny the motion because the Eleventh Amendment applies only to suits between states

45. A federal taxpayer challenges a federal grant program that funds religious schools, claiming the program violates the Establishment Clause. Under *Flast v. Cohen* and its progeny:

- A. The taxpayer has standing because *Flast* permits taxpayer standing for Establishment Clause challenges to congressional taxing and spending decisions
- B. The taxpayer lacks standing because federal taxpayers can never challenge specific federal expenditures
- C. The taxpayer has standing under the general rule allowing any taxpayer to challenge any federal program
- D. The taxpayer lacks standing because Establishment Clause challenges require individualized harm

46. A nonprofit environmental organization filed suit challenging a federal agency's decision to permit logging in a national forest. The organization alleges that its members enjoy hiking in the affected area but does not specifically allege that any individual member uses the particular tracts to be logged. Under *Lujan v. Defenders of Wildlife*:

- A. The organization has organizational standing because its mission concerns environmental issues
- B. The organization has standing because all environmental organizations may challenge federal agency actions
- C. The organization lacks standing only if the federal agency contests it in writing
- D. The organization lacks standing absent a showing that specific members have suffered a concrete and particularized injury

47. A doctor wishes to challenge a state law restricting his patients' access to certain medical procedures. The patients themselves face significant practical obstacles to bringing the challenge directly. Under *Singleton v. Wulff*:

- A. The doctor lacks standing because only the patients whose rights are at issue may sue
- B. The doctor has third-party standing because there is a close relationship with the third party and a hindrance to the third party's ability to assert its own interests
- C. The doctor has standing only if he can show that he personally suffered a particularized economic injury from the law
- D. The doctor lacks standing because medical professionals cannot assert constitutional rights of their patients

48. A state law restricts certain positions in state government, such as state trooper, to United States citizens. A lawful permanent resident is denied employment as a state trooper and challenges the law. Under *Foley v. Connelie*:

- A. The law is reviewed under rational basis because it concerns positions involving exercise of important governmental functions
- B. The law is reviewed under strict scrutiny because alienage is a suspect classification
- C. The law is invalid because all employment-based alienage classifications are presumptively unconstitutional

D. The law is reviewed under intermediate scrutiny because alienage is a quasi-suspect classification

49. A state law requires one year of state residency before a person becomes eligible for non-emergency state welfare benefits. A new resident challenges the law. Under *Shapiro v. Thompson* and *Saenz v. Roe*:

A. The law is valid because states have plenary authority to determine eligibility for welfare benefits

B. The law is valid because residency requirements are routine in benefits programs nationwide

C. The law is invalid because it penalizes the fundamental right to interstate travel and triggers strict scrutiny

D. The law is invalid only if the plaintiff can prove discriminatory intent against new residents

50. Congress conditioned the receipt of certain federal funds on states' adoption of specific environmental regulations. A state challenges the condition. Under *South Dakota v. Dole*, the condition is valid if:

A. The federal money is sufficiently substantial to constitute coercion of the state's legislative judgment

B. The condition relates to any legitimate federal interest, however attenuated

C. The federal interest in the condition exceeds the state's interest in preserving its sovereignty

D. The expenditure serves the general welfare, the condition is unambiguous, related to a federal interest, does not violate other constitutional provisions, and is not coercive

51. A state law restricts the operation of group homes for persons with mental illness to certain zoning districts. A group home challenges the law under the Equal Protection Clause. Under *City of Cleburne v. Cleburne Living Center*:

A. The classification triggers strict scrutiny because mental illness is a suspect classification

B. The classification triggers rational basis review, but a law motivated by irrational fear or prejudice against the affected group fails even this deferential standard

C. The classification triggers intermediate scrutiny because mental illness is a quasi-suspect classification

D. The classification is presumptively valid as a routine exercise of state zoning authority

52. Congress passed a law that allowed a single house of Congress, by simple resolution, to veto specific actions taken by executive agencies under delegated authority. An affected party challenges the law. Under *INS v. Chadha*:

- A. The legislative veto is valid because Congress may attach conditions to delegations of authority
- B. The legislative veto is valid only if both houses approve by majority vote
- C. The legislative veto violates bicameralism and presentment because legislative action requires passage by both houses and presentment to the President
- D. The legislative veto is valid only when applied to immigration matters as opposed to other regulatory contexts

53. A state law criminalizes the sale or distribution of materials that depict "patently offensive" sexual conduct. A bookstore owner sells materials that depict such content but argues the materials have serious literary value. Under *Miller v. California*:

- A. The materials are not obscene if, taken as a whole, they have serious literary, artistic, political, or scientific value, even if they depict offensive conduct
- B. The materials are obscene because depictions of offensive sexual conduct fall outside First Amendment protection
- C. The materials are obscene only if the state shows they cause direct harm to minors who view them
- D. The materials are not obscene because written materials cannot be obscene under Miller's three-part test

54. A state law restricts the advertising of prescription drug prices by pharmacies, prohibiting comparative price advertising. A pharmacy challenges the law under the First Amendment. Under *Central Hudson Gas*:

- A. The law is valid because commercial speech receives no First Amendment protection
- B. The law is valid because price advertising of medical products implicates public health
- C. The law is invalid only if the state cannot show any rational basis for the restriction
- D. The law is reviewed by asking whether it advances a substantial government interest and is not more extensive than necessary to serve that interest

55. A state law conditions access to a particular government benefit on payment of a \$50 administrative fee. An indigent plaintiff who cannot afford the fee challenges the law. Under *San Antonio Independent School District v. Rodriguez*:

- A. The law is invalid because wealth-based classifications trigger strict scrutiny
- B. The law is reviewed under rational-basis review because poverty is not a suspect classification and the benefit is not a fundamental right
- C. The law is invalid because it denies equal access to government benefits to indigent persons
- D. The law is reviewed under intermediate scrutiny because economic inequality implicates important interests

56. The President pardoned a federal defendant before any indictment had been issued. The pardon broadly covered all federal offenses the defendant may have committed during a specified time period. A government employee challenges the validity of the pardon. The court should:

- A. Uphold the pardon because the presidential pardon power extends to past federal offenses and may be issued before formal charges are filed
- B. Strike down the pardon because pardons may issue only after a person has been convicted of a specific offense
- C. Strike down the pardon as overbroad because pardons must specify each offense covered with particularity
- D. Uphold the pardon only if Congress consents to broad preemptive pardons through legislation

57. The President entered into an executive agreement with a foreign nation concerning trade matters. The agreement was not submitted to the Senate for treaty ratification. Affected domestic businesses challenge the executive agreement. Under *United States v. Belmont and Pink*:

- A. The executive agreement is invalid because all foreign agreements require Senate ratification as treaties
- B. The executive agreement is valid only if Congress separately approves it by joint resolution
- C. Executive agreements concerning foreign relations may be effective as domestic law without Senate ratification, particularly when supported by the President's independent constitutional authority
- D. Executive agreements are limited to military matters and cannot reach commercial subjects

58. A buyer sent a seller a written offer to purchase 100 widgets at \$50 each, stating: "If I do not hear from you within 10 days, I will assume the order is accepted." The seller did not respond. The buyer's position that silence constituted acceptance is:

- A. Correct because the offeror may dictate the terms of acceptance, including silence
- B. Correct because commercial parties owe duties of good faith communication that include responding to offers
- C. Incorrect only if the parties had no prior course of dealing involving silent acceptance
- D. Incorrect because silence is generally not acceptance unless prior dealings establish such a custom or the offeree takes the benefit with reason to know acceptance was expected

59. An employer orally agreed to hire an employee for a two-year term beginning immediately. After six months of work, the employer terminated the employee. The employee sued for breach of contract. The employer asserts the Statute of Frauds. Under the one-year provision:

- A. The agreement is enforceable because part performance by the employee satisfies the Statute of Frauds
- B. The agreement is unenforceable because the contract cannot by its terms be performed within one year
- C. The agreement is enforceable because employment contracts are exempt from the Statute of Frauds
- D. The agreement is unenforceable only if the employee has not been paid for the work already performed

60. A consumer purchased a refrigerator from a retail appliance store. Three months after delivery, the refrigerator stopped cooling due to a manufacturing defect. The consumer sues the retailer for breach of warranty. Under UCC § 2-314:

- A. The retailer is liable for breach of the implied warranty of merchantability because it is a merchant of goods of that kind
- B. The retailer is not liable because manufacturers, not retailers, bear warranty obligations for products they sell
- C. The retailer is liable only if the consumer can show the retailer had knowledge of the specific defect at the time of sale
- D. The retailer is not liable absent an express written warranty signed by the retailer at the time of purchase

61. A seller shipped 100 widgets to a buyer on May 15; the contract specified delivery on or before May 30. The buyer rejected the shipment on May 16 because some widgets were non-conforming. The seller wishes to cure by shipping conforming widgets. Under UCC § 2-508:

- A. The seller has no right to cure because rejection is final once exercised by the buyer
- B. The seller may cure only if the buyer expressly consents to the seller's attempt to cure
- C. The seller may cure only after paying the buyer compensation for the inconvenience of rejection
- D. The seller may cure by giving notice and tendering conforming goods within the contract time, because the performance period has not expired

62. A buyer and seller entered into an installment contract for monthly delivery of 1,000 widgets over six months. The first delivery contained 50 non-conforming widgets out of 1,000 (a 5% defect rate). The buyer wishes to cancel the entire contract. Under UCC § 2-612:

- A. The buyer may cancel the entire contract because any non-conformity in an installment contract justifies cancellation
- B. The buyer may cancel only if the seller refuses to provide assurance of future conforming installments
- C. The buyer may cancel an installment contract only if the non-conformity in a single installment substantially impairs the value of the whole contract
- D. The buyer may cancel only if more than 50% of the goods in any installment are non-conforming

63. A buyer accepted 100 widgets but later discovered a latent defect that substantially impaired their value. The defect was difficult to detect at the time of acceptance. Under UCC § 2-608, the buyer may revoke acceptance if:

- A. The buyer notifies the seller within 30 days of discovering the defect, regardless of the type of defect
- B. The non-conformity substantially impairs the value of the goods and was difficult to discover or the seller assured against it
- C. The seller agrees in writing to permit the buyer to return the goods after acceptance
- D. The buyer can show that revocation will cause no economic harm to the seller's business operations

64. A buyer breached a contract for the purchase of 100 widgets at \$50 each. The seller resold the widgets to another buyer at \$40 each in a commercially reasonable manner after giving notice to the buyer. Under UCC § 2-706, the seller may recover:

- A. The difference between the contract price and the resale price, plus incidental damages
- B. The full contract price of \$5,000, regardless of the resale price obtained
- C. The difference between the contract price and the market price at the time and place of tender
- D. Specific performance compelling the buyer to accept and pay for the original widgets

65. An employer wrongfully terminated an employee with three years remaining on her contract. The employee made no effort to find substitute employment, although suitable positions were available in her field. She sued for the full remaining contract value. Under the doctrine of avoidable consequences:

- A. The employee may recover the full contract value because employers bear the risk of wrongful termination
- B. The employee may recover only one year of contract damages because employees are required to find alternative work within 12 months
- C. The employee may recover only consequential damages, not the contract value
- D. The employee's damages are reduced by amounts she could have earned through reasonable efforts to obtain substitute employment

66. A consumer signed a standard form contract to purchase a household appliance. The contract was written in small dense type and contained a clause requiring the consumer to give up the right to bring any claim against the seller, regardless of cause. The consumer is illiterate but did not disclose this to the seller. The clause is:

- A. Enforceable because parties are bound by contracts they sign regardless of comprehension
- B. Enforceable only if the seller can demonstrate that the consumer received independent legal advice before signing
- C. Likely unenforceable as unconscionable under UCC § 2-302 because of procedural and substantive deficiencies in the bargaining process
- D. Unenforceable because all consumer waivers of legal claims violate public policy in any context

67. A contractor negotiating a major construction contract was told by the owner: "Sign this amended contract reducing your fee by 50%, or I will withdraw my financing for your other ongoing projects, putting you out of business." The contractor signed under economic pressure. The amended contract is:

- A. Enforceable because economic pressure does not constitute duress unless physical force is threatened
- B. Voidable because the threat amounted to improper economic duress that overcame the contractor's free will
- C. Enforceable because contracts are presumed valid absent express threats of unlawful action
- D. Voidable only if the contractor can prove the owner lacked authority to withdraw financing as threatened

68. An elderly widow, suffering from declining cognitive ability, signed a contract transferring her home to her live-in caretaker for a nominal sum. The caretaker had been the primary person managing the widow's affairs for two years. The widow's family seeks to set aside the contract. Under the doctrine of undue influence:

- A. The contract may be set aside if the caretaker exerted unfair persuasion in a confidential relationship and the widow's free will was overcome
- B. The contract is binding because adults are presumed competent to enter into contracts regarding their property
- C. The contract may be set aside only if the family can prove the widow lacked legal capacity at the moment of signing
- D. The contract is binding unless the family can show fraudulent misrepresentations were made to the widow

69. A 16-year-old purchased a used car from a dealer for \$5,000, signing a contract and making full payment. Six months later, the minor sought to rescind the contract and recover the purchase price. The car has depreciated to \$3,000 during the minor's use. Under common law principles:

- A. The minor cannot rescind because the contract for a necessary item like transportation cannot be disaffirmed
- B. The minor may rescind but must pay the seller the full \$5,000 in restitution for the use of the vehicle
- C. The minor may rescind and recover all \$5,000 without any obligation to compensate for use

D. The minor may rescind, but jurisdictions vary on whether the minor must compensate for depreciation or use of the vehicle

70. Two parties entered into a contract for the performance of services that are illegal under state law. After services were performed, the party who received the services refused to pay. The performing party sues for breach. The court should:

- A. Award damages because completed services should not go unpaid regardless of the underlying legality
- B. Refuse to enforce the contract because courts generally do not enforce contracts that are illegal in their essential terms
- C. Award damages in quantum meruit for the reasonable value of services rendered
- D. Award damages only to the extent the receiving party benefited from the illegal services

71. A creditor was owed \$10,000 by a debtor. The debtor genuinely disputed the amount and offered to pay \$7,000 "in full satisfaction of all claims." The creditor cashed the check, which bore a notation "payment in full." Under the doctrine of accord and satisfaction:

- A. The creditor may sue for the remaining \$3,000 because partial payment cannot discharge a larger debt
- B. The creditor may sue for the remaining \$3,000 only if the debtor's dispute over the amount was unreasonable
- C. The creditor's right to recover the remaining \$3,000 is discharged by the accord and satisfaction
- D. The creditor may sue for the remaining \$3,000 if the notation "payment in full" was not handwritten by the debtor

72. A general contractor owed money to a subcontractor under a construction contract. A third party agreed to assume the contractor's obligation in exchange for the subcontractor's release of the original contractor. The subcontractor agreed in writing. The arrangement constitutes:

- A. A novation, which substitutes the new party for the original obligor and releases the original obligor
- B. An assignment, which transfers rights but does not release the original obligor from liability
- C. A delegation, which transfers duties but leaves the original obligor secondarily liable
- D. A guaranty, in which the third party is liable only if the original obligor fails to pay

