

PRACTICE EXAM 9 — MBE SIMULATION (200 QUESTIONS)

Section 1 — Questions 1 through 100 (3 Hours)

1. A municipality enacts an ordinance prohibiting any "demonstration, protest, or public assembly of more than 10 persons" in the downtown business district without a permit obtained 72 hours in advance. A protestor is arrested for participating in an unpermitted gathering of 15 people on the steps of city hall. She challenges the ordinance under the First Amendment. What is the most likely outcome?

- A. The ordinance is constitutional because the municipality has authority to regulate public spaces
- B. The ordinance is constitutional as a content-neutral regulation
- C. The ordinance is constitutional as a routine licensing scheme
- D. Under the First Amendment public forum doctrine, traditional public forums (such as the steps of a city hall) are subject to strict First Amendment protection; even content-neutral time, place, and manner restrictions must be narrowly tailored to serve a significant government interest, leave open ample alternative channels, and not give officials unbridled discretion in granting permits

2. A plaintiff sues a defendant in federal court for negligence under diversity jurisdiction. The defendant is served at his home. The defendant moves to quash service, arguing that the plaintiff failed to attach a copy of the complaint to the summons. Under FRCP 4, what is the proper analysis?

- A. Under FRCP 4(c)(1), the summons must be served with a copy of the complaint; service that fails to include the complaint is defective, although the court may permit cure rather than dismiss the action
- B. Service is automatically valid if the defendant receives notice
- C. Service is automatically defective and dismissal is required
- D. Service requires the defendant's consent

3. A defendant is charged with conspiracy to commit bank robbery. The defense argues that the defendant withdrew from the conspiracy by telephoning each co-conspirator and stating that he would not participate. However, the defendant did not contact law enforcement. Two days later, the co-conspirators committed the robbery. Has the defendant established withdrawal?

A. Withdrawal is automatically established by oral notice

B. Withdrawal requires written notice to all co-conspirators

C. Under the common law, withdrawal requires the defendant to (1) take affirmative steps to disassociate himself, (2) communicate the withdrawal to all co-conspirators in time for them to abandon the conspiracy, AND (3) the withdrawal must occur before any overt act in furtherance of the conspiracy is committed; even if withdrawal is properly communicated, the defendant remains liable for conspiracy itself if overt acts occurred before withdrawal

D. Withdrawal is automatically a defense

4. A grantor conveys property "to A for life, then to B, but if B predeceases A, then to C." A is living, B is living, and C is living at the time of conveyance. What is B's interest?

A. A contingent remainder

B. A vested remainder subject to total divestment (sometimes called a vested remainder subject to a condition subsequent); B's interest is vested because B is ascertained and there is no condition precedent to vesting, but the interest may be divested if B predeceases A

C. An executory interest

D. A reversion

5. A federal court is hearing a complex commercial dispute. The plaintiff sues two defendants in tort. After the case is filed, one defendant moves to dismiss for lack of personal jurisdiction. The plaintiff opposes, arguing that the defendant has substantial contacts with the forum through targeted online sales. Under *International Shoe* and modern minimum-contacts analysis, what is the proper standard?

A. Personal jurisdiction is automatic if the defendant has any contact with the state

B. Personal jurisdiction requires physical presence in the forum

C. Personal jurisdiction is satisfied by the plaintiff's residence

D. Under *International Shoe* and progeny (including *J. McIntyre Machinery v. Nicastro*), specific personal jurisdiction requires the defendant to have "purposefully availed" itself of the forum state, and the claim must arise out of or relate to those contacts; targeted online sales directed at the forum may satisfy purposeful availment if substantial and forum-specific

6. A defendant is on trial for the murder of his wife. The prosecution offers testimony from a clergyperson who counseled the defendant after the killing. The defense objects under the clergy-penitent privilege. What is the proper analysis?

A. The clergy-penitent privilege does not apply to confessions

B. The clergy-penitent privilege applies only in religious proceedings

C. Under FRE 501 and most state codifications, the clergy-penitent privilege protects confidential communications made to a clergyperson acting in his professional spiritual capacity; the privilege is held by the penitent (with some jurisdictions also giving the clergyperson a privilege), and statements made for spiritual counseling are generally protected

D. The privilege belongs to the clergyperson alone

7. A buyer and seller enter into a written contract for the sale of a custom-manufactured machine for \$200,000. The contract specifies delivery in 60 days. The seller incurs \$50,000 in setup costs before the buyer cancels the contract without justification. Under the UCC, what is the seller's measure of damages?

A. The seller recovers only the \$50,000 in setup costs

B. Under UCC § 2-708(2), when the standard formula (contract price minus market price or resale) is inadequate to put the seller in as good a position as performance, the seller recovers the lost profit (plus reasonable overhead, incidental damages, and costs reasonably incurred) on a "lost volume seller" theory or for custom goods; the formula must adequately compensate the seller

C. The seller recovers only the contract price

D. The seller recovers only market damages

8. A state passes a law authorizing the use of "any reasonable means" by police to obtain confessions, including deception and limited pressure tactics. A defendant challenges the law as facially unconstitutional. What is the most likely outcome?

A. Under *Miranda v. Arizona* and the Due Process Clause, statements obtained by physical coercion, threats, or psychological pressure are inadmissible; while limited deception by police is generally permitted (*Frazier v. Cupp*), a state law authorizing "any reasonable means" — including pressure tactics that may shade into coercion — is unconstitutional on its face because it sweeps too broadly into prohibited coercive conduct

B. The law is constitutional under the police power

C. The law is constitutional because suspects can refuse to speak

D. The law is constitutional because confessions are encouraged

9. A defendant is on trial for armed robbery. The prosecution offers testimony from an eyewitness who identified the defendant in a six-person photo array. The defense argues the array was unduly suggestive because the defendant's photo had a distinct background color. What is the proper procedure?

A. The court must defer to the police officer's account

B. The court must exclude all identification testimony

C. Under *United States v. Wade* and *Manson v. Brathwaite*, the court conducts a pretrial Wade hearing to determine whether the identification procedure was unduly suggestive and, if so, whether the identification is nevertheless reliable under the totality of the circumstances; the court applies the Biggers/Brathwaite reliability factors

D. The court must require the lineup be photographed

10. A federal court is hearing a state-law tort case in diversity. The state has a substantive law providing for joint and several liability among multiple tortfeasors. The defendant argues the federal court should apply pure several liability. Under *Erie*, what is the proper outcome?

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

11. A federal lawsuit involves a plaintiff and two defendants. The plaintiff seeks to add a third party who has an interest in the subject matter of the action and whose absence would impair complete relief. Under FRCP 19, what is required?

- A. The third party must consent to joinder
- B. Under FRCP 19, a person whose absence would (1) prevent complete relief among existing parties, (2) impair or impede the absent person's ability to protect a related interest, or (3) leave existing parties subject to substantial risk of inconsistent obligations is a "required party" and must be joined if feasible; if joinder is infeasible (e.g., would destroy diversity), the court determines whether to proceed without the party or dismiss for non-joinder under FRCP 19(b)
- C. The third party may be joined automatically
- D. The plaintiff may not add new parties

12. A defendant is on trial for the murder of his wife. The defense argues that the defendant was insane at the time of the killing. The jurisdiction applies the Durham (product) test for insanity, which has been largely abandoned but retained by some courts. What must the defense show?

