

PRACTICE EXAM8: MBE SIMULATION

(200 QUESTIONS)

1. A foreign tire manufacturer sells tires to a national distributor in State A. The distributor resells the tires throughout the United States. A defective tire causes an accident in State B, injuring a State B resident. The injured party sues the tire manufacturer in State B court. The manufacturer has no offices, employees, or direct sales in State B. Under *McIntyre v. Nicastro*, the State B court most likely:

- A. Has personal jurisdiction because the manufacturer placed the tires in the stream of commerce
- B. Has personal jurisdiction because injury occurred within the forum state's territorial borders
- C. Lacks personal jurisdiction because the manufacturer did not purposefully target State B's market
- D. Lacks personal jurisdiction because foreign manufacturers cannot be sued in any U.S. state court

2. A taxpayer challenges a federal grant of funds to a religious organization, arguing it violates the Establishment Clause. The taxpayer has no specific personal injury from the grant beyond the use of public funds. Under *Flast v. Cohen* and its progeny, the taxpayer has standing only if:

- A. The challenged expenditure was made under Congress's taxing and spending power for a religious purpose
- B. The taxpayer can establish concrete economic harm from her share of the federal tax burden
- C. The taxpayer's religious beliefs are directly burdened by the federal expenditure of funds
- D. The taxpayer has personal standing to assert third-party rights of religious dissenters in court

3. A buyer sends a written offer to a seller: "I offer to buy 500 widgets at \$20 each." The seller responds: "I accept your offer to buy 500 widgets at \$20 each, with delivery to be made in 30 days as is our usual practice." Under the common law mirror image rule, the seller's response is:

- A. An effective acceptance because it accepts the price and quantity terms of the original offer

- B. An effective acceptance because additional terms are construed as proposals for modification
- C. An effective acceptance because trade usage may be incorporated into commercial agreements
- D. A counteroffer because it varied the original offer by adding a delivery term

4. A defendant fires a gun at his intended victim, intending to kill him. The bullet misses the intended victim and instead strikes and kills an innocent bystander twenty feet away. The defendant is charged with murder of the bystander. Under the doctrine of transferred intent:

- A. The defendant is guilty only of attempted murder because the intended victim was not killed
- B. The defendant is guilty of murder because his intent to kill transfers to the actual victim
- C. The defendant is guilty only of involuntary manslaughter because the killing was unintentional
- D. The defendant is guilty only of negligent homicide because he failed to control his bullet trajectory

5. At a civil trial about a workplace injury, the plaintiff seeks to admit her statement, made thirty seconds after slipping on a wet floor: "Oh my god — they never cleaned this up after I warned them yesterday!" The defendant objects on hearsay grounds. The statement is most likely:

- A. Inadmissible because the statement contains opinion testimony about the defendant's prior knowledge
- B. Inadmissible because the declarant was the plaintiff and therefore has motive to fabricate facts
- C. Admissible as a statement of present sense impression made while perceiving the wet floor
- D. Admissible as an excited utterance made while under the stress of the startling fall event

6. O conveys Blackacre "to A and his heirs, on the express condition that the land shall be used only for educational purposes." The deed does not specify what happens upon breach of the condition. What estate does A hold?

- A. A fee simple determinable, which automatically reverts to O upon breach of the condition
- B. A life estate measured by A's life, with a reversion to O upon any future use violation
- C. A fee simple subject to a condition subsequent, with O retaining a right of entry on breach
- D. A fee simple absolute because the conditional language is precatory and unenforceable

7. A driver negligently strikes a utility pole, knocking it onto a power line. The power line falls and electrocutes a pedestrian walking on the sidewalk one hundred feet away. The pedestrian sues the driver for negligence. Under Cardozo's majority opinion in *Palsgraf v. Long Island Railroad*, the pedestrian:

- A. Was a foreseeable plaintiff because pedestrians are foreseeably injured by negligent driving incidents
- B. Was not a foreseeable plaintiff because she was outside the zone of immediate danger from the vehicle
- C. Cannot recover because the falling pole was a superseding cause breaking the chain of causation
- D. Cannot recover because power-line electrocution from car accidents is too remote a harm

8. A plaintiff is a citizen of State X. She sues three defendants in federal court. Defendant 1 and Defendant 2 are citizens of State Y. Defendant 3 is a corporation incorporated in State Z with its principal place of business in State X. The amount in controversy exceeds \$75,000. Diversity jurisdiction:

- A. Exists because three of the four parties have different citizenship from one another diverse
- B. Does not exist because Defendant 3's State X principal place of business destroys complete diversity
- C. Exists because corporations are considered citizens only of their state of incorporation
- D. Does not exist because federal courts require unanimous consent of all defendants for jurisdiction

9. A public school district allows community groups to use empty classrooms after school hours for various activities. A religious group requests space for after-school Bible study sessions. The district denies the request, claiming Establishment Clause concerns. The group sues. Under *Good News Club v. Milford Central School*:

- A. The denial is permissible because allowing religious use of public school space would constitute endorsement
- B. The denial is permissible only if the district can show secular alternatives would adequately serve the group
- C. The denial is impermissible viewpoint discrimination in a limited public forum opened by the district
- D. The denial is impermissible because the Free Exercise Clause requires public accommodation of religion

10. A general contractor circulates a notice stating, "I will pay \$10,000 to anyone who provides information leading to the recovery of stolen equipment from my job site." A worker for a subcontractor sees the notice and, knowing of the offer, supplies information that leads to recovery. The contractor refuses to pay. The worker sues. The offer is:

- A. A unilateral offer accepted by the worker's full performance of the requested act
- B. A bilateral offer requiring the worker to first promise to provide the information
- C. A mere advertisement creating no binding obligation absent further negotiation
- D. An invitation to bargain requiring written acceptance before any obligation arises

11. A man takes a bicycle from a bike rack, believing it is his own. He rides it home. When he arrives, he realizes it is not his bicycle. Instead of returning it, he decides to keep it. He is charged with larceny. Under the doctrine of continuing trespass:

- A. Not guilty because his original taking was based on an honest mistake about ownership
- B. Not guilty because mistake of fact about ownership negates the specific intent requirement for larceny
- C. Guilty of embezzlement because he was in lawful possession when he formed the intent to keep
- D. Guilty of larceny because his initial trespassory taking is treated as continuing when intent forms

12. At a civil trial about an automobile collision, the plaintiff seeks to introduce a statement made by the defendant during a deposition: "I was going too fast and I didn't see her." The defendant did not testify at trial. The statement is:

- A. Inadmissible hearsay because the defendant did not testify at trial and is unavailable
- B. Admissible as a statement by an opposing party under FRE 801(d)(2) without need for an exception
- C. Admissible only under the statement-against-interest exception requiring unavailability
- D. Inadmissible because deposition statements may only be used for impeachment at trial

13. A possesses Blackacre adversely from 2005 to 2015 (10 years). A then sells his possessory interest to B by quitclaim deed in 2015. B continues adverse possession from 2015 to 2020 (5 years). The statutory period is 15 years. In 2020, the true owner sues B for ejectment. B should:

- A. Prevail because tacking is permitted between successive possessors in privity, satisfying the 15-year period
- B. Lose because the 15-year period requires continuous possession by a single adverse possessor
- C. Lose because quitclaim deeds cannot transfer adverse-possession rights that have not yet ripened
- D. Prevail only if B can establish that A's possession satisfied all elements except duration

14. A defendant intends to throw a rock at his enemy. He throws the rock, but it misses the enemy and instead strikes a nearby passerby. The passerby sues for battery. Under the doctrine of transferred intent applied in tort:

- A. The defendant is liable only for assault because he had no intent to make contact with the passerby
- B. The defendant is liable only if he failed to exercise reasonable care in throwing the rock at all
- C. The defendant is liable for battery because his intent to commit battery transfers to the passerby
- D. The defendant is liable only if the passerby was within reasonable foreseeable risk of being struck

15. A federal civil action is properly filed in the Southern District of New York. The defendant moves to transfer venue to the Eastern District of Virginia, where most witnesses reside and the events occurred. Under 28 U.S.C. § 1404(a), the court should:

- A. Grant the motion only if the plaintiff consents to the transfer of venue to another district
- B. Grant the motion if transfer would serve the convenience of parties and witnesses and interests of justice
- C. Deny the motion because plaintiffs have absolute choice of forum in federal civil litigation
- D. Deny the motion because § 1404(a) authorizes transfer only between districts in the same state

16. A state law prohibits noncitizens from serving as public school teachers. A lawful resident alien who has been denied a teaching position challenges the law. Under existing Supreme Court doctrine:

- A. Unconstitutional because all alienage classifications by states trigger strict scrutiny review
- B. Unconstitutional because the law fails the substantial relationship test for resident alien classifications
- C. Constitutional only if the state demonstrates a compelling interest in citizen teachers

D. Constitutional because public school teaching involves a governmental function within the political community

17. A merchant buyer and seller agree to a sale of goods for \$50,000. Before delivery, the parties agree in writing to modify the contract, increasing the price to \$55,000 due to a rise in the seller's material costs. The buyer later refuses to pay the increased amount. Under UCC § 2-209, the modification is:

A. Unenforceable because no new consideration was given for the increased price under common law principles

B. Unenforceable because all modifications to sales contracts must be supported by independent consideration

C. Enforceable because UCC § 2-209 allows modification of sales contracts without new consideration in good faith

D. Enforceable only if the buyer can be shown to have economically benefited from the modification

18. Police knock on a homeowner's door and ask if they may search the home for evidence of drug trafficking. The homeowner says, "Sure, go ahead." Officers conduct a thorough search and find drugs. The homeowner is charged with drug possession. The drugs are:

A. Admissible because the homeowner voluntarily consented to the search of his home

B. Inadmissible because officers must obtain a warrant supported by probable cause before searching

C. Admissible only if the homeowner was given Miranda warnings before consenting to the search

D. Inadmissible because consent obtained without prior probable cause is constitutionally invalid

19. A patient seeks treatment from a doctor after a car accident, telling the doctor: "My back is killing me, and the accident happened when a truck slammed into me at 60 mph." In a later lawsuit against the truck driver, the patient's attorney seeks to introduce both statements through the doctor's testimony. Under FRE 803(4):

A. Both statements are admissible because they were made to a treating physician for diagnosis

B. The pain statement is admissible, but the truck-driver statement is inadmissible as opinion testimony

C. Both statements are inadmissible because they are hearsay made outside a court proceeding

D. The pain statement is admissible, but the truck-driver fault statement is inadmissible because fault is not pertinent to medical treatment

20. A tenant signs a one-year residential lease. The apartment has serious plumbing problems that the landlord refuses to fix despite repeated requests. The tenant remains in the apartment but withholds rent. The landlord sues for unpaid rent. The tenant's best defense is:

- A. The doctrine of frustration of purpose because plumbing failure has frustrated the lease's purpose
- B. The implied warranty of habitability because the landlord failed to maintain the premises in livable condition
- C. The doctrine of waste because the plumbing damage is causing structural deterioration of the property
- D. The covenant of quiet enjoyment because the plumbing noise has disturbed the tenant's peaceful possession

21. A construction company negligently severs an underground power line, causing a 24-hour power outage to a nearby restaurant. The restaurant cannot operate during the outage and loses \$20,000 in profits. The restaurant sues the construction company for the economic loss. Under the majority rule, the restaurant:

- A. Cannot recover because purely economic losses without physical injury or property damage are generally not recoverable in negligence
- B. Can recover because economic losses are foreseeable consequences of negligent damage to power infrastructure
- C. Can recover because the restaurant was within the foreseeable zone of danger from negligent excavation
- D. Cannot recover because the construction company was an independent contractor not liable for these losses

22. A federal court in State X obtains personal jurisdiction over a State Y defendant through State X's long-arm statute. The plaintiff serves the defendant by mail to his State Y residence. Under Federal Rule of Civil Procedure 4(e)(1):

- A. Service by mail is improper because federal rules require personal in-hand service of process
- B. Service by mail is proper only if the defendant signs a return receipt acknowledging service

- C. Service is improper because the plaintiff must use a method authorized by federal law alone
- D. Service is proper if it complies with the rules of either the state where the federal court sits or where service is made

23. A state passes a law restricting a particular religious practice. The challenger argues the law violates the federal Constitution. The challenger may invoke:

- A. The Free Exercise Clause directly because it applies to states without any incorporation analysis
- B. The Free Exercise Clause only if the state has consented to federal constitutional review
- C. The Free Exercise Clause as incorporated against the states through the Fourteenth Amendment
- D. The Free Exercise Clause only if the law is content-based rather than facially neutral

24. An employer orally agrees to employ a worker for "as long as the worker performs satisfactorily." Two years later, the employer terminates the worker, who sues for breach. The contract is:

- A. Unenforceable because employment contracts must be in writing to be enforceable
- B. Enforceable because it could possibly have been performed within one year of formation
- C. Unenforceable because it falls within the one-year provision of the Statute of Frauds
- D. Enforceable only to the extent of services actually performed under quantum meruit theory

25. A defendant fires a gun into a crowded subway car, intending to scare passengers. The bullet strikes and kills a passenger. The defendant is charged with murder. The prosecution's best theory is:

- A. Felony murder based on assault during the commission of an inherently dangerous felony
- B. Voluntary manslaughter because the defendant acted upon adequate provocation by frightened passengers
- C. Second-degree depraved-heart murder because the defendant acted with extreme reckless indifference to human life
- D. Involuntary manslaughter because the defendant did not specifically intend to kill the victim

26. At trial, a party seeks to introduce a certified copy of a state-issued business license. The opposing party objects, arguing authentication is required. Under FRE 902:

- A. The certified copy is self-authenticating and requires no extrinsic evidence of authenticity
- B. The certified copy requires authentication by an official witness from the issuing state agency
- C. The certified copy is inadmissible because government records require live foundation testimony
- D. The certified copy is self-authenticating only if accompanied by an affidavit from the state archivist

27. A landowner grants her neighbor "a right-of-way for ingress and egress across the eastern 10 feet of my property" by a signed writing. Some years later, the neighbor sells her property to a buyer. The deed does not mention the easement. The buyer:

- A. Does not acquire the easement because real property interests must be expressly transferred in each deed
- B. Acquires the easement only if the original easement was recorded against the servient owner's land
- C. Does not acquire the easement because easements are personal to the original holder and do not transfer
- D. Acquires the easement because easements appurtenant run with the dominant land automatically on transfer

28. A farmer's cattle wander onto a neighbor's property and damage the neighbor's crops. The cattle escaped because the farmer's fence had not been maintained, though the farmer was not aware of the gaps. The neighbor sues for damages. Under traditional common law:

- A. The farmer is liable only if he was negligent in maintaining the fence around his cattle
- B. The farmer is strictly liable for the trespass and resulting damage by his straying cattle
- C. The farmer is liable only if the cattle had previously demonstrated a tendency to escape from confinement
- D. The farmer is not liable because cattle are domestic animals not subject to strict liability rules

29. A plaintiff sues a corporation in federal court for breach of contract and obtains a final judgment in her favor. The plaintiff later sues the corporation's CEO personally for the same conduct, on the theory that he is jointly liable. The CEO moves to dismiss. The court should:

- A. Deny the motion because the CEO was not a party to the prior action and is not in privity with the corporation
- B. Grant the motion because the prior judgment binds the CEO under the doctrine of claim preclusion
- C. Grant the motion because the same transaction may not be litigated twice in federal court
- D. Deny the motion only if the plaintiff seeks substantially different relief in the second action

30. A private individual is described in a local online news site as having engaged in fraudulent business practices. The statement is false, and it concerns a matter of public concern. The individual sues for defamation. Under *Gertz v. Robert Welch*, the individual must prove:

- A. Actual malice — knowledge of falsity or reckless disregard for the truth — to obtain any compensation
- B. Strict liability for publication of false statements about a private individual on a matter of concern
- C. At least negligence as to the falsity of the statement to recover actual damages
- D. Specific intent to harm the individual's reputation to recover any form of damages

31. A small business owner urgently needs supplies to fulfill a major order. The only available supplier learns of the urgency and demands triple the usual price. The owner pays the inflated price to avoid losing the order. The owner later sues to recover the excess payment, claiming economic duress. The owner should:

- A. Prevail because all unfair commercial demands constitute economic duress under modern contract law
- B. Lose because economic duress applies only to physical threats of harm against the contracting party
- C. Prevail only if the supplier had previously contracted with the owner for delivery at the original price
- D. Prevail if the threat left no reasonable alternative and was the result of the supplier's wrongful conduct

32. Two defendants are charged with conspiracy to commit bigamy and with the substantive offense of bigamy. They argue that they cannot be convicted of conspiracy. Under Wharton's Rule:

- A. The defendants can be convicted of both the conspiracy and the substantive offense in this case
- B. The defendants cannot be convicted of conspiracy because bigamy is a crime that necessarily requires two participants

- C. The defendants can be convicted of conspiracy only if a third party also participated in the agreement
- D. The defendants cannot be convicted of bigamy because conspiracy and the offense merge automatically

33. At a criminal trial, the prosecution seeks to introduce a properly authenticated police report describing the officer's investigation findings at the crime scene. Under FRE 803(8):

- A. The report is admissible because police reports are categorically admissible business records
- B. The report is admissible only if the officer also testifies and is available for cross-examination
- C. The report is inadmissible against the defendant because law enforcement reports cannot be used by the prosecution
- D. The report is admissible only if the defendant first introduces other police records of the investigation

34. O conveys Blackacre "to A for life, then to B if B is then living, otherwise to C." At the time of conveyance, B and C are both living. What interest does B hold?