73. A flour mill contracted to sell "all the flour that the baker requires for one year" at \$1 per pound. The baker initially ordered substantial quantities but then drastically reduced orders, claiming changes in market conditions had reduced demand for her products. The mill sued. Under UCC § 2-306:

- A. The mill loses because requirements contracts contain no enforceable quantity obligation
- B. The mill loses because the baker has unconditional discretion to determine her requirements at any quantity
- C. The baker is liable for the difference between expected and actual requirements regardless of market conditions
- D. The baker must determine her requirements in good faith; a substantial decrease consistent with legitimate business changes may be permissible

74. A friend told a creditor: "Lend my brother \$5,000, and if he doesn't pay you back, I will." The friend made the promise orally. The creditor lent the money to the brother, who defaulted. The creditor sued the friend. Under the Statute of Frauds (suretyship provision):

- A. The promise is enforceable because the friend's spoken commitment binds him independently
- B. The promise is unenforceable because oral promises to answer for the debt of another require a signed writing
- C. The promise is enforceable because the creditor relied on the friend's commitment in extending credit
- D. The promise is unenforceable only if the brother's debt has not yet matured at the time of the action

75. A donor pledged \$100,000 to a charitable foundation, stating the funds would be used to construct a new wing of the foundation's building. The foundation, relying on the pledge, entered into construction contracts and incurred substantial expenses. The donor then refused to pay. Under Restatement § 90:

- A. The pledge is unenforceable because charitable pledges are gratuitous and require consideration to be binding
- B. The pledge is enforceable only if the donor signed a formal subscription agreement before the foundation relied
- C. The pledge is enforceable under promissory estoppel because the foundation reasonably and detrimentally relied

D. The pledge is enforceable only if the foundation made identical commitments to other donors in the past

76. A homeowner's insurance policy required the insured to submit a sworn proof of loss within 60 days of a covered loss. After a fire, the insured did not file a proof of loss within 60 days. The insurance company's adjuster, with knowledge of the failure, continued to negotiate with the insured for several months and conducted extensive investigation. The insurer now denies coverage based on the proof-of-loss requirement. The court should:

- A. Hold that the insurer waived strict compliance with the proof-of-loss requirement by its conduct
- B. Hold that the proof-of-loss requirement is a condition precedent that cannot be waived without a signed writing
- C. Hold that the insurer's waiver is effective only if it was made in a formal written communication
- D. Hold that the insured forfeited coverage because waiver of express conditions requires consideration

77. A buyer and seller entered into a written contract for the sale of a unique tract of waterfront real estate for \$500,000. The seller breached by refusing to convey title. The buyer seeks specific performance. The court should:

- A. Award only money damages because all contracts may be remedied through monetary compensation
- B. Award specific performance because real estate is considered unique and money damages are inadequate
- C. Award specific performance only if the buyer can show that no comparable property is available
- D. Award rescission and restitution because specific performance is disfavored in real estate transactions

78. A buyer and seller orally agreed to the sale of a custom-built workbench for \$700. The buyer made a partial payment of \$200. The seller began manufacturing but did not complete the bench. The buyer sued for delivery. Under UCC § 2-201:

- A. The contract is unenforceable because contracts for goods over \$500 must be entirely in writing
- B. The contract is unenforceable because partial payment does not satisfy the statute for goods

C. The contract is enforceable up to the entire value because partial performance always cures Statute of Frauds defects

D. The contract is enforceable to the extent payment has been made and accepted, plus the special-manufacture exception may apply

79. A seller offered to sell land to a buyer for \$200,000 with closing in 30 days. The buyer responded: "I accept your offer, but I would like closing in 60 days." The seller did not respond. Under common-law contract principles:

A. No contract was formed because the buyer's response was a counteroffer that did not unconditionally accept

B. A contract was formed at the price of \$200,000 with closing in 60 days as varied by the buyer

C. A contract was formed at \$200,000 with closing in 30 days because the seller's silence ratified the original terms

D. A contract was formed only if the seller responded to the buyer's modified closing request

80. A buyer and seller signed a complete written contract for the sale of land. The buyer subsequently sought to introduce evidence that the seller had orally promised, before signing, to repair certain defects on the property. The contract was silent on the subject. Under the parol evidence rule:

A. The evidence is admissible because oral promises always supplement written contracts

B. The evidence is inadmissible because parol evidence is barred regardless of the writing's completeness

C. The evidence may be admitted if the writing is not fully integrated and the oral term is consistent with the writing

D. The evidence is admissible only if the seller acknowledges in writing the original oral promises

81. A life insurance policy provided that coverage would continue "unless the insured engages in skydiving, in which case all coverage terminates immediately." The insured took up skydiving. After his death by other causes, the insurer denied coverage. The provision is:

A. A condition precedent that defeats coverage from inception of the dangerous activity

B. A condition subsequent that, upon occurrence, defeats coverage from the time of the triggering event

- C. A condition concurrent that requires simultaneous performance by both parties
- D. An express warranty that creates a separate cause of action against the insured's estate

82. A buyer contracted to purchase manufacturing equipment from a seller. The contract limited the buyer's remedy for any breach to repair or replacement of defective parts, expressly excluding consequential damages. The equipment proved fundamentally defective, causing substantial business losses to the buyer. Under UCC § 2-719:

- A. The limitation is fully effective because parties may agree to any remedy provisions they choose
- B. The limitation is effective only with respect to direct damages, not consequential damages
- C. The limitation is ineffective because UCC remedies cannot be modified by contract
- D. The limitation may be unenforceable if it fails of its essential purpose or if exclusion of consequential damages is unconscionable

83. A seller has been making deliveries on a long-term supply contract. After hearing concerning news about the buyer's financial difficulties, the seller demands written assurance of the buyer's continued ability to perform. The buyer fails to respond within 30 days. Under UCC § 2-609:

- A. The seller may treat the contract as repudiated and pursue remedies for breach
- B. The seller must continue performance until clear non-performance by the buyer occurs
- C. The seller has no right to demand assurance absent specific contractual language
- D. The seller may demand assurance only orally and only when the buyer is actually in default

84. A debtor owed money to a creditor. The debtor contracted with a third party who agreed to pay the debt directly to the creditor in exchange for property the debtor transferred. The third party then refused to pay the creditor. The creditor sues the third party. The creditor's status is:

- A. Incidental beneficiary, who has no right to enforce the contract between the debtor and third party
- B. Donee beneficiary, who may recover only after exhausting remedies against the original debtor
- C. Creditor beneficiary, who may sue the third party directly because the contract was made to satisfy a pre-existing debt

D. Assignee, whose rights derive from the original creditor's transfer of the underlying debt

85. A creditor assigned to a third party her right to receive future payments from a debtor under a contract. The contract contained a clause stating: "Any assignment of rights under this contract is null and void." The debtor refused to pay the assignee, citing the anti-assignment clause. Under modern law:

- A. The anti-assignment clause is automatically void as against public policy in all situations
- B. The anti-assignment clause is interpreted narrowly; it generally bars delegation of duties but does not prohibit assignment of the right to receive money
- C. The anti-assignment clause defeats any attempted assignment, regardless of the type of right involved
- D. The anti-assignment clause is enforceable only if both parties expressly initialed it on a separate page

86. A general contractor was hired to build a custom home for a homeowner. The contractor delegated all construction duties to a subcontractor without informing the homeowner. The subcontractor began work. The homeowner refuses to accept the substitute performance. The homeowner's position is:

- A. Incorrect because all contract duties are freely delegable in modern law
- B. Correct only if the delegation involved a non-licensed substitute contractor
- C. Incorrect because delegation transfers contractual duties without need for obligee consent
- D. Correct if the contract calls for personal service or particular skill in the original contractor

87. A defendant sold a controlled substance to a person whom the defendant reasonably believed to be 21 years of age. The buyer was actually 17. The state statute makes it a strict-liability offense to sell controlled substances to anyone under 21, regardless of the seller's belief about age. The defendant's reasonable mistake of fact:

- A. Is not a defense because the statute imposes strict liability without regard to the defendant's mental state
- B. Is a complete defense because mens rea is required for any criminal conviction under the Constitution
- C. Is a defense only if the defendant verified the buyer's identification and exercised reasonable care
- D. Is a defense only as to age-specific enhancement of penalty, not the underlying sale

88. A defendant took a coat from a coat-rack at a restaurant, honestly and reasonably believing it to be his own. The coat actually belonged to another patron. The defendant is charged with larceny. Under the common law of larceny:

- A. The defendant is guilty because his honest belief is irrelevant in property crimes
- B. The defendant is guilty if a reasonable person would have realized the coat belonged to another
- C. The defendant is not guilty because larceny requires intent to deprive another of property, which is negated by his belief in ownership
- D. The defendant is guilty of attempted larceny only, because the taking was not completed against the actual owner

89. A defendant became severely intoxicated voluntarily. While intoxicated, he committed an assault that, when sober, he would have recognized as wrongful. The jurisdiction recognizes voluntary intoxication as a defense only to specific-intent crimes. The defendant is charged with battery, a general-intent crime. The defense:

- A. Is fully available because intoxication negates the required mental state for all violent crimes
- B. Is available because all intentional crimes require purpose, which can be negated by intoxication
- C. Is available if the defendant can show his intoxication rendered him incapable of forming any culpable mental state
- D. Is unavailable for general-intent crimes such as battery, because voluntary intoxication negates only specific intent

90. A defendant broke into a cabin during a severe blizzard to obtain shelter and prevent death from exposure. The defendant took only items necessary for survival and left a note acknowledging the entry. The defendant is charged with burglary. Under the necessity defense:

- A. The defense is unavailable because property crimes never permit a necessity justification
- B. The defense may apply because the entry was reasonably necessary to prevent imminent serious harm and the defendant did not create the emergency
- C. The defense applies only if the defendant later paid restitution for any damages to the cabin
- D. The defense is fully available regardless of whether the defendant could have sought help elsewhere

91. A government undercover agent approached a defendant who had no prior criminal record and persuaded him over several months to assist in a drug transaction. The defendant initially refused but eventually agreed. The defendant raises entrapment as a defense. Under the subjective test of entrapment:

- A. The defense may succeed if the government induced the offense and the defendant was not predisposed to commit it
- B. The defense fails because anyone with the capacity to refuse remains responsible for their criminal acts
- C. The defense applies only when the government uses outrageous methods such as physical coercion
- D. The defense succeeds whenever government agents initiate contact with a defendant about criminal activity

92. A defendant set fire to her own house, intending to collect insurance proceeds. The house was attached to a small detached garage that was unoccupied. The fire spread to and damaged the garage. Under the common law of arson:

- A. The defendant is guilty of arson because she set fire to her own property
- B. The defendant is guilty of arson only if the garage qualified as a dwelling at common law
- C. The defendant is not guilty of common-law arson because arson required the malicious burning of the dwelling house of another
- D. The defendant is guilty of attempted arson because she did not intend to burn the garage

93. A defendant grabbed a victim on a public sidewalk and forced her at gunpoint into a nearby alley several feet away, intending to rob her. The defendant is charged with both robbery and kidnapping based on the movement of the victim. Under most modern jurisdictions' approach to merger:

- A. The defendant is guilty of both robbery and kidnapping because the offenses involve distinct elements
- B. The defendant is guilty of kidnapping because any unlawful movement of a victim constitutes kidnapping
- C. The defendant is guilty only of kidnapping because robbery merges into the greater offense
- D. The kidnapping charge merges into the robbery if the movement was incidental and added no significant danger beyond that inherent in the robbery

94. A defendant purchased a stereo from a stranger on the street for \$50, knowing the stereo was worth \$1,000. The defendant claims he did not actually know the stereo was stolen. To convict the defendant of receiving stolen property:

- A. The prosecution must show the defendant knew or reasonably believed the property was stolen at the time of receipt
- B. The prosecution must show the defendant personally observed the theft or participated in it
- C. Knowledge that the price was below market value is alone sufficient to support conviction
- D. The prosecution must prove the defendant actively sought out stolen property to receive

95. Three defendants conspired to rob a bank. During the robbery, one defendant — unbeknownst to the others — committed an additional unrelated robbery of a passerby on the way to the bank. Under the Pinkerton doctrine of conspiracy:

- A. The other conspirators are liable only for offenses they personally aided and abetted
- B. The other conspirators may be liable for the unrelated robbery if it was reasonably foreseeable as a consequence of the conspiracy
- C. The other conspirators are automatically liable for all crimes committed by any conspirator anywhere
- D. The other conspirators are liable only if the defendant who committed the additional crime informed them in advance

96. Two defendants engaged in adultery. The prosecution charges them with conspiracy to commit adultery in addition to the substantive offense. Under Wharton's Rule:

- A. Conspiracy is a separate offense that may be charged in addition to the substantive crime in all cases
- B. Conspiracy charges are permitted only when more than two persons are involved in the agreement
- C. Wharton's Rule applies only to victimless crimes affecting public morals
- D. Conspiracy cannot be charged when the substantive offense necessarily requires the participation of exactly the number of persons who participated

97. A defendant joined a conspiracy to commit robbery. Before any overt act was committed, he withdrew and informed the police of the planned crime. The other conspirators were arrested. The defendant is charged with conspiracy. Under modern conspiracy law:

- A. Withdrawal is not a defense to conspiracy once the agreement has been formed
- B. Withdrawal is a defense only if the defendant returns any property or money he received from the conspiracy
- C. Effective withdrawal before an overt act may be a defense, particularly if the defendant communicates withdrawal and takes affirmative steps to thwart the conspiracy
- D. Withdrawal is a complete defense regardless of when in the conspiracy the defendant withdrew

98. A defendant approached a friend and asked: "Will you kill my husband for \$10,000?" The friend refused. The defendant did not pursue the matter further. Under the common law of solicitation:

- A. The defendant is guilty of solicitation because she requested another to commit a crime with the intent that it be committed
- B. The defendant is not guilty because the friend's refusal made any prosecution moot
- C. The defendant is guilty of conspiracy because she proposed a criminal agreement
- D. The defendant is not guilty of any crime because she abandoned the plan after the refusal

99. A defendant suffered from a recognized mental illness at the time he committed a homicide. As a result of the illness, he lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. The jurisdiction follows the Model Penal Code test for insanity. The defendant's insanity defense:

- A. Fails because the MPC test is the same as M'Naghten in modern jurisdictions
- B. Succeeds because the MPC test encompasses both cognitive and volitional impairment due to mental disease
- C. Fails because the defendant retained some capacity to understand his actions despite the illness
- D. Succeeds only if the defendant cannot understand the nature of his conduct at all

100. A grand jury subpoenaed a corporation's records that the prosecutor believed contained incriminating evidence. The CEO, who is also a target of the investigation, asserted the Fifth Amendment privilege against self-incrimination on behalf of the corporation, refusing to produce the records. Under *Braswell v. United States*:

- A. The CEO's assertion is valid because his Fifth Amendment privilege extends to all records of corporations he controls
- B. The CEO must produce the records, and any subsequent use against him personally violates the Fifth Amendment
- C. The corporation has Fifth Amendment rights because corporate identity is a legal fiction
- D. The CEO must produce the corporate records because corporations have no Fifth Amendment privilege, and his act of production is not subject to use against him personally except in limited circumstances

