PRACTICE EXAM 9: MBE SIMULATION (200 QUESTIONS)

1. Plaintiff sues a national tire manufacturer in State A after a State A accident involving a tire originally sold in State B. The manufacturer markets its tires extensively in State A. Under Ford Motor Co. v. Montana Eighth Judicial District Court (2021), the best-supported conclusion is:

A. State A has specific personal jurisdiction because the manufacturer's deliberate cultivation of the State A market is sufficiently related to a claim arising in State A involving its product

B. State A lacks personal jurisdiction because the specific tire was originally sold in State B and the claim must arise out of the forum sale

C. Jurisdiction depends on whether the manufacturer is "essentially at home" in State A under the Goodyear/Daimler general jurisdiction framework

D. Jurisdiction requires the manufacturer to have physical presence in State A through offices or warehouses to satisfy minimum contacts

2. Plaintiff files a federal antitrust complaint alleging parallel conduct by competitors without further factual detail showing agreement. Under Bell Atlantic Corp. v. Twombly (2007) and Ashcroft v. Iqbal (2009), the best-supported conclusion is:

A. The complaint survives because Rule 8(a)(2) requires only a short and plain statement of the claim

B. The complaint survives because parallel conduct alone gives fair notice to defendants of the antitrust claim asserted

C. The complaint fails because the factual allegations must plausibly suggest unlawful agreement, not merely conduct consistent with both lawful and unlawful behavior

D. The complaint fails only if the defendants rebut the allegations with evidence of independent business judgment

3. A federal diversity action involves a state statute imposing service-of-process requirements that conflict with Federal Rule of Civil Procedure 4. Under Hanna v. Plumer (1965), the best-supported conclusion is:

A. The state service rule controls because service of process implicates substantive rights affecting parties' positions

B. Federal Rule 4 controls if it is on point and procedural; a valid Federal Rule arguably procedural and within the Rules Enabling Act applies in federal court regardless of contrary state law

C. The court applies the twin aims of Erie — outcome determination and forum shopping — to decide whether to apply the state rule

D. The federal court applies state law because Erie requires state law to govern all matters affecting case outcome in diversity actions

4. Plaintiffs seek certification of a nationwide class of female employees alleging discrimination based on subjective decisionmaking by local managers throughout the company. Under Wal-Mart Stores, Inc. v. Dukes (2011), the best-supported conclusion is:

A. Certification is appropriate because Rule 23(a)(2) commonality requires only one common question of law or fact among class members

B. Certification is appropriate because the class shares the same statutory cause of action under Title VII

C. Certification is appropriate because all class members work for the same corporate parent regardless of decisionmaking structure

D. Certification fails because Rule 23(a)(2) requires a common contention capable of classwide resolution; subjective discretion at thousands of separate decision points does not produce common answers across the class

5. A foreign corporation maintains substantial sales and several offices in State X but is incorporated and headquartered elsewhere. Plaintiff sues the corporation in State X on an unrelated claim. Under Goodyear Dunlop Tires v. Brown (2011) and Daimler AG v. Bauman (2014), the best-supported conclusion is:

A. State X has general jurisdiction because the corporation has continuous and systematic contacts with the state

B. State X lacks general jurisdiction because the corporation is "essentially at home" only in its state of incorporation and principal place of business, not in every state where it conducts substantial business

C. State X has general jurisdiction because the corporation has purposefully availed itself of State X benefits

D. State X has specific jurisdiction because the corporation has minimum contacts with the forum

6. Defendant moves for summary judgment, pointing to the absence of evidence in the record supporting an essential element of Plaintiff's claim, without affirmatively producing contrary evidence. Under Celotex Corp. v. Catrett (1986), the best-supported conclusion is:

A. The motion fails because Defendant must affirmatively produce evidence negating Plaintiff's claim to obtain summary judgment

B. The motion fails because Rule 56 requires the movant to disprove every essential element of the non-movant's claim

C. The motion satisfies the movant's initial burden by demonstrating absence of evidence on an essential element; the burden then shifts to Plaintiff to produce specific record evidence creating a genuine dispute

D. The motion succeeds automatically because Plaintiff bears the burden of proof at trial on the challenged element

7. At summary judgment in a defamation case, the parties dispute whether the evidence is sufficient to prove actual malice. Under Anderson v. Liberty Lobby, Inc. (1986), the best-supported conclusion is:

A. The court must apply the substantive evidentiary standard — here, clear and convincing evidence of actual malice — to determine whether a reasonable jury could find for Plaintiff

B. The court applies the preponderance standard at summary judgment regardless of the trial burden of persuasion

C. The court resolves all factual disputes at summary judgment because the moving party challenges the evidentiary basis of the claim

D. The court defers summary judgment until trial because actual malice is always a question for the jury

8. In a federal diversity action, the parties dispute whether state common law or general federal common law applies to the negligence elements. Under Erie R.R. Co. v. Tompkins (1938), the best-supported conclusion is:

A. Federal common law applies because federal courts have inherent power to develop uniform substantive rules in diversity cases

B. Federal common law applies to substantive matters but state law governs procedural questions in diversity actions

C. State substantive law applies because there is no federal general common law; federal courts sitting in diversity apply state substantive law on issues like negligence elements

D. The court applies whichever law promotes the federal interest in uniform decisions across diversity cases

9. In a federal diversity action, the parties dispute which jurisdiction's substantive law applies to the contract claim. Under Klaxon Co. v. Stentor Electric Manufacturing Co. (1941), the best-supported conclusion is:

A. The federal court applies federal choice-of-law principles to determine the applicable substantive law in diversity actions

B. The federal court applies the most significant relationship test from the Restatement (Second) of Conflict of Laws

C. The federal court applies the choice-of-law rules of any state with a substantial interest in the dispute

D. The federal court applies the choice-of-law rules of the state in which it sits, just as that state court would in the same dispute

10. A defendant entered into a long-term franchise relationship with a corporation headquartered in State A but conducted business primarily in State B. Plaintiff sues the franchisee in State A federal court. Under Burger King Corp. v. Rudzewicz (1985), the best-supported conclusion is:

A. The defendant lacks minimum contacts because business was conducted in State B rather than State A

B. The defendant has minimum contacts only if the franchise agreement is governed by State A substantive law

C. The court applies general jurisdiction analysis because the franchise relationship was continuous

D. The defendant has minimum contacts with State A through deliberate establishment of a long-term franchise relationship with the State A franchisor, creating purposeful availment of State A's market and benefits

11. Plaintiff files an antitrust complaint alleging defendants engaged in "parallel pricing conduct." Under Bell Atlantic Corp. v. Twombly (2007), the best-supported conclusion regarding the pleading sufficiency is:

A. Parallel pricing conduct establishes an unlawful agreement under federal antitrust law sufficient to survive a motion to dismiss

B. The complaint survives because Rule 8 notice pleading does not require detailed factual allegations

C. The complaint must allege factual content that plausibly suggests an unlawful agreement — parallel conduct alone is consistent with both lawful and unlawful behavior and does not satisfy the plausibility standard

D. The complaint must allege the specific terms of the alleged conspiracy with particularity under Rule 9(b)

12. A foreign component manufacturer sold parts to a foreign assembler, knowing the finished products would be sold in the United States. The product caused injury in California. Under Asahi Metal Industry Co. v. Superior Court (1987), the best-supported conclusion is:

A. The plurality positions diverge — Justice O'Connor required purposeful availment beyond mere awareness, while Justice Brennan accepted stream-of-commerce alone; without majority resolution, more than placing goods in stream of commerce is typically required

B. The component manufacturer has personal jurisdiction wherever its products end up because it placed goods in the stream of commerce

C. The component manufacturer has no personal jurisdiction because it sold to a foreign assembler rather than directly to U.S. consumers

D. The component manufacturer's awareness alone establishes minimum contacts under Brennan's approach as adopted by the majority

13. A New York automobile dealer sold a car to a New York purchaser who drove it through Oklahoma, where the car caused injury. Plaintiff sues the New York dealer in Oklahoma. Under World-Wide Volkswagen Corp. v. Woodson (1980), the best-supported conclusion is:

A. The Oklahoma court lacks personal jurisdiction because the dealer did not purposefully avail itself of Oklahoma; mere foreseeability that a customer might drive the car into the forum is insufficient

B. The Oklahoma court has specific jurisdiction because the injury occurred in Oklahoma

C. The Oklahoma court has personal jurisdiction because cars by their nature travel between states

D. Jurisdiction depends on whether the dealer advertised the car's national capabilities

14. A civil-rights plaintiff alleges high-ranking federal officials engaged in unconstitutional discrimination based on protected characteristics. The allegations rely on conclusory characterizations. Under Ashcroft v. Iqbal (2009), the best-supported conclusion is:

A. The complaint survives because notice pleading under Rule 8 applies to all federal claims

B. The complaint survives because supervisory officials are vicariously liable for subordinates' conduct

C. The court must disregard conclusory allegations and assess whether the remaining factual content plausibly suggests entitlement to relief; bare assertions of discriminatory intent without supporting facts fail Twombly/Iqbal plausibility

D. The complaint fails because Section 1983 does not extend to federal officials

15. A federal agent in Georgia seized currency from plaintiffs at the Atlanta airport. Plaintiffs, Nevada residents, sued the agent in Nevada based on the agent's mailed false affidavit. Under Walden v. Fiore (2014), the best-supported conclusion is:

A. Nevada has personal jurisdiction because plaintiffs experienced harm in Nevada

B. Nevada lacks personal jurisdiction because the relevant contacts are between the defendant and the forum, not the defendant and the plaintiffs; the defendant did not himself create contacts with Nevada

C. Nevada has personal jurisdiction because the agent's conduct affected Nevada residents

D. Nevada has personal jurisdiction because false statements traveled into Nevada through the postal system

16. A national corporation conducts substantial business in many states but has a single headquarters where its top executives direct operations. Plaintiff sues the corporation in federal court, invoking diversity. Under Hertz Corp. v. Friend (2010), the best-supported conclusion is:

A. The corporation is a citizen only of its state of incorporation under the federal diversity statute

B. The corporation is a citizen of every state where it conducts substantial business

C. The corporation's principal place of business is determined by where it conducts the most operations

D. The corporation's principal place of business under § 1332(c)(1) is its "nerve center" — the location where its officers direct, control, and coordinate corporate activities — typically corporate headquarters

17. Plaintiff sues in a federal forum despite a valid contractual forum-selection clause designating a different federal district. Defendant moves to transfer under § 1404(a). Under Atlantic Marine Construction Co. v. U.S. District Court (2013), the best-supported conclusion is:

A. The plaintiff's choice of forum receives heavy weight in the § 1404(a) analysis regardless of the forum-selection clause

B. The forum-selection clause is presumptively unenforceable and the court applies ordinary § 1404(a) balancing

C. The court considers private-interest factors equally with the forum-selection clause in determining the appropriate forum

D. A valid forum-selection clause is given controlling weight in all but the most exceptional cases; the plaintiff's choice receives no deference, and only public-interest factors may override

18. Members of a class were not adequately represented by class counsel in a prior class action; subsequent class members seek to relitigate. Under Hansberry v. Lee (1940), the best-supported conclusion is:

A. The prior judgment binds all class members regardless of adequacy of representation

B. The prior judgment binds only the named representatives, not absent class members

C. Due process requires that absent class members were adequately represented; if representation was inadequate, absent members are not bound by the prior judgment and may relitigate