- A. Under the Durham (product) test, the defense must show that the criminal act was the product of mental disease or defect; this test is broader than the M'Naghten or irresistible impulse tests because it does not require specific cognitive or volitional impairment, but most jurisdictions have abandoned it in favor of the ALI/MPC or M'Naghten tests because of its imprecision
- B. The defendant must show specific cognitive impairment
- C. The defendant must show specific volitional impairment

D. The defendant must show both cognitive and volitional impairment

13. A buyer signs a written contract with a seller for the sale of 10 acres of farmland. The contract specifies "current condition" and an "as-is" provision. After signing, the buyer discovers that the property has an underground oil tank leaking contamination. The seller knew about the contamination but did not disclose it. The buyer sues for fraud and seeks rescission. May the buyer rescind?

A. No, because the contract is "as-is"

B. No, because the buyer should have investigated

C. No, because the contamination was unknown to both parties

D. Despite an "as-is" provision, the seller's active concealment or knowing failure to disclose known material defects may constitute fraud; the buyer may rescind based on fraudulent misrepresentation or concealment, and the "as-is" clause generally does not protect against active fraud or affirmative misrepresentations

14. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel the defendant to produce documents reflecting confidential financial information. The defendant moves for a protective order. What is the proper standard?

A. The court must defer to the defendant's preferences

B. The defendant must produce all documents

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

D. The defendant may refuse all production

15. A defendant is on trial for assault. The prosecution offers as evidence a statement made by the alleged victim to a nurse at the hospital immediately after the assault, describing the assailant and the manner of attack. The defense objects on hearsay grounds. What is the proper analysis?

- A. The statement is inadmissible because it is hearsay
- B. Under FRE 803(4), statements made for purposes of medical diagnosis or treatment — including statements describing the cause of injury when reasonably pertinent to diagnosis or treatment — are admissible as exceptions to the hearsay rule; statements identifying the assailant by name are sometimes excluded as not pertinent to treatment, depending on the circumstances and the relationship between identification and treatment
- C. The statement is admissible only as character evidence
- D. The statement is inadmissible because it is too remote

16. A federal lawsuit is filed by a plaintiff against a defendant. The defendant moves to dismiss for failure to state a claim under FRCP 12(b)(6). The plaintiff's complaint alleges facts that, if true, would establish all elements of the cause of action with specificity. What is the proper outcome?

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

17. A defendant is on trial for the federal crime of distribution of narcotics. The prosecution offers as evidence the testimony of a confidential informant. The defense seeks to compel disclosure of the informant's identity. The prosecution argues the informant's identity is privileged. Under *Roviaro v. United States*, what result?

- A. The informant's identity must be disclosed automatically
- B. The informant's identity is absolutely privileged
- C. The court must defer to the prosecution

D. Under *Roviaro v. United States*, the informant's privilege is qualified, not absolute; the court balances the public interest in protecting the flow of information against the defendant's right to prepare a defense, considering factors including the relevance of the informant's testimony to the defense, the seriousness of the charges, and the importance of the informant to the prosecution's case

18. A grantor conveys property "to A, but if the property is no longer used as a single-family residence, the property reverts to the grantor." A converts the property to a multi-family rental. The grantor's heirs sue to claim the property. What result?

A. The grantor's heirs automatically reclaim the property

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

C. The grantor's deed creates a fee simple determinable in A with a possibility of reverter in the grantor; the possibility of reverter passes to the grantor's heirs and is exempt from the Rule Against Perpetuities; if the condition (single-family residence) is violated, the property automatically reverts without affirmative action by the grantor's heirs

D. The grantor's interest is automatically void

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

A. Under *Franks v. Delaware*, the defendant must show by a preponderance that (1) the affidavit contained a deliberately false statement or one made with reckless disregard for the truth, AND (2) the false statement was necessary to a finding of probable cause; if the affidavit's remaining content provides probable cause without the false statements, the warrant is upheld and the evidence is admitted

B. The evidence is automatically admissible

C. The evidence must be excluded if any error appears

D. The evidence must be excluded if the defendant proves any falsehood

20. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of subsequent remedial measures the defendant took after the alleged harm to prove the existence of an unsafe condition. The defendant objects under FRE 407. What is the proper analysis?

A. The evidence is automatically admissible

B. Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning. The rule does not bar evidence offered for other purposes (such as ownership, control, or feasibility of precautionary measures if controverted), but proving the "existence of an unsafe condition" is essentially proving negligence and is barred

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

D. The evidence is admissible only to show the existence of damages

21. A state law requires all candidates for state office on the state's ballot to be at least 30 years old. A 28-year-old who meets all federal constitutional qualifications for the office is denied a place on the ballot. He challenges the law under the Equal Protection Clause. What is the proper standard of review?

A. Strict scrutiny applies because the classification burdens fundamental rights

B. Intermediate scrutiny applies because age is a quasi-suspect class

C. No review applies because the state has unlimited authority to set qualifications

D. Under the Equal Protection Clause, age classifications generally receive rational basis review because age is not a suspect class; the state need only show the classification is rationally related to a legitimate government interest, which age-based qualifications for state office easily satisfy

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

A. The court considers only the cash payments

B. The court considers only the attorney's fees

C. Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, the relative bargaining power of the parties, and the reasonableness of attorney's fees in proportion to class relief

D. The court considers only the named plaintiffs' preferences

23. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims the defendant said, two days before the killing, "I'm going to take care of him." The defense objects on hearsay grounds. Should the testimony be admitted?

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

B. No, because the statement is hearsay

C. The statement is admissible only as character evidence

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

24. A federal lawsuit is filed by a plaintiff. The defendant counterclaims for fraud. The plaintiff fails to respond. The defendant moves for default judgment on the counterclaim. The plaintiff opposes, arguing that the answer to the counterclaim is included in the plaintiff's original pleading. Under FRCP 12(a)(1)(B), what is the result?

A. The plaintiff's original pleading addresses the counterclaim

B. Under FRCP 12(a)(1)(B), the plaintiff has 21 days after service of a counterclaim to respond; the plaintiff's original pleading does not satisfy this requirement because it was filed before the counterclaim. The plaintiff must file a separate answer to the counterclaim, and failure to do so may result in default

C. The plaintiff has 60 days to respond

D. The plaintiff is not in default because counterclaims are part of the original case

25. A defendant is on trial for the federal crime of conspiracy. The defense argues that the defendant cannot be convicted of conspiracy alone if all alleged co-conspirators have been acquitted. Under the modern view, what result?

- A. Acquittal of all co-conspirators automatically requires acquittal of the defendant
- B. The defendant cannot be convicted unless all co-conspirators are convicted
- C. The defendant cannot be convicted of conspiracy with only himself
- D. Under the modern view (and the Model Penal Code's "unilateral" approach), the defendant may be convicted of conspiracy even when all alleged co-conspirators are acquitted, particularly if the prosecution proves the defendant believed he was conspiring with another person; the bilateral common-law approach requiring two actual co-conspirators has been largely abandoned

26. A buyer and seller enter into a written contract for the sale of 1,000 widgets at \$20 each. The contract requires delivery within 30 days and specifies that "time is of the essence." The seller delivers the widgets one day late. The buyer rejects the delivery. Under the UCC, what is the proper analysis?

- A. Under UCC § 2-601 (the perfect tender rule), the buyer may reject goods that fail in any respect to conform to the contract, including those tendered late; however, when the contract specifies "time is of the essence," strict compliance with timing is generally required, and one day's delay may justify rejection in some circumstances. Some courts allow some flexibility under the good faith requirement, particularly when the delay is brief and does not materially affect the buyer
- B. The buyer's rejection is automatically valid for any delay
- C. The buyer must accept goods regardless of timing
- D. The buyer can reject only with the seller's consent

27. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory damages and punitive damages. The state has a substantive law requiring that punitive damages be proven by clear and convincing evidence and limited to a multiple of compensatory damages. The defendant argues the federal court should not award punitive damages under these state-law restrictions. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies state substantive law including state-law burden of proof requirements and damage limitations on punitive damages; both are substantive law affecting the measure of recovery and outcome of the case
- D. The federal court applies whichever rule produces uniformity

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

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

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

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

30. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant in a photo lineup. The defense argues the lineup was unduly suggestive. What is the proper analysis?