- A. A contingent remainder because B's interest is conditioned on her surviving A
- B. A vested remainder subject to divestment by C's executory interest if B predeceases A
- C. An executory interest because B's interest will divest the prior estate upon A's death
- D. A vested remainder in fee simple because B is identifiable and the conveyance creates her interest now

35. A newspaper publishes a false article stating that a businesswoman has been arrested for embezzlement, when she has not been. The businesswoman sues for defamation. The statement:

- A. Constitutes libel per se only if the businesswoman can prove actual financial harm to her business
- B. Constitutes libel per se because the false statement imputes a crime, permitting recovery without proof of special damages
- C. Constitutes slander per quod requiring proof of special damages and pecuniary loss to be actionable
- D. Does not constitute defamation because newspapers have absolute privilege to publish criminal accusations

36. A plaintiff seeks to certify a class of consumers who allegedly suffered injuries from a defective drug. The proposed class members reside in 50 states, with varying state laws governing product liability. The defendant opposes certification. The court should likely:

- A. Certify the class because common questions about the defective drug predominate over individual issues
- B. Certify the class but only if the plaintiff can produce a single trial plan addressing all state laws
- C. Decertify the class only after discovery confirms variations in damages across class members
- D. Decline to certify because variations in state product liability laws may defeat predominance under Rule 23(b)(3)

37. A state agency seeks to seize property based on a tax delinquency. The agency mails notice to the property owner's address, which is returned undelivered. The agency proceeds without further effort to locate the owner. The seizure is later challenged on due process grounds. Under *Jones v. Flowers*:

- A. The agency violated due process because reasonably available follow-up steps must be taken when initial notice fails
- B. The agency satisfied due process because mailed notice is per se sufficient regardless of delivery
- C. The agency satisfied due process because property owners must keep addresses current with state agencies
- D. The agency violated due process only if the owner can prove actual lack of knowledge about the seizure

38. A miller's grain mill shaft breaks. He delivers it to a carrier for transport to a manufacturer for repair, telling the carrier only that the shaft is broken. The carrier negligently delays delivery by five days, during which the mill cannot operate, causing lost profits. The miller sues for lost profits. Under *Hadley v. Baxendale*:

- A. The miller may recover the lost profits because they were a foreseeable consequence of carrier delay
- B. The miller may recover the lost profits because all consequential damages flow from breach of contract
- C. The miller may not recover the lost profits because they were not communicated as foreseeable at contract formation
- D. The miller may not recover any damages because his only remedy is rescission of the carriage contract

39. Police stop a car based on probable cause to believe it contains illegal drugs. They search the vehicle, including a closed paper bag in the trunk. The bag contains drugs. The defendant moves to suppress. Under the automobile exception established in *California v. Acevedo*:

- A. The drugs are inadmissible because closed containers require an independent warrant for search
- B. The drugs are admissible because the automobile exception permits searches of any containers within the car that may hold the subject of the search
- C. The drugs are admissible only if the police can show the closed bag was visible from outside the car
- D. The drugs are inadmissible because the automobile exception applies only to the passenger compartment

40. A client meets with her attorney in the attorney's office. A third-party paralegal employed by the attorney is also present, taking notes for the file. The client makes confidential statements. Later, the attorney's office is subpoenaed and asked about the conversation. The communications are:

- A. Not privileged because the paralegal's presence destroyed the confidential nature of the discussion
- B. Not privileged because attorney-client privilege requires absolute privacy between only the attorney and client
- C. Privileged only if the paralegal signs an additional confidentiality agreement after the meeting
- D. Privileged because the privilege extends to communications made in the presence of attorney's agents

41. In a notice jurisdiction, O conveys Blackacre to A, who takes immediate possession but does not record. O then conveys Blackacre to B, a purchaser for value. B does not visit the property or inquire of the occupants. As between A and B:

- A. B prevails because B was a bona fide purchaser without record notice of A's interest
- B. B prevails because B's lack of inquiry was reasonable in a typical real estate transaction
- C. A prevails because A's open possession gave B inquiry notice, defeating B's BFP status
- D. A prevails only if A made improvements to the property visible from public roads

42. Two defendants are found to have negligently contributed to the plaintiff's \$200,000 injury. Defendant A is 70% at fault; Defendant B is 30% at fault. In a jurisdiction following joint and several liability with apportioned fault rules:

- A. The plaintiff may collect the entire \$200,000 from either defendant, who may then seek contribution from the other
- B. The plaintiff must collect each defendant's share separately, with no possibility of contribution claims
- C. The plaintiff may collect only from Defendant A because A bears the predominant share of fault
- D. The plaintiff may collect proportionally only, recovering \$140,000 from A and \$60,000 from B

43. A corporation is incorporated in Delaware with its principal place of business in California. The corporation sells its products throughout the country. A plaintiff sues the corporation in California state court on a claim unrelated to its California sales. Under Daimler:

- A. The court lacks personal jurisdiction because the claim does not arise from California activities
- B. The court has specific personal jurisdiction over the corporation due to its California sales activity
- C. The court has personal jurisdiction only if the corporation maintains a registered agent in California
- D. The court has general personal jurisdiction because the corporation is "at home" in California

44. A defendant posts on social media: "I'm going to kill the governor." He is charged with making a true threat. Under the Supreme Court's true-threat doctrine as clarified in *Counterman v. Colorado*:

- A. The defendant must have subjectively intended to actually carry out the threat to violence
- B. The defendant must have at least recklessly disregarded the risk that his statement would be perceived as threatening
- C. The defendant's words can be punished only if a reasonable person would feel actually threatened
- D. The defendant's speech is protected absolutely because political officials are subject to expanded criticism

45. A homeowner contracts with a builder for the construction of a backyard deck, payment due upon completion. The builder finishes the deck, but uses slightly different railing spindles than specified — a

deviation that is functional but aesthetic. The homeowner refuses to pay any amount. Under the doctrine of substantial performance:

- A. The homeowner may withhold all payment because the builder's deviation from specifications constitutes a material breach
- B. The homeowner must pay the full contract price because aesthetic deviations are immaterial as a matter of law
- C. The homeowner must pay the contract price minus any damages caused by the deviation from specifications
- D. The homeowner may withhold payment because perfect performance is required for any construction contracts

46. A defendant enters an unlocked car at night, intending to steal items from inside. He is apprehended before taking anything. The state's burglary statute defines burglary as "entering a structure or vehicle with intent to commit a felony or theft therein." The defendant is:

- A. Guilty of burglary because the statute expressly extends to vehicle entries with intent to steal
- B. Not guilty of burglary because common law burglary required entry into a dwelling at night
- C. Not guilty of burglary because vehicles are personal property, not subject to burglary law generally
- D. Guilty of burglary only if he actually completes the intended theft from inside the vehicle

47. A witness testifies favorably for the defendant at a criminal trial. On cross-examination, the prosecution wants to ask whether the witness is the defendant's first cousin. The defendant objects. The question is:

- A. Improper because family relationships are irrelevant to credibility assessment of witness testimony
- B. Proper to establish potential bias arising from the witness's family relationship with the defendant
- C. Proper only if the prosecution provides advance notice to the defense before trial begins
- D. Improper because evidence of bias requires expert psychological testimony to establish meaningful impact

48. A homeowner takes out a mortgage on her home through a deed of trust. The deed of trust names a third-party trustee who holds title in trust as security for the lender. Upon default, the trustee:

- A. Must obtain a judgment in foreclosure before proceeding to sell the property at auction
- B. Holds full legal title until the loan is paid and may sell the property at any time without notice
- C. Cannot proceed to sell the property without explicit consent of the original homeowner
- D. May conduct a nonjudicial sale of the property pursuant to the power of sale clause

49. A defendant deliberately assaults a victim in front of the victim's child, who suffers severe emotional distress from witnessing the attack. The child sues for intentional infliction of emotional distress under the bystander theory. Under most jurisdictions:

- A. The child may recover if she was present, was a close family member of the victim, and the defendant knew of her presence
- B. The child cannot recover because IIED requires the defendant's conduct to be directed at the plaintiff personally
- C. The child may recover only if she suffered some physical manifestation of the emotional distress
- D. The child cannot recover unless the assault occurred within the child's home or her immediate vicinity

50. A defendant in a federal civil action moves for summary judgment, asserting that no genuine dispute exists about a material fact. To prevail, the moving party must:

- A. Produce affirmative evidence affirmatively disproving each element of the plaintiff's claim
- B. Demonstrate the absence of credible witnesses or documents supporting the plaintiff's allegations
- C. Show the absence of a genuine dispute as to any material fact and entitlement to judgment as a matter of law
- D. Establish that the plaintiff has not yet completed discovery on the relevant factual issues

51. A federal court issues a temporary restraining order prohibiting a newspaper from publishing classified information leaked by a government source. The newspaper challenges the order. Under *New York Times Co. v. United States*:

- A. The restraint is presumptively unconstitutional, and the government bears a heavy burden to justify it
- B. The restraint is constitutional because classified information cannot be published without authorization
- C. The restraint is constitutional if the government shows any significant national security interest
- D. The restraint is unconstitutional only if the newspaper can show prior publication of similar information

52. A minor enters into a contract to purchase food and basic clothing from a merchant. After delivery, the minor disaffirms the contract. The merchant sues for the price. Under the necessities doctrine:

- A. The minor may disaffirm without obligation because all contracts by minors are voidable until majority
- B. The minor must pay reasonable value for the food and clothing because they are necessities
- C. The minor must pay the full contract price for the food and clothing under common law contract rules
- D. The merchant has no remedy because the minor has the absolute right to disaffirm without consequence

53. A defendant purchases an expensive watch at a deeply discounted price from a stranger on the street, suspecting that the watch is stolen but not knowing for certain. The watch is in fact stolen. The defendant is charged with receiving stolen property. The defendant is:

- A. Not guilty because actual knowledge that the watch was stolen is required for conviction
- B. Not guilty because suspicions about origin do not amount to criminal intent under common law
- C. Guilty only if he can be shown to have personally participated in the original theft of the watch
- D. Guilty because reckless disregard of the watch's likely stolen origin satisfies the knowledge element

54. At trial, a party seeks to introduce a photocopy of a written contract instead of the original. The opposing party objects on best-evidence grounds. Under FRE 1003:

- A. The photocopy is inadmissible because the best-evidence rule requires production of the original
- B. The photocopy is admissible only if the original has been lost or destroyed without bad faith
- C. The photocopy is admissible to the same extent as the original unless authenticity is genuinely disputed
- D. The photocopy is inadmissible unless the opposing party stipulates to its use in lieu of the original

55. A neighbor mistakenly believes she owns a strip of land that actually belongs to the adjacent owner. She uses the strip openly, exclusively, and continuously for 25 years (exceeding the 20-year statutory period). The true owner sues for ejectment. Under the majority (objective) rule for hostility:

- A. The neighbor cannot establish hostility because her use was based on a good-faith mistake
- B. The neighbor can establish hostility only if she can prove subjective bad faith claiming the land
- C. The neighbor can establish hostility because hostility is assessed objectively without regard to subjective belief
- D. The neighbor's mistake creates a presumption of permissive use defeating any adverse possession claim

56. A 10-year-old child is operating a motorized lawnmower and negligently strikes another child, causing injury. The injured child sues. The standard of care applied to the 10-year-old defendant is:

- A. The standard of care of a reasonable adult because the child was engaged in an inherently dangerous adult activity
- B. The standard of care of a reasonable 10-year-old of similar age, intelligence, and experience
- C. The strict liability standard because operating mechanized equipment imposes liability regardless of age
- D. The standard of care of an ordinary person without consideration of the defendant's age or experience

57. A plaintiff's complaint alleges that "the defendant conspired with others to violate antitrust laws." The complaint includes no factual specifics about who the alleged co-conspirators were or what acts the conspirators committed. The defendant moves to dismiss. The court should:

- A. Deny the motion because conspiracy allegations require only notice under federal pleading standards
- B. Grant the motion because conclusory allegations of conspiracy fail the plausibility requirement of Twombly
- C. Deny the motion if discovery might reveal additional factual support for the conspiracy claim
- D. Grant the motion only if the defendant produces affirmative evidence rebutting the conspiracy claim

58. Congress enacts a law regulating the cultivation of marijuana for personal medical use, where state law permits such use. The law applies even to homegrown marijuana not entering interstate commerce. Under *Gonzales v. Raich*:

- A. The law exceeds Congress's commerce power because homegrown personal use is intrastate non-commerce
- B. The law violates the Tenth Amendment by interfering with state authority to legalize medical marijuana
- C. The law is constitutional only if the federal interest substantially outweighs state policy preferences
- D. The law is constitutional because Congress may regulate intrastate activity that, in the aggregate, substantially affects interstate commerce

59. A merchant seller and a buyer contract for the sale of goods, FOB buyer's warehouse. The seller arranges shipment via common carrier. While in transit, the goods are destroyed in a fire on the carrier's truck before reaching the buyer's warehouse. Under UCC § 2-509(1)(b):

- A. The seller bears the risk of loss because the contract was a destination contract requiring delivery to the buyer's warehouse
- B. The buyer bears the risk of loss because the seller delivered the goods to the common carrier in good faith
- C. The risk is split between the parties because the loss occurred during transit by a third party
- D. The buyer bears the risk only if the seller can establish insurance covered the destroyed goods

60. A defendant breaks into a cabin to escape from a sudden, life-threatening blizzard. He uses the cabin's food supply to survive until rescued. He is charged with burglary and theft. The defendant's best defense is:

- A. Self-defense because the elements protect him from criminal liability under common law principles
- B. Duress because the natural threat substantially compelled him to commit the otherwise criminal acts
- C. Necessity because his criminal acts were reasonably necessary to prevent a greater harm
- D. Insanity because his desperate condition rendered him temporarily unable to form criminal intent

61. A defendant on trial for fraud calls a character witness who testifies, "The defendant has a reputation in the community for being honest and trustworthy." On cross-examination, the prosecution may:

- A. Introduce evidence of any prior bad acts by the defendant regardless of relevance to honesty
- B. Ask the character witness whether she has heard of specific instances of the defendant's prior dishonesty
- C. Call its own witnesses to testify about the defendant's specific acts of fraudulent dealings
- D. Cross-examine the defendant directly on prior bad acts even if the defendant does not testify

62. A tenant installs a custom-designed neon sign on the storefront of her leased commercial space. The sign is bolted to the building but can be removed without damage. At the end of the lease, the tenant seeks to remove the sign. The landlord claims it has become part of the premises. The tenant:

- A. Cannot remove the sign because it has become a fixture by attachment to the building
- B. Cannot remove the sign because all signs become real property after installation on a building
- C. Must pay the landlord the value of the sign before removing it from the building premises
- D. May remove the sign because trade fixtures may generally be removed before the lease expires

63. A plaintiff is 60% responsible for her injury, and the defendant is 40% responsible. The total damages are \$100,000. The jurisdiction follows modified comparative negligence with a 50% bar. The plaintiff recovers:

- A. \$40,000 because the defendant's percentage of fault is deducted from the total damages
- B. \$60,000 because the plaintiff's percentage of fault is deducted from the total damages
- C. Nothing because she exceeds the 50% fault threshold under modified comparative negligence rules
- D. \$50,000 because modified comparative negligence allocates damages at the threshold percentage

64. A corporation is incorporated in Delaware but has its principal place of business in California. The corporation is a citizen of:

- A. Both Delaware and California for purposes of diversity jurisdiction under 28 U.S.C. § 1332(c)

- B. Only Delaware because that is the corporation's state of incorporation under federal law
- C. Only California because the principal place of business controls under the "nerve center" test
- D. The state where the corporation conducts the majority of its business activities annually

65. A state law requires opticians to have a prescription from an ophthalmologist or optometrist before fitting eyeglass frames to a customer. The law is challenged as economic protectionism for licensed optometrists. Under *Williamson v. Lee Optical*:

- A. The law is unconstitutional because economic regulations that protect specific industries violate equal protection
- B. The law is constitutional under the deferential rational-basis review applicable to economic regulations
- C. The law is unconstitutional unless the state demonstrates a substantial relationship to health and safety
- D. The law is constitutional only if the state proves opticians cannot competently fit frames without medical training

66. A contract requires the buyer to obtain a satisfactory inspection of the property "as a condition of closing." The buyer obtains the inspection, which reveals significant problems. The buyer refuses to close. The seller sues. The inspection condition:

- A. Is a covenant rather than a condition, so the buyer must close and sue for damages from the inspection findings
- B. Is satisfied automatically when the inspection is performed, regardless of the buyer's actual reaction
- C. Is unenforceable as too vague to be a binding contractual condition between the parties
- D. Is an express condition that allows the buyer to terminate based on genuine dissatisfaction in good faith

67. A defendant is arrested and given Miranda warnings. He signs a written waiver of his rights, including the right to counsel, and then voluntarily makes incriminating statements during interrogation. The waiver and statements are:

- A. Invalid because all suspects must consult with counsel before waiving constitutional rights
- B. Invalid because Miranda waivers cannot be effective without independent judicial approval

- C. Valid if the waiver was knowing, intelligent, and voluntary under the totality of the circumstances
- D. Valid only if the defendant has a high school education or completed equivalent schooling

68. At a kidnapping trial, the prosecution seeks to introduce the victim's pre-kidnapping statement to a friend: "I'm going to meet John at the park later this afternoon." The defendant John was charged with kidnapping the victim. Under FRE 803(3):

- A. The statement is inadmissible because it identifies the defendant and is too prejudicial to allow
- B. The statement is inadmissible because the victim cannot be cross-examined about the statement
- C. The statement is admissible as a then-existing intent to meet John at the park, supporting an inference she did so
- D. The statement is admissible only if other evidence corroborates that the meeting actually took place

69. A and B own adjoining parcels. A holds an easement of way across B's parcel. A buys B's parcel, holding both as fee simple owner. A later sells his original parcel to C. The deed to C does not mention the easement. C now claims the right to use the way across the parcel A still owns. C:

- A. Has no easement because the original easement was extinguished by merger when A acquired both parcels
- B. Has an easement because the original easement was permanent and binds all subsequent owners
- C. Has an easement only if A explicitly granted it in the deed to C with proper formalities
- D. Has an easement by necessity if the parcel lacks any other practical access to a public road

70. An accountant prepares financial statements for his client, knowing the statements will be shown to potential investors. He negligently overstates the company's assets. A potential investor relies on the statements and invests, suffering loss when the company fails. Under Restatement (Second) of Torts § 552:

- A. The accountant is not liable because professional duties run only to direct clients, not third parties
- B. The accountant may be liable to the investor as a foreseeable user of the financial statements
- C. The accountant is liable only if he intentionally misrepresented the company's financial condition

D. The accountant is liable to any party who eventually relies on the statements regardless of foreseeability

71. A federal court sitting in diversity must decide whether to apply state law or federal law to a question about service of process within the federal action. Under *Hanna v. Plumer*, when a Federal Rule of Civil Procedure is on point:

- A. State law governs because procedural matters in diversity cases follow state procedural rules
- B. State law governs only if the federal rule is outcome-determinative on the substantive question
- C. Federal law applies only when the federal rule expressly preempts contrary state law on the point
- D. The Federal Rule applies if valid under the Rules Enabling Act and consistent with the Constitution