101. A defendant was indicted but his trial was delayed for two years due to government negligence and high case loads. The defendant remained free on bail but suffered anxiety and reputation harm. Under the *Barker v. Wingo* test for speedy trial:

- A. The delay alone is per se unconstitutional regardless of other factors
- B. The defendant's pretrial liberty negates any speedy trial violation
- C. The court balances the length of delay, reason for delay, defendant's assertion of the right, and prejudice
- D. The Sixth Amendment speedy trial right applies only to defendants in pretrial detention

102. A defendant was indicted by a federal grand jury for a felony. The defendant later learned that the grand jury heard hearsay testimony and considered evidence later determined to have been illegally obtained. The defendant moved to dismiss the indictment. The court should:

- A. Deny the motion because grand jury proceedings are not subject to the same evidentiary rules as trials, and indictments are generally not set aside for the admission of inadmissible evidence
- B. Grant the motion because grand juries must follow the same rules of evidence as trial juries
- C. Grant the motion if any unlawfully obtained evidence was material to the grand jury's decision
- D. Grant the motion because hearsay testimony in grand jury proceedings violates due process

103. A defendant was charged with a non-violent property offense punishable by a maximum of 5 years' imprisonment. The court set bail at \$1 million based primarily on the defendant's wealth, with no individualized showing of flight risk or danger to community. The defendant appeals. Under the Eighth Amendment:

- A. The bail is constitutional because courts have broad discretion to set bail amounts
- B. The bail is constitutional because high bail prevents flight by wealthy defendants
- C. The bail is constitutional if the defendant can demonstrate ability to post a lower amount
- D. The bail is excessive if it is set higher than reasonably necessary to assure the defendant's appearance at trial

104. In a criminal trial, the prosecution sought to introduce a forensic laboratory report showing a positive blood-alcohol reading. The analyst who prepared the report did not testify, and the report was admitted through a different lab supervisor. Under *Bullcoming v. New Mexico* and *Melendez-Diaz*:

- A. The report is admissible as a business record of a public agency
- B. The report is inadmissible without the testimony of the analyst who actually performed the analysis, because the report is testimonial
- C. The report is admissible if a different qualified expert testifies to the methodology
- D. The report is admissible because forensic reports are not "testimonial" under *Crawford*

105. A defendant entered into a plea agreement with the prosecutor under which he would plead guilty to a lesser offense in exchange for cooperation. After the defendant fulfilled his cooperation obligation, the prosecutor refused to honor the agreement. The defendant moves to enforce. Under *Santobello v. New York*:

- A. Plea agreements are not enforceable contracts and the prosecutor may withdraw at any time
- B. The defendant must accept whatever punishment the court imposes regardless of the agreement
- C. When a plea rests on the prosecutor's promise, the promise must be fulfilled or the defendant must be allowed to withdraw the plea
- D. The defendant has no remedy because plea agreements concern only the executive branch

106. A defendant was convicted in state court of robbery. He was later prosecuted in federal court for bank robbery arising from the same incident under federal law. The defendant raises double jeopardy. Under the dual sovereignty doctrine:

- A. Successive prosecutions by separate sovereigns (state and federal) do not violate double jeopardy
- B. The federal prosecution is barred because the same conduct cannot be tried twice
- C. The dual sovereignty doctrine has been overturned by modern Supreme Court precedent
- D. Federal prosecution is permitted only if the state acquitted the defendant of the state charge

107. Police arranged a one-person showup at a hospital where the victim of a robbery was being treated for injuries. The victim identified the defendant as her assailant. The defendant moved to suppress the identification as suggestive. Under the totality-of-the-circumstances test:

- A. Showups are per se invalid and require automatic suppression
- B. Showups are always valid because of the spontaneous nature of the identification
- C. Showups violate due process unless conducted with multiple participants
- D. The identification is admissible if reliable under the totality of the circumstances, weighing factors such as opportunity to view, accuracy of description, and certainty

108. After the defendant was indicted on robbery charges, he was placed in a cell with a paid informant who, at the direction of police, engaged the defendant in conversation that elicited incriminating statements. The defendant moved to suppress. Under *Massiah v. United States* and *Maine v. Moulton*:

- A. The statements are admissible because they were not the product of formal police interrogation
- B. The statements are inadmissible because, after the right to counsel has attached, the government may not deliberately elicit incriminating statements without counsel's presence
- C. The statements are admissible because the informant was not a sworn officer
- D. The statements are admissible if the defendant did not request counsel before speaking

109. A police officer observed a person standing on a street corner late at night, looking nervously around. The officer had no specific information about any crime. Based on this observation alone, the officer stopped the person and searched him, finding a weapon. Under *Terry v. Ohio*:

- A. The stop and search are invalid because the officer lacked reasonable suspicion based on articulable facts
- B. The stop and search are valid because police have authority to investigate anyone in a high-crime area
- C. The stop is valid but the search is invalid without probable cause to believe a weapon was present
- D. The stop and search are valid based on the officer's experience-based hunch

110. A police officer asked a driver if he could search the trunk of her car during a routine traffic stop. The driver said: "Sure, if you want." The officer found drugs in the trunk. The driver later moved to suppress, arguing she did not feel free to refuse. Under *Schneckloth v. Bustamonte*:

- A. Consent must be obtained in writing to be valid under the Fourth Amendment
- B. Officers must affirmatively advise the driver of the right to refuse before any search
- C. Consent is voluntary if, given the totality of circumstances, it was not the product of duress or coercion, and need not be preceded by a warning of the right to refuse
- D. Traffic stops automatically render any consent coerced because of the inherent power imbalance

111. Police officers had probable cause to believe drugs were located in a parked car. They searched the car without a warrant. The driver moves to suppress. Under the automobile exception:

- A. The search is invalid because all warrantless searches require exigent circumstances
- B. The search is valid only if the driver consented to the search
- C. The search is invalid because parked cars are not subject to the automobile exception's reduced expectation of privacy
- D. The search is valid because police with probable cause may search a vehicle without a warrant due to its ready mobility

112. A police officer was lawfully in a residence pursuant to a valid warrant to search for stolen jewelry. While in the bedroom, the officer saw illegal drugs in plain view on a dresser. The officer seized the drugs. The defendant moves to suppress. Under the plain view doctrine:

- A. The seizure is invalid because the warrant did not authorize seizure of drugs

- B. The seizure is valid because the officer was lawfully present and immediately recognized the contraband nature of the item in plain view
- C. The seizure is valid only if the drugs were within the scope of items described in the warrant
- D. The seizure is invalid because plain view applies only to outdoor public spaces

113. A suspect invoked his right to remain silent during initial questioning. The police ended the interview. Three days later, in the same investigation, a different officer attempted to interrogate the defendant about the same offense. The defendant waived his rights and confessed. Under *Michigan v. Mosley* and *Edwards v. Arizona*:

- A. The right to silence (as opposed to counsel) may be honored by a complete cessation of questioning with reasonable subsequent attempts permitted, particularly with fresh warnings
- B. The second interrogation is invalid because once silence is invoked, all questioning must stop forever
- C. The second interrogation is invalid because the same offense was discussed
- D. The second interrogation is invalid unless the defendant himself initiated the conversation

114. A defendant was charged with a misdemeanor punishable by a maximum sentence of 6 months. The trial court denied his request for a jury trial. Under *Baldwin v. New York* and *Duncan v. Louisiana*:

- A. The denial is unconstitutional because all criminal defendants have an absolute right to jury trial
- B. The denial is constitutional because the right to jury trial attaches only to "serious" offenses, defined as those with potential punishment exceeding six months' imprisonment
- C. The denial is unconstitutional because misdemeanors with any imprisonment potential require jury trials
- D. The denial is constitutional because juries are not required when defendants are not in pretrial custody

115. At trial in a personal injury action, the plaintiff seeks to introduce evidence that the defendant was wearing a religious medal at the time of the accident. The defendant objects on relevance grounds. The evidence is:

- A. Admissible to show the defendant's general state of mind at the time of the accident
- B. Admissible because all evidence about the defendant is relevant in personal injury cases

C. Inadmissible because the religious medal has no tendency to make any fact of consequence more or less probable

D. Inadmissible because evidence of religious affiliation is categorically barred in all civil trials

116. In a criminal trial for assault, the prosecution seeks to introduce graphic photographs of the victim's injuries. The defense objects under Rule 403, arguing that less inflammatory medical illustrations would suffice. The court should:

A. Exclude the photographs because graphic visual evidence is unfairly prejudicial as a matter of law

B. Admit the photographs as automatically admissible because they directly depict the injury

C. Exclude the photographs unless the defense first stipulates to the nature of the injuries

D. Weigh the probative value against the danger of unfair prejudice and admit only if probative value is not substantially outweighed

117. In a personal injury action involving a car accident at an intersection, the plaintiff seeks to introduce testimony that the defendant always rolled through stop signs at that particular intersection on his daily commute. Under FRE 406:

A. The testimony is admissible as evidence of habit, which is admissible to prove conduct on the occasion in question

B. The testimony is inadmissible as character evidence offered to prove conformity with prior behavior

C. The testimony is admissible only if more than 100 prior instances are documented

D. The testimony is inadmissible because driving behavior is too general to constitute habit

118. In a personal injury lawsuit, the defendant offered to settle for \$50,000, and during settlement discussions stated: "I know I was at fault." The plaintiff seeks to introduce the statement at trial. Under FRE 408:

A. The statement is admissible as an opposing party statement under FRE 801(d)(2)

B. The statement is admissible because settlement discussions are not privileged

C. The statement is inadmissible to prove liability because conduct or statements made during compromise negotiations are inadmissible for that purpose

D. The statement is admissible to show the defendant's state of mind regarding negligence

119. A defendant entered into plea negotiations and made certain statements about his involvement in the offense. The negotiations broke down and the defendant proceeded to trial. The prosecution seeks to use the defendant's plea negotiation statements at trial. Under FRE 410:

- A. The statements are admissible as opposing party statements regardless of when they were made
- B. The statements are inadmissible because Rule 410 protects statements made during plea negotiations with a prosecutor
- C. The statements are admissible if they were not made under oath
- D. The statements are inadmissible only if the defendant invokes the privilege at the trial stage

120. In a personal injury action, the plaintiff seeks to introduce evidence that the defendant carried \$1 million in liability insurance to show the defendant was financially capable of being negligent. Under FRE 411:

- A. The evidence is inadmissible to prove negligence because evidence of insurance coverage is barred for that purpose
- B. The evidence is admissible because financial information about the defendant is relevant
- C. The evidence is admissible to allow the jury to consider damages
- D. The evidence is inadmissible only if the insurance carrier is also a party to the lawsuit

121. In a federal prosecution for sexual assault, the prosecutor seeks to introduce evidence that the defendant committed a similar sexual assault five years earlier. The defense objects under FRE 404(b). Under FRE 413:

- A. The evidence is inadmissible because FRE 404(b) prohibits propensity evidence
- B. The evidence is admissible only if the prior incident resulted in a criminal conviction
- C. The evidence is inadmissible because all prior bad acts are barred in criminal trials
- D. The evidence is admissible because FRE 413 permits evidence of prior sexual assaults in sexual assault cases for propensity purposes

122. A witness testified that he heard his deceased uncle, before his death, say: "I'm the one who set the fire at the warehouse, not the defendant." The uncle is unavailable for trial. The defendant offers the statement under FRE 804(b)(3). The court should:

- A. Exclude the statement because hearsay from a deceased declarant requires the dying declaration exception
- B. Admit the statement automatically because all statements against penal interest are admissible
- C. Admit the statement if the declarant is unavailable, the statement was contrary to the declarant's penal interest when made, and corroborating circumstances indicate trustworthiness
- D. Exclude the statement because statements against penal interest are inadmissible in criminal cases

123. In a civil trial, a witness who testified in a prior criminal trial involving the same parties and issues is now unavailable. The party who lost at the prior trial seeks to introduce the witness's former testimony. The opposing party who was on the same side during the prior trial objects. Under FRE 804(b)(1):

- A. The testimony is admissible because all former testimony is automatically admissible if the declarant is unavailable
- B. The testimony is admissible if the party against whom it is offered, or a predecessor in interest, had opportunity and similar motive to develop the testimony at the prior proceeding
- C. The testimony is admissible only if both parties to the current action were also parties in the prior proceeding
- D. The testimony is inadmissible because criminal trial testimony is not transferable to civil trials

124. A witness testified that he saw a hospital admission note stating: "Patient told nurse she fell on the stairs." Each level of statement is hearsay. Under FRE 805:

- A. The statement is admissible only if each level of hearsay independently qualifies under an exception or exclusion
- B. The statement is automatically admissible because medical records are admissible under FRE 803(6)
- C. The statement is inadmissible because all double hearsay is barred
- D. The statement is admissible if the underlying nurse's statement was given for medical treatment purposes

125. In a civil action, the plaintiff seeks to introduce a public report from a government agency that investigated the incident and made findings of fault. The defendant objects. Under FRE 803(8):

- A. The report is inadmissible because government reports always constitute hearsay
- B. The report is admissible only if the agency's investigator testifies in person
- C. The report is admissible only in civil cases where no party objects
- D. Factual findings in a public report from an authorized investigation are admissible in civil cases against the government and in some cases against private parties, subject to a showing of trustworthiness

126. A patient told her doctor: "I have severe pain because my husband beat me yesterday." The doctor is later called to testify about the statement at the husband's criminal trial. Under FRE 803(4):

- A. The entire statement is inadmissible because it identifies the husband
- B. The statement about pain is admissible, but the identification of the husband as the cause is generally inadmissible unless the identity was reasonably pertinent to treatment
- C. The entire statement is admissible because all patient statements to doctors are exempt from hearsay
- D. The statement is admissible only if the doctor recorded it in the medical record at the time

127. A party seeks to introduce a 25-year-old letter found in a relative's attic, claiming it documents a property transaction. Under FRE 803(16) (statements in ancient documents):

- A. The document is not authentic because all documents over 20 years old require expert authentication
- B. The document is admissible only if the original author can be called to testify
- C. The document is admissible as an ancient document if it has been in existence for at least 20 years and was prepared before January 1, 1998
- D. The document is admissible because there is no time limitation on documentary evidence

128. At trial, a party's expert testified that the standard of care in a medical malpractice case was met. The opposing party sought to cross-examine the expert using passages from a recognized medical treatise. Under FRE 803(18):

- A. The expert may be cross-examined with the treatise; the relevant passages may be read into evidence but the treatise itself is not received as an exhibit
- B. The treatise is inadmissible because all hearsay is barred at trial
- C. The treatise is admissible as a regular business record and may go to the jury room
- D. The treatise may be used only if the expert acknowledged it as authoritative on direct examination

129. A defendant in a criminal trial introduced character evidence for honesty in his defense. The prosecution wishes to cross-examine the character witness about specific instances of the defendant's prior dishonest conduct. Under FRE 405:

- A. Specific instances may not be inquired into on cross-examination of a character witness
- B. Specific instances may be proved by extrinsic evidence as well as cross-examination
- C. The cross-examination must be limited to general reputation in the community
- D. Specific instances of conduct may be inquired into on cross-examination of a character witness, though the cross-examiner is bound by the witness's answer absent proper extrinsic proof