A. The identification is automatically excluded

B. The identification is admissible because lineups are presumptively reliable

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

D. The court must defer to the police officer's account

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

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

B. The court must find by clear and convincing evidence

C. The court must find by beyond a reasonable doubt

D. The court defers to the police officer's account

32. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory damages for emotional distress without accompanying physical injury. The state has a substantive law allowing such damages only when the plaintiff is in the "zone of danger" — physically present at the scene and at risk of harm. The defendant argues that federal common law of emotional distress should apply. What is the proper outcome?

- A. The federal court applies federal common law on emotional distress
- B. The federal court applies federal procedural rules
- C. Under Erie, the federal court applies the state's substantive law including state-law restrictions on emotional distress damages (such as the zone-of-danger rule); these restrictions are substantive because they affect whether and how much may be recovered
- D. The federal court applies whichever rule produces uniformity

33. A defendant is on trial for the murder of his wife. The defense seeks to introduce evidence that the wife had previously threatened the defendant on several occasions. The prosecution objects, arguing this is character evidence. What is the proper analysis?

- A. The wife's prior threats are inadmissible because they are character evidence
- B. The wife's prior threats are inadmissible because they are too remote
- C. The wife's prior threats are inadmissible without corroboration
- D. Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense is at issue; specific prior acts of the victim known to the defendant (such as prior threats) are admissible to show the defendant's reasonable apprehension of danger and to support the self-defense claim

34. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery of certain corporate documents. The defendant claims the documents are protected by the attorney-client privilege because they were shared with the corporation's outside accountants for tax planning purposes. The plaintiff argues the privilege has been waived through this disclosure. What is the proper analysis?

- A. The privilege is absolutely waived by any disclosure
- B. Under *United States v. Kovel* and its progeny, the attorney-client privilege may extend to communications with non-lawyer experts (such as accountants) who are necessary for the lawyer's provision of legal advice, provided the communication is made for the purpose of obtaining legal advice and confidentiality is maintained. However, sharing documents with accountants for purposes other than facilitating legal advice may waive the privilege

- C. The privilege is never waived by disclosure
- D. The privilege requires consent of the third party

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

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

36. A federal court is hearing a state-law contract case in diversity. The defendant raises the affirmative defense of frustration of purpose, alleging that a regulatory change after contract formation has made performance worthless to the defendant. The plaintiff argues that frustration is a doctrine of federal common law. What is the proper outcome?

- A. Under Erie, the federal court applies state substantive law including doctrines of contract performance such as frustration of purpose; frustration is part of substantive contract law affecting whether the obligation may be excused
- B. Federal law governs all frustration questions
- C. The federal court applies the parties' choice of law
- D. The court applies whichever rule produces uniformity

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

A. The statement is hypothetical and inadmissible

B. The statement is admissible only as character evidence

C. The statement is inadmissible because it is too remote

D. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of whether the statement was hypothetical or conditional; the statement is also admissible under FRE 404(b) as evidence of motive and intent, and FRE 803(3) as state-of-mind evidence

38. A federal court has jurisdiction over a class action. The named plaintiffs propose a settlement. Class members are notified. Some class members object that the settlement is unfair to certain subclasses. Under FRCP 23(e), what is required?

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

B. Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering relevant factors; concerns about intra-class fairness and inadequate representation may require subclass certification or restructured settlement to ensure all class members receive adequate representation

C. The court must defer to the parties' agreement

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

39. A defendant is on trial for assault. The prosecution offers a witness who claims to have seen the defendant attack the victim. On cross-examination, the defense asks the witness about her vision in the relevant lighting conditions. The prosecution objects. Is the question allowed?

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

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

C. The question is permissible because the witness's perceptual abilities — including her vision in the relevant lighting conditions — are directly relevant to the reliability of her observations; perceptual capacity is a proper subject of cross-examination on credibility

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

40. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing for prejudgment interest at 8%. The defendant argues that the federal court should not award prejudgment interest. What is the proper outcome?

A. Under Erie, the federal court applies the state's substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action; the state's 8% rate is substantive law and must be applied

B. The federal court applies federal common law on interest

C. The federal court applies federal procedural rules

D. The federal court applies whichever rule produces uniformity

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

A. The prosecution must prove by clear and convincing evidence

B. The prosecution must prove beyond a reasonable doubt

C. The court defers to the police officer's account

D. Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent

42. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks discovery of documents from the defendant. The defendant claims the documents are protected by the work product doctrine because they were prepared by counsel in anticipation of litigation. The plaintiff argues that the documents are needed and not available from other sources. Under FRCP 26(b)(3), what is the proper standard?

A. Work product is absolute

B. Under FRCP 26(b)(3), work product is generally protected from disclosure; however, ordinary work product may be discoverable upon a showing of substantial need AND undue hardship in obtaining the substantial equivalent. Opinion work product (mental impressions, conclusions, legal theories) receives nearly absolute protection

C. Work product is freely discoverable

D. Work product applies only to documents prepared by lawyers

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

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

B. No, because the statement is hearsay

C. The statement is admissible only as character evidence

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

44. A federal lawsuit is filed by a plaintiff against a defendant. The plaintiff seeks to depose a non-party witness who is the defendant's former employee. The defendant objects, arguing the deposition is unnecessary because the employee can be interviewed informally. Under FRCP 30, what is the proper analysis?

A. The deposition is automatically permissible

B. The deposition requires the non-party's consent

C. Under FRCP 30, the plaintiff may take the deposition of any person without the consent of any party, subject to the time limits of FRCP 30(d) (typically one day of 7 hours) and the requirements of FRCP 26(b) regarding the scope and limits of discovery; the defendant's preference for informal interviews does not bar the deposition

D. The deposition requires court approval

45. A defendant is convicted of armed robbery. On appeal, the defendant argues that the trial court erred by admitting his confession because police failed to give Miranda warnings before questioning him in his car after a traffic stop. The defendant was not arrested and was free to leave. Under *Berkemer v. McCarty*, what result?

A. The confession is inadmissible because Miranda warnings are required for any police questioning

B. The confession is inadmissible because traffic stops automatically constitute custody

C. The confession is admissible because the defendant was not in custody

D. Under *Berkemer v. McCarty* and *Miranda v. Arizona*, Miranda warnings are required only when the suspect is (1) in custody AND (2) being interrogated; a routine traffic stop typically does not constitute custody because the detention is brief, the questioning is investigatory, and a reasonable person would not believe she was under formal arrest; the confession is therefore admissible

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

A. Under FRE 404(b), evidence of prior bad acts may be admissible for permissible non-propensity purposes including motive, intent, opportunity, preparation, plan, knowledge, identity, or absence of mistake; modus operandi requires that the prior conduct share distinctive features with the charged offense such that the inference of common authorship is warranted, and the court must balance probative value against unfair prejudice under FRE 403

B. Modus operandi is automatically admissible

C. Modus operandi is automatically inadmissible

D. Modus operandi is admissible only with the defendant's consent

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

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

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

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

D. No, because the question seeks specific acts

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

A. The plaintiffs must show the defendant has acted on grounds applicable to the entire class

B. Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy; both predominance and superiority must be satisfied, and the court considers the factors enumerated in 23(b)(3)(A)-(D)

C. The plaintiffs must show that prosecuting separate actions would create inconsistent adjudications

D. The plaintiffs must show that all class members consent

49. A defendant is on trial for the federal crime of mail fraud. The defense calls a character witness who testifies that the defendant has a reputation for honesty in the community. On cross-examination, the

prosecution asks whether the witness has heard about the defendant's prior arrest for forgery. The defense objects. Is the question allowed?