D. Class actions cannot bind absent members under any circumstances

19. Plaintiff seeks to assert quasi in rem jurisdiction over Defendant by attaching Defendant's stock in a forum corporation, even though the dispute is unrelated to the stock. Under Shaffer v. Heitner (1977), the best-supported conclusion is:

A. Quasi in rem jurisdiction exists automatically wherever the defendant owns property regardless of the underlying claim

B. Quasi in rem jurisdiction requires substantial unrelated property of the defendant in the forum

C. Quasi in rem jurisdiction is unconstitutional and has been abolished

D. Quasi in rem jurisdiction requires that the defendant have minimum contacts with the forum sufficient to satisfy International Shoe; mere ownership of unrelated property is insufficient

20. A federal habeas petitioner failed to raise a constitutional claim in the state courts due to attorney negligence, and the state default rules now bar the claim. Under Coleman v. Thompson (1991), the best-supported conclusion is:

A. The federal court is barred from reviewing the defaulted claim unless the petitioner demonstrates cause and prejudice or that failure to consider the claim would result in a fundamental miscarriage of justice

B. The federal court automatically reviews any constitutional claim regardless of state procedural default

C. Attorney negligence per se constitutes cause excusing the default under federal habeas doctrine

D. Federal habeas review is unavailable when the petitioner exhausted state remedies through direct appeal

21. Plaintiff seeks a state-court prejudgment attachment of Defendant's property without notice or hearing in a tort action. Under Connecticut v. Doehr (1991), the best-supported conclusion is:

A. Prejudgment attachment is constitutional whenever statutorily authorized regardless of procedural protections

B. Prejudgment attachment requires criminal-procedure protections including proof beyond reasonable doubt

C. Procedural due process under Mathews v. Eldridge balancing requires considering the private interest, risk of erroneous deprivation, and government interest; ex parte attachment without notice, hearing, or bond protections in tort cases is likely unconstitutional

D. Prejudgment remedies are unconstitutional under all circumstances

22. A federal agency terminates social security benefits using particular pre-termination procedures. The recipient challenges the procedures as constitutionally inadequate. Under Mathews v. Eldridge (1976), the best-supported conclusion is:

A. The agency must provide a full evidentiary hearing in every benefit-termination case regardless of context

B. The agency must provide criminal-style procedural protections including counsel and confrontation

C. The agency need only provide notice without further procedure of any kind

D. Procedural due process requires balancing (1) the private interest affected, (2) the risk of erroneous deprivation and the value of additional procedures, and (3) the government interest including administrative burdens; the calibrated procedures depend on this balance

23. Plaintiff environmental group challenges federal agency action regarding wildlife in distant regions, alleging speculative future injury based on member intentions to visit those regions. Under Lujan v. Defenders of Wildlife (1992), the best-supported conclusion is:

A. Standing requires (1) concrete and particularized injury in fact that is actual or imminent, (2) traceable to defendant's conduct, and (3) redressable by judicial action; speculative "some day" intentions without specific plans fail the imminence requirement

B. Standing is satisfied whenever an organization brings a public-interest claim

C. Standing requires only that the plaintiff has a generalized interest in the subject matter

D. Standing depends on whether the agency action affects the public interest broadly

24. A foreign defendant has substantial commercial contacts with the forum, including continuous in-state activity giving rise to the claim. Under International Shoe Co. v. Washington (1945), which superseded Pennoyer v. Neff, the best-supported conclusion is:

A. Personal jurisdiction is proper if the defendant has minimum contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice

B. Personal jurisdiction requires service of process within the forum's territorial boundaries under Pennoyer

C. Personal jurisdiction requires the defendant's domicile in the forum

D. Personal jurisdiction depends on the plaintiff's residence rather than the defendant's contacts

25. In a diversity action, Plaintiff seeks to add a non-diverse third-party defendant joined under Rule 14 by the original defendant. Under Owen Equipment & Erection Co. v. Kroger (1978), the best-supported conclusion is:

A. The plaintiff may join non-diverse defendants in diversity actions without restriction

B. Supplemental jurisdiction over the plaintiff's claim against the non-diverse defendant is automatic under § 1367(a)

C. The plaintiff may join non-diverse defendants as long as the underlying federal jurisdiction was properly invoked

D. Section 1367(b) bars plaintiffs in diversity cases from asserting claims against persons made parties under Rules 14, 19, 20, or 24 when doing so would destroy complete diversity; the plaintiff's claim against the non-diverse third-party defendant is barred

26. A nationwide class action in State A asserts state-law claims against a defendant. State A would apply its own substantive law to all class members. Under Phillips Petroleum Co. v. Shutts (1985), the best-supported conclusion is:

A. Due process requires the forum to have significant contacts with the claim of each class member; the forum cannot apply its own substantive law to claims with which it has no significant connection

B. The forum may apply its own law to all class members regardless of their connection to the forum

C. Class actions are limited to claims arising under federal law in federal court

D. Choice of law in class actions is left entirely to the forum's discretion without constitutional constraint

27. A federal plaintiff seeks to enjoin an ongoing state criminal prosecution alleged to violate federal constitutional rights. Under Younger v. Harris (1971), the best-supported conclusion is:

A. Federal courts must enjoin state proceedings to protect federal constitutional rights

B. Federal courts must defer to state courts in all cases without exception

C. Federal courts must abstain from enjoining ongoing state criminal proceedings absent extraordinary circumstances (bad-faith prosecution, patently invalid statute, exceptional circumstances threatening irreparable injury)

D. Federal courts have no jurisdiction over state criminal matters

28. A state-court loser brings a federal action seeking review of the state-court judgment alleging constitutional violations in the state proceedings. Under Rooker v. Fidelity Trust Co. (1923) and District of Columbia Court of Appeals v. Feldman (1983), the best-supported conclusion is:

A. The federal court has appellate jurisdiction over state court judgments through § 1983 actions

B. Federal courts have original jurisdiction over all constitutional claims regardless of prior state proceedings

C. Federal district courts lack subject-matter jurisdiction to review state-court judgments; only the U.S. Supreme Court has appellate jurisdiction over state-court decisions

D. Federal courts may review state court judgments under the Anti-Injunction Act

29. A plaintiff sues multiple defendants, one of whom shares the plaintiff's state citizenship. Under Strawbridge v. Curtiss (1806), the best-supported conclusion is:

A. Diversity exists if any defendant is from a different state than the plaintiff

B. Section 1332 requires complete diversity — no plaintiff may share citizenship with any defendant; shared citizenship destroys diversity jurisdiction

C. Diversity exists if a majority of the defendants are diverse from the plaintiff

D. Diversity is satisfied if the amount in controversy exceeds $75,000 regardless of citizenship overlap

30. A federal statute purports to expand the Supreme Court's original jurisdiction beyond constitutional grants. Under Marbury v. Madison (1803), the best-supported conclusion is:

A. The statute is valid because Congress has plenary power over jurisdiction

B. The Supreme Court has authority to declare the statute unconstitutional; "it is emphatically the province and duty of the judicial department to say what the law is," establishing judicial review of legislative acts

C. The statute is valid because the Constitution permits congressional adjustments to original jurisdiction

D. The Supreme Court has no authority to review congressional acts

31. Congress establishes a national bank. A state attempts to tax the bank. Under McCulloch v. Maryland (1819), the best-supported conclusion is:

A. The Necessary and Proper Clause supports the bank as a means appropriate to legitimate ends within Congress's enumerated powers; the state's tax violates the Supremacy Clause as "the power to tax involves the power to destroy"

B. Congress lacks authority to charter a national bank because it is not an enumerated power

C. The state has co-equal authority to tax federal instrumentalities under reserved powers

D. The bank violates Tenth Amendment principles of state sovereignty

32. A state law grants exclusive navigation rights in state waters that conflicts with federal coasting licenses. Under Gibbons v. Ogden (1824), the best-supported conclusion is:

A. The Commerce Clause grants Congress broad power over interstate and foreign commerce, including navigation; the state law conflicts with federal authority and is preempted under the Supremacy Clause

B. The state law is valid as exercise of state police power over waters

C. Commerce is limited to the sale of goods rather than transportation

D. Congress lacks authority to regulate state-licensed shipping

33. Congress enacts a federal statute regulating non-economic intrastate conduct that lacks substantial connection to interstate commerce. Under United States v. Lopez (1995) and United States v. Morrison (2000), the best-supported conclusion is:

A. Congress may regulate any intrastate activity through the Commerce Clause

B. Congress may regulate only the channels of interstate commerce, not the activities affecting them

C. Congress's Commerce Clause power extends to (1) channels of interstate commerce, (2) instrumentalities of interstate commerce, and (3) activities substantially affecting interstate commerce; non-economic intrastate activity without aggregation falls outside this power

D. Congress may regulate intrastate activity only with state consent

34. Congress enacts public-accommodations legislation reaching local businesses serving interstate travelers. Under Heart of Atlanta Motel v. United States (1964) and Katzenbach v. McClung (1964), the best-supported conclusion is:

A. Congress may regulate local accommodations and restaurants under the Commerce Clause because they substantially affect interstate commerce through service to interstate travelers and use of interstate-sourced supplies

B. Congress lacks authority over purely local commerce

C. The Civil Rights Act exceeds congressional Commerce Clause authority

D. Public accommodations are regulated only under the Fourteenth Amendment

35. A government policy classifies persons based on race during a national security emergency. Under modern doctrine including Korematsu v. United States (1944, repudiated) and Trump v. Hawaii (2018), the best-supported conclusion is:

A. Strict scrutiny applies to racial classifications by government — the policy must be narrowly tailored to a compelling government interest; Korematsu has been formally repudiated and is no longer good law for upholding race-based detention

B. National security justifies race-based classifications under rational-basis review

C. Korematsu remains binding precedent for emergency race-based classifications

D. Race-based classifications during emergencies receive intermediate scrutiny

36. A state operates separate public schools by race, asserting facilities are equal. Under Brown v. Board of Education (1954), the best-supported conclusion is:

A. Separate-but-equal is permissible if facilities are objectively equal under Plessy v. Ferguson

B. The Equal Protection Clause permits race-based segregation as a state policy choice

C. Separate educational facilities are inherently unequal; state-imposed racial segregation in public schools violates the Equal Protection Clause regardless of equalization of facilities

D. The federal government lacks authority to address state educational policies

37. A state criminalizes interracial marriage. Under Loving v. Virginia (1967), the best-supported conclusion is:

A. States have plenary authority over marriage as a matter of family law and federal courts must defer to state choices

B. Interracial marriage laws receive only rational-basis review under the Fourteenth Amendment as economic and family-law regulations

C. The classification is permissible if applied equally to all races without discrimination among them

D. The classification violates both the Equal Protection Clause (racial classification subject to strict scrutiny without compelling justification) and substantive due process (fundamental right to marry)

38. A state denies marriage licenses to same-sex couples. Under Obergefell v. Hodges (2015), the best-supported conclusion is:

A. States have authority to define marriage limited to opposite-sex couples

B. The Fourteenth Amendment requires states to license and recognize same-sex marriages; the right to marry is a fundamental liberty under substantive due process and Equal Protection

C. Marriage is a religious institution outside federal constitutional regulation

D. Same-sex marriage receives rational-basis review

39. A state imposes broad restrictions on abortion. Under Dobbs v. Jackson Women's Health Organization (2022), which overruled Roe v. Wade (1973) and Planned Parenthood v. Casey (1992), the best-supported conclusion is:

A. Roe's trimester framework remains the controlling standard for abortion regulations

B. Casey's undue-burden test continues to govern post-viability abortion restrictions

C. There is no constitutional right to abortion under substantive due process because abortion is not deeply rooted in the Nation's history and tradition under Washington v. Glucksberg; abortion regulation is returned to the political branches and reviewed under rational basis

D. Abortion remains a fundamental right subject to strict scrutiny

40. A jurisdiction substantially restricts individual handgun ownership in the home. Under District of Columbia v. Heller (2008), the best-supported conclusion is:

A. The Second Amendment protects only militia-related arms-bearing as a collective right rather than individual right

B. The Second Amendment protects an individual right to keep and bear arms for self-defense, including handgun ownership in the home; broad prohibitions on the right to keep handguns are unconstitutional

C. The Second Amendment does not apply to handguns as a category of weapons

D. The Second Amendment applies only to federal regulations and not state firearms restrictions

41. A state requires "proper cause" for concealed-carry permits, effectively limiting public carry. Under New York State Rifle & Pistol Association v. Bruen (2022), the best-supported conclusion is:

A. The Second Amendment protects public carry of arms for self-defense; modern firearms regulations must be evaluated based on text, history, and tradition rather than means-end scrutiny; restrictive "proper cause" requirements are unconstitutional

B. States have unlimited authority to regulate public carry under their police powers

C. Public carry is not protected under the Second Amendment

D. The Second Amendment permits any "reasonable" regulation under intermediate scrutiny

42. Police interrogate a suspect in custody without informing the suspect of constitutional rights. Under Miranda v. Arizona (1966), the best-supported conclusion is:

A. The confession is admissible if voluntary under the totality of circumstances

B. The Fifth Amendment requires that suspects in custodial interrogation be informed of the rights to silence, that statements may be used against them, to counsel, and to appointed counsel if indigent; statements obtained without these warnings are presumptively inadmissible in the prosecution's case-in-chief

C. Miranda warnings are required only for serious offenses

D. The exclusionary rule does not apply to confessions

43. A public official sues a newspaper for defamation arising from criticism of official conduct. Under New York Times Co. v. Sullivan (1964), the best-supported conclusion is:

A. The official must prove ordinary negligence

B. The official must prove actual malice — knowledge of falsity or reckless disregard for truth — by clear and convincing evidence; the heightened standard protects "uninhibited, robust, and wide-open" debate on public issues

C. The newspaper has absolute privilege regardless of falsity

D. The official must prove gross negligence by a preponderance

44. A protester is convicted under a state statute criminalizing flag burning. Under Texas v. Johnson (1989), the best-supported conclusion is:

A. Flag burning is protected symbolic speech under the First Amendment; content-based statutes criminalizing the expressive conduct receive strict scrutiny that the state cannot satisfy on the basis of preserving the flag as a symbol

B. Flag burning is conduct rather than speech and is unprotected

C. The state has a compelling interest in preserving the flag that justifies the criminal statute

D. Flag burning is unprotected because it offends national sentiment

45. Public school students are disciplined for wearing armbands in symbolic political protest. Under Tinker v. Des Moines Independent Community School District (1969), the best-supported conclusion is:

A. School authorities may restrict any student speech as part of educational administration

B. The First Amendment does not apply within school walls

C. Schools may restrict speech upon any showing of administrative inconvenience

D. Students do not shed First Amendment rights at the schoolhouse gate; schools may restrict student speech only upon showing of substantial disruption or interference with school discipline or the rights of others

46. A speaker advocates abstract violence at a political rally without specifically directing imminent unlawful action. Under Brandenburg v. Ohio (1969), which superseded Schenck v. United States's "clear and present danger" test, the best-supported conclusion is:

A. The speech may be punished only if directed at producing imminent lawless action AND likely to produce such action; mere abstract advocacy of violence is protected speech under the First Amendment

B. The speech may be punished if it creates any clear and present danger of unlawful conduct

C. The speech is categorically unprotected as advocacy of violence

D. The speech is protected if delivered in private but not in public

47. A state restricts political speech in a manner that would violate the First Amendment if applied federally. Under Gitlow v. New York (1925) and subsequent incorporation doctrine, the best-supported conclusion is:

A. The First Amendment's free-speech protections apply to the states through the Fourteenth Amendment's Due Process Clause; the state law receives First Amendment scrutiny

B. The First Amendment applies only to the federal government

C. State speech regulations are subject only to rational-basis review

D. The Fourteenth Amendment does not extend First Amendment protections to state actions

48. A neutral, generally applicable state criminal law incidentally burdens a religious practice. Under Employment Division, Department of Human Resources v. Smith (1990), the best-supported conclusion is:

A. The law is unconstitutional because it burdens religious practice

B. The law receives strict scrutiny under the Free Exercise Clause

C. Neutral, generally applicable laws receive rational-basis review under the Free Exercise Clause; religious exemptions are not constitutionally required absent discriminatory purpose under Church of the Lukumi Babalu Aye v. Hialeah

D. The law receives intermediate scrutiny under the Free Exercise Clause

49. A municipal ordinance is targeted at a religious practice, gerrymandered to exempt secular similar conduct. Under Church of the Lukumi Babalu Aye v. Hialeah (1993), the best-supported conclusion is:

A. The ordinance is constitutional as exercise of police power

B. The ordinance is unconstitutional under the Free Exercise Clause; ordinances that target religious conduct or are not neutral and generally applicable receive strict scrutiny rather than Employment Division v. Smith's rational-basis review

C. The ordinance receives rational-basis review under Smith

D. The ordinance is reviewed under intermediate scrutiny

50. A state government displays a religious symbol on public property. Under American Legion v. American Humanist Association (2019), which substantially limited Lemon v. Kurtzman (1971), the best-supported conclusion is:

A. The display is automatically unconstitutional under Lemon's three 50. A state government displays a religious symbol on public property. Under American Legion v. American Humanist Association (2019), which substantially limited Lemon v. Kurtzman (1971), the best-supported conclusion is:

A. The display is automatically unconstitutional under Lemon's three-prong test

B. The display is constitutional because all religious symbols are permitted on public property

C. The Lemon test continues to control all Establishment Clause cases

D. Long-standing monuments and symbols with religious imagery that have acquired secular meaning through prolonged display and serve community purposes are presumptively constitutional; the analysis emphasizes historical practices rather than rigid Lemon application

51. A public school sponsors prayer at the start of the school day. Under Engel v. Vitale (1962), the best-supported conclusion is:

A. School-sponsored prayer is constitutional if non-denominational

B. School-sponsored prayer is constitutional with parental consent

C. State-sponsored public-school prayer violates the Establishment Clause regardless of denominational content; the government may not compose or prescribe religious exercises for public-school students

D. School prayer is permissible during voluntary periods

52. A government program provides direct financial aid to parochial schools. Under Lemon v. Kurtzman (1971), the best-supported conclusion (within Lemon's original framework, as substantially limited by American Legion) is:

A. Direct aid to parochial schools is per se unconstitutional

B. Direct aid to parochial schools is automatically constitutional under modern doctrine

C. Direct aid is constitutional if applied uniformly to all schools

D. Lemon's three-prong test asks whether the law has (1) a secular purpose, (2) a primary effect that neither advances nor inhibits religion, and (3) avoids excessive entanglement with religion; direct aid often fails the entanglement prong, though modern doctrine emphasizes neutral programs under Zelman v. Simmons-Harris

53. A state court admits evidence seized in a Fourth Amendment violation. Under Mapp v. Ohio (1961), the best-supported conclusion is:

A. State courts may admit evidence regardless of federal Fourth Amendment violations

B. The exclusionary rule applies only to federal proceedings

C. State courts apply state evidentiary rules to suppression questions

D. The Fourth Amendment exclusionary rule applies to state criminal proceedings through Fourteenth Amendment incorporation; states must exclude evidence obtained in Fourth Amendment violations

54. A state denies appointed counsel to an indigent defendant in a felony case. Under Gideon v. Wainwright (1963), the best-supported conclusion is:

A. The Sixth Amendment right to counsel is fundamental and applies to state felony prosecutions through Fourteenth Amendment incorporation; states must appoint counsel for indigent felony defendants

B. The right to counsel applies only in capital cases under Powell v. Alabama

C. The Sixth Amendment applies only to federal prosecutions

D. The right to counsel requires only that the defendant be informed of the right to hire counsel

55. A state denies appointed counsel to an indigent defendant in a misdemeanor case resulting in actual incarceration. Under Argersinger v. Hamlin (1972), the best-supported conclusion is:

A. The right to counsel applies only to felony prosecutions under Gideon

B. The right to counsel applies only to felonies and serious misdemeanors with potential incarceration

C. The right to counsel applies only after conviction has been entered

D. The Sixth Amendment requires appointed counsel for any criminal prosecution that results in actual incarceration, regardless of whether the charge is a felony or misdemeanor

56. A convicted defendant alleges trial counsel was ineffective. Under Strickland v. Washington (1984), the best-supported conclusion is:

A. Defendant need only show counsel made some errors during representation

B. Defendant must show (1) counsel's performance was objectively unreasonable under prevailing professional norms AND (2) prejudice — a reasonable probability that, but for counsel's errors, the result would have been different; strategic choices receive substantial deference

C. Defendant need only show that counsel was inexperienced in the relevant area

D. The standard is governed by strict scrutiny of counsel's professional judgment

57. Defense counsel challenges peremptory strikes used by the prosecution as racially discriminatory. Under Batson v. Kentucky (1986), the best-supported conclusion is:

A. Peremptory strikes are absolutely within prosecutorial discretion

B. Race-based strikes are constitutional if used by either side

C. Race-based strikes are reviewable only after conviction

D. Batson establishes a three-step process: (1) prima facie case of discriminatory strikes, (2) burden shifts to the opposing party to provide a race-neutral explanation, and (3) the trial court determines whether purposeful discrimination has been shown; J.E.B. v. Alabama extends Batson to gender

58. A judge imposes a sentence above the statutory maximum based on judicial fact-finding by preponderance. Under Apprendi v. New Jersey (2000), the best-supported conclusion is:

A. Sentencing factors may be found by the judge on a preponderance standard regardless of effect on sentence

B. The judge may make findings up to the statutory maximum without jury determination

C. Any fact (other than a prior conviction) that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt

D. Sentencing factors are constitutional only if subject to mandatory minimums

59. A contract is breached, causing the non-breaching party special consequential losses that the breaching party did not specifically know about at contract formation. Under Hadley v. Baxendale (1854), the best-supported conclusion is:

A. All consequential damages are recoverable as a matter of right

B. Only nominal damages are recoverable in any breach action

C. Consequential damages are recoverable only if (1) they arise naturally from the breach (general damages) or (2) they were within the reasonable contemplation of the parties at contracting based on special circumstances communicated to the breaching party; absent notice, special consequential damages are not recoverable

D. Consequential damages are limited to compensatory damages only

60. A merchant advertises specific goods for sale at a stated price with specific terms and quantity. Under Lefkowitz v. Great Minneapolis Surplus Store (1957), the best-supported conclusion is:

A. Advertisements are always invitations to deal, never offers

B. An advertisement is an offer if it is clear, definite, and explicit, leaving nothing open for negotiation; specific terms with quantity and price may constitute an offer that creates power of acceptance