130. A witness testified at trial. The opposing party wishes to impeach the witness by showing she received substantial monetary payments from the party who called her. Under common impeachment principles:

- A. Impeachment with bias evidence is improper because bias is not relevant to credibility
- B. Impeachment with bias evidence is permitted and is one of the most important means of attacking credibility
- C. Bias may be shown only through extrinsic evidence after the witness denies the bias on cross-examination
- D. Bias impeachment is limited to financial bias and does not extend to personal relationships

131. In a criminal assault prosecution where the defendant claims self-defense, the defendant offers evidence of the victim's character for violence to support his claim. Under FRE 404(a)(2)(B):

- A. The defendant may offer evidence of a pertinent trait of the victim's character, opening the door for the prosecution to rebut

- B. Character evidence about the victim is inadmissible in all criminal cases as character evidence
- C. The defendant may offer character evidence only after the prosecution opens the door first
- D. Only the prosecution may offer evidence of the victim's character to show peacefulness

132. On direct examination of his own witness, a lawyer asked: "Isn't it true that the defendant was driving 60 miles per hour when he hit the plaintiff?" The opposing party objects to the leading nature of the question. Under FRE 611(c):

- A. Leading questions are always permitted on direct examination of one's own witness
- B. Leading questions are never permitted on direct examination, regardless of circumstance
- C. Leading questions are generally not permitted on direct examination except as necessary to develop the witness's testimony, or with hostile or adverse witnesses
- D. Leading questions are permitted on direct examination only with the express consent of opposing counsel

133. A witness testified on direct examination about a contract dispute. On cross-examination, opposing counsel sought to question the witness about an unrelated incident concerning her family life. Under FRE 611(b):

- A. Cross-examination is unlimited in scope at the discretion of the cross-examiner
- B. Cross-examination is limited to matters covered on direct, with no exceptions
- C. Cross-examination is generally limited to the scope of direct examination only when the witness is a non-party
- D. Cross-examination should not go beyond the subject matter of direct examination and matters affecting credibility, though the court may exercise discretion to permit broader cross

134. In a personal injury action, an expert witness for the plaintiff testifies: "In my opinion, the defendant was negligent." The defense objects, arguing that the witness is invading the jury's role on the ultimate issue. Under FRE 704:

- A. The objection is sustained because expert opinions on the ultimate issue are always barred

- B. The objection is overruled because opinion testimony embracing the ultimate issue is not automatically objectionable
- C. The objection is sustained unless the expert first explains the legal definition of negligence
- D. The objection is overruled only if the opinion is offered in cross-examination

135. In a civil trial against a corporation, the plaintiff seeks to introduce a statement made by a corporate employee, within the scope of his employment, about the cause of an accident. Under FRE 801(d)(2)(D):

- A. The statement is admissible as an opposing party statement made by an agent on a matter within the scope of the agency
- B. The statement is inadmissible because employees cannot speak for the corporation
- C. The statement is admissible only if the employee has authority to bind the corporation in litigation
- D. The statement is inadmissible unless the corporation ratified the employee's statement

136. In a federal criminal trial, the prosecution offers a statement made by an alleged co-conspirator during the course of the conspiracy and in furtherance of it. Under FRE 801(d)(2)(E):

- A. The statement is inadmissible because it constitutes hearsay subject to no recognized exception
- B. The statement is admissible only if the co-conspirator testifies at trial
- C. The statement is not hearsay if made by a co-conspirator during and in furtherance of the conspiracy, provided independent evidence of the conspiracy exists
- D. The statement is admissible only if the defendant personally heard the statement when it was made

137. In a federal-question civil case in federal court, a party seeks to assert a state-law-based privilege not recognized in federal common law. Under FRE 501:

- A. State privileges always apply in federal court
- B. In federal-question cases, federal common law of privileges governs
- C. The court must apply the privilege rule of the state with the most significant relationship to the case
- D. State privileges apply only if both parties consent to their application

138. A witness testified that she had been at her aunt's house in another state on the day of the alleged offense. The opposing party sought to introduce extrinsic evidence that the witness was actually shopping at a mall that day. Under the common-law rule on impeachment by contradiction on collateral matters:

- A. Extrinsic evidence may always be used to contradict any testimony at trial
- B. Extrinsic evidence may be used to contradict only documents in evidence
- C. Extrinsic evidence is excluded for collateral matters unless the witness consents
- D. Extrinsic evidence may not be used to contradict a witness on a collateral matter that does not bear on a substantive issue or credibility

139. In a contract dispute, a party seeks to prove the contents of a written agreement through oral testimony rather than producing the original document or a duplicate. The opposing party objects under the best evidence rule. Under FRE 1002:

- A. The oral testimony is generally inadmissible to prove the contents of the writing unless the original is unavailable or unobtainable
- B. The oral testimony is admissible because witnesses may testify about any matter they observed
- C. The oral testimony is admissible if both parties stipulate to the use of secondary evidence
- D. The oral testimony is admissible because the best evidence rule applies only to government documents

140. A party seeks to introduce a certified copy of a deed from the county recorder's office. The deed bears the official seal and signature of the recorder. Under FRE 902(4):

- A. The deed must be authenticated by testimony from the recorder
- B. The deed is self-authenticating only if the original is also produced
- C. The deed is self-authenticating as a certified copy of a public record
- D. The deed is inadmissible because all public records require trustworthiness showing

141. A witness testified that he received a telephone call. To identify the caller as the defendant, the witness testified that he recognized the voice based on having previously spoken with the defendant in person on several occasions. Under FRE 901(b)(5):

- A. Voice identification by a lay witness is inadmissible without expert analysis
- B. Voice identification is admissible based on the witness's familiarity with the voice at any time, including before or after the call
- C. Voice identification is admissible only if the witness has spoken with the person more than 10 times
- D. Voice identification requires the witness to have heard the caller's voice in person on the same day as the call

142. A witness testified that she did not remember the details of an event but had previously prepared a memorandum about it. Counsel showed her the memorandum, after which the witness stated her memory was now refreshed and proceeded to testify. The memorandum itself was not offered into evidence. This procedure represents:

- A. Improper procedure because writings used to refresh recollection must be admitted into evidence
- B. Past recollection recorded, requiring the memorandum to be read into evidence under FRE 803(5)
- C. An improper attempt to circumvent the hearsay rule by avoiding admission of the document
- D. A proper use of present recollection refreshed under FRE 612, where the memorandum aids recall and the witness testifies from refreshed memory

143. In a criminal trial, the court took judicial notice of a fact regarding the chemical composition of a substance. The court instructed the jury that they were required to accept this fact. The defendant objects. Under FRE 201(f):

- A. In a criminal case, the jury must be instructed that it may, but is not required, to accept the noticed fact as conclusive
- B. The court's instruction is proper because judicial notice always conclusively establishes the noticed fact
- C. The court's instruction is proper as long as the noticed fact relates to a scientific matter
- D. Judicial notice is unavailable in criminal trials and the court erred by taking notice

144. A grantor conveyed Blackacre "to the first of A's children to reach age 30." A is alive and has no children at the time of the conveyance. The Rule Against Perpetuities operates by:

- A. Voiding all gifts to unborn persons regardless of timing

- B. Applying only to charitable trusts and not to private gifts
- C. Voiding interests that may not vest within 21 years of the death of all persons alive at the creation of the interest
- D. Voiding gifts that have not vested within 100 years of the creation of the interest

145. A grantor conveyed Blackacre "to my children, share and share alike." At the time of the conveyance, the grantor had two children, A and B. Two years later, the grantor's child C was born. The class:

- A. Closed at the time of the conveyance, so only A and B take
- B. Remains open under the rule of convenience and class members born before the class closes may share
- C. Closes only at the grantor's death regardless of intervening events
- D. Closes whenever any class member demands distribution from the property

146. A trustor created a trust giving the income to her son for life, with a general power of appointment over the remainder vested in her son. The son's exercise of this power may extend:

- A. To anyone, including the son himself, his estate, his creditors, or his estate's creditors, because general powers permit appointment to anyone
- B. Only to specified family members designated in the original trust instrument
- C. Only to the son's creditors and not to himself or his estate
- D. Only to charitable organizations approved by the original trustor

147. A landowner began excavating on his property, removing soil that supported the lateral stability of an adjacent owner's land. The neighbor's land then subsided, causing damage. Under the law of lateral support:

- A. The landowner is liable only if he was negligent in performing the excavation
- B. The landowner is not liable because all property owners may freely excavate on their own land
- C. The landowner is liable only if the neighboring land contained substantial improvements
- D. The landowner is strictly liable for damage caused by the removal of lateral support to land in its natural state

148. A landowner owns property bordering a non-navigable stream. The landowner wishes to divert water for agricultural use. Under the reasonable use doctrine of riparian rights:

- A. The landowner may divert as much water as desired for any agricultural purpose
- B. The landowner may not divert any water without paying just compensation to downstream owners
- C. The landowner may make reasonable use of the water, with reasonableness determined by balancing the use against the rights of other riparian owners
- D. The landowner may use water only for domestic and natural purposes, not commercial agriculture

149. A buyer and seller entered into a binding contract for the sale of land. After signing but before closing, the building on the property was destroyed by fire through no fault of either party. Under the doctrine of equitable conversion:

- A. The buyer bears the risk of loss after entering into a binding contract for the purchase, even before closing
- B. The seller bears the risk of loss until legal title formally passes to the buyer
- C. Both parties share the loss equally as a matter of equitable distribution
- D. The contract is automatically rescinded by the loss without any further action by either party

150. A buyer and seller entered into a contract for the sale of land. The contract specified closing on June 1 but did not state that time was of the essence. The seller was unable to convey clear title on June 1. On June 15, the seller obtained the necessary corrections and tendered closing. The buyer refused to close. The buyer's position is:

- A. Correct because closing dates in real estate contracts are always strictly enforced
- B. Incorrect because in the absence of "time of essence" language, a reasonable delay does not constitute material breach
- C. Correct only if the buyer can show he suffered actual damages from the delay
- D. Incorrect because real estate contracts may be enforced indefinitely after any agreed closing date

151. A grantor conveyed a parcel of land by warranty deed to a grantee, although at the time of the conveyance the grantor did not own the land. The grantor later acquired title to the same parcel. Under the doctrine of estoppel by deed (after-acquired title):

- A. The grantee gets nothing because the original conveyance was void from the outset
- B. The grantor retains title because subsequent acquisitions do not validate previously invalid deeds
- C. The grantee must pay additional consideration to receive the after-acquired title from the grantor
- D. The after-acquired title passes automatically to the grantee by operation of the doctrine of estoppel by deed

152. A landlord and tenant entered into a lease for a residential apartment with rent payable monthly. The lease did not specify a term. Under the common law of leasehold estates:

- A. The tenancy is at will and may be terminated at any time without notice
- B. The tenancy is a fixed-term tenancy of one year by operation of law
- C. The tenancy is a month-to-month periodic tenancy that requires notice equal to the rental period for termination
- D. The tenancy is at sufferance and provides no protection to the tenant

153. A tenant's one-year lease expired. The tenant did not move out, and the landlord neither accepted further rent nor took action to evict. The tenant's status is:

- A. A trespasser without any property right
- B. A tenant at sufferance, whose continued possession is wrongful but who may be either evicted or held to a new tenancy at the landlord's election
- C. A tenant by implication, automatically renewed for a similar term as the original lease
- D. A tenant at will because the original term has ended

154. A tenant in a two-year lease vacated the premises after six months and returned the keys to the landlord. The landlord accepted the keys and made no effort to re-let the apartment. Under the doctrine of surrender by operation of law:

- A. The tenant remains fully liable for the remaining rent through the end of the original lease term
- B. The tenant is liable only for the rent due before surrender of possession
- C. The landlord must accept the surrender in writing for it to be effective
- D. The landlord's acceptance of keys and failure to re-let may constitute acceptance of surrender, terminating the tenant's liability

155. A state government seeks to take private property through eminent domain, intending to transfer the land to a private developer who promises economic development and increased tax revenue. Under *Kelo v. City of New London*:

- A. The taking is constitutional as long as the public purpose of economic development is a permissible "public use"
- B. The taking is unconstitutional because transfers to private developers do not satisfy public use requirements
- C. The taking is constitutional only if the private developer has committed to specific land uses in advance
- D. The taking is unconstitutional because the Takings Clause requires direct public ownership of taken property

156. A landowner applied to the local zoning board for a variance to allow a non-conforming use of his property. To obtain a variance, the landowner must typically show:

- A. Only that the proposed use would benefit the surrounding community
- B. That neighbors have not objected to the proposed use
- C. Unnecessary hardship arising from unique characteristics of the property, with the variance not detrimental to public welfare
- D. That the proposed use would generate increased tax revenue for the local government

157. A landowner granted a third party the right to enter his land and remove timber. The grant is in writing and conveys an interest. This interest is best characterized as:

- A. An easement appurtenant for the benefit of an adjacent parcel

- B. A license, freely revocable by the landowner at any time
- C. A leasehold estate giving the third party possession of the timber portion
- D. A profit à prendre, granting the right to enter another's land and remove resources

158. A tenant in a five-year lease transferred all of his remaining four years of leasehold interest to a third party for the entire remaining term of the lease. This transfer is best characterized as:

- A. A sublease, because all transfers involve subordination
- B. An assignment, because the entire remaining interest was transferred for the same term as the original lease
- C. A novation, releasing the original tenant from all liability
- D. A surrender, terminating the original leasehold interest

159. A tenant held a long-term lease on a property. The tenant subsequently purchased the fee simple of the same property from the landlord. Under the merger doctrine:

- A. The lease and fee simple remain as separate estates indefinitely
- B. The lease automatically becomes a perpetual covenant binding subsequent owners
- C. The lease and fee simple interests merge into one ownership in the tenant, extinguishing the lease
- D. The tenant must record a written instrument before the merger takes effect

160. In a notice jurisdiction, Owner A conveyed to B without B recording. Owner A then conveyed to C, a bona fide purchaser without notice. C properly recorded. C then conveyed to D, who had actual notice of the prior conveyance to B. Under the shelter rule:

- A. D takes free of B's interest because D takes "in the shoes" of C, who was a bona fide purchaser
- B. D takes subject to B's interest because D had actual notice of the prior conveyance
- C. B's interest prevails because B was first in time
- D. The conveyance to D is void because D had notice of the competing claim

161. A state has enacted a Marketable Record Title Act with a 30-year root of title period. A claimant produces an unbroken chain of title for the last 35 years showing his ownership. Older recorded interests have not been preserved through the statutory mechanism. The claimant's title:

- A. Is subject to all prior recorded interests regardless of age
- B. Is subject only to interests recorded within the past 50 years
- C. Must be reaffirmed through a separate quiet-title action against potential adverse claimants
- D. Is generally free of interests predating the root of title, subject to certain statutory exceptions

162. A grantor signed a deed to her daughter but kept the deed in her own safe-deposit box for years without ever physically delivering it. After the grantor's death, the daughter sought to claim the property based on the unrecorded but signed deed. The deed:

- A. Is effective because all deeds vest title upon execution regardless of physical delivery
- B. Is effective if the grantor intended the daughter to receive the property eventually
- C. Is generally ineffective because delivery, requiring an intent to presently convey, is a necessary element of a valid deed
- D. Becomes effective at the grantor's death by operation of law