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

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

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

51. A defendant is on trial for the murder of his neighbor. The defense argues that the killing was committed in the heat of passion after the neighbor insulted the defendant. The prosecution argues that mere words are insufficient provocation. What is the proper analysis?

- A. Under the common law heat of passion doctrine, adequate provocation traditionally required physical conduct or some grievous wrong; "mere words," however offensive or insulting, were generally considered insufficient to constitute adequate provocation, even where the words were highly

inflammatory. Modern jurisdictions have varied somewhat, but the words-alone rule remains influential in many states

- B. Heat of passion always applies after insults
- C. Heat of passion never applies
- D. Heat of passion requires immediate response to provocation

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

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

53. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant from a six-person lineup. The defense argues that the lineup was unduly suggestive because the defendant was the only one of his ethnicity in the lineup. What is the proper analysis?

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

54. A federal court has jurisdiction over a complex commercial case. The plaintiff seeks to amend the complaint to add a new claim arising from a separate transaction. The defendant objects, arguing the amendment is improper. Under FRCP 15(a), what is the proper standard?

A. Leave is granted as a matter of right

B. Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires"; the court considers factors including undue delay, prejudice, futility, and bad faith, but new claims arising from different transactions may still be added if these factors are satisfied; the general policy favors amendment to allow disputes to be resolved on the merits

C. Leave is denied unless the new claim is meritorious

D. Leave requires consent of all defendants

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

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

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

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

D. No, because hearsay rules bar the testimony

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

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

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

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

D. The motion is denied automatically

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

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

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

C. No, because hearsay rules bar the testimony

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

58. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery of documents from the defendant. The defendant claims the documents are protected by the joint defense privilege because they were shared with co-defendants' counsel in a related case. What is the proper analysis?

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

B. Under the joint defense (or common interest) privilege, parties with a common legal interest may share information without waiving the attorney-client privilege; the privilege requires (1) a common legal interest (not merely commercial), (2) the communication made in furtherance of that interest, and (3) confidentiality maintained

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

D. The joint defense privilege requires explicit consent

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

A. Only the person who recorded the videotape can authenticate it

B. Videotapes are inadmissible unless self-authenticating

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

D. Videotapes require expert testimony

60. A federal court is hearing a state-law contract case in diversity. The state has a substantive law providing that contracts must be in writing if they exceed \$1,000. The defendant moves to dismiss because the alleged contract was oral. The plaintiff argues that the partial performance exception applies. What is the proper analysis?

A. Under Erie, the federal court applies the state's statute of frauds AND state-law exceptions to it (such as partial performance); both the rule and the exception are substantive because they affect contract enforceability, and the federal court must apply both consistently

B. The federal court applies federal common law on contracts

C. The federal court applies federal procedural rules on contract enforcement

D. The federal court applies whichever rule produces uniformity

61. A defendant is on trial for the murder of his neighbor. The prosecution offers testimony from a witness who claims to have seen the defendant outside the neighbor's home shortly before the killing. The defense argues this is insufficient to prove the defendant committed the killing. What is the proper analysis?

A. Circumstantial evidence is inadmissible in criminal cases

B. Circumstantial evidence requires direct corroboration

C. Under Jackson v. Virginia, circumstantial evidence is admissible and may support a conviction if a rational jury could find guilt beyond a reasonable doubt; direct evidence is not required, and the totality of circumstantial evidence may be sufficient

D. Circumstantial evidence is conclusive of guilt

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

A. The defendant has no obligation

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

C. The plaintiff's recovery is reduced

D. The defendant is liable for the plaintiff's costs

63. A defendant is convicted of murder. On appeal, the defendant argues that his Sixth Amendment right to counsel was violated because police questioned him after he had been formally indicted but before counsel was appointed. Under Massiah v. United States, what result?

A. The questioning is permissible because the defendant did not invoke his right to counsel

B. The questioning is permissible because the defendant voluntarily spoke

C. The questioning is permissible if the defendant initiated the conversation

D. Under Massiah v. United States, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment; deliberate elicitation of statements from an indicted defendant without counsel violates the right, and statements obtained must be suppressed

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

A. Under Erie, the federal court applies the state's substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery; the state's restriction on emotional distress damages applies

B. The federal court applies federal common law on damages

C. The federal court applies federal procedural rules

D. The federal court applies whichever rule produces uniformity

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

A. Prior crimes are inadmissible to show character

B. Prior crimes are inadmissible if too remote

C. Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi, where the prior conduct shares distinctive features with the charged offense; three similar schemes within two years are probative of intent, knowledge, and scheme, and must satisfy FRE 403's balancing

D. Prior crimes are inadmissible unless charged

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

A. Voluntary intoxication is never a defense to murder

B. Under the common law, voluntary intoxication may negate the specific intent (premeditation and deliberation) required for first-degree murder; the intoxication evidence is relevant to whether the defendant could form the specific mental state, but voluntary intoxication generally is not a defense to

murder under a depraved heart or felony murder theory, both of which require only general intent or recklessness

- C. Voluntary intoxication is automatically a defense
- D. Voluntary intoxication is a defense to general intent crimes

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

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

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

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

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

- A. The plaintiffs must show that all class members consent

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

C. The plaintiffs must show that common questions predominate over individual questions

D. The plaintiffs must show that damages are certain

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

A. The identification is automatically excluded

B. The identification is automatically admitted

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

D. The court must defer to the police officer's account

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

A. Settlement evidence is automatically admissible

B. Settlement evidence is admissible only to show motive

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

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

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

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

B. Intoxication is never a defense

C. Voluntary intoxication is a complete defense

D. Voluntary intoxication is a defense to general intent crimes

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

A. The court considers only the cash payments

B. The court considers only the attorney's fees

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

D. The court considers only the named plaintiffs' preferences

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

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

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

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

D. No, because hearsay rules bar the testimony

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

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

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

- A. No, because the statement is hearsay
- B. The statement is admissible only as character evidence
- C. No, because the statement is too remote in time
- D. Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of remoteness in time which affects weight rather than admissibility; the statement is also admissible under FRE 404(b) as evidence of motive and intent

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

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

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

A. No, because arrests are unproven

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

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

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

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

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

B. Prior bad acts are always admissible

C. Prior bad acts are always inadmissible

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

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

A. The search is unconstitutional because all searches require warrants

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

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

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

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

A. Specific performance is automatic for all contract disputes

B. Specific performance is the remedy of choice for breach of a contract for a unique chattel (such as antiques, art, or one-of-a-kind goods) because monetary damages are inadequate; the uniqueness of the subject matter justifies equitable relief, and the buyer is entitled to specific performance

C. Specific performance is denied because monetary damages are always available

D. Specific performance requires consent of both parties

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

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

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

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

D. No, because hearsay rules bar the testimony

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

- A. Under FRCP 45, a non-party served with a subpoena may object on grounds including undue burden, expense, or privilege; the court must quash or modify a subpoena that subjects a person to undue burden, and may also condition production on cost-shifting or other protective measures
- B. Non-parties must comply with all discovery requests
- C. Non-parties may refuse all discovery
- D. Non-parties must obtain consent of all parties before objecting

84. A defendant is on trial for the federal crime of bank robbery. The prosecution offers a confession given by the defendant during interrogation. The defense argues the confession was obtained after the defendant said "I think I want a lawyer." The prosecution argues this statement was ambiguous. Under *Davis v. United States*, what result?