C. The advertisement creates a contract only with the merchant's express consent

D. Advertisements are governed exclusively by consumer-protection statutes

61. An uncle promises his nephew $5,000 if the nephew refrains from drinking and smoking until age 21. The nephew refrains and seeks payment. Under Hamer v. Sidway (1891), the best-supported conclusion is:

A. The promise lacks consideration because the nephew's restraint benefits him

B. Forbearance from a legal right (such as engaging in a lawful activity) constitutes consideration; the bargained-for restraint supplies the legal detriment required to support the promise, regardless of whether the promisee actually benefits

C. The promise is unenforceable because it lacks a bargained-for exchange

D. The promise is unenforceable because it concerns moral rather than legal obligation

62. A company advertises a reward to anyone who uses its product as directed and still contracts the disease. The plaintiff uses the product and contracts the disease. Under Carlill v. Carbolic Smoke Ball Co. (1893), the best-supported conclusion is:

A. The advertisement constituted a unilateral offer accepted by performance; the plaintiff's use of the product per instructions formed a contract supported by consideration, including the legal detriment of using the product per direction

B. The advertisement was a mere puff and not a binding offer

C. The contract requires explicit acceptance through communication before performance

D. Unilateral contracts are unenforceable under modern doctrine

63. A promisor makes a promise that the promisor should reasonably expect will induce action; the promisee relies and the promisor reneges. Under Restatement (Second) § 90, the best-supported conclusion is:

A. The promise is binding to the extent necessary to prevent injustice if the promisor should reasonably expect the promise to induce action by the promisee, and it does induce such action; consideration is not required

B. The promise is unenforceable without bargained-for consideration

C. The promise is enforceable only if reduced to writing under the Statute of Frauds

D. The promise is enforceable only if performance has been completed in full

64. Buyer's purchase order and Seller's acknowledgment contain different terms; the parties perform. Under UCC § 2-207, the best-supported conclusion is:

A. The mirror-image rule prevents contract formation when terms differ in any respect

B. A definite acceptance forms a contract even with additional or different terms; between merchants, additional terms enter the contract unless the offer limits acceptance, the terms materially alter, or the offeror objects in time; conduct may form a contract under § 2-207(3) on agreed terms plus gap-fillers

C. The seller's terms always control as the most recent communication

D. The buyer's terms always control as the offeror in the transaction

65. A merchant gives a signed written firm offer to keep the offer open for two months. The merchant attempts to revoke. Under UCC § 2-205, the best-supported conclusion is:

A. The offer is revocable at any time because no consideration was given for the firm-offer promise

B. The offer is irrevocable for the full stated period regardless of length

C. The offer is irrevocable only with consideration paid by the offeree

D. A merchant's signed written firm offer is irrevocable for the stated period not exceeding three months without consideration; the two-month firm period is enforceable, and attempted revocation during this period is ineffective

66. Two parties to a sale-of-goods contract orally modify their agreement upward without new consideration. Under UCC § 2-209, the best-supported conclusion is:

A. The modification fails for lack of consideration under the pre-existing duty rule

B. The modification requires a writing in all circumstances regardless of value

C. The modification is enforceable only with both parties' attorneys present

D. UCC § 2-209(1) eliminates the consideration requirement for modifications to sale-of-goods contracts; the modification is enforceable in good faith; § 2-209(2) permits no-oral-modification clauses, and § 2-209(3) requires writing if the modified contract is within the Statute of Frauds

67. Two parties orally agree to a sale of goods worth $1,000. The buyer accepts and uses the goods without complaint. Under UCC § 2-201, the best-supported conclusion is:

A. The oral contract is unenforceable because it exceeds $500 and lacks a writing

B. Under § 2-201(3)(c), the Statute of Frauds is satisfied with respect to goods that have been received and accepted; the buyer's acceptance and use removes the contract from the writing requirement

C. The oral contract is enforceable only after a writing is created post-acceptance

D. The Statute of Frauds applies only to contracts exceeding $1,000

68. Two parties contract for the sale of a cow believed by both to be barren but discovered to be pregnant before delivery. Under Sherwood v. Walker (1887), the best-supported conclusion is:

A. The contract is enforceable because the parties agreed to the stated terms

B. The contract is rescindable only if the buyer was at fault for the mistake

C. The contract is voidable on grounds of unilateral mistake by one party

D. Mutual mistake about a basic assumption of the contract that materially affects the exchange and is not allocated by risk renders the contract voidable; the substantial difference between a barren and pregnant cow constitutes such a material mistake

69. Parties contract under a mutual mistake about a basic assumption that materially affects the exchange. Under Restatement (Second) § 152, the best-supported conclusion is:

A. The contract is enforceable regardless of mistake under freedom of contract principles

B. The contract is automatically rescinded upon discovery of the mutual mistake

C. The contract is enforceable if the mistake concerns a non-essential element of the bargain

D. The contract is voidable by the adversely affected party if (1) the mistake concerned a basic assumption, (2) it had a material effect on the exchange, AND (3) the adversely affected party did not bear the risk of the mistake (either by agreement or because aware of limited knowledge)

70. After a son's death, a father promises in writing to pay a stranger who cared for the son in his final illness. The father reneges. Under Mills v. Wyman (1825), the best-supported conclusion is:

A. The promise is enforceable as a charitable subscription

B. The promise is enforceable under promissory estoppel because of reliance

C. Past consideration is no consideration; a moral obligation arising from past kindness rendered before the promise generally does not support a present promise, and the promise is unenforceable as a contract (subject to limited moral-obligation exceptions in some jurisdictions)

D. The promise is enforceable simply because it was reduced to writing

71. Before performance is due under a contract, one party communicates that they will not perform. The non-breaching party seeks immediate remedies. Under Hochster v. De La Tour (1853), the best-supported conclusion is:

A. The non-breaching party may treat the repudiation as an immediate breach and seek remedies before the original performance date; the doctrine of anticipatory repudiation permits immediate action without waiting for the original performance time

B. The non-breaching party must wait until the original performance date to seek remedies

C. The repudiation has no legal effect until performance is actually due

D. The non-breaching party must formally communicate acceptance of the repudiation

72. A builder substantially performs a construction contract with minor non-conforming deviations (e.g., wrong brand pipe of equivalent value). Under Jacobs & Youngs v. Kent (1921), the best-supported conclusion is:

A. The builder may recover nothing because the contract was technically breached

B. Substantial performance entitles the builder to recover the contract price less damages for the deviation; the damages are typically diminution in value rather than cost of completion when the deviation is minor and reconstruction would constitute economic waste

C. The owner may withhold the entire contract price for any non-conformity in performance

D. The builder may demand specific performance of acceptance by the owner

73. A coal company breaches its contractual obligation to restore property after strip mining; restoration would cost $29,000 but increase property value by only $300. Under Peevyhouse v. Garland Coal & Mining (1962), the best-supported conclusion is:

A. The plaintiff is entitled to specific performance of restoration regardless of cost

B. Damages are measured by diminution in value ($300) rather than cost of completion ($29,000) when the cost of completion would constitute economic waste grossly disproportionate to the benefit; the modern majority approach disfavors this rule

C. Damages are always measured by cost of completion regardless of disparity

D. The plaintiff is entitled to consequential damages only on a breach

74. Two parties write a contract on a restaurant check, allegedly while joking. One party claims the contract is not binding. Under Lucy v. Zehmer (1954), the best-supported conclusion is:

A. The objective theory of contracts controls — the parties' outward expressions, not subjective intent, determine contract formation; if a reasonable person would understand the manifestations as creating a binding agreement, the contract is enforceable

B. Subjective intent controls contract formation regardless of outward manifestations

C. Written contracts created in restaurants are unenforceable as a matter of law

D. The contract is unenforceable if either party privately considered the agreement a joke

75. An exclusive sales agency contract has no express promise of efforts by the agent. Under Wood v. Lucy, Lady Duff-Gordon (1917), the best-supported conclusion is:

A. The contract fails for lack of consideration without express promise of effort

B. The court implies a duty of reasonable efforts by the agent; the implied promise to use reasonable efforts supplies the consideration and binds the parties — Cardozo's principle that "the law has outgrown its primitive stage of formalism"

C. Exclusive agency contracts are unenforceable for indefiniteness of obligation

D. The contract requires express words of agency to be enforceable at all

76. A general contractor reasonably relies on a subcontractor's bid in preparing the general's bid; the subcontractor attempts to revoke before acceptance. Under Drennan v. Star Paving Co. (1958), the best-supported conclusion is:

A. The subcontractor may revoke at will until formal acceptance by the general

B. The subcontractor's bid is held irrevocable for a reasonable time under promissory estoppel because the general contractor reasonably relied on the bid in preparing its own; revocation is ineffective until the general's reliance period passes

C. The subcontractor's bid creates a binding contract upon submission

D. The subcontractor's bid is governed exclusively by UCC firm-offer rules

77. After contract formation, an unforeseen event makes performance significantly more difficult or expensive but not technically impossible. Under Restatement (Second) § 261, the best-supported conclusion is:

A. The contract is automatically discharged by any change in circumstances post-formation

B. Mere increased cost is sufficient to discharge the contract under impracticability

C. The party seeking to be excused must show absolute impossibility of performance

D. The contract is excused only if (1) an event occurred whose non-occurrence was a basic assumption of the contract, (2) the event makes performance impracticable (not merely costlier), AND (3) the party seeking excuse did not bear the risk; the doctrine is narrowly construed

78. A party rents a room with a view of an event; the event is canceled, eliminating the principal purpose of the rental. Under Krell v. Henry (1903), the best-supported conclusion is:

A. The contract remains enforceable because actual performance remains possible

B. Frustration of purpose discharges the contract when (1) a party's principal purpose is substantially frustrated, (2) by an unforeseen event, (3) whose non-occurrence was a basic assumption, AND (4) the party did not bear the risk; the cancellation of the central event satisfies these elements

C. The renter must perform regardless of the event's cancellation

D. The doctrine of frustration applies only to commercial contracts between merchants

79. A consumer signs a standard-form contract with significant boilerplate including an arbitration clause. Under modern doctrine following Williams v. Walker-Thomas Furniture (1965), the best-supported conclusion is:

A. Adhesion contracts are categorically unenforceable as a matter of public policy

B. Adhesion contracts are enforceable in all circumstances regardless of terms

C. Adhesion contracts may be set aside as unconscionable upon showing of (1) procedural unconscionability (oppression or surprise in the bargaining process) AND (2) substantive unconscionability (overly harsh or one-sided terms); the analysis depends on the totality of circumstances

D. Adhesion contracts may be set aside only upon showing of actual fraud

80. A surgeon promises a specific result from medical treatment; the result is not achieved. The patient sues. Under Hawkins v. McGee (1929), the best-supported conclusion is:

A. Damages are measured by reliance damages only in cases of medical promises

B. The surgeon's promise is unenforceable as professional medical opinion

C. The patient may recover expectation damages — the difference between the value of the result promised and the value of the result actually obtained; specific contractual promises of medical results are enforceable as contracts independent of medical malpractice

D. The patient may recover only restitution of medical fees paid

81. Offer for a unilateral contract; offeree begins partial performance; offeror attempts revocation. Under modern doctrine via Restatement (Second) § 45, the best-supported conclusion (in contrast to Petterson v. Pattberg's traditional rule) is:

A. Beginning performance creates an option contract holding the offer open while the offeree completes performance; revocation during this period is ineffective; Petterson's traditional rule permitting revocation up to complete performance has been substantially modified by the modern Restatement § 45 framework

B. The offeror may revoke at any time before complete performance under Petterson's traditional rule, which remains the modern majority

C. The offeree may not collect compensation for partial performance under any theory

D. Unilateral contracts are no longer enforceable under modern contract doctrine

82. Plaintiff confers a benefit on Defendant without a valid contract; Defendant retains the benefit. Plaintiff sues in quantum meruit. Under modern restitution doctrine, the best-supported conclusion is:

A. Plaintiff has no remedy without a valid contract between the parties

B. Plaintiff recovers the full contract price even without contract formation

C. Plaintiff recovers the reasonable value of the benefit conferred when (1) Plaintiff confers a benefit on Defendant non-officiously and not as a gift, AND (2) Defendant's retention without payment would be unjust; the remedy is independent of contract formation

D. Plaintiff recovers only nominal damages for benefits conferred

83. An online user clicks through a website without scrolling to view terms presented below the "agree" button. Under Specht v. Netscape Communications Corp. (2002), the best-supported conclusion is:

A. The click-through automatically forms a contract regardless of notice given

B. Electronic contracts require physical signatures to be binding under modern doctrine

C. The terms are enforceable if posted anywhere on the website regardless of visibility

D. Reasonable notice of contract terms is required for binding assent; terms not reasonably visible or accessible to the user at the time of clicking are unenforceable; effective electronic contracts require that the user be given reasonable notice of and assent to the terms

84. A party promises additional compensation for performance already required under an existing contract; no new consideration is given. Under Stilk v. Myrick (1809) and the pre-existing duty rule, the best-supported conclusion is:

A. The promise is unenforceable for lack of consideration; performance of a pre-existing duty does not constitute new consideration for a modified promise; UCC § 2-209 modifies this rule for sale-of-goods contracts and modern doctrine has eroded the rule

B. The promise is enforceable because additional compensation was promised

C. The pre-existing duty rule has been completely abolished in modern law

D. The promise is enforceable only with written documentation of modification

85. A nephew refrains from drinking and smoking as bargained-for consideration. Under Hamer v. Sidway (1891), the best-supported conclusion is:

A. Forbearance from a legal right (refraining from a lawful activity) is legal detriment sufficient to support consideration; the bargained-for restraint creates an enforceable promise even where the promisee gives up nothing tangible

B. Forbearance is not consideration without monetary value being given

C. Refusal to engage in vices is not legally cognizable consideration

D. The consideration must benefit the promisor directly to be enforceable

86. A surgeon's promise of a specific cosmetic result is not achieved. Plaintiff seeks damages. Under Sullivan v. O'Connor (1973), the best-supported conclusion is:

A. The plaintiff may recover only expectation damages measured by promised result

B. The plaintiff may recover only restitution of fees paid to the surgeon

C. In cases involving promises to achieve medical results, the plaintiff may recover reliance damages — typically the patient's expenses and worsening of condition resulting from reliance on the promise — which better reflects what was lost than expectation damages

D. The plaintiff has no remedy because medical promises are unenforceable as contracts

87. A creates a contract intending to benefit C as a third party. A and B later modify the contract to eliminate C's benefit. C had not yet manifested assent or relied. Under Restatement (Second) § 311, the best-supported conclusion is:

A. C's rights vest immediately upon contract formation regardless of conduct

B. C may sue under any third-party beneficiary contract without further requirements

C. C may modify the contract without A and B's consent once benefits accrue

D. C's rights as an intended third-party beneficiary do not vest until C (1) materially relies, (2) brings suit, or (3) manifests assent at A or B's request; until vesting, A and B may modify or rescind freely

88. A state prosecution seeks to admit evidence obtained in violation of the Fourth Amendment. Under Mapp v. Ohio (1961), the best-supported conclusion is:

A. State courts apply state evidentiary rules without regard to Fourth Amendment violations

B. The exclusionary rule applies only to federal proceedings under federal law

C. State courts may admit constitutionally tainted evidence with proper foundation

D. The Fourth Amendment exclusionary rule applies to state criminal proceedings through Fourteenth Amendment incorporation; evidence seized in violation of the Fourth Amendment must be excluded from state prosecutions

89. A police officer observes a suspect engaged in furtive activity and conducts a brief investigative stop and protective frisk. Under Terry v. Ohio (1968), the best-supported conclusion is:

A. The stop is permissible on reasonable suspicion based on articulable facts; a protective frisk is permissible if the officer reasonably suspects the person is armed and dangerous; the standards are less than probable cause

B. The stop requires probable cause for a seizure under the Fourth Amendment

C. The frisk requires a warrant before officer contact

D. The stop is permissible only upon witnessing an actual crime in progress

90. Government agents listen to a phone call made from a public phone booth without a warrant. Under Katz v. United States (1967), the best-supported conclusion is:

A. The Fourth Amendment applies only to physical intrusions into protected spaces

B. Public phone booths receive no Fourth Amendment protection from surveillance

C. The Fourth Amendment protects persons rather than places; a search occurs when the government violates a reasonable expectation of privacy that society recognizes as reasonable; the listening without warrant constitutes an unconstitutional search

D. The Fourth Amendment requires physical trespass for protection to apply

91. Police on probable cause to believe a container in a vehicle holds contraband search the container without a warrant. Under California v. Acevedo (1991), the best-supported conclusion is:

A. The container search requires a separate warrant beyond vehicle authorization

B. The container search is unconstitutional without consent of the owner

C. The container search requires both probable cause and a warrant in all circumstances

D. Police may conduct a warrantless search of a container in a vehicle when they have probable cause to believe the container holds contraband or evidence; the automobile exception extends to all containers in the vehicle that may contain the object of the search

92. Police on probable cause stop and search a vehicle without a warrant for contraband. Under Carroll v. United States (1925), the best-supported conclusion is:

A. The Fourth Amendment automobile exception permits warrantless searches of vehicles on probable cause; the mobile nature of vehicles and the lesser expectation of privacy in vehicles justify the exception

B. Vehicle searches require warrants except in true exigent circumstances

C. The automobile exception applies only to commercial vehicles, not private cars

D. The automobile exception requires consent of the vehicle owner

93. Police arrest a suspect in his home and search the entire house without a warrant. Under Chimel v. California (1969), the best-supported conclusion is:

A. The search incident to arrest is limited to the arrestee's person and the area within his immediate control; searches beyond this area without exigent circumstances or other exception require a warrant

B. Search incident to arrest extends to the entire premises of arrest

C. Search incident to arrest is limited to the room of the arrest only

D. Search incident to arrest extends to all nearby rooms without further showing

94. Police arrest a vehicle's occupant and search the passenger compartment after the arrestee is secured and removed. Under Arizona v. Gant (2009), the best-supported conclusion is:

A. The search is constitutional under Belton's bright-line rule for any arrest

B. The search is constitutional under the automobile exception alone

C. The search is constitutional as long as the arrest itself is lawful

D. Vehicle search incident to arrest is limited to circumstances where (1) the arrestee is unsecured and within reaching distance of the passenger compartment, OR (2) it is reasonable to believe the vehicle contains evidence of the offense of arrest; a handcuffed arrestee removed from the vehicle satisfies neither prong

95. The prosecution offers a testimonial out-of-court statement against the defendant; the declarant is unavailable, but the defendant had no prior opportunity to cross-examine. Under Crawford v. Washington (2004), the best-supported conclusion is:

A. The statement is admissible if reliable under Ohio v. Roberts's reliability analysis

B. The Confrontation Clause bars admission of testimonial hearsay against criminal defendants unless the declarant is unavailable AND the defendant had a prior opportunity to cross-examine; reliability analysis is replaced by these procedural requirements

C. The statement is admissible if it falls within a recognized hearsay exception

D. The statement is admissible if subject to court verification of accuracy

96. Pre-Crawford, the prosecution offered out-of-court statements against the defendant supported by indicia of reliability. Under Ohio v. Roberts (1980), as overruled by Crawford v. Washington (2004), the best-supported conclusion (as historical baseline) is:

A. Ohio v. Roberts permitted admission of hearsay against criminal defendants when the statement bore "adequate indicia of reliability" — either falling within a firmly rooted hearsay exception or possessing

particularized guarantees of trustworthiness; Crawford v. Washington (2004) overruled this approach for testimonial hearsay

B. Ohio v. Roberts continues to govern Confrontation Clause analysis after Crawford

C. Ohio v. Roberts applies only to civil proceedings rather than criminal cases

D. Ohio v. Roberts established the categorical bar of all hearsay against criminal defendants

97. The prosecution offers a forensic analyst's report identifying drugs without the analyst's testimony. Under Melendez-Diaz v. Massachusetts (2009) and Bullcoming v. New Mexico (2011), the best-supported conclusion is:

A. The report is admissible as a business record under standard exceptions

B. The forensic report is testimonial under Crawford; the analyst (or another competent witness with personal knowledge) must testify and be subject to cross-examination; admission without testimony violates the Confrontation Clause

C. The report is admissible under the public records exception

D. The report is admissible as scientific evidence regardless of testimony

98. Police arresting a suspect in a home conduct a brief protective sweep of immediately adjacent areas for persons who might pose danger. Under Maryland v. Buie (1990), the best-supported conclusion is:

A. The sweep is unconstitutional without a warrant in all circumstances

B. The sweep is constitutional throughout the entire home without limitation

C. A limited protective sweep — a quick, cursory inspection of places immediately adjacent to the place of arrest where a person might be hiding — is constitutional incident to arrest based on a reasonable belief that the area harbors a person posing danger; sweeps beyond immediately adjacent areas require articulable facts supporting reasonable suspicion

D. The sweep requires probable cause to be conducted lawfully

99. A custodial suspect unambiguously invokes the right to counsel; police continue questioning. Under Edwards v. Arizona (1981), the best-supported conclusion is:

A. Once a custodial suspect unambiguously invokes the right to counsel, all interrogation must cease until counsel is present or the suspect initiates further communication; any statements obtained in violation are inadmissible regardless of Miranda compliance

B. Police may continue questioning if the suspect previously waived rights

C. Police may continue if the suspect's invocation is ambiguous in any respect

D. The invocation has no effect on continued questioning if otherwise voluntary

100. Government agents deliberately elicit incriminating statements from an indicted defendant outside counsel's presence. Under Massiah v. United States (1964), the best-supported conclusion is:

A. The statements are admissible if Miranda warnings were given before

B. Once adversary judicial proceedings have commenced (indictment, preliminary hearing, arraignment), the Sixth Amendment right to counsel attaches; the government may not deliberately elicit incriminating statements about the charged offense without counsel, regardless of Miranda compliance

C. The statements are admissible if the defendant voluntarily speaks at any time

D. The Sixth Amendment applies only at trial, not during pretrial investigation

101. The prosecution fails to disclose material exculpatory evidence to the defense. Under Brady v. Maryland (1963), the best-supported conclusion is:

A. The prosecution's duty applies only when the defense specifically requests evidence

B. The prosecution's duty extends only to physical evidence rather than testimonial

C. The prosecution violates due process when it suppresses evidence (1) favorable to the accused (exculpatory or impeachment), (2) material to either guilt or punishment, and (3) regardless of prosecutorial good or bad faith; "material" means a reasonable probability the result would have been different