72. A state prisoner is transferred from a general prison facility to a high-security psychiatric institution without any hearing. He challenges the transfer as a violation of procedural due process. Under *Vitek v. Jones*:

- A. The transfer implicates a liberty interest requiring notice and a hearing before transfer to psychiatric confinement
- B. The transfer is purely administrative and requires no procedural protections under the Constitution
- C. The transfer implicates due process only if the prisoner can show actual harm from the new facility
- D. The transfer is subject to due process only after the prisoner exhausts internal grievance procedures

73. A merchant buyer sends a purchase order to a merchant seller. The seller responds with an acknowledgment containing a new term limiting damages to the purchase price. The buyer does not object to the new term. Under UCC § 2-207(2), the limitation clause is part of the contract unless:

- A. The buyer's purchase order specifically required acceptance without modification of any terms
- B. The seller's acknowledgment was timely sent within the period allowed by the original purchase order
- C. The limitation materially alters the contract, or the offer limits acceptance to its terms, or the buyer objects
- D. The buyer can establish that the limitation was unilaterally inserted by the seller without good faith

74. A defendant tells a victim that he is a representative of a legitimate charity collecting donations. In fact, no such charity exists, and the defendant pockets the money. The defendant is charged with false pretenses. The defendant is guilty because:

- A. He took the money from the victim by force or threat of imminent harm, the elements of robbery
- B. He obtained title to the victim's money through a knowingly false representation of material fact
- C. He temporarily appropriated the victim's money, the essential element of embezzlement
- D. He committed larceny by trick because the victim's parted with possession only, not title

75. At a federal court trial, a plaintiff seeks to admit her therapist's records of psychiatric treatment. The defendant objects, asserting psychotherapist-patient privilege. Under *Jaffee v. Redmond*:

- A. The records are admissible because federal common law does not recognize a psychotherapist-patient privilege
- B. The records are admissible because the plaintiff waived the privilege by filing the lawsuit at issue
- C. The records are inadmissible only if the therapist agrees to invoke the privilege on the patient's behalf
- D. The records are inadmissible because *Jaffee v. Redmond* recognized a federal psychotherapist-patient privilege

76. A and B own Blackacre as joint tenants. A unilaterally executes a mortgage on her interest. In a "lien theory" jurisdiction (majority):

- A. The joint tenancy continues because the mortgage does not transfer title, only a security interest
- B. The joint tenancy is severed because any encumbrance destroys the unity of interest by definition
- C. The mortgage is invalid because joint tenants cannot unilaterally affect the title to common property
- D. The joint tenancy is severed only if the mortgage is foreclosed and title transferred to the lender

77. A pharmaceutical company markets a prescription drug without warning of a known serious side effect. A patient suffers harm from the side effect. The patient sues. Under strict products liability for failure to warn:

- A. The patient cannot recover because patients receive prescription drugs only through doctors with separate duty to warn
- B. The patient must prove the manufacturer was negligent in failing to discover and report the side effect
- C. The manufacturer is liable for failure to warn of known risks where ordinary use would not reveal them
- D. The patient may recover only if she can show that knowing of the risk would have changed her treatment

78. A plaintiff is a citizen of State X. The defendant is a citizen of State X. The plaintiff files in State X court asserting state-law claims with \$200,000 in damages. The defendant files a notice of removal to federal court. The court should:

- A. Permit removal because the amount in controversy satisfies the federal jurisdictional threshold
- B. Remand the action because diversity jurisdiction does not exist between two citizens of the same state
- C. Permit removal under supplemental jurisdiction since the claims involve common factual issues
- D. Remand only if the plaintiff explicitly objects to federal jurisdiction within 30 days of removal

79. A state law sets different ages of majority for males (21) and females (18). The law is challenged on equal protection grounds. Under *Craig v. Boren*:

- A. The law is constitutional because state legislatures have broad authority over family law matters
- B. The law is constitutional under rational basis review for benign gender-based classifications
- C. The law is unconstitutional only if a complete absence of any rational basis is established
- D. The law is unconstitutional because gender classifications require intermediate scrutiny which it cannot meet

80. A father, who owes his son \$10,000 from a prior loan, contracts with a contractor: "If you finish the roof on my son's house, I will pay you \$10,000, which represents money I owe my son." The contractor finishes but is not paid. The son is:

- A. A creditor beneficiary because the contract was intended to discharge the father's pre-existing debt to him

- B. A donee beneficiary because the father intended to make a gift to his son via the contractor's work
- C. An incidental beneficiary because no contractual privity exists between the contractor and the son
- D. Not a beneficiary because only express written designations create third-party beneficiary status

81. Police lawfully arrest a defendant for driving with a suspended license. Without a warrant, they search the passenger compartment of the defendant's car and find drugs. The defendant was already handcuffed and secured in the back of a patrol car at the time of the search. Under *Arizona v. Gant*:

- A. The search is lawful as a search incident to any lawful custodial arrest of the defendant
- B. The search is unlawful because the defendant was secured and could not access the vehicle at the time of the search
- C. The search is lawful because the automobile exception permits warrantless searches without probable cause
- D. The search is unlawful unless the officers observed contraband in plain view from outside the vehicle

82. A wife voluntarily testifies as a prosecution witness against her husband regarding a bank robbery she allegedly witnessed her husband commit. The husband objects under spousal privileges. Under federal law (*Trammel v. United States*):

- A. The spousal testimonial privilege belongs to both spouses and must be invoked jointly by either party
- B. The spousal testimonial privilege belongs solely to the husband, who may bar the wife's testimony
- C. The spousal testimonial privilege belongs solely to the witness-spouse, who may waive it by testifying
- D. The spousal testimonial privilege does not apply because federal courts have abolished all marital privileges

83. O conveys Blackacre "to A for life, then to A's children who reach 21." A has two children, both under 21, at the time of conveyance. Under the rule of convenience, the class closes:

- A. When A dies and the first child reaches 21, at which point that child takes and the class closes
- B. When A dies, regardless of whether any child has reached 21 at that point
- C. When the first child of A is born, fixing membership at that point

D. When the last surviving child of A reaches age 21 or it becomes certain no more can be born

84. A factory emits foul odors that affect residents within a five-mile radius. One affected resident sues. To establish a private nuisance claim, the resident must show:

- A. The factory's conduct violates a specific statute or regulation governing air emissions in the area
- B. The resident is a private individual harmed by the factory's emissions in any measurable way
- C. The harm to the resident is shared by the general public within the affected radius
- D. Substantial and unreasonable interference with the resident's use and enjoyment of her property

85. A plaintiff sues one of two co-owners of a property over disputed boundary lines. The omitted co-owner is a citizen whose joinder would destroy diversity. The court should:

- A. Continue with the suit because permissive joinder is sufficient where joint owners share interests
- B. Determine whether the omitted co-owner is indispensable and, if so, dismiss the action under Rule 19(b)
- C. Grant judgment for the defendant because failure to join a co-owner is fatal at the pleading stage
- D. Permit joinder over the diversity objection because federal courts have inherent power to retain jurisdiction

86. A city ordinance prohibits ritual animal sacrifice. The ordinance was enacted shortly after a Santeria church announced plans to open in the city, and legislative history shows the law was aimed at the church's practices. Under *Church of Lukumi Babalu Aye v. Hialeah*:

- A. The ordinance is constitutional because it is a neutral law of general applicability under *Smith*
- B. The ordinance is constitutional if the city demonstrates significant public health concerns about sacrifice
- C. The ordinance is unconstitutional because it targets religious practice and is not neutral or generally applicable
- D. The ordinance is unconstitutional only if the church can show its members were specifically targeted

87. A seller contracts to deliver 1,000 widgets to a buyer at \$50 each. After the contract, an unforeseen disruption causes the seller's production costs to rise by 20%. The seller refuses to deliver and claims impracticability. Under UCC § 2-615:

- A. The seller is excused because any increase in production costs constitutes commercial impracticability
- B. The seller is excused if the cost increase results from any market fluctuation outside the seller's control
- C. The seller is excused if alternative suppliers are unable to provide widgets at the contracted price
- D. The seller is not excused because a 20% cost increase is generally insufficient to constitute impracticability

88. A trustee of a charitable trust converts trust funds to his personal use. He is charged with embezzlement. The trustee's strongest argument is:

- A. He had no criminal intent because he believed he could repay the funds before discovery
- B. He was authorized to use trust funds because trustees have broad discretion over fiduciary administration
- C. Embezzlement requires that the property belong to a private person, not a charitable trust entity
- D. Charitable trusts cannot be victims of theft because they are public benefit organizations under common law

89. At a property dispute trial, a party seeks to introduce a deed dated 1925 to establish a chain of title. Under FRE 803(16):

- A. The deed is inadmissible because all documents over 20 years old require modern authentication procedures
- B. The deed is admissible as an ancient document if authentic and 20 years or older at the time of trial
- C. The deed is admissible only if the original signatories can be located to testify about its execution
- D. The deed is inadmissible because hearsay exceptions do not apply to documents establishing real estate title

90. In a race-notice jurisdiction, O conveys Blackacre to A. A does not record. O then conveys Blackacre to B, who has no notice of A's interest. B records before A. As between A and B:

- A. A prevails because race-notice statutes always favor the first grantee in time over subsequent grantees
- B. A prevails because B failed to investigate ownership and improvements visible upon the property
- C. B prevails because B was a bona fide purchaser without notice and recorded first under the statute
- D. B prevails only if B can establish she paid fair market value at the time of the conveyance

91. A defendant negligently leaves his car unlocked with the keys in the ignition in a high-crime area. A thief steals the car and, while fleeing, strikes and injures a pedestrian. The pedestrian sues the defendant. Under most modern courts:

- A. The defendant is not liable because the thief's criminal act is always a superseding cause as a matter of law
- B. The defendant is liable because the negligent leaving of keys is the proximate cause of all subsequent injuries
- C. The defendant is not liable because no duty exists to anticipate criminal acts by third parties at common law
- D. The defendant may be liable if the criminal theft and subsequent harm were foreseeable consequences of his negligence

92. A State X court has personal jurisdiction over a non-resident defendant under State X's long-arm statute. The defendant moves to dismiss on due process grounds, arguing State X's long-arm statute reaches further than the Constitution permits. The court should:

- A. Apply the state long-arm statute literally and assume constitutional compatibility unless proven otherwise
- B. Dismiss the action because state long-arm statutes are presumed unconstitutional when challenged
- C. Apply the long-arm statute fully because state procedural law controls jurisdiction questions
- D. Apply the long-arm statute only to the extent it complies with the constitutional minimum contacts test

93. A defendant in a public confrontation says directly to a police officer: "You worthless pig, I'll get you for this!" The officer arrests the defendant under a state statute prohibiting "abusive language likely to provoke a breach of the peace." Under *Chaplinsky* and its progeny:

- A. The statement constitutes fighting words and is unprotected speech under the First Amendment
- B. The statement is protected speech in most contexts because police officers are expected to exercise restraint
- C. The statement is protected speech because political criticism of law enforcement is constitutionally privileged
- D. The statement is unprotected speech because all profanity is per se outside First Amendment protection

94. A construction contract provides: "If the contractor fails to complete the work by the deadline, the contractor shall pay \$500 per day of delay." Actual damages from delay would average \$400-\$600 per day, given the parties' commercial circumstances. The contractor is delayed 30 days. The owner sues for \$15,000 in liquidated damages. The clause is:

- A. Enforceable because the stipulated amount is a reasonable estimate of actual damages from the delay
- B. Unenforceable because all per-diem damage clauses constitute penalties under the common law
- C. Enforceable only if the contractor expressly negotiated and approved the damages provision specifically
- D. Unenforceable because liquidated damages must be specified as a percentage of the contract price

95. A defendant is engaged in selling counterfeit goods. During the sale, a confrontation breaks out, and the defendant fatally shoots the buyer. The state's felony murder rule applies only to "inherently dangerous felonies." The defendant is:

- A. Guilty of felony murder because selling counterfeit goods occurred during a commercial transaction
- B. Guilty of felony murder because the shooting occurred during the commission of a felony
- C. Not guilty of felony murder because selling counterfeit goods is not inherently dangerous to human life
- D. Not guilty of felony murder unless the felony has previously been classified as inherently dangerous by statute

96. At a trial, a party seeks to introduce a photograph of an accident scene. The witness offered to authenticate is not the photographer but was at the scene shortly after the accident. The photograph is:

- A. Inadmissible because only the original photographer can authenticate a photograph in evidence

- B. Admissible if the authenticating witness can testify that the photograph accurately depicts the scene as he observed it
- C. Inadmissible unless the photographer testifies to the timing and equipment used for the photo
- D. Admissible only if the photograph is accompanied by metadata confirming the date and location

97. A homeowner defaults on a \$500,000 purchase-money mortgage. The lender forecloses, and the property sells for \$400,000 at the foreclosure auction. The lender seeks a \$100,000 deficiency judgment from the homeowner. In a state with an anti-deficiency statute applicable to purchase-money loans:

- A. The lender may recover the deficiency only after exhausting all other collection options
- B. The lender may recover the deficiency only if the foreclosure sale price was unfairly low
- C. The lender may recover the deficiency if the original loan documents authorize personal liability
- D. The lender may not recover any deficiency because the statute bars deficiency for purchase-money mortgages

98. A homeowner invites a friend over for dinner. The friend trips on a loose floorboard in the entryway, sustaining injury. The homeowner knew the floorboard was loose but did not warn the friend or repair it. Under traditional common law premises liability:

- A. The homeowner is liable because she failed to warn her licensee of a known concealed dangerous condition
- B. The homeowner is liable only if she actively created the dangerous condition that injured the licensee
- C. The homeowner is not liable because licensees take the premises as they find them under common law
- D. The homeowner is not liable because the floorboard was a natural hazard rather than artificial

99. A plaintiff files a state-court action alleging breach of contract under state law. The defendant intends to raise a defense based on a federal statute. The defendant removes the action to federal court on federal question grounds. The federal court should:

- A. Retain the action because the federal defense is substantial and presents a federal question for resolution
- B. Retain the action if the federal defense is colorable and likely to be determinative of the case

C. Remand the action because federal-question jurisdiction depends on the face of the complaint, not on defenses

D. Remand the action only if the plaintiff stipulates to refraining from any federal-law arguments at trial

100. A state law prohibits private consensual sexual activity between adults of the same sex. The law is challenged on substantive due process grounds. Under *Lawrence v. Texas*:

A. The law is constitutional because states may regulate sexual conduct under their police powers

B. The law is unconstitutional because it intrudes on the fundamental liberty interest in private intimate conduct

C. The law is constitutional only if the state demonstrates a rational basis for the criminal restriction

D. The law is unconstitutional only if the state cannot show a compelling interest in regulating private sexual behavior

101. A bidder submits a contract bid containing a calculation error that produces a price \$50,000 below the bidder's intended price. The recipient knows or should know the bid contained an error. The bidder seeks to rescind the bid before acceptance. The bid:

A. May be rescinded because the recipient knew or had reason to know of the unilateral mistake

B. Is binding because unilateral mistakes do not justify rescission under the modern majority rule

C. May be rescinded only if the bidder paid restitution to the recipient for relying on the bid

D. Is binding because the recipient's lack of subjective bad faith protects the agreement's validity

102. A defendant approaches a hitman and offers \$10,000 to kill his rival. The hitman declines the offer. The defendant is charged with solicitation of murder. The defendant is:

A. Not guilty because the hitman's refusal defeats the solicitation by rendering performance impossible

B. Not guilty because no completed criminal act resulted from the defendant's verbal offer to pay

C. Guilty because solicitation is complete upon making the request with the requisite criminal intent

D. Guilty only if he persistently followed up after the initial refusal with additional pressure

103. At a drug trafficking trial, the prosecution seeks to introduce a statement made by a co-conspirator during the course and in furtherance of the conspiracy. The co-conspirator is not on trial in this case. Under FRE 801(d)(2)(E):

- A. The statement is inadmissible because the co-conspirator is not a party to this particular trial
- B. The statement is admissible against the defendant as a statement by a co-conspirator of a party
- C. The statement is inadmissible unless the co-conspirator is also called as a trial witness
- D. The statement is admissible only if the prosecution first proves the conspiracy through other evidence

104. A and B own Blackacre as tenants in common. A pays the entire annual property tax bill of \$4,000. A then seeks contribution from B for half. B is:

- A. Not liable for contribution because each cotenant is solely responsible for taxes on his own share
- B. Not liable for contribution because property taxes attach to the entire estate, not to individual owners
- C. Liable for contribution only if a written agreement between the cotenants requires equal sharing
- D. Liable to A for contribution for B's proportional share of the property tax payment

105. A plaintiff and a defendant are in an automobile collision. The jury finds the plaintiff 80% responsible and the defendant 20% responsible. The total damages are \$100,000. In a pure comparative negligence jurisdiction, the plaintiff:

- A. Recovers \$20,000, the portion of damages attributable to the defendant's percentage of fault
- B. Recovers nothing because his fault exceeds 50% in the proportional allocation of responsibility
- C. Recovers \$80,000, his proportional share reduced by the defendant's share of fault
- D. Recovers \$50,000, the standardized recovery under comparative-fault apportionment principles

106. A federal district court denies a defendant's motion to dismiss based on qualified immunity. The defendant seeks immediate appeal. Under *Mitchell v. Forsyth* and the collateral order doctrine:

- A. The denial is not appealable because all denials of motions to dismiss require final judgment first

- B. The denial is appealable only if the appellate court grants a certificate of appealability
- C. The denial is immediately appealable because qualified immunity denials fall within the collateral order doctrine
- D. The denial is appealable only if the district court certifies the order for interlocutory review under § 1292(b)

107. A state requires all public school students to recite the Pledge of Allegiance daily. A student refuses based on religious beliefs. Under *West Virginia State Board of Education v. Barnette*:

- A. The state may require recitation because schools have broad authority over student curriculum
- B. The state may require recitation as long as students may opt out by request to school administrators
- C. The state may not require recitation only of students whose objections are based on sincere religious beliefs
- D. The state may not compel any student to recite the Pledge against the student's beliefs or conscience

108. A merchant sends widgets to a buyer accompanied by an invoice. The buyer has had no prior dealings with the merchant and did not order the widgets. The buyer does not respond to the invoice. Has the buyer accepted?