- A. The confession is automatically inadmissible
- B. The confession is admissible regardless of the statement
- C. The confession is admissible if voluntary
- D. Under *Davis v. United States*, the suspect's invocation of the right to counsel must be unambiguous and unequivocal; "I think I want a lawyer" or "Maybe I should talk to a lawyer" are generally considered ambiguous and do not require police to cease questioning; the confession is admissible if it was otherwise voluntary

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

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

86. A defendant is on trial for the murder of his sister. The prosecution offers testimony from a witness who claims the defendant said, "She has caused me too much pain" two days before the killing. The defense objects on hearsay grounds. Should the testimony be admitted?

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

87. A federal court has jurisdiction over a class action against a corporation. The plaintiffs seek certification under FRCP 23(b)(1)(A). What standard applies?

- A. Under FRCP 23(b)(1)(A), the plaintiffs must show that prosecuting separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the defendant; the focus is on the defendant's potential for being subject to conflicting requirements, not just any risk of inconsistent results
- B. (b)(1)(A) requires only the FRCP 23(a) requirements
- C. (b)(1)(A) requires only that the defendant request certification
- D. (b)(1)(A) requires unanimous consent of class members

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

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

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

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

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

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

91. A federal court has jurisdiction over a complex commercial litigation. The plaintiff seeks to compel discovery from the defendant. The defendant moves for a protective order, arguing that the requested documents contain trade secrets. What is the proper procedure?

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

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

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

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

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

94. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a warrantless seizure of his cell phone, which was searched incident to his arrest. Under *Riley v. California*, what result?

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

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

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

B. The court must defer to the parties' agreement

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

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

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

A. Plea agreements are inadmissible to prove the witness's truthfulness

B. Plea agreements are admissible only to show motive

C. Plea agreements are inadmissible because they prejudice the prosecution

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

97. A federal lawsuit involves a plaintiff and three defendants. After answering, one defendant files a third-party complaint against a fourth party seeking contribution for the plaintiff's claim. Under FRCP 14, what is required?

A. The plaintiff must consent to impleader

B. Under FRCP 14, a defending party may, as a third-party plaintiff, serve a summons and complaint on a non-party who is or may be liable to the third-party plaintiff for all or part of the claim against it; impleader is intended to promote efficiency by resolving derivative liability in one action, and is permitted without leave of court if filed within 14 days after the defendant's original answer

- C. Impleader requires court approval
- D. Impleader is allowed only for indemnity claims

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

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

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

- A. The motion is granted because diversity must continue
- B. The motion is granted because the defendant's relocation defeats diversity
- C. The motion is granted because the parties must remain diverse
- D. Under the well-established time-of-filing rule, diversity jurisdiction is determined at the time the action is filed; subsequent changes in citizenship by the parties do not defeat jurisdiction, even if they would have defeated diversity if they had occurred before filing

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

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

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

Section 2 — Questions 101 through 200 (3 Hours)

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

- A. The court must retain jurisdiction over all related claims
- B. The court must transfer the case to state court
- C. Under 28 U.S.C. § 1367(c) and *Carnegie-Mellon v. Cohill*, when the federal claim has been dismissed, the court has discretion to decline supplemental jurisdiction; the court considers judicial economy, convenience, fairness, and comity in exercising this discretion, and dismissal is often appropriate when the federal claim is dismissed before substantial federal proceedings
- D. The court must dismiss the state-law claim automatically

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

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

103. A federal court is hearing a state-law breach of contract case in diversity. The state has a substantive law providing that the plaintiff must give the defendant written notice of breach within 60 days. The

plaintiff missed the deadline. The plaintiff argues that federal pleading rules govern. What is the proper outcome?

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

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

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

105. A federal court has jurisdiction over a complex commercial case. The plaintiff moves to compel production of documents from the defendant. The defendant claims the documents are protected by the work product doctrine because they were prepared by counsel in anticipation of litigation. Under FRCP 26(b)(3), what is the proper standard?

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

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

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

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

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

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

- A. No, because the wife's character is irrelevant
- B. Yes, but only after the prosecution provides advance notice
- C. No, because reputation evidence is inadmissible

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

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

A. Under Erie, the federal court applies state substantive law including state-law burden of proof requirements; the state's clear and convincing standard for gross negligence against state entities is substantive because it affects the outcome of the case

B. The federal court applies federal common law on burden of proof

C. The federal court applies the preponderance standard as the federal default

D. The federal court applies whichever rule produces uniformity

110. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained from a search of his home pursuant to a warrant. The defense alleges the warrant was issued based on stale information from observations made four months earlier. What is the proper analysis?

A. Stale information automatically invalidates a warrant

B. Information used in a warrant application is always sufficient if in writing

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

D. Four-month-old information is always stale

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

- A. The court must order in camera review of all documents
- B. Under FRCP 26(b)(5), a party withholding documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court then evaluates the validity of the privilege claim, potentially through in camera review
- C. The defendant must produce all documents
- D. The defendant may refuse all production

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

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

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

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

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

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

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

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

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

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

117. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks to introduce evidence of subsequent remedial measures the defendant took after the alleged harm. The defendant objects under

FRE 407. The plaintiff argues the evidence is offered to prove ownership of the premises. What is the proper analysis?

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

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

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

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

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

- C. The new defendant must consent to be added
- D. The new defendant cannot be added under any circumstances

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

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

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

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

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

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

- B. No, because the conviction is too remote in time
- C. No, because the question is more prejudicial than probative
- D. No, because the question seeks specific acts

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

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

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

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

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

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

126. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting his confession because police failed to give Miranda warnings before questioning him in custody. The prosecution argues the confession was voluntary. May the confession be used?

- A. Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently; voluntariness does not cure the Miranda violation for case-in-chief purposes
- B. The confession is admissible if voluntary
- C. The confession is inadmissible for any purpose
- D. The confession is admissible because Miranda warnings are not constitutionally required

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

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

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

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

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

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

130. A defendant is on trial for the murder of his wife. The defense argues that the killing was committed in the heat of passion after the defendant discovered the wife's infidelity. The prosecution argues that the time between discovery and killing was sufficient for cooling off. What is the proper analysis?

- A. Heat of passion never applies to spousal killings
- B. Heat of passion always applies after discovery of infidelity
- C. Under the common law heat of passion doctrine, voluntary manslaughter requires (1) adequate provocation, (2) actual heat of passion at the time of the killing, (3) insufficient cooling-off time, and (4) a causal connection between provocation, passion, and the fatal act; whether cooling-off has occurred is a factual question for the jury
- D. Heat of passion requires the killing to occur during the provoking event

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

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

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

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

133. A federal court is hearing a state-law tort case in diversity. The plaintiff seeks compensatory damages for emotional distress without accompanying physical injury. The state has a substantive law allowing such damages only when the plaintiff is in the "zone of danger." The defendant argues that the federal court should apply this state rule. What is the proper outcome?

- A. The federal court applies federal common law on damages
- B. The federal court applies federal procedural rules
- C. The federal court applies whichever rule produces uniformity

D. Under Erie, the federal court applies the state's substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery; the state's "zone of danger" restriction applies

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

A. The videotape is inadmissible because it was made without consent

B. The videotape is inadmissible because security cameras require warrants

C. The videotape requires expert testimony

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

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

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

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

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

D. No, because reputation evidence is inadmissible

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

A. The court considers only the plaintiff's likelihood of success

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

C. The court considers only the defendant's hardship

D. The court considers only the public interest

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

A. Flight evidence is inadmissible

B. Flight evidence is conclusive of guilt

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

D. Flight evidence requires direct physical evidence

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

A. The federal court applies federal common law on interest

B. The federal court applies federal procedural rules

C. The federal court applies whichever rule produces uniformity

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

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

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

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

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

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

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

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

- A. Prior bad acts are always admissible
- B. Prior bad acts are always inadmissible

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

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

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

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

B. Prior crimes are inadmissible to show character

C. Prior crimes are inadmissible if too remote

D. Prior crimes are inadmissible unless charged

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

A. The court considers only the cash payments

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

C. The court considers only the attorney's fees

D. The court considers only the named plaintiffs' preferences

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

A. No, because the statement is hearsay

B. The statement is admissible only as character evidence

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

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

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

A. Evidence of net worth is automatically inadmissible

B. Evidence of net worth requires special permission

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

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

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

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

B. The videotape is inadmissible because it was made without consent

C. The videotape is inadmissible because security cameras require warrants

D. The videotape requires expert testimony

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155. A defendant is convicted of murder. On appeal, the defendant argues that the trial court erred by admitting evidence obtained pursuant to a search warrant. The defense alleges the warrant was issued based on the tip of a confidential informant. Under *Illinois v. Gates*, what is the proper analysis?