D. The prosecution's duty extends only to evidence proving innocence

102. A convicted defendant claims trial counsel was ineffective. Under Strickland v. Washington (1984), the best-supported conclusion is:

A. The defendant must show (1) counsel's performance was objectively unreasonable under prevailing professional norms AND (2) prejudice — a reasonable probability that, but for the deficient performance, the result would have been different; strategic choices receive substantial deference

B. The defendant must show counsel was inexperienced in the area

C. The defendant must show counsel made any error during representation

D. The defendant must show counsel's conduct was unethical under bar rules

103. Defense counsel fails to advise a noncitizen defendant of immigration consequences of a guilty plea. Under Padilla v. Kentucky (2010), the best-supported conclusion is:

A. Counsel has no duty to advise of collateral consequences of any kind

B. Counsel must advise only of direct sentencing consequences of the plea

C. Constitutionally effective counsel must advise noncitizen clients of deportation risks attached to guilty pleas; failure to advise (or affirmative misadvice) constitutes deficient performance under Strickland, and the defendant must show prejudice — a reasonable probability he would have rejected the plea and gone to trial

D. Immigration consequences are entirely collateral and outside counsel's duty

104. A defendant successfully appeals; the court imposes a higher sentence after retrial. Under North Carolina v. Pearce (1969), the best-supported conclusion is:

A. The higher sentence is automatically constitutional after successful appeal

B. The Due Process Clause bars vindictive sentencing; a presumption of vindictiveness arises when the same judge imposes a higher sentence after retrial absent objective on-the-record reasons; the prosecution may rebut by showing identifiable conduct or events occurring after the original sentence justifying the increase

C. The higher sentence is constitutional only with a jury's approval

D. The higher sentence is unconstitutional in all circumstances post-appeal

105. Police make an unconstitutional arrest, then obtain a confession from the arrestee. Under Wong Sun v. United States (1963), the best-supported conclusion is:

A. The confession is automatically admissible if voluntary under the totality

B. The confession is automatically inadmissible as fruit of the poisonous tree

C. Evidence and statements obtained as a result of constitutional violations are inadmissible as "fruit of the poisonous tree" unless attenuated from the violation by intervening factors, independent source, inevitable discovery, or otherwise sufficiently distant from the taint; the court analyzes the connection between violation and statement

D. The confession is admissible if Miranda warnings were given post-arrest

106. A state criminalizes the status of being a drug addict rather than the act of using drugs. Under Robinson v. California (1962), the best-supported conclusion is:

A. The state may criminalize any conduct deemed harmful to the community

B. The Eighth Amendment permits punishment of any disease-related conduct

C. The state law is constitutional as exercise of state police power

D. The Eighth Amendment bars punishment for the status of being an addict (a mental or physical condition) rather than for acts; punishing a person for the disease or condition rather than for proscribed conduct constitutes cruel and unusual punishment

107. A state imposes the death penalty for non-homicide rape of an adult. Under Coker v. Georgia (1977) and Kennedy v. Louisiana (2008), the best-supported conclusion is:

A. The death penalty is constitutional for any serious felony offense

B. The Eighth Amendment permits the death penalty for non-homicide offenses

C. The Eighth Amendment proportionality analysis is conducted on a case-by-case basis only

D. The Eighth Amendment categorically bars the death penalty for non-homicide offenses against individuals (Coker for adult rape, Kennedy for child rape); death is constitutionally disproportionate to non-homicide crimes

108. A state imposes the death penalty on a defendant with intellectual disability. Under Atkins v. Virginia (2002), the best-supported conclusion is:

A. The death penalty is constitutional for any capable defendant

B. The Eighth Amendment bars only the death penalty for severe intellectual disability

C. The Eighth Amendment categorically bars the execution of intellectually disabled offenders; the disability must be established through clinical criteria including (1) significant intellectual deficits, (2) significant deficits in adaptive behavior, and (3) onset before adulthood

D. Atkins applies only to severe physical disability rather than intellectual

109. A state imposes the death penalty for an offense committed when the defendant was 17. Under Roper v. Simmons (2005), the best-supported conclusion is:

A. The death penalty is constitutional for offenders of any age at the offense

B. The Eighth Amendment bars the death penalty only for offenses committed by children under 16

C. The Eighth Amendment categorically bars the death penalty for offenses committed by persons under 18 at the time of the offense; juvenile diminished culpability and capacity for change support categorical exclusion

D. Roper applies only to non-homicide juvenile offenses

110. A state imposes mandatory life without parole for an offense committed when the defendant was a juvenile. Under Miller v. Alabama (2012), the best-supported conclusion is:

A. Mandatory life without parole is constitutional for juveniles in all cases

B. Mandatory life without parole for juvenile offenders violates the Eighth Amendment because it precludes consideration of the juvenile's diminished culpability and capacity for change; sentencers must conduct an individualized hearing considering the juvenile's youth and its attendant characteristics before imposing life without parole

C. Miller applies only to homicide offenses by juveniles

D. Miller bars all juvenile life sentences regardless of consideration of factors

111. A state imposes life without parole on a juvenile for a non-homicide offense. Under Graham v. Florida (2010), the best-supported conclusion is:

A. Graham applies only to homicide offenses by juveniles

B. Life without parole is constitutional for any juvenile non-homicide offense

C. Graham requires only individualized sentencing for juvenile non-homicide offenders

D. The Eighth Amendment categorically bars life without parole for juveniles convicted of non-homicide offenses; states must provide some meaningful opportunity for release based on demonstrated maturity and rehabilitation

112. A state imposes the death penalty through a procedure that includes guided discretion through aggravating and mitigating factors and individualized sentencing. Under Furman v. Georgia (1972) and Gregg v. Georgia (1976), the best-supported conclusion is:

A. The death penalty is per se unconstitutional under the Eighth Amendment

B. Death-penalty procedures must include (1) guided discretion through specified aggravating and mitigating factors and (2) individualized sentencing consideration; Furman invalidated arbitrary capital sentencing, and Gregg upheld guided-discretion statutes meeting these procedural requirements

C. Death penalty procedures are entirely committed to state legislatures without constitutional standards

D. The death penalty is constitutional only with jury unanimity on every factor

113. A judge imposes the death penalty based on findings of aggravating factors made by judicial preponderance. Under Ring v. Arizona (2002), the best-supported conclusion is:

A. Aggravating factors may be found by the judge alone for capital sentencing

B. Aggravating factors require only a preponderance standard of proof

C. Aggravating factors that subject a defendant to the death penalty must be found by a jury, not a judge, under Apprendi v. New Jersey's logic extended to capital sentencing; aggravating factors function as the "functional equivalent of elements of a greater offense"

D. Aggravating factors are reviewable only on appeal after conviction

114. A capital defendant challenges his sentence based on statistical evidence of racial disparity in capital sentencing. Under McCleskey v. Kemp (1987), the best-supported conclusion is:

A. Statistical disparities prove racial discrimination as a matter of law

B. Statistical evidence of disparity alone does not establish an Eighth Amendment or Equal Protection violation in capital sentencing; the defendant must show purposeful discrimination in his particular case to obtain relief

C. The Eighth Amendment categorically bars all capital sentencing where statistical disparities exist

D. Statistical evidence is inadmissible in capital sentencing challenges

115. A state court in 1959 admits evidence obtained in a Fourth Amendment violation. Under Wolf v. Colorado (1949), which was overruled by Mapp v. Ohio (1961), the best-supported conclusion (as historical doctrine) is:

A. Wolf v. Colorado established the modern exclusionary rule in state courts

B. Wolf v. Colorado required states to follow federal Fourth Amendment standards exactly

C. Wolf v. Colorado required application of all federal Fourth Amendment protections to state criminal proceedings

D. Wolf v. Colorado held that the Fourth Amendment applied to the states through the Fourteenth Amendment but that the exclusionary rule was not required; Mapp v. Ohio (1961) subsequently overruled this aspect and required state courts to exclude evidence obtained in Fourth Amendment violations

116. A custodial suspect remains silent for hours of interrogation, then makes incriminating statements. Under Berghuis v. Thompkins (2010), the best-supported conclusion is:

A. The right to silence is invoked by mere silence under modern doctrine

B. The right to silence must be invoked in a writing signed by the suspect

C. To invoke the Fifth Amendment right to silence, a suspect must do so unambiguously; mere silence without an unambiguous invocation does not invoke the right, and subsequent voluntary statements may be admissible if Miranda warnings were given and the suspect did not invoke silence or counsel

D. Berghuis bars admission of statements made after any prolonged silence

117. A party offers evidence claimed to be relevant. Under Federal Rule of Evidence 401, the best-supported conclusion is:

A. Evidence is relevant if it has any tendency to make a material fact more or less probable than it would be without the evidence; the threshold is low, and any tendency suffices for relevance, subject to other exclusionary rules

B. Evidence must have substantial probative value to be relevant

C. Evidence is relevant only if it directly proves the fact in issue

D. Relevance requires expert testimony to establish in every case

118. A party seeks to introduce relevant but prejudicial evidence. The opposing party objects under Rule 403. Under Rule 403, the best-supported conclusion is:

A. All relevant evidence is automatically admissible regardless of prejudice

B. Rule 403 permits exclusion of relevant evidence only if its probative value is substantially outweighed by unfair prejudice, confusion of issues, misleading the jury, undue delay, wasting time, or needlessly cumulative evidence; the rule strongly favors admission with substantial trial court discretion

C. Rule 403 requires exclusion of any prejudicial evidence offered

D. Rule 403 requires admission of all evidence offered without balancing

119. A party seeks to introduce novel scientific expert testimony in a federal court. Under Daubert v. Merrell Dow Pharmaceuticals (1993), which superseded Frye v. United States (1923) in federal court, the best-supported conclusion is:

A. The Frye general-acceptance test continues to control federal expert testimony

B. The Daubert factors are limited to scientific testimony only and not engineering

C. Expert testimony requires only that the expert be qualified by education

D. Daubert v. Merrell Dow Pharmaceuticals (codified in Rule 702) imposes a gatekeeper function on the trial court — assessing the reliability of expert testimony through factors including testability, peer review and publication, known error rate, controlling standards, and general acceptance; Frye's pure general-acceptance test was superseded in federal court

120. Under Daubert v. Merrell Dow Pharmaceuticals (1993), the best-supported conclusion about expert testimony admissibility is:

A. Expert testimony requires acceptance by the relevant scientific community alone

B. Expert testimony is admissible if the expert is qualified by experience or education

C. Daubert applies only in personal-injury cases involving toxic substances

D. The trial court conducts a gatekeeping inquiry into the reliability and fit of expert testimony, considering factors including (1) testability and falsifiability, (2) peer review and publication, (3) known or potential error rate, (4) maintenance of standards, and (5) general acceptance; the analysis is flexible and not all factors apply in every case

121. A party seeks to introduce non-scientific expert testimony (e.g., engineering or specialized knowledge). Under Kumho Tire Co. v. Carmichael (1999), the best-supported conclusion is:

A. Daubert applies only to scientific testimony, not other expert opinions

B. Non-scientific expert testimony is admissible without reliability analysis

C. The Daubert gatekeeping function extends to all expert testimony under Rule 702 — including technical and other specialized knowledge — not just scientific evidence; the same flexible reliability analysis applies