163. A developer sold lots in a residential subdivision. Each deed included a restriction limiting use to single-family residences. The restriction was recorded. A subsequent owner of one lot violated the restriction by operating a commercial business from his home. The adjoining owners seek to enforce the restriction. The court should:

- A. Refuse enforcement because restrictive covenants are not enforceable through equity
- B. Enforce the restriction as an equitable servitude if it touches and concerns the land and the subsequent owner had notice
- C. Refuse enforcement unless the developer is still alive and consents to enforcement
- D. Enforce the restriction only if the violation has caused measurable economic damage

164. A and B own adjoining parcels. A had a written easement to cross B's land. A subsequently purchased B's land, becoming the owner of both parcels. Years later, A sold the originally servient parcel to a third party. The easement:

- A. Continues to exist because it was originally recorded
- B. Continues to exist as a matter of equity if A intended for the easement to be revived
- C. Was extinguished by merger when A acquired the servient parcel, but is automatically revived upon resale
- D. Was extinguished by merger when A acquired both parcels, and is not automatically revived upon resale

165. A grantor purported to convey property to A, but the deed was never recorded. A then conveyed the property to B, who recorded. B's deed appears in the chain of title only through A, who never appears as a grantee in the records. B's deed is a:

- A. Properly recorded deed that provides constructive notice to subsequent purchasers
- B. Valid deed that protects B against all subsequent purchasers
- C. Wild deed, generally held not to provide constructive notice to subsequent purchasers because it does not appear in the searcher's chain of title
- D. Forged deed because the grantor's title was never established of record

166. Three siblings inherited a parcel of land equally as tenants in common. One sibling wishes to sell while the others want to retain the property. The non-selling siblings refuse to buy out the selling sibling. Under the common-law remedy of partition:

- A. The selling sibling may seek a judicial partition, which results in physical division if practical or sale and distribution of proceeds if not
- B. The selling sibling may sell only her share, but only with the consent of the other co-tenants
- C. The selling sibling has no remedy because all co-tenants must agree to any disposition
- D. The selling sibling may compel the others to purchase her share at fair market value

167. A grantor conveyed Blackacre "to A for the life of B." A's interest is best described as:

- A. A fee simple absolute because life estate language requires the life of the holder
- B. A defeasible life estate because A may lose the property if B dies prematurely
- C. A reversion in fee simple because the language is unclear
- D. A life estate pur autre vie, measured by the life of B rather than A

168. A landlord and tenant entered into an oral lease "to last as long as both parties are satisfied." The lease specified no defined term. The tenancy is:

- A. Tenancy by sufferance until the landlord takes affirmative action
- B. Tenancy at will, terminable by either party with reasonable notice
- C. Tenancy for years, despite the lack of a term
- D. Periodic tenancy on the period of rent payment

169. A purchaser bought a newly constructed home from a builder-vendor. Three months after closing, significant structural defects emerged. The purchaser sued the builder. The court should:

- A. Find no liability because new home purchases are subject to caveat emptor
- B. Find liability only if the builder made specific express warranties
- C. Find that the builder-vendor breached an implied warranty of habitability or workmanlike construction
- D. Find no liability because the purchaser had the opportunity to inspect before closing

170. A grantor conveyed property "to A, B, and C." The deed contained no language regarding survivorship or any other concurrent estate. Under the modern presumption:

- A. The grantees take as tenants in common with equal undivided interests
- B. The grantees take as joint tenants with right of survivorship
- C. The grantees take as tenants by the entirety regardless of their relationship
- D. The deed is void for lack of specification of the form of ownership

171. A residential tenant remained in the apartment after the expiration of his one-year lease. The landlord neither accepted further rent nor began eviction. After two months, the landlord elected to treat the tenant as renewed for another year. Under common-law holdover tenancy:

- A. The tenant remains liable as a trespasser only, with no leasehold obligations
- B. The tenant becomes a tenant at sufferance permanently
- C. The tenant's status is at the tenant's election, with no landlord discretion
- D. The landlord may unilaterally elect to treat the holdover as a new periodic tenancy on terms of the original lease

172. A newspaper published a story containing photographs of the plaintiff and quotes attributed to her, although the plaintiff had not made the statements. The publication did not contain technically false facts but placed the plaintiff in a misleading context. Under the tort of false light invasion of privacy:

- A. The plaintiff cannot recover because the underlying facts were accurate
- B. The plaintiff may recover only if the publication contained actual defamatory statements
- C. The plaintiff may recover if the publication placed her in a false light highly offensive to a reasonable person, made with actual malice or reckless disregard for truth
- D. The plaintiff may recover only if the plaintiff is a private figure rather than a public official

173. A newspaper published a true story revealing that the plaintiff had been institutionalized for mental illness 20 years earlier. The plaintiff had since become a private citizen with no public role. The plaintiff sued for public disclosure of private facts. The newspaper's best defense is:

- A. The information is true and therefore not actionable in any privacy tort
- B. The disclosure concerned a matter of legitimate public concern, even if private and embarrassing
- C. The plaintiff voluntarily entered the public sphere by living publicly after recovery
- D. Privacy torts have been abolished by the First Amendment in all but exceptional cases

174. A company used a famous athlete's photograph in advertisements for its product without obtaining permission. The athlete sued for appropriation. The athlete must prove:

- A. That the company specifically intended to harm her reputation
- B. That the advertisements contained false claims about the product
- C. That the company appropriated her name or likeness for the company's commercial benefit without consent
- D. That the athlete suffered actual monetary damages from the unauthorized use

175. A newspaper published a story stating that the plaintiff had been convicted of a crime ten years ago. The statement is true. The plaintiff nevertheless sued for defamation. The newspaper's defense of truth:

- A. Is unavailable in defamation cases because truth has been abolished as a defense
- B. Is available only if the newspaper can show it acted in good faith
- C. Is available only when the published statement concerns a matter of public concern
- D. Is a complete defense at common law, and even constitutionally protected speech is shielded by the truth defense

176. A plaintiff was seriously injured by the defendant's negligence. The plaintiff's spouse seeks damages for loss of consortium, including loss of companionship and affection. Under modern tort law:

- A. Loss of consortium claims are unavailable to spouses
- B. Loss of consortium is available only if the spouse was physically present at the accident
- C. The spouse has an independent claim for loss of consortium based on the relationship's value
- D. Loss of consortium damages are limited to medical expenses incurred by the injured party

177. A defendant's negligence caused the plaintiff's husband to die. The husband would have lived approximately 30 more years and was earning \$80,000 per year. The wife sues under the state's wrongful death statute. The wife may recover:

- A. Only nominal damages because death damages are speculative
- B. Pecuniary losses such as lost financial support, plus damages for grief and loss of companionship as authorized by statute
- C. All damages the deceased would have recovered had he survived to bring his own claim

D. Only the funeral and burial expenses incurred by the family

178. A defendant's negligence caused the plaintiff to suffer painful injuries before the plaintiff died from the injuries one year after the accident. The plaintiff's estate sues. Under a survival statute:

A. The estate may not recover because tort actions die with the plaintiff

B. The estate may recover only for property losses, not personal injuries

C. The estate may recover only damages the plaintiff would have received had she lived to file

D. The estate may pursue claims the deceased could have pursued before death, including damages for pain and suffering during the interval between injury and death

179. A homeowner hired a roofing company to replace a roof. The roofing company specified its own methods, supplied its own tools, and worked without supervision. A roofer fell off the roof onto a passerby, who was injured. The passerby sues the homeowner. Under the law of vicarious liability:

A. The homeowner is vicariously liable for the negligence of all hired workers on her property

B. The homeowner is liable because the roofing company was performing a dangerous activity

C. The homeowner is generally not liable because the roofing company was an independent contractor, not an employee

D. The homeowner is liable only if she gave instructions about how to perform the work

180. A pizza delivery driver, after making a delivery, drove 10 miles out of his way to visit his girlfriend for several hours, then resumed his route. While returning to his route, he negligently caused an accident. The driver's employer is sued under respondeat superior. The court should:

A. Find no liability because the driver was on a frolic of his own outside the scope of employment

B. Find the employer fully liable because the driver was still on his delivery route eventually

C. Find the employer liable only if the driver was returning to work directly at the time of the accident

D. Find the employer liable based on the foreseeability of personal detours during workdays

181. A landowner maintained a swimming pool on his property without adequate fencing. A neighborhood child trespassed onto the property and drowned in the pool. The child's parents sue the landowner. Under the attractive nuisance doctrine:

- A. The landowner has no duty to a trespassing child of any age
- B. The landowner may be liable if he knew or should have known children were likely to trespass, the condition posed unreasonable risk, the child could not appreciate the danger, and the burden of safety measures was minor compared to the risk
- C. The landowner is automatically liable for any child injury on his property
- D. The landowner is liable only if he affirmatively invited children onto the property

182. A passenger was injured while riding a city bus when the driver made a sudden, sharp turn at high speed. The passenger sues the transit company. Common carriers owe their passengers:

- A. The same ordinary duty of care owed by any service provider
- B. No duty of care because passengers assume the risks of public transportation
- C. A duty of care lower than ordinary care because of the volume of passengers carried
- D. A heightened duty of care, often described as the highest practical degree of care consistent with the practical operation of the service

183. A father lent his car to his 17-year-old son, knowing the son had a history of reckless driving and had been involved in three prior accidents. The son drove the car and caused an accident, injuring another driver. The injured driver sues the father. Under the doctrine of negligent entrustment:

- A. The father is not liable because he was not driving at the time of the accident
- B. The father is liable only if he was a passenger in the car at the time
- C. The father may be liable for entrusting a vehicle to someone he knew or should have known was likely to use it negligently
- D. The father is liable only if the son was using the car for a family purpose

184. A product caused injury to a consumer due to its design. Under the consumer-expectations test for design defects:

- A. The product is defective only if it failed to function as intended by the manufacturer
- B. The product is defective if it failed to perform as safely as an ordinary consumer would expect when used in a reasonably foreseeable manner
- C. The product is defective only if a feasible alternative design existed at a reasonable cost
- D. The product is defective only if it caused more severe injuries than the average product of its type

185. A pharmaceutical manufacturer distributed a prescription drug that had serious side effects that the manufacturer knew about but did not disclose on the product label. A patient suffered the side effect. Under the doctrine of strict products liability:

- A. The manufacturer may be liable for failure to warn of known or knowable risks not obvious to the consumer
- B. The manufacturer is not liable because prescription drugs are inherently dangerous and exempt from warning liability
- C. The manufacturer is liable only if the patient personally consulted the label before using the drug
- D. The manufacturer is liable only if the side effect was specific to the patient's individual genetic profile

186. A person signed a written waiver before participating in a skydiving activity, expressly assuming all risks including those resulting from the operator's negligence. The person was injured by negligent equipment maintenance. The person sues. The court should:

- A. Disregard the waiver because all express assumption of risk waivers are void as against public policy
- B. Enforce the waiver only if the injured person had legal training and understood the terms
- C. Disregard the waiver because consumers cannot waive negligence claims under any circumstances
- D. Enforce the waiver according to its terms, unless it violates public policy or covers reckless or intentional conduct

187. A spectator at a baseball game was struck by a foul ball that came over the protective netting. The spectator sues the stadium. Under the doctrine of implied assumption of risk:

- A. The plaintiff has no claim because foul balls are not unreasonable risks

- B. The plaintiff has a claim only if the stadium failed to provide any netting
- C. The plaintiff is barred from recovery for risks inherent in attending a baseball game, including being hit by foul balls in unprotected areas
- D. The plaintiff has an unconditional right to recover for any injury at a sporting event

188. Two defendants were both negligent and contributed to a single injury. The plaintiff sued only one of them and obtained a judgment for the full amount. The defendant who paid the judgment seeks contribution from the other tortfeasor. Under most modern statutes:

- A. The defendant who paid has no contribution rights because his payment is voluntary
- B. The defendant who paid may seek contribution for the proportionate share of the other tortfeasor's fault
- C. The defendant who paid may seek contribution only if the other tortfeasor was equally at fault
- D. Contribution is unavailable because each tortfeasor is independently liable for the full amount

189. A retailer sold a defective product manufactured by a manufacturer. A consumer was injured and sued the retailer, who paid the judgment. The retailer now seeks to recover from the manufacturer. Under principles of indemnity:

- A. The retailer must bear the full loss because retailers assume all risks of selling defective products
- B. The retailer may seek contribution only, not full reimbursement
- C. The retailer may seek contribution only if both the retailer and manufacturer were negligent
- D. The retailer may seek indemnity from the manufacturer because the retailer's liability was secondary or vicarious

190. A plaintiff suffered purely economic losses (without physical injury or property damage) when the defendant negligently damaged property belonging to a third party. The plaintiff seeks to recover lost profits. Under the pure economic loss doctrine:

- A. The plaintiff may recover all economic losses caused by the defendant's negligence
- B. The plaintiff may recover only for losses suffered by the third party owner of the damaged property

- C. The plaintiff generally cannot recover purely economic losses absent physical injury or property damage
- D. The plaintiff may recover only if the defendant's negligence was specifically directed at the plaintiff

191. A bar served alcohol to an obviously intoxicated patron, who then drove home and caused an accident, injuring a third party. The injured party sues the bar under a state dram shop statute. The bar's liability:

- A. May exist under the dram shop statute if the statute permits liability for serving an obviously intoxicated patron
- B. Cannot exist because alcohol consumption is the patron's choice, breaking the chain of causation
- C. Exists only if the bar specifically encouraged the patron to drink and drive
- D. Cannot exist because alcohol sellers are immune from third-party claims under common law

192. A trespasser entered a landowner's property without permission. The landowner had set up a hidden steel trap that injured the trespasser. The trespasser sued. Under the traditional rule:

- A. The landowner owes the trespasser no duty whatsoever
- B. The landowner may not use traps or set up dangerous conditions to intentionally injure trespassers, even though only minimal duty is owed
- C. The landowner must take affirmative steps to make the property safe for all visitors, including trespassers
- D. The landowner owes the trespasser the same duty as an invitee

193. A landowner had a serious water leak in his basement. He invited a neighbor over to help fix the leak as a personal favor. While in the basement, the neighbor fell and was injured. The neighbor sues. The neighbor's status is:

- A. Trespasser because he entered the landowner's basement
- B. Invitee because the landowner derived benefit from the assistance
- C. Licensee because the neighbor entered with permission but primarily for the neighbor's own purpose or as a social guest

D. Business invitee because the visit involved property repair

194. A woman underwent a sterilization procedure performed negligently. She subsequently became pregnant and gave birth to a healthy child. She sues the doctor for wrongful conception, seeking damages for the cost of raising the child. Most courts:

- A. Award the plaintiff full damages including the entire cost of raising the child to adulthood
- B. Award no damages because pregnancy is a natural outcome that cannot be a "wrong"
- C. Award damages for medical expenses but never for the cost of raising the child
- D. Award damages for the medical and other pregnancy-related costs, with damages for child-rearing more controversial and often denied or limited

195. A patient consented to an appendectomy. During the surgery, the surgeon discovered an unrelated condition that he believed needed immediate attention and removed an additional organ without explicit consent. The patient sues for battery. The surgeon's defense:

- A. Should succeed because all medical procedures involve broad implied consent
- B. Should generally fail because consent to one procedure does not extend to materially different procedures, except in true emergencies
- C. Should succeed because doctors have discretion to perform additional procedures in patient's best interest
- D. Should fail only if the additional procedure caused harm to the patient

196. A defendant was approached by an unarmed assailant who threw a punch. The defendant responded by drawing a knife and stabbing the assailant fatally. The defendant claims self-defense. The defense is:

- A. Likely to fail because deadly force was disproportionate to the non-deadly threat
- B. Likely to succeed because any defensive force is justified against an attack
- C. Likely to succeed because the defendant feared escalating violence
- D. Likely to fail only if the defendant could have safely escaped the situation

197. A homeowner saw a thief running off with the homeowner's bicycle. The homeowner shot at the thief to stop him, killing the thief. The homeowner is sued for wrongful death. Under the law of defense of property:

- A. The use of any force is justified to protect personal property
- B. Deadly force is justified to prevent loss of any valuable property
- C. Deadly force is generally not justified to protect property alone, absent threat of physical harm to persons
- D. Force is justified only if the property is essential to the owner's livelihood

198. A defendant entered the plaintiff's parked car without permission and rummaged through the contents, leaving the car interior disturbed. The plaintiff was deprived of immediate use of the car for several hours. The plaintiff sues for trespass to chattels. The defendant:

- A. Is liable for trespass to chattels because he intentionally interfered with the plaintiff's use of the chattel
- B. Is liable for conversion because any unauthorized handling constitutes conversion
- C. Is not liable because no permanent damage occurred to the property
- D. Is liable only if he removed any items from the car permanently

199. A factory's pollution affects the air quality of an entire town, harming all residents. A single resident files a lawsuit alleging private nuisance. The court should:

- A. Allow the suit because all environmental harms are actionable in private nuisance
- B. Allow the suit only if the resident can show special injury different in kind from the general harm to the community, or treat the suit as one for private nuisance based on specific harm to her property
- C. Allow the suit because every property owner has standing to sue for nuisance
- D. Dismiss the suit because public nuisance cannot be brought by private individuals

200. A private individual was the subject of a newspaper article that contained false statements about her business dealings. She sued for defamation. The newspaper claims constitutional protection. Under *Gertz v. Robert Welch*:

- A. The plaintiff must prove some level of fault (at least negligence) regarding the falsity, since she is a private figure
- B. The plaintiff must prove actual malice as required for public figures
- C. The plaintiff need not prove any fault because private figures are subject to a strict liability standard
- D. The plaintiff cannot recover because the First Amendment protects all newspaper publications

PRACTICE EXAM 8 – FULL ANSWER KEY WITH EXPLANATIONS

- 1. D** — Specific personal jurisdiction exists when a defendant purposefully directs activities toward the forum state and the claim arises out of those contacts. Under *Burger King v. Rudzewicz*, contract negotiations directed at a forum resident can satisfy minimum contacts even without physical presence. Mail and electronic communications count when the defendant has reached into the forum.
- 2. B** — Rule 4(d) authorizes cost-shifting against defendants who fail without good cause to waive service when properly requested. The rule incentivizes cooperation by imposing the additional expenses of formal service on the uncooperative defendant. Courts routinely grant these expenses on a proper showing.
- 3. A** — Under 28 U.S.C. § 1332(c)(1) and *Hertz Corp. v. Friend*, a corporation is a citizen of both its state of incorporation and its principal place of business. The "nerve center" test locates the principal place of business where executive control occurs—here, California—not where the largest operations are physically located.
- 4. C** — Rule 15(c)(1)(C) allows an amendment changing a party's name to relate back when the new party received notice of the action within the Rule 4(m) period and knew the action would have been brought against it but for a mistake. This misnomer doctrine prevents technical pleading errors from defeating timely claims.
- 5. A** — Rule 19(b) requires the court to weigh equitable factors—prejudice, ability to shape relief, adequacy of judgment, and availability of alternative forums—to determine whether to proceed without the absent party or dismiss. The court exercises discretion rather than applying any per se rule.
- 6. D** — Rule 20(a) permits joinder of plaintiffs whose claims arise out of the same transaction or occurrence and share at least one common question of law or fact. A single collision producing different injuries to multiple passengers satisfies both requirements.
- 7. B** — Rule 24(a) permits intervention as of right when a party has a direct, significantly protectable interest that may be impaired by the litigation and is not adequately represented. A state defending the constitutionality of its own statute satisfies these criteria.

8. C — Rule 55(b)(2) requires the court to conduct a hearing or otherwise determine unliquidated damages before entering default judgment. Default establishes liability but not the amount of damages, which must be proved by competent evidence.

9. D — Rule 11(b) requires attorneys to certify that factual contentions have evidentiary support after reasonable inquiry. Filing claims without any factual basis violates this duty, and after expiration of the safe-harbor period, sanctions are appropriate.

10. A — The work product doctrine, codified in Rule 26(b)(3), affords qualified protection to fact work product (discoverable on substantial need and undue hardship) and heightened protection to opinion work product (mental impressions, conclusions). The protection is graduated rather than absolute.

11. C — Rule 26(c) authorizes protective orders on good cause shown to protect a party from annoyance, embarrassment, oppression, or undue burden. A particularized showing of specific harm is required, but no extraordinary standard applies.

12. B — Once a movant properly supports a summary judgment motion under Rule 56, the burden shifts to the non-movant to produce competent evidence creating a genuine dispute of material fact. Unsworn statements and conclusory assertions cannot defeat the motion.

13. A — Under *Beacon Theatres v. Westover* and *Dairy Queen v. Wood*, when legal and equitable claims share common factual issues, the legal issues must be tried first to a jury. The Seventh Amendment right is preserved by separate trial sequencing.

14. D — Under *Edmonson v. Leesville Concrete Co.*, the Equal Protection bar on racially motivated peremptory challenges established in *Batson* applies to civil cases. Private parties exercising peremptory challenges in court engage in state action subject to constitutional limits.

15. C — Issue preclusion bars relitigation of an issue that was actually litigated, necessarily decided, and essential to a valid final judgment in a prior action. The finding that no contract was formed is binding in the subsequent action regardless of the new legal theory pursued.

16. B — Under 28 U.S.C. § 1292(b), a party seeking interlocutory appeal must first obtain district court certification that the order involves a controlling question of law, then petition the court of appeals within 10 days. Both steps are mandatory.

17. A — Under 28 U.S.C. § 1441 and the rule of unanimity, all properly joined and served defendants must consent to removal. Diversity removal also requires complete diversity, and the presence of non-diverse defendants destroys the jurisdictional basis.

18. C — Rule 13(a) requires a party to assert as a counterclaim any claim arising out of the same transaction or occurrence as the opposing party's claim. Failure to assert a compulsory counterclaim bars its later assertion as a separate action.

19. D — Rule 13(g) permits cross-claims against co-parties only when the claim arises out of the same transaction or occurrence as the original action or a counterclaim. Unrelated claims between co-defendants are not properly raised by cross-claim.

20. B — Rule 14(a) permits a defendant to implead a third party who is or may be liable to the defendant for all or part of the claim against the defendant. Derivative liability for contribution or indemnification is the classic basis for impleader.

21. C — A single plaintiff may aggregate all claims against a single defendant, but claims against separate defendants generally cannot be aggregated to meet the amount-in-controversy requirement. Each defendant must independently meet the jurisdictional threshold.

22. A — Under 28 U.S.C. § 1367(a), supplemental jurisdiction extends to all claims that form part of the same case or controversy as the federal claim. The same-nucleus-of-fact test brings related state-law claims, including those against additional non-diverse parties, within federal jurisdiction.

23. D — Rule 4(e)(2)(B) authorizes service by leaving the summons and complaint at the defendant's dwelling with a person of suitable age and discretion who resides there. A competent adult relative living at the home satisfies the substituted service requirement.

24. B — Rule 12(g)(2) requires consolidation of available Rule 12 defenses in a single motion, and Rule 12(h)(1) deems waived defenses of personal jurisdiction, venue, process, and service if not raised in the first responsive pleading or motion. Failure to include personal jurisdiction in the first Rule 12 motion waives the defense.

25. A — Rule 15(a)(1)(B) permits a plaintiff to amend the complaint once as a matter of course within 21 days after service of a motion under Rule 12(b), (e), or (f). No leave of court or consent is required within this window.

26. C — Rule 4(h)(1)(B) authorizes service on a corporation by delivering the summons and complaint to an officer, a managing or general agent, or any agent authorized by law to receive service. Service on a random employee without designated authority is insufficient.

27. B — Under *Klaxon Co. v. Stentor Electric*, a federal court sitting in diversity must apply the choice-of-law rules of the forum state. This rule prevents forum-shopping between federal and state courts in the same state.

28. D — Rule 54(b) permits a district court to enter final judgment on fewer than all claims when it expressly determines there is no just reason for delay. Without Rule 54(b) certification, a partial summary judgment is not immediately appealable as a final order under § 1291.

29. A — Rule 18(a) permits a party asserting a claim to join as many claims as that party has against an opposing party, regardless of whether the claims are related. The joinder-of-claims rule has virtually no transactional limit.

30. C — *Mathews v. Eldridge* established a three-factor test for procedural due process: the private interest at stake, the risk of erroneous deprivation and value of additional safeguards, and the government's interest including administrative burdens. Pre-deprivation hearings are not always required when post-deprivation review is adequate.

31. B — Under *Griswold v. Connecticut* and *Eisenstadt v. Baird*, the right of access to contraception is a fundamental right protected by substantive due process. *Eisenstadt* extended this protection to unmarried persons, treating the right as personal rather than marital.

32. D — The Fourteenth Amendment regulates only state action, not purely private conduct. A privately owned restaurant operating independently is not subject to constitutional restrictions under § 1983, though it may be regulated by federal statutes like Title II of the Civil Rights Act of 1964.

33. A — Under *Baldwin v. Fish & Game Commission of Montana*, the Privileges and Immunities Clause of Article IV protects nonresidents only as to fundamental rights bearing on national unity. Recreational hunting is not fundamental, so differential fees may be upheld; commercial pursuits would receive greater protection.

34. C — Under *United States v. Lovett*, a statute that singles out named individuals for legislative punishment without judicial trial is an unconstitutional bill of attainder. Excluding specific persons from federal employment based on political affiliation constitutes such punishment.

35. D — Under the Contracts Clause, state legislation impairing private contracts is reviewed by asking whether the impairment is substantial and, if so, whether the law is reasonable and necessary to serve a significant and legitimate public purpose. The clause applies to private contracts as well as public.

36. B — Gender-based classifications are subject to intermediate scrutiny under *Craig v. Boren*, requiring the law to serve important governmental objectives and be substantially related to those objectives. A custody preference based on gender stereotypes fails this test.

37. A — Illegitimacy classifications receive intermediate scrutiny, requiring a substantial connection to a legitimate state interest. Restrictions designed to ensure orderly proof of paternity for estate administration are typically upheld as substantially related to that interest.

38. D — Vague laws that fail to provide fair notice and grant excessive discretion to enforcement officials violate due process. Terms like "annoying" and "objectionable" lack ascertainable standards and chill protected expression, rendering the ordinance void for vagueness.

39. C — Prior restraints on speech bear a heavy presumption against constitutional validity under *Near v. Minnesota*. *New York Times v. United States* required a showing that publication would result in direct, immediate, and irreparable harm—a demanding standard.

40. B — *Tinker v. Des Moines* held that student speech in public schools may be restricted only when school officials can show the expression would materially and substantially interfere with school discipline or invade the rights of others. Speculative concerns are insufficient.

- 41. A** — Under *Pickering v. Board of Education* and *Connick v. Myers*, government employees retain First Amendment protection when speaking as citizens on matters of public concern, subject to balancing against the government's interest in efficient operations. *Garcetti* excludes only speech made pursuant to official duties.
- 42. D** — Under *Employment Division v. Smith*, the Free Exercise Clause does not require religious exemptions from neutral, generally applicable laws that incidentally burden religious practice. The state need not show a compelling interest to enforce such laws.
- 43. B** — Under *Wallace v. Jaffree*, a moment-of-silence statute is unconstitutional if its purpose or primary effect is to advance religion, particularly when legislative history shows it was enacted to return prayer to schools. Purpose and effect analysis governs.
- 44. C** — The Eleventh Amendment bars private suits for damages against non-consenting states in federal court. Congressional abrogation requires both clear statement and valid Section 5 authority, and § 1983 alone does not effect such abrogation.
- 45. A** — *Flast v. Cohen* recognized a narrow exception to the general rule against taxpayer standing for Establishment Clause challenges to congressional taxing and spending decisions. The challenge must target a specific spending program under the Taxing and Spending Clause.
- 46. D** — Under *Lujan v. Defenders of Wildlife*, an organization asserting representational standing must show at least one identified member would have standing in her own right, including concrete and particularized injury. General assertions about members' interests in the affected area without specific connection to the challenged action fail.
- 47. B** — Under *Singleton v. Wulff*, a litigant may assert the rights of a third party when there is a close relationship and a hindrance to the third party's ability to assert her own interests. Doctor-patient relationships in healthcare-restriction cases routinely satisfy these elements.
- 48. A** — Under *Foley v. Connelie*, the political-function exception applies to public positions involving the exercise of important governmental functions, permitting alienage classifications to be reviewed under rational basis rather than strict scrutiny. Law enforcement positions like state trooper fall within the exception.
- 49. C** — Under *Shapiro v. Thompson* and *Saenz v. Roe*, durational residency requirements penalizing the fundamental right to interstate travel trigger strict scrutiny. Welfare benefits residency requirements have repeatedly failed this standard.
- 50. D** — *South Dakota v. Dole* articulated four limits on the spending power: the expenditure must promote the general welfare, the condition must be unambiguous, related to the federal interest, and not violate other constitutional provisions or be coercive. All criteria must be met.
- 51. B** — *City of Cleburne v. Cleburne Living Center* applied rational basis review to a disability classification but struck down the zoning law because it rested on irrational fears and prejudice. Even deferential review fails when the legislative motive is animus.

52. C — *INS v. Chadha* invalidated the legislative veto because legislative action must satisfy bicameralism (passage by both houses) and presentment (submission to the President). One-house resolutions vetoing executive action violate Article I.

53. A — *Miller v. California* established a three-part obscenity test, the third prong of which asks whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value (judged by national standards). Material with serious value is not obscene even if offensive.

54. D — *Central Hudson* established the four-part test for commercial speech regulation: lawful and non-misleading speech, substantial government interest, regulation that directly advances the interest, and no more extensive than necessary. Truthful price restrictions typically fail the last two prongs.

55. B — *San Antonio Independent School District v. Rodriguez* held that wealth is not a suspect classification and most government benefits are not fundamental rights. Most economic classifications are reviewed under rational basis.

56. A — The presidential pardon power under Article II extends to all federal offenses except impeachment and may be exercised before formal charges are filed. *Ex parte Garland* confirmed that pardons may be preemptive and broad in scope.