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

156. A federal court has jurisdiction over a class action against a corporation. The named plaintiffs propose a settlement. Class members are notified. Some class members object that the attorney's fees are excessive in relation to the relief provided. The court must determine whether to approve the settlement. Under FRCP 23(e), what is required?

- A. The court must approve the settlement because settlement is favored
- B. The court must approve the settlement unless all objections are sustained
- C. The court must approve the settlement if the named plaintiffs agree

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

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

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

B. No, because the statement is hearsay

C. The statement is admissible only as character evidence

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

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

A. Prior bad acts are always admissible

B. Prior bad acts are always inadmissible

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

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

159. A defendant is on trial for armed robbery. The prosecution offers eyewitness testimony from the bank teller who identified the defendant from a six-person lineup. The defense argues the lineup was unduly suggestive because the defendant was the only one without facial hair. What is the proper analysis?

A. The identification is automatically excluded

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

C. The identification is automatically admitted

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

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

A. Specific performance is automatic for all contract disputes

B. The federal court applies federal common law on remedies

C. The federal court applies federal procedural rules

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

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

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

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

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

D. No, because hearsay rules bar the testimony

162. A federal court has jurisdiction over a complex commercial case. The plaintiff seeks to compel discovery from the defendant. The defendant moves for a protective order, arguing that the requested documents are highly confidential. What is the proper procedure?

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

B. The defendant must produce the documents

C. The defendant may refuse all production

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

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

A. The videotape is inadmissible because it was made without consent

B. The videotape is inadmissible because security cameras require warrants

C. The videotape requires expert testimony

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

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

A. Prior bad acts are always admissible

B. Prior bad acts are always inadmissible

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

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

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

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

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

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

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

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

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

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

169. A defendant is on trial for the federal crime of conspiracy. The defense argues that the defendant cannot be convicted of conspiracy alone if all alleged co-conspirators have been acquitted. Under the modern view, what result?

- A. Acquittal of all co-conspirators automatically requires acquittal of the defendant
- B. Under the modern view (and the Model Penal Code's unilateral approach), the defendant may be convicted of conspiracy even when all alleged co-conspirators are acquitted, particularly if the prosecution proves the defendant believed he was conspiring with another person; the bilateral common-law approach requiring two actual co-conspirators has been largely abandoned
- C. The defendant cannot be convicted unless all co-conspirators are convicted
- D. The defendant cannot be convicted of conspiracy with only himself

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

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

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

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

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

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

173. A defendant is convicted of armed robbery. On appeal, the defendant argues that the trial court erred by admitting evidence obtained pursuant to a warrant. The defense alleges the affidavit contained falsehoods made with reckless disregard for the truth. Under *Franks v. Delaware*, what result?

- A. Under *Franks v. Delaware*, the defendant must show by a preponderance that (1) the affidavit contained a deliberately false statement or one made with reckless disregard for the truth, AND (2) the false statement was necessary to a finding of probable cause; if both prongs are shown, the evidence must be excluded
- B. The evidence is automatically admissible
- C. The evidence must be excluded if any error appears
- D. The evidence must be excluded if the defendant proves a false statement

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

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

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

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

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

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

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

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

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

- A. Under FRCP 45 and FRCP 26(b)(5), a third party served with a subpoena who withholds documents on privilege grounds must produce a privilege log identifying the documents and the nature of the privilege claimed; the court evaluates the validity of the privilege claim, potentially through in camera review
- B. The court must order production
- C. The third party may refuse all production
- D. The court must defer to the third party's representations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188. A federal court has jurisdiction over a complex commercial case. The plaintiff seeks to amend the complaint to add a new claim arising from a separate transaction. The defendant objects. Under FRCP 15(a), what is the proper standard?

- A. Leave is granted as a matter of right
- B. Leave is denied unless the new claim is meritorious
- C. Leave requires consent of all defendants
- D. Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires"; the court considers factors including undue delay, prejudice, futility, and bad faith, but new claims arising from different transactions may still be added if these factors are satisfied

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

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

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

- A. Settlement evidence is automatically admissible
- B. Settlement evidence is admissible only with the defendant's consent
- C. Under FRE 408, evidence of compromise offers, settlements, and conduct or statements made during compromise negotiations is generally inadmissible to prove liability for, invalidity of, or amount of a disputed claim; the rule encourages settlement by ensuring related conduct is not used as evidence at trial
- D. Settlement evidence is admissible only to show motive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRACTICE EXAM 9 — ANSWER KEY WITH FULL EXPLANATIONS

1. D — Under the First Amendment public forum doctrine, traditional public forums (such as the steps of city hall) receive the strongest First Amendment protection. Even content-neutral time, place, and manner restrictions must be narrowly tailored to serve a significant government interest, leave open ample alternative channels, and not give officials unbridled discretion in granting permits.

2. A — Under FRCP 4(c)(1), the summons must be served together with a copy of the complaint. Service that fails to include the complaint is defective, although the court may permit cure rather than dismiss the action outright, particularly when there is no prejudice to the defendant.

3. C — Under the common law, withdrawal from a conspiracy requires the defendant to (1) take affirmative steps to disassociate, (2) communicate the withdrawal to all co-conspirators in time for them to abandon the conspiracy, AND (3) the withdrawal must occur before any overt act in furtherance of the conspiracy. Telephoning co-conspirators after overt acts have begun does not establish withdrawal.

4. B — B's interest is a vested remainder subject to total divestment (sometimes called a vested remainder subject to a condition subsequent). B's interest is vested because B is ascertained and there is no condition precedent to vesting, but the interest may be divested if B predeceases A.

5. D — Under *International Shoe* and its progeny (including *J. McIntyre Machinery v. Nicastro*), specific personal jurisdiction requires the defendant to have "purposefully availed" itself of the forum state, and the claim must arise out of or relate to those contacts. Targeted online sales directed at the forum may satisfy purposeful availment if substantial and forum-specific.

6. C — Under FRE 501 and most state codifications, the clergy-penitent privilege protects confidential communications made to a clergyperson acting in his professional spiritual capacity. The privilege is held by the penitent (with some jurisdictions also giving the clergyperson a privilege), and statements made for spiritual counseling are generally protected.

7. B — Under UCC § 2-708(2), when the standard formula (contract price minus market price or resale) is inadequate to put the seller in as good a position as performance would have, the seller recovers lost profit (plus reasonable overhead, incidental damages, and costs reasonably incurred) on a "lost volume seller" theory or for custom goods. The formula must adequately compensate the seller.

8. A — Under *Miranda v. Arizona* and the Due Process Clause, statements obtained by physical coercion, threats, or psychological pressure are inadmissible. A state law authorizing "any reasonable means" — including pressure tactics that may shade into coercion — is unconstitutional on its face because it sweeps too broadly into prohibited coercive conduct.