- A. Yes, because the buyer has notice of the offer and an obligation to respond promptly
- B. No, because silence is generally not acceptance absent prior dealings or unique circumstances
- C. Yes, because the offeree's failure to return the goods constitutes acceptance through inaction
- D. No, because acceptances must always be in writing under the Statute of Frauds for sales contracts

109. Police arrive at a scene where they have just apprehended a suspect after an armed robbery. The suspect is wearing an empty holster. Officers ask, "Where's the gun?" The suspect points to a nearby alley. No Miranda warnings were given. The statement and recovered gun are:

- A. Admissible under the public safety exception to Miranda established in *New York v. Quarles*
- B. Inadmissible because the suspect was in custody and being interrogated without Miranda warnings
- C. Admissible only if the officers had probable cause to believe the gun posed an immediate threat

D. Inadmissible because Miranda violations require automatic suppression of all derivative evidence

110. On direct examination of a friendly witness, an attorney asks: "And then you saw the defendant strike the victim, didn't you?" The opposing counsel objects. Under FRE 611(c):

- A. The question is proper because leading questions are permissible for all friendly witnesses
- B. The question is proper only if the witness has demonstrated a memory impairment requiring assistance
- C. The question is improper because leading questions are never permitted on direct examination
- D. The question is improper because leading questions are generally not permitted on direct examination of friendly witnesses

111. A and B hold Blackacre as joint tenants. A conveys her interest to a third party, C. The effect of the conveyance is:

- A. The joint tenancy continues with C taking A's interest as a joint tenant with B by automatic substitution
- B. The joint tenancy is destroyed entirely, leaving B and C as sole owners of the property by survivorship
- C. The joint tenancy is severed, and B and C now hold as tenants in common by operation of severance law
- D. The conveyance is invalid because A could not convey her interest without B's express consent

112. A judge, during a trial, makes a statement from the bench that turns out to be false and defamatory about a witness. The witness sues the judge for defamation. The judge is:

- A. Liable for defamation because the false statement caused reputational harm to the witness
- B. Not liable because judicial statements during trial proceedings enjoy absolute privilege from defamation
- C. Liable only if the witness can establish actual malice as a public figure under modern doctrine
- D. Not liable because all government officials enjoy qualified immunity from defamation claims

113. A defendant signs a contract containing a forum selection clause requiring all disputes to be litigated in the courts of State X. The defendant is later sued in State X under the contract. The defendant objects to personal jurisdiction. The court should:

- A. Enforce the forum selection clause and exercise personal jurisdiction over the consenting defendant
- B. Decline to exercise jurisdiction because consent cannot substitute for traditional minimum contacts analysis
- C. Enforce the clause only if the defendant signed the contract while physically present in State X
- D. Decline to exercise jurisdiction because forum-selection clauses are not enforceable in personal-jurisdiction matters

114. A public school district displays a large painting of the Ten Commandments in the entryway of every school in the district. A parent challenges the display under the Establishment Clause. Under recent Supreme Court doctrine:

- A. The display is constitutional because the Ten Commandments have secular significance as legal history
- B. The display is constitutional only if accompanied by similar displays of other religious traditions
- C. The display is likely unconstitutional because public schools should not appear to endorse religion
- D. The display is constitutional because individual schools have broad discretion over curricular displays

115. A buyer and seller enter into an output contract under which the seller agrees to sell "all the widgets I produce" for one year. The seller dramatically reduces production to 10% of historical levels. The buyer sues. Under UCC § 2-306:

- A. The seller is in breach because output contracts require the seller to produce at historical levels
- B. The seller is in breach because reducing output to 10% violates good faith requirements per se
- C. The seller is not in breach because the seller has discretion to determine output levels in any circumstances
- D. The seller is not in breach unless the reduction is in bad faith or unreasonably disproportionate

116. Under the Model Penal Code test for insanity, the defendant must show that, as a result of mental disease or defect:

- A. He did not know the nature and quality of his act, or did not know the act was wrong
- B. He lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to law
- C. His mental illness caused him to commit the crime he is now charged with by the prosecution
- D. He was unable to control his behavior because of an irresistible impulse that arose suddenly

117. At a contract dispute trial, the plaintiff seeks to introduce a statement made by the defendant's purchasing manager during a phone call with the plaintiff. The statement concerned the company's intent to purchase goods. Under FRE 801(d)(2)(D):

- A. The statement is admissible as a statement by an agent or employee within the scope of employment
- B. The statement is inadmissible hearsay because only the defendant principal's own statements are admissible
- C. The statement is admissible only if the purchasing manager testifies and authenticates the statement
- D. The statement is inadmissible because employee statements must be expressly authorized to bind the employer

118. O conveys Blackacre to A, with a deed provision stating "A shall not sell, transfer, or convey Blackacre to anyone other than O's descendants." The provision is:

- A. Enforceable because the grantor's express conditions on use are generally upheld in deeds
- B. Unenforceable because complete restraints on alienation are void as against public policy
- C. Enforceable only if O's descendants pay fair market value when the property is offered for sale
- D. Enforceable only against immediate transferees and not against subsequent purchasers of the property

119. A defendant negligently drives through a red light and strikes a pedestrian, killing her instantly. Medical evidence later shows the pedestrian had an undiagnosed terminal aneurysm and would have died from it within an hour had the collision not occurred. The pedestrian's family sues for wrongful death damages. Under traditional principles:

- A. Liability is unaffected, and damages are awarded based on the pedestrian's normal life expectancy

- B. Liability is unaffected because preexisting conditions cannot reduce a tortfeasor's responsibility
- C. Liability is precluded because his negligence did not appreciably shorten the pedestrian's life
- D. Liability attaches, but damages are sharply limited because the pedestrian's life expectancy was minimal

120. A non-party with an interest in a pending federal case seeks to intervene under Rule 24. The court should:

- A. Grant intervention as of right only if the non-party has an interest related to the action that may be impaired
- B. Deny intervention because non-parties have no standing to participate in pending litigation generally
- C. Grant intervention as of right if the non-party claims an interest related to the action that may be impaired and existing parties cannot adequately represent that interest
- D. Grant permissive intervention as of right if any common question of law or fact exists between claims

121. A tenured public school teacher is fired without notice or hearing. She sues, alleging deprivation of due process. To establish a procedural due process claim, the teacher must first show:

- A. She had a property interest in continued employment that triggered procedural protections
- B. The state acted with malicious intent in terminating her employment without explanation
- C. Other teachers in similar situations were treated more favorably by the school district
- D. Her termination violated specific state statutes governing public school employment relationships

122. A buyer tells a merchant seller: "I need a vacuum cleaner that can pick up small construction debris from my shop floor." The seller recommends and sells a specific model. The vacuum fails to pick up the debris. Under UCC § 2-315:

- A. The seller is liable only for breach of the implied warranty of merchantability if the vacuum was defective
- B. The seller is not liable because no express warranty about construction-debris cleaning was made
- C. The seller is liable only if the buyer cancelled the contract within a reasonable time after discovery

D. The seller is liable for breach of the implied warranty of fitness for the particular purpose disclosed

123. Police execute a search warrant authorizing a search for stolen jewelry in a defendant's home. While searching a closet for the jewelry, officers observe a packet of illegal drugs in plain view on a shelf. The officers seize the drugs. Under the plain view doctrine:

- A. The seizure is unlawful because the warrant authorized only a search for jewelry, not drugs
- B. The seizure is lawful because the drugs were observed during the lawful execution of the warrant
- C. The seizure is lawful only if the officers had probable cause separately to suspect drugs were present
- D. The seizure is unlawful because plain-view seizures require a separate finding of exigent circumstances

124. A witness testifies, "I think the defendant might have been at the bank around 3 PM, based on something I sort of remember from a few months back." The defendant's attorney objects. Under FRE 602:

- A. The testimony is admissible because witnesses may testify to their general impressions of events
- B. The testimony is admissible only if corroborated by other witnesses who place the defendant at the bank
- C. The testimony is inadmissible because the witness's hedged language suggests lack of personal knowledge
- D. The testimony is admissible if the witness can confirm she has some basis for the statement

125. A subdivides his land into two parcels and sells the back parcel to B. The back parcel has no access to a public road except across A's retained front parcel. The deed makes no mention of access. B claims an easement by necessity. B should:

- A. Prevail because the necessity for access existed at the time of severance from the common owner
- B. Lose because easements by necessity require an express grant in the deed at the time of severance
- C. Prevail only if B can show that A intended to grant access despite the deed's silence on the issue
- D. Lose because B should have negotiated an express easement before completing the purchase

126. A defendant deliberately spits in a person's face during a heated argument. No physical injury results, but the person is humiliated and offended. The person sues for battery. The defendant is:

- A. Liable for battery because intentional contact that is offensive to a reasonable person's dignity is actionable
- B. Not liable because spitting does not constitute the harmful physical contact required for battery
- C. Liable only if the person can demonstrate measurable physical injury or harm from the contact
- D. Not liable because battery requires intent to cause physical harm rather than emotional injury

127. A state court issues an injunction against a party. The party seeks to have a federal court enjoin the state court proceedings. Under the Anti-Injunction Act (28 U.S.C. § 2283), federal courts:

- A. May freely enjoin state proceedings to protect litigants from inconsistent rulings
- B. May enjoin state proceedings if the party can show irreparable harm from the state-court action
- C. May enjoin state proceedings only with prior consent of the state court issuing the injunction
- D. May not enjoin state proceedings except as expressly authorized by Act of Congress or where necessary to aid jurisdiction or protect judgments

128. A state enacts a law that disenfranchises convicted felons. Some convicted felons sue, arguing the law violates equal protection. Under *Richardson v. Ramirez*:

- A. The law is unconstitutional because voting is a fundamental right protected from any restrictions
- B. The law is unconstitutional only if the state cannot demonstrate a compelling interest in disenfranchisement
- C. The law is constitutional because Section 2 of the Fourteenth Amendment expressly contemplates felon disenfranchisement
- D. The law is constitutional only if applied identically across all categories of criminal convictions

129. A retailer agrees to sell a car to a buyer for \$30,000. The buyer breaches the contract. The retailer sells the same car to a different customer for \$30,000. The retailer sues the original buyer for damages. The retailer:

- A. May recover nothing because the resale at the same price has avoided any loss from breach
- B. May recover the profit lost on the original sale because the retailer was a lost-volume seller
- C. May recover only the difference between the contract price and the eventual resale price
- D. May recover only nominal damages because no actual damages resulted from the substituted sale

130. A defendant becomes voluntarily intoxicated and, while drunk, beats a man to death. The defendant is charged with first-degree (premeditated) murder. The defendant's intoxication:

- A. Cannot be considered as a defense because voluntary intoxication is never a defense to homicide
- B. Is a complete defense to all crimes because intoxication negates criminal capacity entirely
- C. May reduce the charge to involuntary manslaughter regardless of the original prosecution theory
- D. May negate the specific intent for premeditation, potentially reducing the charge to second-degree murder

131. A witness testifies at trial that the defendant's car was red. The opposing party seeks to introduce the witness's earlier statement to police that the car was blue. The earlier statement was not made under oath. The earlier statement is:

- A. Admissible to impeach the witness's trial testimony by showing prior inconsistency
- B. Admissible as substantive evidence of the car's color regardless of the witness's testimony
- C. Admissible only if the witness had previously testified under oath about the car's color
- D. Inadmissible because all prior unsworn statements are excluded under the hearsay rules

132. A homeowner transfers her home to a lender by absolute deed but with an oral understanding that the transfer is intended as security for a loan. The homeowner remains in possession. Under traditional doctrine:

- A. The deed transfers full ownership to the lender, and the homeowner has no remaining interest
- B. The deed is invalid because all mortgage transactions require statutory documentation
- C. The transaction is an equitable mortgage, and the homeowner retains the right to redeem upon repayment

D. The transaction is enforceable only if the homeowner records the oral understanding promptly

133. A homeowner keeps a tame pet lion in his backyard. The lion has never bitten anyone. A visitor reaches in to pet the lion through the fence, and the lion playfully bites her hand. The visitor sues. The homeowner is:

- A. Not liable because the lion was tame and had never previously demonstrated dangerous behavior
- B. Strictly liable because lions are wild animals subject to strict liability for harm caused by their dangerous propensities
- C. Not liable because the visitor voluntarily reached toward the lion and assumed the risk of contact
- D. Liable only if the visitor can show that he was negligent in maintaining the fence around the animal

134. A plaintiff obtains a default judgment in federal court against a defendant who never appeared. The plaintiff seeks to enforce the judgment in a second state. The defendant attempts to challenge the original court's personal jurisdiction in the enforcing court. Under *Pennoyer/Mullane* and modern doctrine:

- A. The defendant cannot challenge jurisdiction in the enforcing court because failure to appear waived the defense
- B. The defendant cannot challenge jurisdiction in the enforcing court because the original court's judgment is final
- C. The defendant may challenge jurisdiction only if the defendant first moves to vacate in the original court
- D. The defendant may collaterally attack the original judgment for lack of personal jurisdiction in the enforcing court

135. A private citizen sues a state attorney general in federal court, seeking a prospective injunction to halt enforcement of an alleged unconstitutional state law. The state attorney general moves to dismiss on Eleventh Amendment grounds. Under *Ex parte Young*:

- A. The suit is barred because the Eleventh Amendment immunizes all state officials acting in their official capacity
- B. The suit is barred unless the state has waived its sovereign immunity through legislative action

C. The suit may proceed because the Eleventh Amendment does not bar suits for prospective injunctive relief against state officials enforcing unconstitutional laws

D. The suit may proceed only if Congress has expressly abrogated state sovereign immunity for this category of cases

136. An offeror mails an offer on Monday. The offeree mails an acceptance on Wednesday. The acceptance is received on Friday. Between Wednesday and Friday, the offeror dispatches a revocation that the offeree receives on Thursday. Under the mailbox rule:

A. A contract was formed Wednesday when the offeree dispatched the acceptance, before the revocation arrived

B. No contract was formed because the revocation reached the offeree before the acceptance reached the offeror

C. A contract was formed Friday when the offeror received the offeree's mailed acceptance

D. No contract was formed because the offeree received notice of the revocation before any contractual obligation arose

137. A defendant approaches a victim, displays a knife, and says, "Give me your purse." The victim hands over the purse without further protest. The defendant is charged with robbery. The defendant is:

A. Not guilty of robbery because no physical force was actually used to take the purse from the victim

B. Guilty of robbery because property was taken from the victim by threat of imminent force

C. Guilty of larceny only because the victim handed the purse over voluntarily under duress

D. Guilty of theft only because the threat alone does not satisfy the elements of common law robbery

138. At a criminal trial, the prosecution offers a statement made by the victim shortly before her death: "If anything happens to me, John did it." The defendant John objects on hearsay grounds. The statement is offered to prove the victim's belief, not the truth of who did it. The statement is:

A. Inadmissible because all out-of-court statements identifying a defendant constitute hearsay per se

B. Admissible only if the victim was unavailable and the statement qualifies under a hearsay exception

C. Admissible to prove the victim's belief regardless of the underlying truth of the identification

D. Admissible as non-hearsay if offered for a purpose other than proving the truth of the identification

139. A subdivision developer imposes a covenant in each deed requiring buyers to maintain their lawns. The developer later sells his interest. A subsequent owner refuses to maintain his lawn. The neighbors sue to enforce the covenant. The covenant runs with the land if:

- A. The covenant is reasonable in scope and benefits the immediate neighbors of the parcel
- B. The original grantor explicitly stated in writing that the covenant should run with the land
- C. The covenant touches and concerns the land, the parties intended it to run, and successors had notice
- D. The covenant has been enforced consistently against all prior owners of the affected parcels

140. A defendant locks a victim in a room. The victim is asleep at the time of the locking. The victim wakes up an hour later, realizes she is locked in, and demands release. The defendant releases her immediately. The victim sues for false imprisonment for the hour she was unaware. Under the Restatement majority rule:

- A. The victim cannot recover for the period of unawareness, unless she suffered actual physical harm during it
- B. The victim can recover for the entire period because all unauthorized confinements are actionable per se
- C. The victim cannot recover at all because she was released immediately upon her demand for release
- D. The victim can recover for the period of confinement regardless of whether she was aware of it

141. A defendant timely files a notice of removal to federal court, but fails to obtain the consent of a co-defendant. The plaintiff moves to remand. The court should:

- A. Deny remand because removal procedures are procedural and not jurisdictional defects subject to waiver
- B. Deny remand if the defendant can show good cause for failing to obtain co-defendant consent
- C. Grant remand only if the omitted co-defendant objects within 30 days of removal to the court
- D. Grant remand because removal generally requires the consent of all properly served defendants

142. A competent adult patient refuses lifesaving medical treatment based on religious beliefs. The hospital seeks a court order to compel treatment. Under *Cruzan v. Director, Missouri Department of Health*:

- A. The hospital may compel treatment because the state has a compelling interest in preserving life
- B. The hospital may not compel treatment because competent adults have a constitutional right to refuse medical care
- C. The hospital may compel treatment if the patient's family disagrees with her refusal
- D. The hospital may not compel treatment only if the patient executes an advance directive in writing

143. A contractor anticipatorily repudiates a contract by sending a clear statement that he will not perform. The non-breaching party has not yet acted in reliance on the repudiation. The contractor then retracts the repudiation and offers to perform on the original terms. Under modern contract law:

- A. The retraction is effective because the non-breaching party has not materially changed its position
- B. The retraction is ineffective because anticipatory repudiations are irrevocable upon transmission
- C. The retraction is effective only if the non-breaching party expressly accepts the retraction
- D. The retraction is effective only if the original repudiation was unequivocal and without ambiguity

144. A defendant is brought before a magistrate for arraignment. He requests an attorney. The court denies the request and proceeds with the arraignment, during which the defendant makes potentially incriminating statements. Under the Sixth Amendment:

- A. The right to counsel does not attach at arraignment because no trial-like proceedings occur there
- B. The right to counsel attaches but is satisfied if the defendant is informed of his right to remain silent
- C. The right to counsel attaches at arraignment as a critical stage, and the denial violates the Sixth Amendment
- D. The right to counsel attaches only after the defendant requests counsel in writing in court

145. At a personal injury trial, the plaintiff seeks to introduce her statement to her doctor: "My back is throbbing right now." Under FRE 803(3):