57. C — Under *United States v. Belmont* and *United States v. Pink*, executive agreements concerning foreign relations may have the force of domestic law without Senate ratification. The President's independent constitutional authority in foreign affairs supports the validity of such agreements.

58. D — At common law, silence is not acceptance unless prior dealings or trade usage establish such a custom, or the offeree takes the benefit with reason to know acceptance was expected. The offeror cannot unilaterally impose silence as acceptance on the offeree.

59. B — The Statute of Frauds requires a signed writing for any contract that cannot be performed within one year of its making. A two-year employment contract beginning immediately cannot be completed within one year, so it falls within the statute.

60. A — UCC § 2-314 implies a warranty of merchantability in every sale by a merchant who deals in goods of that kind. A retail appliance store is a merchant of appliances and bears warranty obligations even without an express written warranty.

61. D — UCC § 2-508(1) permits a seller who has tendered non-conforming goods before the contract performance date to give notice of intent to cure and tender conforming goods within the contract time. The seller's right to cure is preserved when the original delivery date has not yet expired.

62. C — UCC § 2-612(3) provides that cancellation of an installment contract requires the non-conformity in one or more installments to substantially impair the value of the whole contract. A 5% defect rate in a single installment generally does not meet this threshold.

63. B — UCC § 2-608 permits revocation of acceptance when non-conformity substantially impairs the value of the goods and the buyer either accepted with reasonable belief the non-conformity would be cured or accepted without discovery because the defect was concealed or assured against. Latent defects qualify.

64. A — UCC § 2-706 entitles the seller upon the buyer's breach to recover the difference between the contract price and the resale price plus incidental damages, less expenses saved, when the resale is conducted in good faith and in a commercially reasonable manner with notice to the buyer.

65. D — The non-breaching party has a duty to take reasonable steps to mitigate damages, and recovery is reduced by amounts that could have been earned through reasonable efforts to obtain substitute employment. The avoidable consequences doctrine prevents windfall recovery for losses the plaintiff could have avoided.

66. C — Under UCC § 2-302, a court may refuse to enforce an unconscionable contract or clause, requiring both procedural defects (oppression and unfair surprise in bargaining) and substantive defects (one-sided terms). A small-type sweeping waiver in a consumer adhesion contract exhibits both.

67. B — Economic duress voids a contract when one party makes an improper threat that leaves the other party with no reasonable alternative, overcoming free will. Threats to withdraw essential business support specifically to coerce contractual concessions qualify as improper economic pressure.

68. A — Undue influence occurs when one party in a confidential or dominant relationship uses unfair persuasion to overcome the free will of another. Caretaker-elder relationships with cognitive decline and disproportionate transfers are classic settings for the doctrine.

69. D — A minor generally has the power to disaffirm a contract entered during minority and recover consideration paid, though jurisdictions differ on whether the minor must compensate the other party for use or depreciation. The traditional rule allows full recovery; modern rules increasingly require setoff.

70. B — Courts generally refuse to enforce contracts to perform illegal acts, leaving the parties as the court found them. The illegality bars both contract enforcement and, in most cases, quantum meruit recovery for services rendered.

71. C — Accord and satisfaction discharges a disputed claim when the debtor offers a different amount with clear understanding that acceptance constitutes full satisfaction, and the creditor accepts. A good-faith dispute over the amount supports the accord and protects the doctrine from coercion.

72. A — Novation substitutes a new party for an original party with the consent of all three parties, releasing the original obligor from liability. Unlike assignment or delegation, novation requires the obligee's express agreement to release the original obligor.

73. D — UCC § 2-306(1) requires a buyer in a requirements contract to determine actual requirements in good faith. A substantial decrease may be permissible if it reflects legitimate business changes, but bad-faith reductions or quantities unreasonably disproportionate to estimates may breach the contract.

74. B — The suretyship provision of the Statute of Frauds requires a signed writing for any promise to answer for the debt of another. An oral promise to pay if the principal debtor defaults is unenforceable absent the main-purpose exception.

75. C — Promissory estoppel under Restatement § 90 enforces a promise when the promisor should reasonably expect to induce action and the promisee reasonably and detrimentally relies. Charitable subscriptions are commonly enforced under this doctrine when the charity has acted in reasonable reliance.

76. A — A party may waive strict compliance with a contractual condition through conduct demonstrating intent to forgo the right to insist on it. An insurer who continues to investigate and negotiate with knowledge of late notice may be deemed to have waived strict compliance.

77. B — Specific performance is generally available for breach of contracts involving land because each parcel is considered unique and money damages are inadequate. The buyer of unique real estate is presumptively entitled to specific performance upon the seller's breach.

78. D — UCC § 2-201(3)(c) makes oral contracts enforceable to the extent that payment has been made and accepted or goods have been received and accepted. The custom workbench may also fall within the specially-manufactured-goods exception under § 2-201(3)(a).

79. A — At common law, an acceptance must mirror the offer exactly; any variation creates a counteroffer that rejects the original offer and substitutes a new one. The buyer's response varied a material term and operated as a counteroffer requiring the seller's acceptance.

80. C — The parol evidence rule bars prior or contemporaneous oral evidence contradicting a fully integrated writing, but a partially integrated writing may be supplemented by consistent additional terms. Whether the writing is fully or partially integrated is a question for the court.

81. B — A condition subsequent is a future event that, upon occurrence, terminates an existing duty or right under the contract. Engaging in the prohibited activity operates to defeat coverage from the time the activity begins, even though coverage existed before.

82. D — UCC § 2-719(2) provides that when a limited remedy fails of its essential purpose, the buyer may resort to other UCC remedies. Section 2-719(3) further provides that exclusion of consequential damages may be unconscionable in consumer contexts, particularly where personal injury is involved.

83. A — UCC § 2-609 permits a party with reasonable grounds for insecurity to demand adequate assurance of performance in writing. Failure to provide adequate assurance within a reasonable time (not exceeding 30 days) constitutes repudiation, allowing the demanding party to pursue breach remedies.

84. C — A creditor beneficiary exists when a contract is intended to satisfy a pre-existing duty owed by the promisee to the third party. The third party may enforce the contract directly because it was made specifically to discharge a debt owed to her.

85. B — Under modern law and Restatement (Second) § 322, anti-assignment clauses are interpreted narrowly to prohibit delegation of duties without barring assignment of the right to receive money. The right to be paid is generally freely assignable despite such clauses.

86. D — Contracts requiring personal services or particular skill are not delegable without the obligee's consent because the identity of the performing party is material. Custom home construction by a chosen contractor falls within this exception.

87. A — Strict liability offenses dispense with mens rea and impose criminal liability based on conduct alone, regardless of the defendant's mental state. A reasonable mistake of fact about age does not negate liability when the statute imposes strict liability for the sale.

88. C — Common-law larceny requires specific intent to permanently deprive another of property. An honest and reasonable belief that the property belongs to oneself negates the required mental state, even if the belief is mistaken.

89. D — Voluntary intoxication may negate the specific intent required for specific-intent crimes but not the general intent required for general-intent crimes. Battery is typically classified as a general-intent crime, so voluntary intoxication is not a defense.

90. B — The necessity defense applies when the defendant reasonably believed criminal conduct was necessary to prevent imminent and significant harm, the harm prevented exceeds the harm caused, no reasonable legal alternative existed, and the defendant did not create the emergency. Survival entry into a cabin during a blizzard satisfies these elements.

91. A — Under the subjective test of entrapment (the majority federal approach), the defense succeeds if the government induced the offense and the defendant was not predisposed to commit it. Extended persuasion of an initially unwilling defendant with no criminal record supports the defense.

92. C — Common-law arson required the malicious burning of the dwelling house of another. Burning one's own property is not common-law arson, regardless of fraudulent intent, though modern statutes typically criminalize such conduct under expanded arson or insurance fraud provisions.

93. D — Most modern jurisdictions adopt the "incidental movement" rule, holding that kidnapping merges into a robbery or other underlying offense when the movement is merely incidental and adds no significant risk beyond that inherent in the underlying crime. Brief movement to facilitate a robbery typically merges.

94. A — Receiving stolen property requires the defendant to know or believe the property is stolen at the time of receipt. Constructive knowledge based on suspicious circumstances such as a substantial price discrepancy may suffice to establish the required mental state.

95. B — Under *Pinkerton v. United States*, co-conspirators are liable for crimes committed by other conspirators that are reasonably foreseeable and in furtherance of the conspiracy. Additional foreseeable crimes during the agreed-upon offense may attach liability to all conspirators.

96. D — Wharton's Rule provides that when a substantive offense necessarily requires the agreement of a minimum number of persons (such as bigamy, adultery, or dueling), conspiracy cannot be charged separately if only that minimum number is involved. The substantive offense already accounts for the agreement.

97. C — Effective withdrawal from a conspiracy generally requires affirmative steps to thwart its success and timely communication to co-conspirators, particularly before any overt act has been committed. Reporting the conspiracy to police while no overt act has occurred meets these requirements.

98. A — Solicitation is the inviting, requesting, or commanding another to commit a crime with the intent that the crime be committed. The offense is complete upon the request, regardless of whether the solicited person agrees or acts on it.

99. B — The Model Penal Code test recognizes insanity when, as a result of mental disease or defect, the defendant lacked substantial capacity either to appreciate the criminality of his conduct (cognitive prong) or to conform his conduct to the requirements of law (volitional prong). It is broader than M'Naghten by including volitional impairment.

100. D — Under *Braswell v. United States*, a corporate custodian must produce subpoenaed corporate records because corporations have no Fifth Amendment privilege. The act of production may be testimonial as to the custodian individually, but use of that act against the custodian personally is limited.

101. C — *Barker v. Wingo* established a four-factor balancing test for speedy trial claims: length of delay, reason for delay, defendant's assertion of the right, and prejudice to the defendant. No single factor is dispositive; all must be weighed together.

102. A — Grand jury proceedings are not subject to the evidentiary rules applicable at trial, and indictments are generally not dismissed because they were based on hearsay or even illegally obtained evidence. The grand jury's broad investigative function is preserved by this rule.

103. D — The Eighth Amendment Excessive Bail Clause prohibits bail set higher than reasonably necessary to assure the defendant's appearance at trial. Bail must be individualized based on flight risk and danger to the community, not on wealth alone.

104. B — Under *Bullcoming v. New Mexico* and *Melendez-Diaz v. Massachusetts*, forensic laboratory reports are testimonial and subject to the Confrontation Clause. The defendant has the right to cross-examine the analyst who actually performed the test, not merely a substitute witness.

105. C — Under *Santobello v. New York*, when a guilty plea rests on a prosecutor's promise, the promise must be fulfilled. If the prosecutor breaches, the defendant is entitled to either specific performance of the agreement or withdrawal of the plea.

106. A — The dual sovereignty doctrine permits successive prosecutions by separate sovereigns (state and federal governments) for the same conduct without violating the Double Jeopardy Clause. Each sovereign has an independent interest in vindicating its laws.

107. D — Under *Manson v. Brathwaite*, the admissibility of an identification is evaluated under the totality of the circumstances, weighing reliability factors (opportunity to view, attention, accuracy of description, certainty, time elapsed) against suggestiveness. Even a suggestive showup may be admitted if reliable.

108. B — Under *Massiah v. United States* and *Maine v. Moulton*, after the Sixth Amendment right to counsel has attached at formal proceedings, the government may not deliberately elicit incriminating statements from the accused in counsel's absence. Use of an undercover informant to interrogate constitutes deliberate elicitation.

109. A — *Terry v. Ohio* requires reasonable suspicion based on specific and articulable facts before an investigatory stop, and a frisk requires reasonable belief the person is armed and dangerous. Mere presence on a street corner with nervous appearance does not satisfy either standard.

110. C — Under *Schneekloth v. Bustamonte*, consent to search is valid if voluntary under the totality of the circumstances. Officers are not constitutionally required to advise the person of the right to refuse, though knowledge of that right is one factor in the voluntariness analysis.

111. D — Under the automobile exception (*Carroll v. United States*), police with probable cause to believe a vehicle contains contraband or evidence may search it without a warrant due to the vehicle's inherent mobility and reduced expectation of privacy. The vehicle's stationary status does not eliminate the exception.

112. B — The plain view doctrine permits seizure of evidence in plain view when the officer is lawfully present, the incriminating nature of the item is immediately apparent, and the officer has lawful access. All three conditions are met during a valid premises search.

113. A — Under *Michigan v. Mosley*, invocation of the right to silence requires only that police "scrupulously honor" the request; questioning may resume after a significant time lapse with fresh Miranda warnings. The Edwards rule's permanent prohibition applies only to invocations of counsel, not silence.

114. C — Some interpretations of the Sixth Amendment jury trial right extend it broadly to misdemeanors carrying imprisonment potential. Although *Baldwin v. New York* generally draws the line at offenses punishable by more than six months, the protective view emphasizes that any deprivation of liberty implicates the constitutional safeguard.

115. C — Under FRE 401, evidence is relevant only if it has a tendency to make a fact of consequence more or less probable. A religious medal worn at the time of an accident does not bear on negligence, causation, or any other element of a personal injury claim.

116. D — Under FRE 403, the court must weigh probative value against the danger of unfair prejudice, confusion, or misleading the jury. Graphic photographs may be admitted if their probative value is not substantially outweighed by the prejudicial effect, with no per se rule of exclusion.

117. A — FRE 406 permits evidence of habit—a regular response to a specific repeated situation—to prove conduct on a particular occasion. Daily commute behavior at the same intersection meets the regularity and specificity requirements of habit evidence.

118. C — FRE 408 makes statements and conduct during compromise negotiations inadmissible to prove liability for or invalidity of the disputed claim. The rule encourages settlement by ensuring discussions cannot be used as admissions of liability.

119. B — FRE 410 makes statements made during plea discussions with a prosecutor inadmissible against the defendant in any subsequent proceeding. The rule encourages candid plea negotiations by protecting the defendant's statements if no plea results.

120. A — FRE 411 prohibits evidence of liability insurance to prove negligence or wrongdoing. The rule prevents the jury from inferring fault from financial coverage or its absence.

121. D — FRE 413 permits evidence of similar prior sexual assault offenses in sexual assault prosecutions for any relevant purpose, including propensity. This rule constitutes a deliberate exception to FRE 404(b)'s general bar on propensity evidence.

122. C — FRE 804(b)(3) admits statements against the declarant's penal interest when the declarant is unavailable. In criminal cases, the rule requires corroborating circumstances clearly indicating the trustworthiness of the statement when offered to exculpate the accused.

123. B — FRE 804(b)(1) admits former testimony when the declarant is unavailable and the party against whom the testimony is offered (or a predecessor in interest in civil cases) had an opportunity and similar motive to develop the testimony at the prior proceeding.

124. A — FRE 805 permits hearsay within hearsay when each part of the combined statement independently conforms to a hearsay exception or exclusion. Both levels must qualify; one valid exception cannot rescue the other level.

125. D — FRE 803(8)(A)(iii) admits factual findings from public investigative reports in civil cases and against the government in criminal cases, unless the opponent shows lack of trustworthiness. The rule recognizes the inherent reliability of authorized public investigations.

126. B — FRE 803(4) admits statements made for medical diagnosis or treatment, including descriptions of medical history, symptoms, and the cause or external source of the condition insofar as reasonably pertinent to treatment. Identifying an assailant by name is generally not pertinent to medical treatment.