9. C — Under *United States v. Wade* and *Manson v. Brathwaite*, the court conducts a pretrial Wade hearing to determine whether the identification procedure was unduly suggestive and, if so, whether the identification is nevertheless reliable under the totality of the circumstances using the Biggers/Brathwaite reliability factors.

10. D — Under Erie, the federal court applies the state's joint and several liability rule because the allocation of damages among tortfeasors is substantive law affecting the measure of recovery. The federal court does not apply pure several liability as a default when state law provides otherwise.

11. B — Under FRCP 19, a person whose absence would prevent complete relief, impair the absent person's ability to protect a related interest, or leave existing parties subject to substantial risk of inconsistent obligations is a "required party" and must be joined if feasible. If joinder is infeasible, the court determines whether to proceed without the party or dismiss for non-joinder under FRCP 19(b).

12. A — Under the Durham (product) test, the defense must show that the criminal act was the product of mental disease or defect. This test is broader than M'Naghten or irresistible impulse, but most jurisdictions have abandoned Durham in favor of the ALI/MPC or M'Naghten tests because of its imprecision.

13. D — Despite an "as-is" provision, the seller's active concealment or knowing failure to disclose known material defects may constitute fraud. The buyer may rescind based on fraudulent misrepresentation or concealment, and the "as-is" clause generally does not protect against active fraud or affirmative misrepresentations.

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

15. B — Under FRE 803(4), statements made for purposes of medical diagnosis or treatment — including statements describing the cause of injury when reasonably pertinent to diagnosis or treatment — are admissible as exceptions to the hearsay rule. Statements identifying the assailant by name are sometimes excluded as not pertinent to treatment, depending on the circumstances.

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

17. D — Under Roviario v. United States, the informant's privilege is qualified, not absolute. The court balances the public interest in protecting the flow of information against the defendant's right to prepare a defense, considering factors including the relevance of the informant's testimony, the seriousness of the charges, and the importance of the informant to the prosecution's case.

18. C — The grantor's deed creates a fee simple determinable in A with a possibility of reverter in the grantor. The possibility of reverter passes to the grantor's heirs and is exempt from the Rule Against Perpetuities; if the condition is violated, the property automatically reverts without affirmative action.

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

- 20. B** — Under FRE 407, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, defective product, or need for a warning. Proving the "existence of an unsafe condition" is essentially proving negligence and is barred; the rule's exceptions (ownership, control, feasibility) do not apply here.
- 21. D** — Under the Equal Protection Clause, age classifications generally receive rational basis review because age is not a suspect class. The state need only show the classification is rationally related to a legitimate government interest, which age-based qualifications for state office easily satisfy.
- 22. C** — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, the relative bargaining power of the parties, and the reasonableness of attorney's fees in proportion to class relief.
- 23. A** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also admissible under FRE 803(3) as evidence of state of mind toward the victim and under FRE 404(b) as evidence of motive and intent.
- 24. B** — Under FRCP 12(a)(1)(B), the plaintiff has 21 days after service of a counterclaim to respond. The plaintiff's original pleading does not satisfy this requirement because it was filed before the counterclaim, and failure to file a timely answer to the counterclaim may result in default.
- 25. D** — Under the modern view (and the Model Penal Code's "unilateral" approach), the defendant may be convicted of conspiracy even when all alleged co-conspirators are acquitted, particularly if the prosecution proves the defendant believed he was conspiring with another person. The bilateral common-law approach requiring two actual co-conspirators has been largely abandoned.
- 26. A** — Under UCC § 2-601 (the perfect tender rule), a buyer may reject goods that fail in any respect to conform to the contract, including those tendered late. When the contract specifies "time is of the essence," strict compliance is required, and even one day's delay may justify rejection, though good-faith considerations may temper this in some courts.
- 27. C** — Under Erie, the federal court applies state substantive law including state-law burden of proof requirements and damage limitations on punitive damages. Both are substantive law affecting the measure of recovery and outcome of the case.
- 28. B** — Under FRE 404(a)(2)(B), once the defendant places the victim's character in issue by claiming self-defense, the prosecution may rebut with evidence of the victim's peaceful character through reputation or opinion testimony.
- 29. D** — Under FRCP 16(b)(4), modifying a scheduling order requires "good cause" shown by the moving party. The moving party must show diligence in attempting to comply with the deadline and may not amend simply by invoking FRCP 15(a)'s liberality after the scheduling deadline has passed.
- 30. C** — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the

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

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

32. C — Under *Erie*, the federal court applies the state's substantive law including state-law restrictions on emotional distress damages (such as the zone-of-danger rule). These restrictions are substantive because they affect whether and how much may be recovered.

33. D — Under FRE 404(a)(2)(B), the defendant may offer evidence of the alleged victim's character for violence when self-defense is at issue. Specific prior acts of the victim known to the defendant (such as prior threats) are admissible to show the defendant's reasonable apprehension of danger.

34. B — Under *United States v. Kovel* and its progeny, the attorney-client privilege may extend to communications with non-lawyer experts (such as accountants) who are necessary for the lawyer's provision of legal advice, provided the communication is made for the purpose of obtaining legal advice and confidentiality is maintained. Sharing documents with accountants for other purposes may waive the privilege.

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

36. A — Under *Erie*, the federal court applies state substantive law including doctrines of contract performance such as frustration of purpose. Frustration is part of substantive contract law affecting whether the obligation may be excused, not federal procedural law.

37. D — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement, regardless of whether the statement was hypothetical or conditional. The statement is also admissible under FRE 404(b) as evidence of motive and intent, and FRE 803(3) as state-of-mind evidence.

38. B — Under FRCP 23(e), the court must direct notice, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate. Concerns about intra-class fairness and inadequate representation may require subclass certification or restructured settlement to ensure all class members receive adequate representation.

39. C — The question is permissible because the witness's perceptual abilities — including her vision in the relevant lighting conditions — are directly relevant to the reliability of her observations. Perceptual capacity is a proper subject of cross-examination on credibility.

40. A — Under *Erie*, the federal court applies the state's substantive law on prejudgment interest because it affects the measure of recovery on the underlying state-created cause of action. The state's 8% rate is substantive law and must be applied.

- 41. D** — Under *Colorado v. Connelly*, the prosecution must prove by a preponderance of the evidence that the defendant's Miranda waiver was voluntary, knowing, and intelligent. The trial court applies this standard at the pretrial suppression hearing.
- 42. B** — Under FRCP 26(b)(3), work product is generally protected; ordinary work product may be discoverable upon a showing of substantial need AND undue hardship in obtaining the substantial equivalent. Opinion work product receives nearly absolute protection.
- 43. A** — Under FRE 801(d)(2)(A), the defendant's own statement is admissible against him as an opposing party's statement. The statement is also admissible under FRE 803(3) as state-of-mind evidence and under FRE 404(b) for motive and intent.
- 44. C** — Under FRCP 30, the plaintiff may take the deposition of any person without the consent of any party, subject to the time limits of FRCP 30(d) and the requirements of FRCP 26(b). The defendant's preference for informal interviews does not bar the deposition.
- 45. D** — Under *Berkemer v. McCarty* and *Miranda v. Arizona*, Miranda warnings are required only when the suspect is in custody AND being interrogated. A routine traffic stop typically does not constitute custody because the detention is brief, the questioning is investigatory, and a reasonable person would not believe she was under formal arrest.
- 46. A** — Under FRE 404(b), evidence of prior bad acts may be admissible for permissible non-propensity purposes including modus operandi. Modus operandi requires that the prior conduct share distinctive features with the charged offense such that the inference of common authorship is warranted, subject to FRE 403 balancing.
- 47. C** — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including prior convictions, to test the witness's basis for the reputation testimony. The inquiry tests her knowledge of the defendant's actual reputation in the community.
- 48. B** — Under FRCP 23(b)(3), the plaintiffs must show that common questions of law or fact predominate over individual questions AND that a class action is the superior method of fairly and efficiently adjudicating the controversy. Both predominance and superiority must be satisfied.
- 49. D** — Under FRE 405(a), the prosecution may cross-examine a character witness about specific instances of conduct, including reports of prior arrests, to test the witness's basis for the reputation testimony. Extrinsic proof of the arrest is barred but the inquiry itself is permitted.
- 50. C** — Specific performance is the standard remedy for breach of a real estate sales contract because each parcel of land is treated as unique, making monetary damages inadequate. This principle is well-established in equity and applies in federal court under *Erie*.
- 51. A** — Under the common law heat of passion doctrine, adequate provocation traditionally required physical conduct or some grievous wrong. "Mere words," however offensive or insulting, were generally considered insufficient to constitute adequate provocation, and the words-alone rule remains influential in many states.