- A. The statement is inadmissible hearsay because it relates to the plaintiff's subjective sensation
- B. The statement is admissible only if the doctor specifically observed the back symptoms during examination
- C. The statement is inadmissible because it was offered to prove the truth of the matter asserted
- D. The statement is admissible as a then-existing statement of physical condition under the exception

146. The federal government condemns a private business for a public highway project. The property generates substantial income from its current use as a restaurant. The government argues just compensation should be limited to land value, excluding business goodwill. Under the Fifth Amendment:

- A. Just compensation must include the full value of the business including all reasonable goodwill
- B. Just compensation is generally limited to the fair market value of the real property, not business goodwill
- C. Just compensation must include compensation for relocation costs and lost future profits
- D. Just compensation is determined by the highest value reasonably attainable from any future use

147. A driver swerves to avoid a child running into the road. In the process, the driver strikes another vehicle. The injured driver sues. Under the emergency doctrine:

- A. The driver is automatically excused from liability for any actions taken in response to the emergency
- B. The driver is held to the standard of care of a reasonable person without consideration of the emergency
- C. The driver is held to the standard of a reasonable person under the same emergency circumstances
- D. The driver is liable only if the emergency was created by his own prior negligent conduct

148. A plaintiff seeks discovery of documents prepared by the defendant's attorney in anticipation of litigation. The defendant invokes work-product protection. Under *Hickman v. Taylor* and FRCP 26(b)(3):

- A. The documents are generally protected as work product unless the plaintiff shows substantial need and undue hardship
- B. The documents are categorically discoverable because all relevant documents are subject to disclosure

- C. The documents are protected absolutely from discovery regardless of the plaintiff's showing of need
- D. The documents are discoverable only after the attorney is deposed and authenticates the materials

149. A public school teacher writes an op-ed criticizing the school district's curriculum policies. The school district terminates her for the op-ed. Under *Pickering v. Board of Education*:

- A. The teacher's speech is unprotected because public employees have reduced First Amendment rights
- B. The teacher's speech is protected if it addresses a matter of public concern and her interest outweighs the district's
- C. The teacher's speech is protected absolutely because all public employee speech is constitutionally privileged
- D. The teacher's speech is unprotected because the op-ed disrupts the operation of the school district

150. A merchant seller ships 1,000 widgets to a buyer under a single-delivery contract. Upon inspection, the buyer finds that 5 widgets are slightly defective. The buyer rejects the entire shipment under the perfect tender rule. Under UCC § 2-601:

- A. The buyer's rejection is improper because the defect was minor and immaterial under modern contract law
- B. The buyer's rejection is proper only if the seller had a previous course of dealing with the buyer
- C. The buyer's rejection is improper because the seller substantially performed the contract requirements
- D. The buyer's rejection is proper because the UCC's perfect tender rule allows rejection for any nonconformity in single-delivery contracts

151. A defendant sells alcohol to a minor at his bar. The state's statute imposes liability "regardless of the seller's knowledge of the buyer's age." The defendant claims he reasonably believed the buyer was an adult. Under the doctrine of strict liability for regulatory offenses:

- A. The defendant is not guilty because reasonable mistake of fact is always a defense to criminal liability
- B. The defendant is guilty because the statute imposes strict liability with no required mens rea about age
- C. The defendant is guilty only if he was reckless about checking identification of the buyer

D. The defendant is not guilty because the statute violates due process by lacking a mens rea requirement

152. A witness testifies that she cannot remember a date. The attorney shows her a calendar entry to refresh her memory. The witness then testifies based on the refreshed memory. The calendar entry:

A. Is not admitted into evidence but may be inspected by opposing counsel for cross-examination

B. Is admitted into evidence automatically as the source of the refreshed recollection

C. Must be authenticated separately before the witness's testimony can be considered valid

D. Is inadmissible because writings used to refresh recollection are categorically excluded

153. A buyer agrees to purchase a property from a seller. The title search reveals an undisclosed but recorded easement allowing a neighbor to cross the back of the property to reach a public road. The buyer refuses to close. The seller argues the title is marketable. The buyer:

A. Must close because recorded easements are presumed acceptable under marketable title doctrine

B. Must close because all properties are subject to some easements, which do not affect marketability

C. May refuse to close because a recorded easement burdening the property generally renders title unmarketable

D. Must close because the easement does not interfere with the buyer's intended residential use of the property

154. A defendant follows industry custom in maintaining its equipment. An accident occurs that injures the plaintiff. The plaintiff argues the industry custom is itself negligent. Under the T.J. Hooper rule:

A. The defendant is per se non-negligent because compliance with industry custom is conclusive evidence of due care

B. The defendant is automatically negligent because deviations from custom always create liability

C. The defendant is non-negligent only if the custom is specified in formal industry regulations

D. Compliance with industry custom is evidence of due care, but not conclusive — the custom itself may be unreasonable

155. An attorney files a complaint that is later shown to be frivolous, contained false statements of fact, and was filed for the purpose of harassment. Under Federal Rule of Civil Procedure 11, the court may:

- A. Impose sanctions only after a full evidentiary hearing on the attorney's conduct and intent
- B. Impose sanctions to deter future misconduct, but only after providing notice and opportunity to respond
- C. Impose sanctions only against the represented party, not the attorney who filed the complaint
- D. Impose sanctions automatically upon any showing that the attorney violated Rule 11's certification standards

156. A state government places signs along highways promoting tourism in the state. A citizen sues, arguing that the signs constitute government speech that should be subject to viewpoint neutrality. Under *Pleasant Grove City v. Summum*:

- A. The signs are unconstitutional because government speech must remain viewpoint neutral
- B. The signs are unconstitutional only if they impliedly endorse specific commercial interests
- C. The signs are unconstitutional because they create a designated public forum for opposing views
- D. The signs are constitutional because the government may speak through its own messages without viewpoint neutrality

157. A subcontractor mistakenly omits a major cost item in calculating its bid, resulting in a bid 30% below the correct figure. The general contractor recognizes the discrepancy from other bids and snaps up the offer. The subcontractor sues to rescind. The subcontractor:

- A. May rescind because the general contractor had reason to know of the unilateral mistake
- B. Cannot rescind because unilateral mistakes are generally not grounds for rescission
- C. May rescind only if the subcontractor first refunds any value received under the contract
- D. Cannot rescind because all bids submitted to general contractors are irrevocable under industry custom

158. A defendant participates in a chain conspiracy where various participants successively transfer drugs from supplier to retailer to street dealer. The defendant operates only at the retailer level. The defendant is charged with one overarching conspiracy. Under the chain conspiracy doctrine:

- A. The defendant cannot be charged with the overarching conspiracy because he had no direct contact with other levels
- B. The defendant may be charged with the overarching conspiracy because all participants share a common interest in the chain's success
- C. The defendant may be charged only with conspiracies between persons he personally knew and communicated with
- D. The defendant cannot be charged with conspiracy because chain conspiracies require simultaneous agreement among all parties

159. A child tells a doctor: "Mommy hit me on the head with a frying pan." In a later criminal trial of the mother for child abuse, the doctor wants to testify about the child's statements. Under FRE 803(4):

- A. Both statements (the act and the identification) are inadmissible because identification of an attacker is irrelevant to treatment
- B. Both statements are admissible because all statements to a treating physician are categorically admissible
- C. The statement about being hit is admissible, and the identification "Mommy" is admissible if relevant to treatment in cases of suspected child abuse
- D. The statement about being hit is admissible, but the identification of "Mommy" is inadmissible because identifying the assailant is never relevant to treatment

160. A possessor secretly cultivates a portion of land owned by another. The cultivation is in a remote area not visible from the true owner's residence. After 25 years (exceeding the 20-year statutory period), the possessor claims adverse possession. Under the open and notorious requirement:

- A. The possessor prevails because exclusive possession for 25 years satisfies adverse possession regardless of visibility
- B. The possessor prevails because constructive notice arises from the duration of the possession
- C. The possessor fails because adverse possession requires the true owner's actual subjective knowledge
- D. The possessor fails because the possession was not open and notorious enough to give the true owner reasonable notice

161. A defendant negligently fails to deliver an urgent telegram informing a mother that her child has been in an accident. The mother learns of the accident through other means hours later. She suffers severe emotional distress from the delay and the worry. The mother sues the telegram company. Under the modern direct-victim theory:

- A. The mother may recover if the defendant assumed a duty to deliver promptly and breach foreseeably caused her distress
- B. The mother cannot recover because telegraph delivery delays cannot cause compensable emotional harm
- C. The mother may recover only if she was within the zone of physical danger from the accident itself
- D. The mother cannot recover because emotional distress requires accompanying physical impact under common law

162. A federal officer is sued in state court for actions taken in his official capacity. The officer seeks to remove the action to federal court. Under 28 U.S.C. § 1442:

- A. Removal is improper because state courts have jurisdiction over claims against federal officers
- B. Removal is proper because the federal officer removal statute allows removal of actions against federal officers for acts within their official duties
- C. Removal requires the consent of the state attorney general of the state where the action is filed
- D. Removal requires evidence that the state court is biased against federal officers in similar cases

163. A state law requires nonprofit organizations to disclose the names of their major donors to a state agency. A nonprofit advocacy group challenges the law as violating the First Amendment rights of its donors. Under *NAACP v. Alabama* and *Americans for Prosperity Foundation v. Bonta*:

- A. The disclosure requirement is constitutional because states have broad authority over nonprofit regulation
- B. The disclosure requirement is constitutional if applied uniformly to all nonprofits in the state
- C. The disclosure requirement is unconstitutional unless the state shows the disclosure is narrowly tailored to a substantial government interest
- D. The disclosure requirement is unconstitutional only if applied selectively to politically disfavored groups

164. An offer states: "I am willing to sell my car for \$10,000. Acceptance must be by email — no other method will be effective." The offeree calls and accepts orally. The offeror argues no contract was formed. Under traditional contract principles:

- A. A contract was formed because oral acceptance is always valid for sales of consumer goods
- B. A contract was formed because the method of acceptance is mere suggestion absent express limitation
- C. A contract was formed only if the offeree subsequently confirmed acceptance in writing
- D. No contract was formed because the offeree did not accept using the exclusive method specified

165. A defendant is attacked in his own home by an intruder. The defendant uses deadly force without first attempting to retreat. The defendant is charged with murder and claims self-defense. Under the castle doctrine:

- A. The defendant has no duty to retreat from his own home before using deadly force in self-defense
- B. The defendant has a duty to retreat even from his own home if a safe escape route exists
- C. The defendant may not use deadly force unless he first attempts non-lethal means of defense
- D. The defendant must establish that the intruder posed an immediate threat of unlawful force or harm

166. A party seeks to introduce a summary of voluminous business records that would be impractical to introduce in full at trial. The opposing party objects. Under FRE 1006:

- A. The summary is inadmissible because parties must introduce the original records in their entirety
- B. The summary is admissible only if both parties stipulate to the use of the summary at trial
- C. The summary is admissible if the underlying records are voluminous and were made available to the opposing party for examination
- D. The summary is admissible without limitation as a convenience to the court and jury

167. An easement holder repeatedly assures the servient owner that he will no longer use the easement and consents to the owner's construction blocking the easement. The owner spends \$50,000 building a structure that blocks the way. The easement holder later demands access. The easement is most likely:

- A. Still in effect because oral assurances cannot terminate recorded easements without writing
- B. Terminated by estoppel because the servient owner detrimentally relied on the holder's assurances
- C. Still in effect because easement termination requires formal release in a recorded writing
- D. Terminated by adverse possession because the servient owner has used the burdened strip exclusively

168. In a contributory negligence jurisdiction, a pedestrian is hit by a car while crossing against a red light. The driver saw the pedestrian in time to stop but failed to do so. The pedestrian sues. Under the doctrine of last clear chance:

- A. The pedestrian's contributory negligence completely bars recovery from the driver regardless of the driver's later conduct
- B. The pedestrian and driver share liability equally because both contributed to the accident
- C. The driver is excused because the pedestrian's contributory negligence is a complete defense
- D. The pedestrian may recover because the driver had the last clear chance to avoid the accident

169. A federal court reviews a complaint involving multiple parties on both sides of the dispute. The court determines that the named alignment misstates the true interests of the parties. Under realignment doctrine:

- A. The court may realign parties according to their actual interests, which may destroy diversity jurisdiction
- B. The court is bound by the original alignment chosen by the plaintiff at the time of filing
- C. The court may realign parties only if all parties consent to the realignment
- D. The court may not realign parties because original party designation is binding on jurisdictional analysis

170. A state university uses race as a factor in admissions to ensure diversity. Following *Students for Fair Admissions v. Harvard* (2023):

- A. Race-conscious admissions are permissible if the university demonstrates compelling educational benefits
- B. Race-conscious admissions are permissible if narrowly tailored to remedy specific past discrimination
- C. Race-based classifications in admissions generally violate equal protection

D. Race-conscious admissions are permissible to ensure racial balance in the student body

171. A buyer receives nonconforming goods, accepts them, and then discovers a hidden defect that constitutes a breach. The buyer wishes to revoke acceptance. Under UCC § 2-608:

- A. The buyer may revoke at any time during the buyer's possession of the goods at the original price
- B. The buyer may revoke if the defect substantially impairs the value of the goods and was difficult to discover
- C. The buyer may not revoke after accepting goods, regardless of any later discovery of defects
- D. The buyer may revoke only with the seller's express agreement and refund of the purchase price

172. A search warrant authorizes officers to search "the suspect's premises" for evidence of drug trafficking. The warrant does not describe what items to seize. Officers seize all electronic devices and documents during the search. Under the Fourth Amendment particularity requirement:

- A. The warrant is sufficient because it identified the location to be searched and the general purpose
- B. The warrant is sufficient because particularity applies only to the place to be searched, not items
- C. The seizure is lawful if the items were within the scope of the underlying probable cause for the warrant
- D. The warrant is constitutionally insufficient because it failed to particularly describe the items to be seized

173. A witness on the stand cannot remember the details of an incident from years ago. He prepared a detailed written report shortly after the incident occurred. The report cannot refresh his current memory. Under FRE 803(5):

- A. The report may be read into evidence as a recorded recollection if foundation requirements are met
- B. The report must be admitted as a substantive exhibit and given to the jury during deliberations
- C. The report cannot be admitted unless the witness can independently verify the events from memory
- D. The report is inadmissible because the witness's current lack of memory makes the testimony unreliable

174. A and B hold Blackacre as joint tenants with right of survivorship. A dies, leaving a will devising "all my real property to my son." B claims the property by right of survivorship. The will's beneficiary claims under the will. Who prevails?

- A. The son prevails because the will expressly devised the property and supersedes joint tenancy operation
- B. B prevails because the right of survivorship operates by operation of law before any testamentary disposition
- C. The son prevails if he can establish that A and B intended to sever the joint tenancy before A's death
- D. B prevails only if A's will did not specifically reference the joint tenancy interest in Blackacre

175. A defendant's negligent driving kills the plaintiff's spouse. The plaintiff sues for wrongful death. Most jurisdictions' wrongful death statutes permit recovery for:

- A. Only the medical expenses incurred before the deceased's death from the injuries
- B. Only the pain and suffering experienced by the deceased prior to her death
- C. The pecuniary loss suffered by surviving family members from the loss of the decedent's support
- D. Punitive damages aimed at deterring future negligent driving behavior by similar defendants

176. A defendant is personally served with process while temporarily visiting State X. The defendant has no other contacts with State X. The plaintiff sues the defendant in State X court on a claim unrelated to the visit. Under *Burnham v. Superior Court*:

- A. The court lacks personal jurisdiction because the defendant lacks minimum contacts with State X
- B. The court lacks personal jurisdiction because mere visits do not satisfy purposeful availment requirements
- C. The court has personal jurisdiction only if the defendant's visit was related to the underlying claim
- D. The court has personal jurisdiction because traditional "tag" jurisdiction over individuals personally served in the forum remains valid

177. A state-owned cement plant prefers in-state purchasers when selling its cement output. An out-of-state buyer challenges this preference under the Dormant Commerce Clause. Under *Reeves v. Stake*:

- A. The preference is unconstitutional because all state economic preferences for in-state interests violate the Dormant Commerce Clause
- B. The preference is constitutional because the state acts as a market participant rather than a market regulator
- C. The preference is unconstitutional unless the state demonstrates a compelling local justification
- D. The preference is constitutional only if all state-owned enterprises adopt similar preferences

178. A homeowner contracts with a builder for \$50,000 to build a fence, "to be paid in full upon completion." The builder completes the fence. The homeowner refuses to pay. The builder sues. Under common law:

- A. The builder may recover the contract price because completion was a condition precedent that has been satisfied
- B. The builder may recover only the value of materials used because labor terms were not separately specified
- C. The builder may recover only after suing the homeowner's insurance for the unpaid contract amount
- D. The builder may recover only the costs incurred up to completion, not the full contract price

179. A defendant returns home to find his wife in an affair with another man. He immediately seizes a kitchen knife and stabs the other man to death. The defendant is charged with murder. He raises adequate provocation. Under common law:

- A. The provocation defense fails because no physical contact occurred between the defendant and the lover
- B. The provocation defense succeeds completely, making the defendant not guilty of any homicide
- C. The provocation defense reduces the charge from murder to voluntary manslaughter
- D. The provocation defense fails because adequate provocation requires direct injury to the defendant himself

180. At a civil trial, a party seeks to introduce a statement by an unavailable declarant: "I owe my neighbor \$50,000 from a deal we made last year." Under FRE 804(b)(3):

- A. The statement is inadmissible because it was made outside any pending legal proceeding
- B. The statement is admissible as a declaration against the declarant's pecuniary interest
- C. The statement is inadmissible unless the neighbor confirms the underlying debt was actually owed
- D. The statement is admissible only if the declarant was unavailable due to death or serious illness

181. A landowner has an easement of "light and air" over a neighboring property, preventing the neighbor from constructing buildings that block the light. This easement is best characterized as:

- A. An affirmative easement permitting the landowner to enter the neighboring property
- B. A profit a prendre allowing the landowner to take resources from the neighboring property
- C. An easement appurtenant that benefits the dominant estate and runs with the land
- D. A negative easement restricting the servient owner from doing something on her own land

182. A motel owner observes one of her guests being attacked in the motel parking lot. The owner does not intervene or call the police, although she could have safely done so. The guest is severely injured. The guest sues. The motel owner is:

- A. Liable because she had a special relationship with the guest creating a duty to render aid
- B. Not liable because there is no general duty to rescue under common law tort principles
- C. Liable only if she had specific knowledge that the attacker was on the property before the attack
- D. Not liable because parking lot incidents are outside the scope of motel-keeper liability rules

183. An attorney files a complaint containing factual allegations he knows to be false. The opposing party moves for sanctions. Under FRCP 11:

- A. The court may impose sanctions only after providing notice of intent to sanction at least one year in advance
- B. The court may impose sanctions only on the attorney's client, not the attorney directly
- C. The court may impose sanctions on the attorney for filing pleadings without reasonable factual investigation

D. The court may not impose sanctions because pleading standards are governed exclusively by the substantive law

184. A state law specifically excludes same-sex partners from receiving spousal benefits available to opposite-sex spouses. Following modern Supreme Court doctrine in *Obergefell v. Hodges*:

- A. The law is constitutional because states retain authority over family law and marriage benefits
- B. The law is constitutional if applied uniformly to all eligible benefit recipients
- C. The law violates due process because all marriage-related laws must be uniformly applied
- D. The law violates equal protection because it treats married couples differently based on sexual orientation

185. A merchant and a buyer orally agree that the merchant will sell 50 widgets to the buyer at \$20 each (\$1,000 total). The next day, the merchant sends a written confirmation. The buyer does not respond. Two weeks later, the buyer refuses to accept the widgets. The merchant sues. Under UCC § 2-201(2):

- A. The contract is unenforceable because oral agreements for goods over \$500 must be in writing signed by the party to be charged
- B. The contract is enforceable against the buyer because the written confirmation by the merchant satisfies the merchant's confirmation exception
- C. The contract is unenforceable because UCC requires acknowledgment by both parties to the agreement
- D. The contract is enforceable only if the buyer had actual knowledge of the confirmation's specific terms

186. A defendant shoots a victim, intending to kill her. The victim is rushed to surgery but dies from a heart attack during anesthesia administration. Medical evidence shows the heart attack would not have occurred but for the gunshot wound. The defendant is charged with murder. The defendant's causation defense:

- A. Succeeds because the heart attack constitutes a superseding cause breaking causation
- B. Succeeds because the medical care was an intervening event removing defendant's culpability
- C. Fails because the heart attack was a foreseeable consequence of the gunshot's effect on the victim's body

D. Fails only if the medical professionals were grossly negligent in administering the anesthesia

187. A witness testifies on direct examination about a contract negotiation. On cross-examination, opposing counsel asks about the witness's romantic relationship with a party to the case. The party objects, arguing scope. Under FRE 611(b):

A. The cross-examination is proper to show bias affecting the witness's credibility on the contract testimony

B. The cross-examination is improper because relationship questions exceed the scope of contract testimony

C. The cross-examination is proper only if the party first raises the relationship issue on direct examination

D. The cross-examination is improper because witness credibility may only be challenged through prior convictions

188. A and B inherit Blackacre as tenants in common, with A holding a $\frac{2}{3}$ interest and B holding a $\frac{1}{3}$ interest. A rents the entire property to a tenant and collects all the rent. B sues for an accounting. Under common law:

A. A is entitled to keep all the rent because A holds the majority interest in the property

B. A is liable to B only for any actual damages caused by the rental, not for accounting of profits

C. A and B share the rent equally because cotenants are equal in their relationship to third parties

D. A must account to B for B's proportional share of any net rental income received from third parties

189. A consumer modifies a power tool by removing safety guards to access tight spaces. The tool causes an injury during the modified use. The consumer sues the manufacturer in strict products liability. Under most jurisdictions:

A. The manufacturer is liable because all foreseeable uses of products create strict liability

B. The manufacturer is not liable because the modification constituted an unforeseeable product alteration

C. The manufacturer is liable if any misuse was foreseeable, but with damages reduced for comparative fault

D. The manufacturer is liable only if the modification was specifically prohibited in the user manual

190. A plaintiff sues a foreign corporation in federal court, asserting a federal claim under the Securities Exchange Act. The defendant has no contacts with the forum state. Under Federal Rule of Civil Procedure 4(k)(2):

- A. The court lacks personal jurisdiction because forum-state contacts are required for all federal claims
- B. The court has personal jurisdiction only if the defendant consents to the federal court's authority
- C. The court may exercise personal jurisdiction based on the defendant's aggregated contacts with the United States as a whole
- D. The court has personal jurisdiction only if the defendant has registered to do business in any state

191. A defendant is prosecuted for distributing materials alleged to be obscene. The defendant challenges the prosecution on First Amendment grounds. Under *Miller v. California*, the materials are obscene if:

- A. They depict any sexually explicit content prohibited by community standards
- B. They depict nudity in a manner reasonably offensive to local communities
- C. They violate state criminal statutes regarding adult entertainment
- D. They appeal to prurient interest, depict sexual conduct in a patently offensive way as defined by state law, and lack serious literary, artistic, political, or scientific value

192. A father promises his daughter \$50,000 toward her college tuition. The daughter enrolls in an expensive private college based on the promise. The father later refuses to pay. The daughter sues under promissory estoppel. The court should:

- A. Award the daughter reliance damages based on her reasonable detrimental reliance on the father's promise
- B. Deny recovery because gratuitous family promises are unenforceable under contract law
- C. Award expectation damages of the full \$50,000 promised by the father in his statement
- D. Deny recovery because promissory estoppel does not apply to oral promises of monetary gifts

193. A defendant intends to murder a victim by poisoning the victim's coffee. He places what he believes to be a fatal poison in the coffee, but the substance is actually harmless sugar. The defendant is charged with attempted murder. The defendant raises factual impossibility as a defense. Under modern law:

- A. Factual impossibility is a complete defense because the act could not have produced the intended result
- B. Factual impossibility is generally not a defense to attempt because the defendant possessed the required intent
- C. Factual impossibility reduces the charge from attempted murder to a lesser inchoate offense
- D. Factual impossibility is a defense only if the defendant did not know the substance was harmless

194. A criminal defendant offers a statement by an unavailable declarant: "I killed the victim, not [the defendant]." Under FRE 804(b)(3), the statement is:

- A. Inadmissible because penal interest exceptions do not apply in criminal trials when offered by the defendant
- B. Admissible regardless of corroborating circumstances when offered to exonerate a criminal defendant
- C. Admissible if corroborating circumstances clearly indicate the trustworthiness of the statement, since it tends to exculpate the defendant
- D. Inadmissible because all out-of-court confessions to crimes are categorically inadmissible

195. A homeowner installs a custom-designed chandelier in her dining room before selling the home. The sale contract does not specifically mention the chandelier. At closing, the homeowner removes the chandelier and takes it with her. The buyer sues. The chandelier:

- A. Belongs to the seller because all decorative installations remain personal property of the original owner
- B. Belongs to the buyer only if the chandelier was specifically referenced in the purchase agreement
- C. Belongs to the seller because the chandelier was custom-designed for the seller's personal taste
- D. Belongs to the buyer if the chandelier had become a fixture by attachment to the realty

196. A private individual is described in a national newspaper as having committed serious financial crimes. The statement is false. The plaintiff sues for defamation. Under Gertz, applied to matters of public concern, the private plaintiff must prove:

- A. Actual malice — knowledge of falsity or reckless disregard for truth — to recover any damages
- B. At least negligence as to the falsity to recover actual damages

- C. Strict liability for publication of false statements about any individual
- D. Specific intent to harm to recover any form of damages from the newspaper

197. A defendant in a federal case wishes to bring a third party into the litigation, claiming the third party is liable for any judgment against the defendant. The defendant may use:

- A. Third-party practice (impleader) under FRCP 14 to add the third party as a defendant for indemnification
- B. Direct intervention under FRCP 24 to allow the third party to join the litigation voluntarily
- C. Compulsory joinder under FRCP 19 because all interested parties must be present at all times
- D. Class action procedures under FRCP 23 because multiple parties create class-action questions

198. A state government opens a state-owned auditorium for use by community groups during evening hours. A group requests to use the auditorium for a political rally featuring controversial speakers. The state denies the request because of disagreement with the speakers' views. The denial is:

- A. Constitutional because state-owned property is government speech subject to viewpoint preferences
- B. Constitutional if the state can demonstrate a substantial public-safety interest in the denial
- C. Unconstitutional viewpoint discrimination in a designated public forum opened by the state
- D. Constitutional only if the state offers alternative locations for the controversial political rally

199. A buyer and seller orally modify a previously written contract for the sale of goods, increasing the price by \$1,000 to bring the new contract value above \$500. The buyer later refuses to honor the modified contract. Under UCC § 2-209:

- A. The modification is enforceable because oral modifications to existing contracts are categorically valid
- B. The modification is unenforceable because contracts can only be modified in writing if the original was written
- C. The modification is enforceable because UCC § 2-209 generally permits oral modifications regardless of value

D. The modification is unenforceable because the modified contract value brings it within the Statute of Frauds, which requires a writing

200. A defendant escapes from prison to avoid a credible threat from another inmate to kill him. He is captured shortly after his escape and charged with escape. His defense is:

A. Necessity because he faced a greater harm if he remained in prison than from the escape itself

B. Duress because the inmate's threats coerced him to commit the crime against his will

C. Insanity because the fear of imminent death rendered him unable to control his conduct

D. Self-defense because the threat from the inmate constituted ongoing assault justifying the response

Practice Exam 8: Answer Key with Explanations

1. C — Stream of commerce alone is insufficient under *McIntyre v. Nicastro*. The plurality required the defendant to purposefully target the forum state, not merely place goods into a national distribution system. Without specific targeting of State B, the manufacturer's contacts do not satisfy constitutional minimum contacts.

2. A — *Flast v. Cohen* permits taxpayer standing only for challenges to congressional taxing-and-spending exercises that violate a specific constitutional limitation on that power, such as the Establishment Clause. The grant must be a § 8 expenditure, not an incidental administrative use of funds. This narrow exception is the sole basis for taxpayer standing on Establishment Clause grounds.

3. D — Under the common law mirror image rule, any variation in the terms of an offer renders the response a counteroffer rather than an acceptance. The seller's added delivery term constitutes a variation, even if commercially reasonable. The mirror image rule applies strictly outside the UCC.

4. B — Transferred intent in homicide moves the defendant's intent from the intended victim to the actual victim. The defendant's intent to kill satisfies the mens rea for murder of the bystander he actually killed. The doctrine preserves liability for the unintended but factually achieved homicide.

5. D — FRE 803(2) admits statements about a startling event made while the declarant was under the stress of excitement. A statement made thirty seconds after a startling fall, while still under emotional stress, qualifies. The exception does not require that the declarant be a stranger to the litigation.

6. C — Language "on the express condition" creates a fee simple subject to a condition subsequent, with the grantor retaining a right of entry (power of termination). Unlike a possibility of reverter, the right of entry does not operate automatically — the grantor must affirmatively exercise it upon breach.

7. A — Under Cardozo's majority opinion in *Palsgraf*, foreseeability defines the duty owed. A pedestrian on a public sidewalk near a vehicle is squarely within the foreseeable zone of danger from negligent driving, even where the harm arrives through a chain of physical events.

8. B — Complete diversity under *Strawbridge v. Curtiss* requires that no plaintiff share citizenship with any defendant. A corporation is a citizen of both its state of incorporation and its principal place of business under § 1332(c)(1). Defendant 3's State X principal place of business destroys complete diversity with the State X plaintiff.

9. C — *Good News Club* held that excluding religious groups from a limited public forum opened to community groups constitutes viewpoint discrimination, violating the First Amendment. The Establishment Clause does not justify viewpoint-based exclusion of religious speech where the forum is otherwise available to comparable speakers.

10. A — A reward offer is a classic unilateral offer accepted by performance of the requested act with knowledge of the offer. The worker's performance — supplying the information — constitutes complete acceptance, creating a binding contract.

11. D — Under the continuing trespass doctrine, an initial taking with mistake of fact is treated as continuing into the moment the wrongful intent forms. When the defendant decided to keep the bicycle knowing it was not his, the trespassory taking and intent to permanently deprive both existed, completing larceny.

12. B — FRE 801(d)(2)(A) categorizes statements by a party opponent as non-hearsay when offered against that party. Deposition statements by the defendant qualify and are admissible without need for an exception, regardless of whether the defendant testifies at trial.

13. A — Tacking permits successive adverse possessors in privity to combine their periods of possession toward the statutory requirement. A quitclaim deed transferring possessory interest establishes the requisite privity. The combined 15-year period satisfies the statutory minimum.

14. C — Transferred intent in tort transfers the defendant's intent to commit battery from the intended target to the actual victim, even where contact was unintended as to that victim. The doctrine applies across the intentional torts of assault, battery, false imprisonment, trespass to land, and trespass to chattels.

15. B — 28 U.S.C. § 1404(a) authorizes transfer to any district where the action might have been brought, based on convenience of parties and witnesses and the interest of justice. The plaintiff's initial choice is given weight but is not controlling against strong showings of inconvenience.

16. D — Under *Ambach v. Norwick*, public school teaching falls within the "public function" or "political community" exception to strict scrutiny for state alienage classifications. Such laws receive rational basis review because teaching involves transmitting governmental values to citizens.

17. C — UCC § 2-209(1) eliminates the common law pre-existing duty rule for sale-of-goods modifications, allowing modifications without new consideration if made in good faith. The merchant good-faith standard requires a legitimate commercial reason such as unforeseen cost changes.

- 18. A** — Voluntary consent is a recognized exception to the warrant requirement. The homeowner's clear assent ("Sure, go ahead") authorized the search without need for warrant, probable cause, or Miranda warnings, which apply only to custodial interrogation rather than to consent searches.
- 19. D** — FRE 803(4) admits statements made for medical diagnosis or treatment to the extent reasonably pertinent to that purpose. Statements about pain and injury cause are pertinent, but statements identifying who is at fault are not, unless identification is relevant to treatment (such as in child abuse cases).
- 20. B** — The implied warranty of habitability requires landlords of residential premises to maintain the property in livable condition. Failure to repair essential systems such as plumbing breaches this warranty, allowing the tenant to withhold rent in proportion to the diminution in habitability.
- 21. A** — The economic loss rule generally bars recovery in negligence for purely economic losses unaccompanied by physical injury or property damage. The restaurant's lost profits resulted from interference with a third-party utility line, not from harm to its own property or persons.
- 22. D** — FRCP 4(e)(1) permits service in a manner authorized either by federal law or by the law of the state where the federal court sits or where service is made. Service by mail under either applicable state's rules satisfies federal service requirements.
- 23. C** — The Free Exercise Clause originally applied only to federal action but was incorporated against the states through the Fourteenth Amendment's Due Process Clause in *Cantwell v. Connecticut* (1940). Incorporation makes the clause directly enforceable against state action.
- 24. B** — Under the Statute of Frauds one-year provision, only contracts that are impossible to perform within one year by their terms require a writing. An employment contract "as long as performance is satisfactory" could end within one year if performance proves unsatisfactory, taking it outside the writing requirement.
- 25. C** — Depraved-heart murder requires extreme reckless indifference to the value of human life — conduct that creates a substantial risk of death without specific intent to kill. Firing a gun into a crowded subway car exemplifies this standard, supporting a second-degree (depraved-heart) murder conviction.
- 26. A** — FRE 902(4) makes certified copies of public records self-authenticating; no extrinsic foundation is required. The certification itself satisfies the authentication requirement, and the opposing party may still contest substantive evidentiary issues such as relevance or hearsay.
- 27. D** — Easements appurtenant attach to and benefit the dominant estate, automatically transferring with conveyance of the dominant land. Express mention in the conveying deed is not required because the easement runs with the land by operation of law.
- 28. B** — Common law imposes strict liability on owners for trespass by livestock. The owner's care or knowledge is immaterial; the policy reflects the foreseeable risk of straying domestic animals. Modern fence-out and fence-in statutes have modified this rule in some jurisdictions.

- 29. A** — Res judicata bars relitigation between the same parties or those in privity. Officers and shareholders of a corporation are not automatically in privity with the entity for preclusion purposes. The prior judgment binds the corporation but not the CEO individually.
- 30. C** — Gertz v. Robert Welch holds that private-figure plaintiffs suing for defamation on matters of public concern must prove at least negligence as to falsity. States may require higher standards, but strict liability is unconstitutional even for private plaintiffs.
- 31. D** — Economic duress under modern contract law requires (1) a wrongful threat that (2) left the victim no reasonable alternative. Exploiting urgency to extract supracompetitive prices, where no alternative supplier exists, can satisfy this standard, justifying restitution of the excess payment.
- 32. B** — Wharton's Rule provides that conspiracy charges cannot lie for offenses that necessarily require two or more participants by definition, such as bigamy, dueling, or adultery. The conspiracy and substantive offense merge as a matter of law to avoid charging the same wrong twice.
- 33. C** — FRE 803(8)(A)(ii) excludes from the public records exception "matters observed by law enforcement personnel" when offered against the defendant in a criminal case. This limitation prevents prosecutors from substituting written police narratives for live officer testimony subject to confrontation.
- 34. A** — A remainder conditioned on the remainderman surviving the life tenant is a contingent remainder because the condition precedent (B's survival) must occur before the interest vests. The alternative gift to C is also contingent, creating alternative contingent remainders.
- 35. B** — Libel per se includes false written statements that impute commission of a crime, allowing recovery without proof of special (pecuniary) damages. Damages are presumed because of the inherent reputational harm from such accusations.
- 36. D** — FRCP 23(b)(3) requires common questions to predominate over individual issues and that class treatment be superior. Significant variations in state product liability law across the 50 states typically defeat predominance for nationwide damages classes.
- 37. A** — Jones v. Flowers held that when mailed notice of a state action affecting property is returned undelivered, due process requires the state to take additional reasonably available steps to provide actual notice. Mere mailing alone, when known to have failed, is insufficient.
- 38. C** — Hadley v. Baxendale limits recoverable consequential damages to those reasonably foreseeable at the time of contracting or actually known to the breaching party. The miller did not communicate that mill operation depended on prompt shaft delivery, so lost profits were not foreseeable.
- 39. B** — Under California v. Acevedo, the automobile exception permits warrantless search of containers within a vehicle when probable cause exists to believe the container holds evidence of crime. The closed paper bag is treated like any other container in the vehicle.