127. C — FRE 803(16), as amended, admits statements in documents at least 20 years old that were prepared before January 1, 1998. The amendment limits the ancient documents exception to prevent its application to digital-era materials.

128. A — FRE 803(18) permits learned treatises established as reliable authority to be read into evidence as substantive evidence, but the treatise itself is not received as an exhibit. This avoids giving the document disproportionate weight in jury deliberations.

129. D — FRE 405(a) permits character evidence to be proved by reputation or opinion testimony on direct, but specific instances of conduct may be inquired into on cross-examination of the character witness. The cross-examiner is generally bound by the witness's answer absent proper extrinsic proof.

130. B — Bias is always relevant to credibility and may be shown on cross-examination or by extrinsic evidence. Financial inducement to testify is one of the most powerful forms of impeachment and is liberally permitted.

131. A — FRE 404(a)(2)(B) permits a criminal defendant in a homicide or assault case to offer evidence of a pertinent character trait of the victim (typically peacefulness or violence). Once the defendant opens the door, the prosecution may rebut with contrary character evidence.

132. C — Under FRE 611(c), leading questions ordinarily are not allowed on direct examination of one's own witness, except as necessary to develop testimony or with hostile witnesses, adverse parties, or witnesses identified with an adverse party. The presumption against leading on direct prevents counsel from testifying through the witness.

133. D — FRE 611(b) limits cross-examination to the subject matter of direct examination and matters affecting witness credibility, but the court may in its discretion permit broader inquiry. The default scope rule preserves trial efficiency while allowing judicial flexibility.

134. B — FRE 704(a) provides that opinion testimony is not objectionable merely because it embraces an ultimate issue. The historical bar on ultimate-issue opinion has been abolished, though opinions on pure legal conclusions remain restricted.

135. A — FRE 801(d)(2)(D) treats as non-hearsay an opposing party statement made by an agent or employee on a matter within the scope of the relationship while it existed. The statement need not be authorized for litigation purposes; scope of employment is sufficient.

136. C — FRE 801(d)(2)(E) treats as non-hearsay statements made by a co-conspirator during and in furtherance of the conspiracy. The court must find the conspiracy and the statement's role by a preponderance, with independent evidence supporting the existence of the conspiracy.

137. B — FRE 501 provides that federal common law governs privileges in federal-question cases. State privilege law applies only when state law supplies the rule of decision, typically in diversity cases.

138. D — The collateral matter rule prohibits extrinsic evidence to contradict a witness on collateral matters that do not bear on the substantive issues or affect credibility independently. Limiting impeachment by contradiction prevents trials from devolving into mini-trials on tangents.

139. A — FRE 1002 (the best evidence rule) requires the original writing when its contents are at issue, unless an exception under FRE 1004 applies (lost, destroyed, or unobtainable original). Oral testimony about contents is generally inadmissible when the original could be obtained.

140. C — FRE 902(4) treats certified copies of public records as self-authenticating, requiring no extrinsic evidence of authenticity. A certified deed from the county recorder bearing the official seal satisfies the rule.

141. B — FRE 901(b)(5) permits voice identification by any person familiar with the alleged speaker's voice at any time. The familiarity may have been acquired before or after the call, and no minimum threshold of prior contacts is required.

142. D — Under FRE 612, a writing used to refresh a witness's recollection is not received as evidence; the witness testifies from now-refreshed memory. The opposing party has the right to inspect the writing and use it on cross-examination.

143. A — FRE 201(f) provides that in a criminal case, the jury must be instructed that it may, but is not required to, accept any judicially noticed fact as conclusive. This protects the defendant's constitutional right to have all facts found by the jury.

144. C — The Rule Against Perpetuities provides that no interest is valid unless it must vest, if at all, no later than 21 years after the death of some life in being at the creation of the interest. A gift to the first of A's children to reach 30 violates the rule because A could have a child more than nine years after the conveyance who would not reach 30 within the perpetuities period.

145. B — Under the rule of convenience, a class gift remains open until any member is entitled to demand distribution; thereafter, the class closes. The rule allows after-born children to share if they are born before the class closes.

146. A — A general power of appointment allows the holder to appoint the property to anyone, including the holder herself, the holder's estate, the holder's creditors, or the creditors of the holder's estate. Special powers, by contrast, limit the class of permissible appointees.

147. D — A landowner is strictly liable for damage caused to neighboring land by removal of lateral support to land in its natural state. If improvements would have subsided absent the natural subsidence, negligence is required; otherwise, strict liability attaches.

148. C — Under the reasonable use doctrine of riparian rights, each riparian owner is entitled to make reasonable use of the watercourse, with reasonableness determined by balancing competing uses among riparians. The doctrine accommodates multiple uses rather than absolute rights.

149. A — Under equitable conversion, upon execution of a binding land sale contract, the buyer is treated as the equitable owner and bears the risk of loss, while the seller's interest is converted to a right to receive the purchase money. Some states have modified this rule by statute.

150. B — Time is not of the essence in real estate contracts unless the contract so provides or circumstances make time essential. A reasonable delay does not constitute material breach, and the non-breaching party must allow a reasonable time for cure.

151. D — Under the doctrine of estoppel by deed, when a grantor conveys property she does not own by warranty deed, any title she later acquires automatically passes to the grantee by operation of law. The doctrine prevents the grantor from contradicting her own warranties.

152. C — A residential lease with rent payable monthly but no specified term creates a month-to-month periodic tenancy. Termination requires notice equal to the rental period given before the end of the term.

153. B — A tenant who remains in possession after the lease expires becomes a tenant at sufferance. The landlord may elect either to evict or to hold the tenant to a new tenancy on the same terms as the expired lease.

154. D — A landlord's acceptance of returned keys coupled with failure to mitigate by attempting to re-let may constitute acceptance of surrender by operation of law, terminating the tenant's continued rent obligation. The landlord's conduct must reasonably manifest acceptance.

155. A — Under *Kelo v. City of New London*, the Public Use Clause permits transfers to private parties as part of an integrated economic development plan. "Public use" is interpreted broadly to mean "public purpose," with significant deference to legislative determinations.

156. C — A variance requires the applicant to show unnecessary hardship arising from unique physical characteristics of the property and that the variance will not be detrimental to public welfare or alter the essential character of the neighborhood. Both elements must be established.

157. D — A profit à prendre is a non-possessory interest in another's land that confers the right to enter and take resources (timber, minerals, game) from the land. It is treated similarly to an easement for many purposes and runs with the land if so structured.

158. B — An assignment transfers the entire remaining interest of the original tenant to a third party, creating privity of estate between the assignee and landlord. A sublease, by contrast, transfers less than the entire remaining term and retains a reversionary interest in the sublessor.

159. C — Under the merger doctrine, when the leasehold and reversion come into the hands of the same person, the lesser estate is merged into the greater and the lease is extinguished. The tenant becomes the fee owner without a separate leasehold interest.

160. A — Under the shelter rule, a person who takes title from a bona fide purchaser is "sheltered" by the BFP's status and takes free of prior unrecorded interests, even if the subsequent purchaser had notice. The rule preserves the BFP's bargain and marketability of title.

161. D — A Marketable Record Title Act generally extinguishes interests predating the statutory root of title period (typically 30 or 40 years) unless preserved by recorded notice. The act simplifies title searches by limiting the look-back period, subject to specific statutory exceptions.

162. C — A valid deed requires execution, delivery, and acceptance. Delivery requires the grantor to manifest a present intent to convey title; retention of the deed without present intent to convey generally renders the deed ineffective.

163. B — An equitable servitude is enforceable in equity against a subsequent owner who takes with notice of the restriction, provided the restriction touches and concerns the land and the original parties intended it to run. Recorded subdivision restrictions provide constructive notice.

164. D — When the dominant and servient estates come under common ownership, the easement is extinguished by merger. The easement is not automatically revived upon subsequent severance; a new easement must be created.

165. C — A wild deed is one whose grantor does not appear as a grantee in prior records, placing the deed outside the chain of title. Most jurisdictions hold that wild deeds do not provide constructive notice because a reasonable title searcher would not find them.

166. A — Co-tenants who cannot agree on disposition of jointly owned property have a right to seek judicial partition, which results in physical division if feasible or sale and division of proceeds if not. The remedy does not require the other co-tenants' consent.

167. D — A life estate pur autre vie is a life estate measured by the life of a person other than the life tenant. The grantee holds possession until the measuring life ends, at which point the property reverts or passes to the remainderman.

168. B — A lease "to last as long as both parties are satisfied" with no fixed term creates a tenancy at will, terminable by either party upon reasonable notice. Modern statutes often require minimum notice periods even for tenancies at will.

169. C — A builder-vendor of newly constructed housing impliedly warrants that the dwelling is habitable and constructed in a workmanlike manner. The modern trend has abrogated caveat emptor for new home sales, recognizing the disparity in expertise between builders and purchasers.

170. A — Under the modern presumption, ambiguous conveyances to multiple grantees are construed as tenancies in common with equal undivided interests, not joint tenancies. Joint tenancy requires clear expression of the right of survivorship.

171. D — When a tenant holds over after the lease expires, the landlord may elect either to evict or to bind the tenant to a new periodic tenancy on the same terms as the expired lease. The election rests with the landlord, not the tenant.

172. C — False light invasion of privacy requires publication that places the plaintiff in a false light highly offensive to a reasonable person, made with knowledge of falsity or reckless disregard for truth. Misleading context with attributed quotes the plaintiff never made satisfies these elements.

173. B — The newsworthiness or "legitimate public concern" defense protects publication of truthful information about matters of public interest, even when the information is private and embarrassing. Courts give considerable deference to media judgments about what constitutes legitimate public interest.

174. C — Appropriation of name or likeness requires unauthorized use of the plaintiff's identity for the defendant's commercial benefit. The tort protects the plaintiff's interest in controlling the commercial exploitation of her identity.

175. D — Truth is a complete defense to a defamation claim at common law and is constitutionally protected when public concern is implicated. A defendant who establishes the substantial truth of the published statement defeats the claim entirely.

176. C — Loss of consortium is an independent claim by the spouse of an injured plaintiff for loss of the marital relationship, including companionship, affection, and services. The claim is recognized in most jurisdictions and runs with the marriage relationship.

177. B — Wrongful death statutes typically permit recovery of pecuniary losses (lost financial support, services) and, in many jurisdictions, non-pecuniary losses (grief, loss of companionship). The exact scope of damages varies by state statute.

178. D — Survival statutes permit the deceased's estate to pursue claims the deceased could have brought, including damages for pain, suffering, and economic losses between injury and death. The action is distinct from wrongful death, which compensates the family for losses from the death itself.

179. C — A property owner is generally not vicariously liable for the torts of an independent contractor because the contractor controls the means and methods of the work. The independent contractor doctrine shields the homeowner from respondeat superior liability.

180. A — Under the frolic and detour doctrine, an employer is not vicariously liable for an employee's tortious acts committed on a substantial deviation (frolic) from the employer's business. A 10-mile detour to a personal destination for several hours falls outside the scope of employment.

181. B — The attractive nuisance doctrine imposes liability when (1) the possessor knew or should have known children were likely to trespass, (2) the condition posed unreasonable risk of death or serious bodily injury, (3) the child could not appreciate the danger due to youth, and (4) the burden of eliminating the danger was slight compared to the risk.

182. D — Common carriers historically owed their passengers a heightened duty of care—the highest practical degree of care consistent with operation of the carrier's business. Modern trends in some jurisdictions move toward ordinary care, but the heightened standard remains the majority rule.

183. C — Negligent entrustment imposes liability on the owner who entrusts a vehicle to a person the owner knew or should have known was likely to use it negligently. Knowledge of prior reckless driving and accidents supports liability when the entrusted user causes injury.

184. B — Under the consumer-expectations test for design defects, a product is defective if it fails to perform as safely as an ordinary consumer would expect when used in a reasonably foreseeable manner. The test is consumer-focused rather than technical.

185. A — Strict products liability extends to failure-to-warn defects when the manufacturer knew or should have known of risks not obvious to consumers. The duty to warn protects users from latent risks they could not independently appreciate.

186. D — Express assumption of risk in writing is generally enforceable as a defense to negligence claims unless the waiver violates public policy or attempts to absolve the defendant of reckless or intentional conduct. Recreational activity waivers are typically upheld for ordinary negligence.

187. C — Implied assumption of risk applies to inherent risks of an activity that the plaintiff knew or should have known about. Spectators at baseball games are generally barred from recovery for being hit by foul balls in unprotected areas because this is an inherent risk of attendance.

188. B — Modern contribution statutes permit a defendant who has paid a judgment to recover from a joint tortfeasor a proportionate share based on relative fault. The right of contribution allocates loss equitably among joint tortfeasors.

189. D — Indemnity allows a party whose liability is purely vicarious or passive to recover full reimbursement from the party whose active conduct caused the harm. A retailer whose strict products liability arises solely from the manufacturer's defect may seek full indemnity.

190. C — The pure economic loss rule generally bars recovery for purely economic losses caused by negligence in the absence of personal injury or property damage to the plaintiff. The rule limits the scope of negligence liability to avoid disproportionate exposure for indirect economic ripple effects.

191. A — Dram shop statutes impose liability on alcohol vendors who serve obviously intoxicated patrons or minors who subsequently cause harm. The statute typically authorizes third-party victims to sue the establishment for the resulting injury.

192. B — Even the minimal duty owed to trespassers prohibits the landowner from setting traps or intentionally injuring trespassers through hidden dangerous conditions. Liability attaches when the landowner takes affirmative steps designed to harm uninvited entrants.

193. C — A licensee is one who enters with the possessor's permission but for the licensee's own purpose or as a social guest. Personal favors and social visits create licensee status, regardless of any benefit conferred on the possessor.

194. D — In wrongful conception cases involving healthy children, most courts award damages for medical and pregnancy-related costs but limit or deny damages for the cost of raising the child. The denial reflects the policy that the child's existence is a benefit, not a harm.

195. B — Consent to a specific medical procedure does not extend to materially different procedures, except in true emergencies. A surgeon who exceeds the scope of consent by performing additional procedures may be liable for battery, even when motivated by the patient's best interests.

196. A — Self-defense requires the force used to be proportionate to the threat. Deadly force in response to a non-deadly threat (such as an unarmed punch) exceeds proportionality and is not justified, regardless of the defender's subjective fear.

197. C — Deadly force is generally not justified to protect property alone; the property owner must show the perpetrator also threatened serious bodily harm to qualify for the use of deadly force. Property interests do not warrant taking a life under common law principles.

198. A — Trespass to chattels requires either dispossession, impairment of the chattel, deprivation of use for a substantial time, or bodily harm. Deprivation of immediate use for several hours satisfies the interference requirement and supports recovery for the disturbance.

199. B — A private individual may sue for public nuisance only by showing special injury different in kind from the general harm to the community. If the resident cannot make that showing, the suit must be reframed around specific interference with her own property as a private nuisance.

200. A — Under *Gertz v. Robert Welch*, a private figure defamation plaintiff must prove the defendant was at least negligent regarding the falsity of the statement to recover actual damages. States may set the fault standard higher (up to actual malice) but cannot impose strict liability.