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

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

54. B — Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires." The court considers factors including undue delay, prejudice, futility, and bad faith, but new claims arising from different transactions may still be added if these factors are satisfied; the general policy favors amendment.

55. A — Under the narrow view of FRE 404(a)(2)(B), a defendant's claim of self-defense based on a specific act of attack does not necessarily put the victim's general character in issue; some courts require the defendant to invoke general character traits before opening the door to general reputation rebuttal. Under that more restrictive view, the rebuttal evidence may be excluded as not responsive to a character question the defendant has placed in issue.

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

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

58. B — Under the joint defense (or common interest) privilege, parties with a common legal interest may share information without waiving the attorney-client privilege. The privilege requires a common legal interest, communication in furtherance of that interest, and confidentiality maintained.

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

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

61. C — Under *Jackson v. Virginia*, circumstantial evidence is admissible and may support a conviction if a rational jury could find guilt beyond a reasonable doubt. Direct evidence is not required, and the totality of circumstantial evidence may be sufficient to sustain a conviction.

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

63. D — Under *Massiah v. United States*, the Sixth Amendment right to counsel attaches at the initiation of adversarial judicial proceedings such as indictment. Deliberate elicitation of statements from an indicted defendant without counsel violates the right, and statements obtained must be suppressed.

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

65. C — Under FRE 404(b), prior crimes are admissible for permissible non-propensity purposes including common scheme, plan, or modus operandi. Three similar schemes within two years are probative of intent, knowledge, and scheme, and must satisfy FRE 403's balancing.

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

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

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

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

70. C — Under *Manson v. Brathwaite*, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the circumstances. The reliability factors govern admissibility, with suggestiveness alone insufficient to exclude.

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

72. A — Under the common law, voluntary intoxication may negate the specific intent required for crimes like mail fraud (which requires specific intent to defraud). Intoxication evidence is relevant to whether the defendant could form the specific mental state, but is not a defense to general intent crimes.

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

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

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

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

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

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

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

80. D — Under the automobile exception (*Carroll v. United States*), an officer may conduct a warrantless search of a vehicle when there is probable cause to believe it contains contraband or evidence of a crime. The search may extend to any area where the contraband may reasonably be located.

81. B — Specific performance is the remedy of choice for breach of a contract for a unique chattel (such as antiques, art, or one-of-a-kind goods) because monetary damages are inadequate. The uniqueness of the subject matter justifies equitable relief.

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

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

84. D — Under *Davis v. United States*, the suspect's invocation of the right to counsel must be unambiguous and unequivocal. Statements like "I think I want a lawyer" or "Maybe I should talk to a lawyer" are generally considered ambiguous and do not require police to cease questioning.

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

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

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

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

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

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

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

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

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

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

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

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

97. B — Under FRCP 14, a defending party may, as a third-party plaintiff, serve a summons and complaint on a non-party who is or may be liable to the third-party plaintiff for all or part of the claim against it. Impleader is permitted without leave of court if filed within 14 days after the defendant's original answer.

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

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

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

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

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

103. D — Under *Erie*, the federal court applies state substantive law including state-law procedural conditions to recovery. If the state-law notice requirement is substantive (acting as a condition precedent to recovery), the federal court applies it, and the plaintiff's failure to comply may bar the claim.

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

105. A — Under FRCP 26(b)(3), work product is generally protected; ordinary work product may be discoverable upon a showing of substantial need AND undue hardship in obtaining the substantial equivalent. Opinion work product receives nearly absolute protection.

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

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

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

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

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

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

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

113. D — Under *Erie*, the federal court applies the state's substantive law on the availability of specific performance because remedies for breach of contract are substantive law affecting the measure of recovery. The state-law limitation on specific performance for personal service contracts applies.

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

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

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

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

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

119. A — Under FRCP 15(a)(2) and the law of the case doctrine, a court may reconsider a prior dismissal on personal jurisdiction grounds when there has been a substantial change in circumstances, such as the defendant's establishment of new and substantial contacts with the forum. The law of the case doctrine is discretionary.

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

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

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

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

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

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

126. A — Under *Miranda v. Arizona* and *Harris v. New York*, statements obtained without Miranda warnings are inadmissible in the prosecution's case-in-chief but may be used to impeach the defendant if he testifies inconsistently. Voluntariness does not cure the Miranda violation for case-in-chief purposes.

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

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

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

130. C — Under the common law heat of passion doctrine, voluntary manslaughter requires adequate provocation, actual heat of passion at the time of the killing, insufficient cooling-off time, and a causal connection. Whether cooling-off has occurred is a factual question for the jury.

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

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

133. D — Under Erie, the federal court applies the state's substantive law on the availability of emotional distress damages because such damages are substantive law affecting the measure of recovery. The state's "zone of danger" restriction applies.

134. C — Where authentication of video evidence requires technical analysis beyond a lay witness's competence (such as digital forensics, image enhancement, or metadata verification), expert testimony may be required to establish the recording system's reliability and the integrity of the footage. The proponent must satisfy FRE 901's authentication standard, which in technically complex cases may necessitate qualified expert input.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155. B — Under Illinois v. Gates, probable cause for a search warrant based on informant testimony is determined by the totality of the circumstances, considering factors such as the informant's veracity, basis of knowledge, and corroboration of the tip. The magistrate makes a practical, common-sense determination based on the affidavit as a whole.

156. D — Under FRCP 23(e), the court considers factors including the strength of the plaintiffs' case, the value of the settlement, the reaction of class members, the views of competent counsel, the stage of the proceedings, the relative bargaining power of the parties, and the reasonableness of attorney's fees in proportion to class relief.

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

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

159. B — Under Manson v. Brathwaite, the court considers whether the identification procedure was unduly suggestive and, if so, whether the identification was nevertheless reliable under the totality of the

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

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

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

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

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

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

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

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

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

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

169. B — Under the modern view (and the Model Penal Code's unilateral approach), the defendant may be convicted of conspiracy even when all alleged co-conspirators are acquitted, particularly if the prosecution proves the defendant believed he was conspiring with another person. The bilateral common-law approach has been largely abandoned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

188. D — Under FRCP 15(a)(2), the court should freely give leave to amend "when justice so requires." The court considers factors including undue delay, prejudice, futility, and bad faith, but new claims arising from different transactions may still be added if these factors are satisfied.

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

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

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

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

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

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

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

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

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

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

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

200. B — Under FRCP 23(e), the court must direct notice in a reasonable manner to all class members who would be bound by the settlement, hold a fairness hearing, and approve the settlement only after finding it fair, reasonable, and adequate considering factors such as the strength of the case, value of settlement, reaction of class members, views of competent counsel, stage of proceedings, and relative bargaining power.