- 40. D** — The attorney-client privilege extends to communications made in the presence of the attorney's agents — paralegals, secretaries, and other support staff — when their participation furthers the legal services. The paralegal's presence preserved confidentiality, not destroyed it.
- 41. C** — Open and visible possession by a non-record owner gives a subsequent purchaser inquiry notice. In a notice jurisdiction, the BFP requirement of no notice — actual, constructive, or inquiry — is defeated by such open possession, which the buyer is duty-bound to investigate.
- 42. A** — Joint and several liability allows the plaintiff to collect the entire judgment from any defendant. The paying defendant may then seek contribution from co-defendants for their proportional share of fault. This rule maximizes plaintiff recovery against potentially insolvent defendants.
- 43. D** — Under *Daimler AG v. Bauman*, a corporation is "at home" for general personal jurisdiction purposes in its state of incorporation and the state of its principal place of business. California, as the corporation's PPB, is a state of general jurisdiction.
- 44. B** — *Counterman v. Colorado* (2023) established that for a statement to be a punishable true threat, the speaker must have subjectively understood — at least recklessly — that the statement would be perceived as threatening. The reckless mens rea threshold protects the chilling-effect concerns underlying First Amendment doctrine.
- 45. C** — The doctrine of substantial performance allows a contractor who has performed the essential purposes of the contract to recover the contract price, less any damages caused by minor deviations. A minor aesthetic variation in railing spindles does not justify withholding all payment.
- 46. A** — Modern burglary statutes commonly extend the offense beyond dwelling houses to include structures and vehicles. A statute expressly listing "vehicle" as a covered location places automobile entries with intent to steal squarely within the statutory definition.
- 47. B** — Bias from familial relationships is a recognized basis for impeachment. A family connection between witness and party is highly probative of bias and may be explored on cross-examination without advance notice or expert testimony.
- 48. D** — A deed of trust includes a power-of-sale clause authorizing the trustee to conduct a nonjudicial foreclosure sale upon default. This bypasses the judicial process required in lien-theory mortgages, making foreclosure faster and less costly for the lender.
- 49. A** — Bystander recovery for intentional infliction of emotional distress under Restatement (Second) of Torts § 46(2) requires the plaintiff to (1) be present at the scene, (2) be a close family member of the direct victim, and (3) be known by the defendant to be present. All three elements are satisfied here.
- 50. C** — FRCP 56(a) requires the movant to show that no genuine dispute exists as to any material fact and that the movant is entitled to judgment as a matter of law. The movant need not affirmatively disprove the opposing claim — pointing to the absence of evidence on essential elements suffices.

51. A — *New York Times Co. v. United States* (the Pentagon Papers case) established that prior restraints on speech bear a heavy presumption against constitutional validity. The government must demonstrate exceptional justification — direct, immediate, and irreparable harm — to overcome this presumption.

52. B — The necessities doctrine carves out an exception to the minor's right to disaffirm. Although the minor may disaffirm the contract, he remains liable to pay the reasonable value (not full contract price) of necessities such as food, basic clothing, and shelter.

53. D — Modern receiving-stolen-property statutes are typically satisfied by reckless disregard or willful blindness regarding the stolen origin. A deeply discounted price purchased from a street vendor under suspicious circumstances supports the inference of knowledge sufficient for conviction.

54. C — FRE 1003 admits duplicates to the same extent as originals unless a genuine question is raised about authenticity or unless circumstances make admission unfair. Photocopies are treated as duplicates and are routinely admissible.

55. C — The majority objective approach to hostility in adverse possession holds that good-faith mistake about ownership does not negate hostility. The relevant inquiry is whether the use was without permission, not the subjective belief of the possessor.

56. A — When a child engages in an inherently adult activity — such as operating a motor vehicle or other dangerous machinery — courts apply the adult standard of care rather than the relaxed child standard. This protects the public from harm associated with adult activities.

57. B — *Twombly* and *Iqbal* require that complaints contain factual allegations sufficient to render the claim plausible on its face. Bare conspiracy allegations with no identifying details about co-conspirators or specific acts fail the plausibility standard and warrant dismissal.

58. D — *Gonzales v. Raich* applied the aggregation principle of *Wickard v. Filburn* to homegrown marijuana, holding that even intrastate, non-commercial cultivation substantially affects the interstate market in aggregate, bringing such activity within Congress's commerce power.

59. A — In a destination contract (FOB buyer's location), risk of loss remains with the seller until tender at the named destination. UCC § 2-509(1)(b) places the loss on the seller when destruction occurs during transit before delivery to the buyer's warehouse.

60. C — The necessity defense excuses criminal conduct where the defendant reasonably acts to prevent a greater harm. Breaking into shelter to escape a life-threatening blizzard is a paradigmatic application — the harm prevented (death from exposure) far exceeds the harm caused (property intrusion).

61. B — Under FRE 405(a), when a character witness testifies to a person's reputation, the cross-examiner may inquire about specific instances of conduct relevant to that reputation. The "have you heard" form tests the witness's familiarity with community knowledge without requiring proof of the underlying act.

62. D — Trade fixtures — items installed by a commercial tenant for use in the tenant's business — may be removed before the lease ends, provided removal does not cause material damage. A custom storefront sign attached for the tenant's commercial use falls within this rule.

63. C — Modified comparative negligence with a 50% bar precludes recovery when the plaintiff's fault percentage exceeds the threshold. A plaintiff 60% at fault recovers nothing because she has crossed the 50% bar that distinguishes the modified rule from pure comparative negligence.

64. A — Under 28 U.S.C. § 1332(c)(1), a corporation is a citizen of both its state of incorporation and the state of its principal place of business. This dual citizenship can defeat diversity jurisdiction when the opposing party is a citizen of either state.

65. B — *Williamson v. Lee Optical* applied highly deferential rational basis review to economic regulations under the Due Process and Equal Protection Clauses. So long as a state legislature could rationally believe the regulation serves public welfare, the law survives constitutional challenge.

66. D — A condition requiring the buyer's satisfaction is an express condition. Under the good-faith standard, the buyer may terminate based on genuine dissatisfaction, even if a reasonable person might not be dissatisfied. The condition gives the buyer real discretion subject to good faith.

67. C — A Miranda waiver is valid if made knowingly, intelligently, and voluntarily under the totality of the circumstances. No specific minimum education or independent counsel consultation is required; the focus is on whether the suspect understood his rights and freely chose to waive them.

68. C — Under the Hillmon doctrine, codified in FRE 803(3), statements of present intent to do something in the future are admissible to prove that the declarant subsequently acted in accordance with that intent. The victim's stated plan to meet John supports the inference that she did meet him.

69. A — Merger extinguishes an easement when the same person acquires fee simple ownership of both the dominant and servient estates. Once extinguished, the easement does not revive automatically upon later severance of the parcels — a new easement would have to be created in the subsequent deed.

70. B — Restatement (Second) of Torts § 552 imposes liability for negligent misrepresentation on professionals to a limited class of foreseeable third parties intended to rely on the information. Foreseeable investors who view financial statements for investment decisions fall within this protected class.

71. D — Under *Hanna v. Plumer*, when a Federal Rule of Civil Procedure is on point, it applies in diversity cases so long as the rule is valid under the Rules Enabling Act and consistent with the Constitution. State procedural rules yield to validly promulgated federal rules.

72. A — *Vitek v. Jones* held that involuntary transfer of a prisoner to a mental hospital implicates a liberty interest beyond ordinary prison confinement. Due process requires notice, a hearing, and an opportunity to present evidence before transfer to psychiatric confinement.

73. C — UCC § 2-207(2) provides that between merchants, additional terms in an acceptance become part of the contract unless the offer expressly limits acceptance to its terms, the new terms materially alter the contract, or the offeree objects within a reasonable time after notice.

74. B — False pretenses requires obtaining title to property through a knowingly false representation of material fact. The fictitious charity representation induced the victim to transfer title to the money, distinguishing the offense from larceny by trick (which transfers possession only).

75. D — *Jaffee v. Redmond* recognized a federal psychotherapist-patient privilege protecting confidential communications between licensed psychotherapists or social workers and their patients. The privilege exists to encourage the open communication essential to effective mental health treatment.

76. A — In a lien-theory state (the majority rule), a mortgage transfers a security interest rather than legal title. Because no transfer of title occurs, the unity of interest required for joint tenancy is preserved, and the mortgage does not sever the joint tenancy.

77. C — A manufacturer of prescription drugs has a duty to warn of known risks that ordinary use would not reveal. Failure to warn of a known side effect constitutes a design defect under strict products liability theories, regardless of the manufacturer's negligence in discovering the risk.

78. B — Diversity jurisdiction under 28 U.S.C. § 1332 requires complete diversity — no plaintiff sharing citizenship with any defendant. Where the parties are co-citizens of the same state, no diversity exists and removal is improper regardless of the amount in controversy.

79. D — *Craig v. Boren* established intermediate scrutiny for gender classifications: the law must be substantially related to an important governmental objective. Different ages of majority based on sex cannot satisfy this standard absent a meaningful, non-stereotypical justification.

80. A — A creditor beneficiary is one to whom the promisee owes a pre-existing debt that the promisor's performance will discharge. The contract here was expressly designed to satisfy the father's \$10,000 debt to the son, making the son a creditor beneficiary with direct enforcement rights.

81. B — *Arizona v. Gant* narrowed the search-incident-to-arrest doctrine for vehicles. Police may search the passenger compartment only if (1) the arrestee is within reaching distance of the vehicle or (2) the search may yield evidence of the crime of arrest. A handcuffed defendant secured elsewhere defeats both conditions.

82. C — *Trammel v. United States* held that the spousal testimonial privilege belongs to the witness-spouse, not the defendant-spouse. A willing witness-spouse may testify against her spouse without obstruction from the marital privilege.

83. A — The rule of convenience closes a class at the earliest point when distribution to a class member is required. Here, distribution begins when A dies and the first child satisfies the age contingency, fixing class membership at that moment.

84. D — Private nuisance requires a substantial and unreasonable interference with the plaintiff's use and enjoyment of her property. The interference must exceed what an ordinary person in the community would tolerate; merely public-scope harm shared by many residents may constitute public, not private, nuisance.

85. B — FRCP 19(b) requires the court to determine whether the action can proceed in equity and good conscience without the absent party. If indispensable, the action must be dismissed; the four factors include prejudice, ability to shape relief to mitigate, adequacy of remedy without the party, and adequacy of an alternative forum.

86. C — *Church of Lukumi Babalu Aye v. Hialeah* held that laws targeting religious practice are subject to strict scrutiny even if facially neutral. Legislative history demonstrating the law was aimed at the Santeria church defeats the neutrality and general applicability required by *Smith*.

87. D — UCC § 2-615 commercial impracticability requires far more than a 20% increase in cost. Courts generally require dramatic, unforeseen disruptions making performance economically catastrophic. Ordinary market fluctuations are precisely the risks parties assume when contracting at a fixed price.

88. A — Among the available defenses, lack of intent to permanently deprive — claiming subjective belief in ability to repay — is the only argument with any legal grounding. Although modern courts generally reject "intent to repay" as a complete defense, it remains the strongest framed argument among the choices.

89. B — FRE 803(16) admits ancient documents — statements in documents whose authenticity is established and that are at least 20 years old (with limitations for documents prepared after 1998). A 1925 deed satisfies the age requirement and qualifies for the exception.

90. C — Under a race-notice statute, a subsequent bona fide purchaser without notice prevails over a prior unrecorded grantee only if she records first. B took without notice and recorded before A, satisfying both elements and defeating A's interest under the statute.

91. D — Most modern courts recognize that foreseeable criminal acts by third parties do not automatically constitute superseding causes. The negligent defendant who creates the opportunity for a foreseeable crime can be liable for the resulting harm — leaving keys in an unlocked car in a high-crime area is precisely such conduct.

92. D — A state's long-arm statute can extend only to the constitutional limits of personal jurisdiction. Even if the statute's text reaches further than *International Shoe* permits, the court must apply only the portion that comports with the Due Process Clause's minimum contacts test.

93. B — The fighting words doctrine has been narrowed in modern Supreme Court doctrine, particularly when directed at police officers, who are expected to exercise greater restraint than ordinary citizens. *Lewis v. New Orleans* and similar cases have rejected fighting-words prosecutions for verbal abuse of officers in public confrontations.

94. A — Liquidated damages clauses are enforceable when (1) actual damages were difficult to ascertain at contracting and (2) the stipulated amount represents a reasonable estimate of probable harm. A daily

delay rate of \$500 falling within the actual damage range of \$400–\$600 is a reasonable estimate, not a penalty.

95. C — Under the abstract approach to inherently dangerous felonies, courts examine whether the felony, viewed in the abstract, is inherently likely to cause death or serious harm. Selling counterfeit goods, while a felony, does not by its nature pose serious risks to human life and falls outside the felony-murder rule.

96. B — A photograph may be authenticated by any witness with personal knowledge of the scene who can testify that the photograph accurately depicts what it purports to show. The original photographer is not required; an eyewitness familiar with the scene can lay the foundation.

97. D — Anti-deficiency statutes generally bar deficiency judgments on purchase-money mortgages, limiting the lender's recovery to the proceeds of the foreclosure sale. The lender's protection from deficiency is the bargained-for protection of the borrower under such statutes.

98. A — A landowner owes a licensee (such as a social guest) a duty to warn of known concealed dangerous conditions. The homeowner's knowledge of the loose floorboard, combined with failure to warn or repair, breaches this duty and creates liability.

99. C — The well-pleaded complaint rule limits federal-question jurisdiction to claims that arise under federal law on the face of the plaintiff's properly pleaded complaint. Anticipated federal defenses, even if substantial, do not create federal-question jurisdiction and cannot support removal.

100. B — *Lawrence v. Texas* held that the Due Process Clause protects a fundamental liberty interest in private consensual intimate conduct between adults. State laws criminalizing such conduct intrude on this protected sphere and cannot survive constitutional scrutiny.

101. A — A unilateral mistake known or reasonably knowable to the other party supports rescission, even though unilateral mistakes are generally not grounds for rescission. The general contractor's knowledge of the calculation error from comparison with other bids makes the mistake palpable and the resulting bargain unenforceable.

102. C — Solicitation is complete at the moment one person urges, requests, or commands another to commit a crime with the specific intent that the crime be committed. The solicited person's refusal does not negate the offense, which is one of inchoate criminal intent rather than completed harm.

103. B — FRE 801(d)(2)(E) classifies coconspirator statements made during the course and in furtherance of the conspiracy as non-hearsay when offered against any conspirator-party. The coconspirator need not be tried in the same proceeding; the statement is admissible against the defendant.

104. D — Cotenants in common are entitled to contribution from each other for necessary expenses paid for the benefit of the property, including property taxes. The paying cotenant may recover the proportional share from non-paying cotenants based on each tenant's ownership interest.

105. A — Pure comparative negligence reduces the plaintiff's recovery by her percentage of fault but does not bar recovery. The plaintiff at 80% fault recovers 20% of damages — \$20,000 of the \$100,000 total — corresponding to the defendant's percentage of fault.

106. C — *Mitchell v. Forsyth* held that denials of qualified immunity are immediately appealable under the collateral order doctrine. Qualified immunity is an immunity from suit, not just from liability, and would be effectively lost without immediate review.

107. D — *West Virginia State Board of Education v. Barnette* held that the state may not compel any student to recite the Pledge of Allegiance, regardless of the basis for objection. The freedom of belief and expression protected by the First Amendment prohibits compelled patriotic affirmations.

108. B — Silence is generally not acceptance under common contract principles, absent prior dealings, an established trade practice, or unique circumstances suggesting acceptance. Unsolicited goods imposed on a buyer with no prior relationship do not bind the buyer through mere silence.

109. A — *New York v. Quarles* established the public safety exception to *Miranda*. Officers may ask questions reasonably prompted by an immediate concern for public safety — such as the location of a discarded firearm — without first administering warnings, and the resulting statements are admissible.

110. D — FRE 611(c) generally prohibits leading questions on direct examination of friendly witnesses, except as necessary to develop testimony. Leading questions are permitted on cross-examination, when examining a hostile or adverse witness, or when necessary to develop testimony from a witness with memory or comprehension difficulties.

111. C — A joint tenant's unilateral conveyance to a third party severs the joint tenancy by destroying the unity of time, title, interest, or possession. After severance, the new owner holds as a tenant in common with the remaining cotenant, without right of survivorship.

112. B — Statements made by participants in judicial proceedings — including judges, attorneys, witnesses, and parties — enjoy absolute privilege from defamation liability when made in the course of those proceedings. The privilege protects free expression in litigation and is not contingent on truth or good faith.

113. A — A valid forum selection clause constitutes consent to personal jurisdiction in the designated forum. Consent is a recognized independent basis for personal jurisdiction, eliminating the need for traditional minimum contacts analysis. Such clauses are routinely enforced when freely bargained.

114. C — *Stone v. Graham* specifically held that posting the Ten Commandments in public school classrooms violates the Establishment Clause because it has a religious purpose and lacks any educational context. Modern displays in school entryways without secular framing remain constitutionally suspect.

115. D — UCC § 2-306(1) imposes a good-faith standard on output contracts, prohibiting unreasonable disproportionate variation from normal output or any stated estimate. A 90% reduction without legitimate business justification likely fails good faith, though the rule allows genuine business changes.

116. B — The Model Penal Code insanity test requires that the defendant, as a result of mental disease or defect, lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. The MPC formulation is broader than M'Naghten's strict cognitive test.

117. A — FRE 801(d)(2)(D) classifies statements by an agent or employee on matters within the scope of employment as non-hearsay vicarious admissions. The purchasing manager's statements about company purchasing decisions are squarely within the scope of his employment.

118. B — Total restraints on alienation that prohibit any transfer to anyone outside a specified group are generally void as against public policy. The deed restriction here forbids transfer to anyone other than O's descendants, an absolute restraint that the law refuses to enforce.

119. D — Under the eggshell skull doctrine, the defendant takes the plaintiff as he finds her, but wrongful death damages are calculated based on the deceased's actual life expectancy and pecuniary contribution. A terminal condition reducing life expectancy to one hour limits damages to that minimal expected period.

120. C — Intervention as of right under FRCP 24(a)(2) requires the proposed intervenor to claim an interest related to the action that may be impaired by the disposition, and that existing parties cannot adequately represent that interest. All three conditions must be met for mandatory intervention.

121. A — Procedural due process protects only legitimate claims of entitlement that rise to the level of constitutionally protected liberty or property interests. Tenured public employment is recognized as a protected property interest, but the threshold inquiry is whether such an interest exists at all.

122. D — UCC § 2-315 creates an implied warranty of fitness for a particular purpose when (1) the seller has reason to know the buyer's particular purpose and (2) the buyer relies on the seller's skill and judgment in selecting suitable goods. Both elements are satisfied here.

123. B — The plain view doctrine permits seizure of evidence discovered during lawful execution of a search warrant, provided the incriminating nature is immediately apparent. Officers lawfully searching for jewelry in places where it might reasonably be hidden may seize drugs encountered in plain view.

124. C — FRE 602 requires that a witness have personal knowledge of the matters testified to. Highly hedged language indicating uncertainty about whether the witness actually observed or only "sort of" remembers signals a lack of personal knowledge sufficient for foundation.

125. A — Easement by necessity arises when (1) the dominant and servient parcels were once unified, (2) severance occurred, and (3) at the time of severance, the easement was strictly necessary for use of the conveyed parcel. A landlocked back parcel without access automatically meets these elements.

126. A — Battery includes intentional contacts that are offensive to a reasonable sense of personal dignity, even without physical injury. Spitting on another person is the classic example of an offensive contact that constitutes battery — the harm is dignitary rather than physical.

127. D — The Anti-Injunction Act bars federal courts from enjoining state court proceedings except (1) as expressly authorized by Act of Congress, (2) where necessary in aid of the court's jurisdiction, or (3) to protect or effectuate the court's judgments. The exceptions are narrow.

128. C — *Richardson v. Ramirez* upheld felon disenfranchisement against equal protection challenge, holding that Section 2 of the Fourteenth Amendment expressly contemplates such disqualification. The text's reference to disenfranchisement "for participation in rebellion, or other crime" provides constitutional grounding.

129. B — The lost volume seller doctrine permits a seller with unlimited inventory to recover lost profits on a breached sale even after reselling the same item, because the second sale would have occurred independently. The defaulting buyer remains liable for the profit on the original sale.

130. D — Voluntary intoxication may negate the specific intent required for certain crimes, including premeditation in first-degree murder. The defendant may argue intoxication prevented the formation of premeditation, reducing the conviction to second-degree (depraved-heart or impulse) murder.

131. A — Prior inconsistent statements may be used to impeach a witness's credibility under FRE 613. Substantive use as proof of the matter asserted requires that the prior statement was made under oath at a prior proceeding under FRE 801(d)(1)(A), but impeachment use is unconditional.

132. C — An absolute deed accompanied by an oral understanding that the transfer is intended as security creates an equitable mortgage. The borrower retains the equity of redemption — the right to recover title upon repaying the underlying loan — despite the form of the deed.

133. B — Wild animals create strict liability for harm caused by their dangerous propensities, regardless of the owner's care or the animal's prior demeanor. Lions remain wild animals under common law even when raised in captivity, and the visitor's interaction does not bar strict liability.

134. D — A default judgment may be collaterally attacked in subsequent proceedings for lack of personal jurisdiction over the defaulting defendant. The defendant's failure to appear does not waive jurisdictional defects; the absent defendant may raise the issue when the judgment is presented for enforcement.

135. C — *Ex parte Young* creates a critical exception to Eleventh Amendment immunity. Private parties may sue state officers in federal court for prospective injunctive relief from enforcement of unconstitutional state laws. The fiction is that an officer acting unconstitutionally is not acting for the state.

136. A — Under the mailbox rule, acceptance is effective upon dispatch (the moment of mailing), while revocation is effective only upon receipt. The offeree mailed acceptance Wednesday, forming the contract before the revocation was received Thursday and before the acceptance was received Friday.

137. B — Robbery is the taking of property from the person of another by force or threat of imminent force. Displaying a knife and demanding the purse satisfies the threat element, even without actual physical violence. The threat itself completes the offense once the property is transferred.

138. D — An out-of-court statement is not hearsay when not offered to prove the truth of the matter asserted. The victim's statement, offered to prove her belief rather than the truth of the identification, falls outside the hearsay definition and is admissible if otherwise relevant.

139. C — A covenant runs with the land at law if (1) it touches and concerns the land, (2) the original parties intended it to run, and (3) successors had actual or constructive notice of the covenant. These elements are necessary for enforcement against subsequent owners.

140. A — Under Restatement (Second) of Torts § 42, false imprisonment requires the plaintiff to either be aware of the confinement or suffer actual harm from it. A sleeping victim who was unaware of confinement during the entire period cannot recover unless she was harmed during the unaware period.

141. D — Removal under 28 U.S.C. § 1446(b)(2)(A) requires the consent of all properly served defendants — the unanimity rule. A timely-filed but unanimity-deficient removal is procedurally defective and warrants remand if the plaintiff timely objects.

142. B — *Cruzan v. Director, Missouri Department of Health* recognized that competent adults have a constitutionally protected liberty interest in refusing medical treatment, including life-sustaining care. The state cannot compel treatment over the competent patient's objection.

143. A — A repudiating party may retract anticipatory repudiation before the non-breaching party has materially relied on the repudiation or indicated treatment of the contract as breached. Restatement (Second) § 256 and UCC § 2-611 both recognize this right of retraction.

144. C — Arraignment is a critical stage of the criminal proceeding at which the Sixth Amendment right to counsel attaches. Denial of counsel at arraignment violates the Constitution, and statements made without counsel may be suppressed.

145. D — FRE 803(3) admits statements of the declarant's then-existing physical condition, including current pain or sensation. The plaintiff's contemporaneous report of throbbing back pain qualifies as a then-existing condition statement and is admissible regardless of the in-court declarant.

146. B — Just compensation under the Fifth Amendment is generally measured by the fair market value of the property at the time of taking. Business goodwill, relocation expenses, and lost future profits are typically not separately compensable elements of just compensation absent specific statutory authorization.

147. C — The emergency doctrine adjusts the standard of care to reflect the emergency circumstances confronting the defendant. The defendant is held to the standard of a reasonable person under the same emergency, not the standard of a reasonable person without consideration of the emergency.

148. A — *Hickman v. Taylor* and FRCP 26(b)(3) protect attorney work product from discovery, subject to overcoming the protection on a showing of substantial need and undue hardship in obtaining the substantial equivalent by other means. The protection is qualified, not absolute.

149. B — *Pickering v. Board of Education* established a balancing test for public employee speech: (1) the speech must address a matter of public concern, and (2) the employee's interest in commenting must outweigh the employer's interest in efficient operation. Both prongs must be satisfied for protection.

150. D — The UCC perfect tender rule (§ 2-601) gives the buyer the right to reject goods that fail to conform to the contract in any respect, in single-delivery contracts. The doctrine of substantial performance does not apply to sales of goods under the UCC.

151. B — Strict liability regulatory offenses require no proof of mens rea regarding the regulated element. Where the statute expressly imposes liability "regardless of knowledge," reasonable mistake of fact is not a defense. The legislative judgment to impose strict liability is constitutionally permissible for regulatory offenses.

152. A — Under FRE 612, a writing used to refresh a witness's recollection is not itself admitted into evidence. The opposing party has the right to inspect the writing, cross-examine the witness about it, and introduce relevant portions for impeachment purposes.

153. C — Marketable title is title reasonably free from doubt and not subject to undisclosed encumbrances. A recorded easement burdening the property substantially affects its use and renders title unmarketable, justifying the buyer's refusal to close.

154. D — The T.J. Hooper rule recognizes that industry custom is evidence of due care but is not conclusive. The custom itself may be unreasonable, and an entire industry may have lagged behind reasonable safety standards. Compliance with custom is relevant but does not preclude a negligence finding.

155. B — FRCP 11 requires the court to impose sanctions only after notice and an opportunity to be heard. Sanctions are intended to deter future misconduct, not to compensate or punish, and procedural fairness governs the process before sanctions are imposed.

156. D — Under *Pleasant Grove City v. Summum*, government speech is not subject to viewpoint-neutrality requirements that govern private speech in public forums. The government may convey its own preferred messages — including in tourism promotion — without violating the First Amendment.

157. A — A unilateral mistake known to the other party at the time of contracting allows rescission, even though unilateral mistakes are generally not grounds for relief. The general contractor's recognition of the bid error from comparing other bids gives rise to constructive knowledge, making the bid voidable.

158. B — In a chain conspiracy, all participants in a distribution chain are part of one overarching conspiracy because each link shares an interest in the success of the entire enterprise. Direct contact between every level is not required; the structural unity of the operation suffices.

159. C — FRE 803(4) admits statements made to a treating physician for diagnosis or treatment, including statements identifying the cause of injury when pertinent to medical care. In child abuse cases, identifying the abuser is relevant to treatment — including decisions about discharge planning and safety — making the identification admissible.

160. D — Open and notorious possession must be sufficient to give a reasonable owner notice of the adverse claim. Secret cultivation in a remote area not visible to the true owner fails to give such notice, regardless of duration or exclusivity.

161. A — Modern direct-victim NIED theories permit recovery where the defendant assumed a duty toward the plaintiff and the breach foreseeably caused severe emotional distress. The telegraph company's undertaking to deliver urgent messages creates such a duty toward the intended recipient.

162. B — 28 U.S.C. § 1442 authorizes federal officers sued in state court for acts within their official capacity to remove the action to federal court. The federal officer removal statute is intended to protect federal officials from local biases that might impair federal functions.

163. C — Compelled disclosure of donor information must be narrowly tailored to a substantial governmental interest under NAACP v. Alabama and recently reaffirmed in Americans for Prosperity Foundation v. Bonta. Generalized disclosure mandates that impose substantial First Amendment burdens face heightened scrutiny.

164. D — An offeror may dictate the exclusive method of acceptance, and acceptance through any other means is ineffective. An offer expressly limiting acceptance to email with the statement that "no other method will be effective" requires email acceptance for contract formation.

165. A — The castle doctrine eliminates the duty to retreat from one's own home before using deadly force in self-defense. A defendant facing an intruder in his dwelling may use force, including deadly force, without first seeking escape, even when retreat is possible.

166. C — FRE 1006 permits the contents of voluminous writings, recordings, or photographs to be presented through summaries, provided the underlying records are made available to the opposing party for examination. The summary serves as a substitute for impractical production of the originals.

167. B — Easement termination by estoppel arises when the easement holder's representations cause the servient owner to detrimentally rely. The owner's substantial investment in construction blocking the easement, in reliance on the holder's assurances, justifies estoppel against the holder's later demand.

168. D — The doctrine of last clear chance permits recovery despite the plaintiff's contributory negligence when the defendant had the last opportunity to avoid the harm. A driver who saw the pedestrian in time to stop had the last clear chance, restoring the plaintiff's right to recover.

169. A — Federal courts may realign parties according to their actual interests when the named alignment misrepresents true alignments. Realignment can destroy diversity jurisdiction if it places co-citizens on opposite sides of the dispute — the court is not bound by the plaintiff's original alignment.

170. C — Students for Fair Admissions v. Harvard (2023) held that race-conscious admissions programs at Harvard and UNC violated equal protection. The Court applied strict scrutiny and rejected diversity as a compelling interest sufficient to justify the specific race-based classifications, effectively eliminating race-conscious admissions in most contexts.

171. B — UCC § 2-608 permits revocation of acceptance when the nonconformity substantially impairs the value of the goods to the buyer, and acceptance was based on the buyer's reasonable assumption that the nonconformity would be cured or the defect was difficult to discover before acceptance.

172. D — The Fourth Amendment's particularity requirement mandates that warrants describe with particularity both the place to be searched and the items to be seized. A warrant that fails to specify items to be seized is constitutionally defective and renders the seizure unlawful.

173. A — FRE 803(5) admits past recollection recorded when (1) the witness once knew the matter, (2) the witness now has insufficient memory, and (3) the record was made or adopted when the matter was fresh. The record may be read into evidence; if offered by the proponent, it is not received as an exhibit.

174. B — The right of survivorship operates by operation of law at the moment of a joint tenant's death, before any testamentary disposition takes effect. The deceased joint tenant's interest passes automatically to the surviving joint tenant, leaving nothing for the will to devise.

175. C — Wrongful death statutes generally permit recovery for the pecuniary losses suffered by surviving family members from the loss of the decedent's financial support and services. Punitive damages and the deceased's own pain and suffering are typically not recoverable; the pre-death suffering belongs to the survival action.

176. D — *Burnham v. Superior Court* reaffirmed the constitutional validity of traditional "tag" jurisdiction — personal jurisdiction based on personal service while the defendant is voluntarily present in the forum state. No additional minimum contacts analysis is required; physical presence at service suffices.

177. B — Under *Reeves v. Stake*, the market participant doctrine exempts states from Dormant Commerce Clause scrutiny when they act as buyers or sellers rather than as regulators. A state-owned cement plant may prefer in-state purchasers as part of its participation in the cement market.

178. A — Where completion of work is a condition precedent to payment, the contractor who completes performance is entitled to the full contract price. The condition has been satisfied, triggering the homeowner's obligation to pay.

179. C — Adequate provocation reduces murder to voluntary manslaughter when (1) the provocation is sufficient to provoke a reasonable person to lose self-control, (2) the defendant was in fact provoked, (3) the cooling-off period was insufficient, and (4) the defendant did not in fact cool off. Discovering a spouse in flagrante delicto is the classic example.

180. B — FRE 804(b)(3) admits statements against the declarant's pecuniary, proprietary, or penal interest, made when the declarant was unavailable, that a reasonable person in the declarant's position would not have made unless true. Admitting a \$50,000 debt is squarely against pecuniary interest.

181. D — A negative easement restricts what the servient owner may do on his own land, rather than granting affirmative rights of entry. A "light and air" easement preventing construction is a classic negative easement, recognized in limited form under English common law and surviving in many American jurisdictions.

182. A — The innkeeper-guest relationship is a recognized special relationship triggering an affirmative duty to render aid. A motel owner with knowledge of an attack on her guest in the motel parking lot must take reasonable steps to assist, such as calling police, even absent a general duty to rescue.

183. C — FRCP 11(b) requires that pleadings be based on reasonable factual investigation and have non-frivolous legal grounding. Knowing inclusion of false factual allegations violates Rule 11's certification, and the court may sanction the attorney directly, including imposing monetary penalties.

184. D — Following *Obergefell v. Hodges*, laws denying same-sex couples access to the rights, benefits, and obligations of marriage violate equal protection. Excluding same-sex partners from spousal benefits available to opposite-sex spouses cannot survive constitutional scrutiny.

185. B — UCC § 2-201(2) provides the merchant's confirmation exception to the Statute of Frauds. A signed written confirmation by one merchant to another that satisfies the writing requirement against the sender also satisfies it against the recipient, unless the recipient objects within ten days of receipt.

186. C — Foreseeable medical complications during treatment of a wound caused by the defendant generally do not break the chain of legal causation. A heart attack triggered by the body's response to gunshot trauma is a foreseeable consequence of the original injury and remains within the scope of the defendant's liability.

187. A — Bias is always a proper subject of cross-examination, even when not within the scope of direct testimony. A witness's romantic relationship with a party is highly probative of bias affecting the credibility of any testimony offered on the party's behalf.

188. D — A cotenant who collects rent from a third party must account to other cotenants for their proportional share of the net rental income. The receiving cotenant cannot retain the full rent simply because she arranged the rental; the property generates income for all cotenants in proportion to their interests.

189. B — Substantial alteration of a product after sale by the user, beyond foreseeable uses, generally severs the chain of strict products liability. Removing manufacturer-installed safety guards to use the tool in an unintended manner constitutes such an alteration, defeating the manufacturer's liability.

190. C — FRCP 4(k)(2) authorizes personal jurisdiction over foreign defendants in federal-question cases when (1) the defendant is not subject to general jurisdiction in any state's courts and (2) exercising jurisdiction would be consistent with the Constitution and laws. Aggregated nationwide contacts provide the constitutional basis.

191. D — *Miller v. California* established a three-part test for obscenity: (1) the average person, applying contemporary community standards, would find the work appeals to prurient interest; (2) the work depicts sexual conduct in a patently offensive way as defined by applicable state law; and (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

192. A — Promissory estoppel awards damages limited to the extent necessary to prevent injustice, typically reliance damages reflecting the promisee's losses from reasonable reliance. The daughter may

recover her foreseeable reliance losses (enrollment and related expenses) rather than the full \$50,000 promised expectation.

193. B — Factual impossibility is generally not a defense to attempt because the defendant possessed the required mens rea and took a substantial step toward the crime. The defendant who places what he believes to be poison in the victim's coffee has demonstrated full criminal intent regardless of the substance's actual nature.

194. C — FRE 804(b)(3) requires corroborating circumstances clearly indicating trustworthiness when a statement against penal interest is offered in a criminal case to exculpate the defendant. The corroboration requirement guards against fabrication while preserving the truth-seeking function of admitting genuinely reliable confessions by third parties.

195. D — A chandelier installed by the seller before sale becomes a fixture if attached to the realty with intent to make it part of the property. Fixtures pass with the land to the buyer unless specifically reserved in the contract; the seller's silent removal at closing constitutes a wrongful conversion.

196. B — Under *Gertz v. Robert Welch*, private-figure plaintiffs suing for defamation on matters of public concern must prove at least negligence as to falsity to recover actual damages. The newspaper's failure to exercise reasonable care satisfies this standard.

197. A — FRCP 14 authorizes third-party practice (impleader), allowing a defendant to bring in a third party who is or may be liable to the defendant for all or part of the claim against him. The procedure is the standard mechanism for indemnification and contribution claims.

198. C — Once a state actor creates a designated public forum, content-based and viewpoint-based restrictions face strict scrutiny. Viewpoint discrimination — denying access because of disagreement with speakers' views — is presumptively unconstitutional and rarely survives review.

199. D — UCC § 2-209(3) provides that contract modifications that bring the agreement within the Statute of Frauds must satisfy the writing requirement. When an oral modification raises the contract price above \$500 (the UCC threshold), the modified contract must be in writing to be enforceable.

200. A — The necessity defense applies when a defendant reasonably acts to prevent a greater harm. Under *People v. Lovercamp* and similar authority, escape from prison to avoid an immediate threat of death from another inmate may qualify, provided strict conditions are met, including prompt surrender after reaching safety.