D. Non-scientific expert testimony requires more rigorous reliability analysis than scientific testimony

122. The prosecution offers Defendant's prior statement against Defendant at trial. The defense objects on hearsay grounds. Under Federal Rule of Evidence 801(d)(2)(A), the best-supported conclusion is:

A. The statement is hearsay subject to no exception

B. The statement is admissible under the residual hearsay exception

C. The statement is admissible under the business records exception

D. The statement is categorically excluded from the hearsay definition as the opposing party's own statement; it is admissible as non-hearsay without any need for a hearsay exception

123. A witness makes a statement under the stress of excitement immediately after a startling event. The prosecution offers the statement. Under Federal Rule of Evidence 803(2), the best-supported conclusion is:

A. The statement is hearsay with no available exception

B. The statement is admissible as an excited utterance if (1) it relates to a startling event AND (2) was made while the declarant was under the stress of excitement caused by the event; contemporaneity is not strictly required but the stress condition is

C. The statement requires unavailability of the declarant

D. The statement is admissible only with corroboration of the event

124. A witness describes an event as she perceives it. The opposing party objects on hearsay grounds. Under Federal Rule of Evidence 803(1), the best-supported conclusion is:

A. The statement is hearsay with no exception available under modern rules

B. The statement requires the witness's testimony in addition to the statement

C. The statement is admissible as a present sense impression if it describes or explains an event made while or immediately after the declarant perceived it; contemporaneity is the touchstone of reliability, and unavailability is not required

D. The statement is admissible only in civil cases under modern doctrine

125. A declarant makes a statement about her current state of mind, emotion, or physical condition. The opposing party objects. Under Federal Rule of Evidence 803(3), the best-supported conclusion is:

A. The statement is inadmissible as hearsay without exception

B. The statement is admissible as a present statement of the declarant's then-existing state of mind, emotion, sensation, or physical condition; the exception applies regardless of declarant availability but is limited when offered to prove the fact remembered or believed (with a narrow exception for wills)

C. The statement is admissible only with corroborating evidence

D. The statement is admissible only as substantive evidence rather than impeachment

126. A witness once had knowledge of an event but cannot now recall; the witness made a record when the matter was fresh. Under Federal Rule of Evidence 803(5), the best-supported conclusion is:

A. The record is inadmissible because the witness cannot testify directly

B. The record is admissible as past recollection recorded if (1) the witness once had knowledge, (2) the witness now lacks sufficient recollection, (3) the record was made or adopted when fresh in memory,

AND (4) the record accurately reflects the witness's knowledge; the record is read into evidence but received as an exhibit only if offered by the adverse party

C. The record is admissible as a business record under separate exception

D. The record is admissible without foundation testimony

127. A party offers a regularly kept business record. The opposing party objects on hearsay grounds. Under Federal Rule of Evidence 803(6), the best-supported conclusion is:

A. The record is inadmissible as hearsay regardless of business practice

B. The record is admissible only with the original keeper's testimony at trial

C. The record is admissible if (1) made at or near the time by a person with knowledge, (2) kept in the regular course of a regularly conducted activity, (3) making such records was a regular practice, AND (4) authenticated by a qualified witness or Rule 902(11) certification; the opponent may show lack of trustworthiness

D. The record is admissible only with notice to the opponent before trial

128. A party offers a public record of an office's activities or matters observed by officers. The opposing party objects. Under Federal Rule of Evidence 803(8), the best-supported conclusion is:

A. The record is inadmissible as hearsay regardless of source

B. The record is admissible only with the original officer's testimony

C. The record is admissible if it sets out (1) the office's activities, (2) matters observed by a public officer with a duty to report (excluding law-enforcement observations in criminal cases against the defendant), OR (3) factual findings from a legally authorized investigation

D. The record is admissible without authentication of any kind

129. In a homicide prosecution, the prosecution offers a statement by the victim shortly before death identifying the assailant. The defense objects. Under Federal Rule of Evidence 804(b)(2), the best-supported conclusion is:

A. The statement is inadmissible as hearsay without exception

B. The statement is admissible as a dying declaration if (1) the declarant believed death was imminent, (2) the statement concerns the cause or circumstances of impending death, AND (3) the declarant is unavailable; the exception applies in homicide prosecutions and civil cases

C. The statement is admissible only with corroboration from other evidence

D. The statement is admissible regardless of the declarant's belief about death

130. A non-testifying declarant made a statement against the declarant's penal interest. The prosecution offers the statement. Under Federal Rule of Evidence 804(b)(3), the best-supported conclusion is:

A. The statement is inadmissible without corroboration of any kind

B. The statement is admissible without further analysis if against interest

C. The statement is admissible if (1) the declarant is unavailable, (2) the statement was against the declarant's pecuniary, proprietary, or penal interest at the time made, AND (3) a reasonable person would not have made it unless believing it true; criminal-liability statements require corroborating circumstances clearly indicating trustworthiness

D. The statement is admissible only if it implicates only the declarant

131. A party seeks to introduce character evidence to prove a person acted in accordance with the character on a particular occasion. Under Federal Rule of Evidence 404(a), the best-supported conclusion is:

A. Character evidence is admissible if relevant under Rule 401

B. Character evidence is freely admissible to prove conduct on the occasion

C. Character evidence is generally inadmissible to prove conduct on a particular occasion (propensity); Rule 404(b)(2) admits other-acts evidence for non-character purposes — motive, opportunity, intent, plan, knowledge, identity, absence of mistake — subject to Rule 403 balancing

D. Character evidence is admissible only in criminal cases by the defendant

132. A party seeks to introduce evidence of other acts to prove motive or identity. The opposing party objects. Under Federal Rule of Evidence 404(b), the best-supported conclusion is:

A. Other-acts evidence is admissible to prove propensity if relevant

B. Other-acts evidence is admissible for non-character purposes including motive, opportunity, intent, plan, knowledge, identity, or absence of mistake; the proponent must articulate a specific permissible purpose, the evidence must be probative of that purpose, and Rule 403 balancing applies; pure propensity use is barred under Rule 404(b)(1)

C. Other-acts evidence is admissible without any limitation if relevant

D. Other-acts evidence is inadmissible in all circumstances under Rule 404

133. A party seeks to prove character through specific instances of conduct. Under Federal Rule of Evidence 405, the best-supported conclusion is:

A. Character may be proved only through reputation testimony from witnesses

B. Character may be proved only through opinion testimony of witnesses

C. When character is an essential element of a claim or defense (Rule 405(b)), specific instances may be proved; when character is offered under Rule 404 for permissible purposes (Rule 405(a)), reputation and opinion testimony control on direct, with specific instances available only on cross-examination

D. Character may be proved only through documentary evidence of acts

134. A party seeks to introduce evidence of a person's habit or organization's routine practice. The opposing party objects. Under Federal Rule of Evidence 406, the best-supported conclusion is:

A. Habit evidence is inadmissible because it implies propensity to act

B. Habit evidence is admissible without any limitation if offered

C. Habit evidence requires corroboration from independent sources

D. Rule 406 admits evidence of a person's habit or an organization's routine practice to prove that on a particular occasion the person or organization acted in accordance with the habit or routine; habit differs from character in that it is specific, routine, and semi-automatic conduct

135. A party seeks to introduce evidence of a defendant's remedial measures taken after an injury. The defendant objects. Under Federal Rule of Evidence 407, the best-supported conclusion is:

A. Subsequent remedial measures are categorically admissible to prove fault

B. Subsequent remedial measures are inadmissible for all purposes whatsoever

C. Subsequent remedial measures are admissible only with the parties' consent

D. Subsequent remedial measures are excluded when offered to prove negligence, culpable conduct, a defect, or a need for warning; the evidence may be admitted for permissible purposes including impeachment, ownership, control, or feasibility when controverted

136. A party offers evidence of the opposing party's settlement offer to prove liability. The opposing party objects. Under Federal Rule of Evidence 408, the best-supported conclusion is:

A. Compromise offers are admissible to prove liability for the underlying claim

B. Compromise offers are admissible under the residual hearsay exception

C. Rule 408 bars evidence of compromise offers and conduct or statements in negotiations when offered to prove or disprove validity or amount of a disputed claim or for impeachment by inconsistent statement; the rule does not bar such evidence offered for other purposes (bias, undue delay, obstruction of criminal investigation)

D. Compromise offers are admissible to impeach by inconsistent statement only

137. A party seeks to introduce statements made during plea negotiations. The opposing party objects. Under Federal Rule of Evidence 410, the best-supported conclusion is:

A. Rule 410 bars evidence of withdrawn guilty pleas, nolo contendere pleas, statements made during plea negotiations with prosecutors, and statements in any proceeding regarding such pleas; the rule applies in any civil or criminal case against the defendant who made the plea or statement

B. Plea negotiations are freely admissible against the defendant who participated

C. Plea statements are admissible if voluntary and uncoerced

D. Plea statements are admissible under the public records exception

138. In a sexual-misconduct case, a party seeks to introduce evidence of the victim's prior sexual behavior. Under Federal Rule of Evidence 412, the best-supported conclusion is:

A. The evidence is freely admissible to prove consent or credibility

B. Rule 412 bars evidence offered to prove a victim's prior sexual behavior or sexual predisposition in sexual-misconduct cases, with limited exceptions for (1) evidence of specific instances offered to prove

someone other than the defendant was the source of physical evidence, (2) evidence of past sexual behavior with the defendant offered on consent, AND (3) constitutional rights; balance probative value against unfair prejudice

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

D. The evidence is admissible only in civil cases rather than criminal

139. A party seeks to invoke a privilege in federal court. Under Federal Rule of Evidence 501 and federal common law, the best-supported conclusion is:

A. Federal courts apply only federally codified privileges in evidence law

B. Federal courts apply common-law privileges as interpreted in light of reason and experience; state law governs privileges in civil cases arising under state law where state law supplies the rule of decision; federal courts have recognized attorney-client, marital, psychotherapist-patient, and other privileges

C. Federal courts apply state-law privileges in all cases including federal claims

D. Privileges in federal court are categorically barred under modern doctrine

140. A party inadvertently produces a privileged document during discovery. Under Federal Rule of Evidence 502, the best-supported conclusion is:

A. The disclosure waives privilege in all subsequent proceedings and forums

B. Inadvertent disclosure waives privilege only for the specific disclosed document

C. Rule 502 provides that inadvertent disclosure of privileged communications does not waive privilege if (1) the disclosure was inadvertent, (2) the holder took reasonable steps to prevent disclosure, AND (3) the holder promptly took reasonable steps to rectify the error; the rule promotes orderly handling of privileged materials

D. Inadvertent disclosure has no effect on privilege under modern doctrine

141. Plaintiff seeks to compel testimony from a psychotherapist about confidential patient communications. Under Jaffee v. Redmond (1996), the best-supported conclusion is:

A. The psychotherapist must testify because no federal psychotherapist privilege exists

B. Jaffee v. Redmond recognized the federal psychotherapist-patient privilege protecting confidential communications between a patient and a licensed psychotherapist (including licensed social workers performing therapy); the privilege belongs to the patient and is not subject to balancing

C. The privilege applies only to psychiatrists rather than psychologists or social workers

D. The privilege applies only in civil cases rather than criminal

142. A witness is asked to testify against her spouse in a criminal case. Under Trammel v. United States (1980), the best-supported conclusion is:

A. The defendant spouse may bar the testifying spouse from testifying against him

B. The testimonial spousal privilege belongs to the testifying spouse, who may choose whether to testify against her defendant spouse in a criminal case; the defendant spouse cannot prevent the witness spouse from testifying voluntarily; the marital communications privilege separately protects confidential spousal communications

C. The privilege belongs to both spouses jointly under modern doctrine

D. The privilege has been abolished in federal court under modern rules

143. Corporate counsel speaks with low-level employees about matters relevant to legal advice for the corporation. Under Upjohn Co. v. United States (1981), the best-supported conclusion is:

A. The attorney-client privilege extends to communications between corporate counsel and any employee about matters relevant to providing legal advice to the corporation, regardless of the employee's rank; Upjohn rejected the control-group test that limited privilege to communications with senior management

B. Corporate privilege extends only to senior management under modern law

C. Corporate privilege requires waiver to apply to lower employees

D. Corporate privilege does not apply to internal investigations at all

144. A witness uses a writing to refresh recollection during testimony. The opposing party seeks to inspect the writing. Under Federal Rule of Evidence 612, the best-supported conclusion is:

A. The writing must be excluded entirely from the proceedings

B. The writing automatically becomes substantive evidence at trial

C. The witness's testimony is invalid if refreshed by a writing

D. Rule 612 permits the witness to use a writing to refresh recollection; the writing itself is not admitted as substantive evidence (the witness's testimony controls), but the adverse party is entitled to inspect the writing, cross-examine on it, and introduce relevant portions; Rule 803(5) separately admits recorded recollection as substantive evidence

145. Two hunters pursue a fox; one wounds it but the other captures it. Under Pierson v. Post (1805), the best-supported conclusion is:

A. The hunter who captures (asserts dominion over) the fox acquires title; mere pursuit without manifesting an intent to control by occupancy is insufficient; capture or mortal wounding with continued pursuit is required for title in wild animals

B. The hunter who first wounds the animal acquires title regardless of capture

C. The hunter who first pursues acquires title under traditional doctrine

D. Title in wild animals is determined by good faith of the hunter

146. A possessor occupies land for the statutory period. The owner challenges title. Under common-law adverse possession doctrine, the best-supported conclusion is:

A. Adverse possession requires only continuous use of the land

B. Adverse possession requires (1) actual possession, (2) open and notorious use, (3) hostile (without permission), (4) exclusive, AND (5) continuous for the statutory period; all five elements must be satisfied throughout the entire statutory period

C. Adverse possession requires written documentation of the claim of right

D. Adverse possession requires the owner's actual knowledge of the use

147. A possessor occupies land believing it is her own under a mistake of fact (e.g., honestly mistaken about the boundary). Under modern doctrine following Mannilo v. Gorski (1969), the best-supported conclusion is:

A. The possession is not hostile because the possessor acted in good faith

B. The possession is not hostile because the possessor lacked subjective intent to take

C. The possessor must show subjective bad faith for hostility to exist

D. The hostility requirement is satisfied by objective use inconsistent with the true owner's rights; subjective intent is irrelevant in most jurisdictions; the possessor's good or bad faith does not control the analysis

148. A grantor conveys "to A for life, then to A's children who reach age 25." A has no children at conveyance. Under the classical Rule Against Perpetuities, the best-supported conclusion is:

A. The interest is valid because A's children will likely vest within the period

B. The interest violates the Rule Against Perpetuities — a contingent interest that might vest more than 21 years after the death of a measuring life in being at creation is void; here, A's children to reach 25 might not be born within A's lifetime and might not reach 25 within 21 years of A's death

C. The interest is valid under modern wait-and-see doctrine alone

D. The interest is valid only if A has children at conveyance

149. Cohabitants without a formal marriage seek to enforce a property-sharing agreement. Under Marvin v. Marvin (1976), the best-supported conclusion is:

A. Cohabitation agreements are categorically unenforceable under family law

B. Cohabitation agreements are unenforceable as against public policy concerns

C. Cohabitation agreements may be enforced under contract principles; cohabitants are entitled to enforce express agreements about property, services, and earnings as long as the consideration is not explicit sexual services; implied contracts and equitable remedies may also apply

D. Cohabitation agreements are governed exclusively by family law statutes

150. In a race jurisdiction, Plaintiff prior unrecorded grantee seeks to defeat a subsequent grantee. Defendant subsequent grantee recorded first. Under the race statute, the best-supported conclusion is:

A. In a pure race jurisdiction, the first to record prevails regardless of notice; Defendant's prior recording defeats Plaintiff's claim even though Plaintiff received the deed first

B. The first to receive the deed prevails regardless of recording order

C. Notice analysis applies in race jurisdictions to determine priority

D. The race-notice rule applies in pure race jurisdictions as the operative test

151. A subsequent purchaser takes land with notice of a restrictive covenant; the original parties did not have horizontal privity. Under Tulk v. Moxhay (1848), the best-supported conclusion is:

A. The covenant is enforceable only with horizontal privity at common law

B. The covenant is unenforceable against the subsequent purchaser absent privity

C. The covenant is enforceable only with the subsequent purchaser's consent

D. Equitable servitudes are enforceable in equity against successors with notice (actual, record, or inquiry) when the original parties intended to bind successors and the covenant touches and concerns the land; horizontal privity is not required for equitable enforcement, distinguishing equitable servitudes from real covenants at law

152. An easement holder claims an easement by necessity for access to a landlocked parcel. Under traditional easement-by-necessity doctrine, the best-supported conclusion is:

A. Easements of necessity arise from mere convenience to the dominant owner

B. Easements by necessity require (1) common ownership at severance, (2) strict necessity for access (not mere convenience), AND (3) necessity arising at the time of severance; the easement passes with the dominant estate

C. Easements by necessity are perpetual without limitation in scope

D. Easements by necessity arise from public policy regardless of common ownership

153. An easement appurtenant is used to benefit not only the dominant estate but also a separately owned parcel. Under Brown v. Voss (1986), the best-supported conclusion is:

A. Use of an easement to benefit land beyond the dominant estate is unauthorized misuse; the easement is limited to benefiting the dominant estate it was created for, and use for additional parcels constitutes a violation regardless of whether burden on the servient estate is increased

B. Use beyond the dominant estate is automatically authorized by easement

C. Use beyond the dominant estate is permissible if burden is not increased

D. Easements appurtenant may be used for any related parcel in common ownership

154. A developer sells parcels in a planned subdivision with uniform restrictive covenants. A subsequent purchaser claims no notice of the restrictions in his deed. Under Sanborn v. McLean (1925), the best-supported conclusion is:

A. Restrictions in a subdivision apply only to deeds expressly containing them

B. Reciprocal negative servitudes arise implicitly when a developer manifests a common scheme through (1) sale of substantial property with uniform restrictions and (2) circumstances suggesting the restrictions are intended for the benefit of all parcels in the development; the implied restrictions bind subsequent purchasers with notice

C. Subdivision restrictions require explicit notice in each deed to be valid

D. Implied servitudes are unenforceable as too vague for enforcement

155. Buyer and Seller execute a land-sale contract. Before closing, the property is destroyed. Under traditional equitable-conversion doctrine, the best-supported conclusion is:

A. The buyer can refuse to close because the property is destroyed before closing

B. The seller bears the risk of loss under all circumstances and doctrines

C. Equitable conversion treats the buyer as the equitable owner upon execution of an enforceable land-sale contract; under the English (majority) rule, risk of loss passes to the buyer at execution; UVDA jurisdictions place risk on the seller until possession or title passes; contractual risk-allocation may modify

D. The contract is automatically discharged by destruction of the property

156. Buyer sues Seller for failure to deliver marketable title due to an undisclosed easement. Under traditional marketable-title doctrine, the best-supported conclusion is:

A. Marketable title must be free from reasonable doubt and undisclosed defects; an undisclosed easement materially affecting the property's value or use renders title unmarketable, supporting Buyer's claim

B. Marketable title requires only that the seller hold legal title at closing

C. Marketable title is not required absent express contract provision

D. Easements never affect marketability of title under traditional doctrine

157. A purported joint tenancy is created without all four unities. Under traditional joint-tenancy doctrine, the best-supported conclusion is:

A. Joint tenancy is automatically created in all cotenancy arrangements

B. Joint tenancy requires the four unities at creation — time (interests vest simultaneously), title (acquired by the same instrument), interest (equal interests), AND possession (equal right to possess); without all four, the cotenancy defaults to tenancy in common

C. Joint tenancy requires only the unity of possession to be created

D. Joint tenancy is created by express words alone regardless of unities

158. A joint tenant attempts to sever by self-conveyance without the cooperation of a strawman. Under Riddle v. Harmon (1980), modifying common-law doctrine, the best-supported conclusion is:

A. Severance requires a strawman transaction at common law without exception

B. Modern doctrine permits a joint tenant to sever the joint tenancy by self-conveyance to herself; the artificial requirement of a strawman conveyance has been eliminated, and direct severance is effective to create a tenancy in common; the conveyance must manifest clear intent to sever

C. Severance is impossible without joint tenant consent in modern law

D. Severance requires court order to be effective

159. Married spouses hold property as tenants by the entirety. A creditor of one spouse attempts to attach. Under traditional tenancy-by-the-entirety doctrine, the best-supported conclusion is:

A. Neither spouse may unilaterally convey or encumber the property without the other's consent; creditors of one spouse generally cannot reach entirety property to satisfy individual debts; the entirety property is treated as an indivisible unit

B. Either spouse may unilaterally convey entirety property to a third party

C. Creditors of either spouse may attach entirety property freely

D. Tenancy by entirety has been abolished in modern American law

160. A residential development encroaches on an existing industrial operation; residents sue for nuisance. Under Spur Industries, Inc. v. Del E. Webb Development Co. (1972), the best-supported conclusion is:

A. The development has come to the nuisance and cannot recover any relief

B. The nuisance must be permanently enjoined regardless of equities

C. The court balances equities including who came to the nuisance; the developer who knowingly extended residential development to the boundary of an industrial operation may obtain injunctive relief but must indemnify the industrial operator for moving costs; equitable principles permit nuanced remedies

D. The industrial operation must cease without compensation to the operator

161. A cement plant emits substantial dust harming nearby residents. Plaintiffs seek injunctive relief. Under Boomer v. Atlantic Cement Co. (1970), the best-supported conclusion is:

A. The plant must be permanently enjoined regardless of consequences

B. The court may award permanent damages instead of an injunction when (1) granting an injunction would cause grossly disproportionate harm to the defendant, (2) the harm is substantial but compensable in damages, AND (3) the public interest in continued operation supports balancing; damages compensate without forcing closure

C. The plaintiff must accept the harm without compensation under nuisance law

D. The plant must continue without restriction or compensation

162. A landlord refuses to renew a lease after the tenant reported housing code violations. Under Edwards v. Habib (1968), the best-supported conclusion is:

A. The landlord's retaliatory eviction violates public policy; the implied warranty of habitability and tenant protections preclude retaliation for tenant exercise of statutory rights; the landlord may not refuse renewal or evict in retaliation for code-violation reports

B. Landlords have unrestricted discretion in tenant selection and renewal

C. Retaliatory eviction is permissible if not expressly prohibited by statute

D. Tenant protections apply only to formal lease violations

163. A tenant withholds rent claiming uninhabitable conditions. The landlord sues. Under modern doctrine following Javins v. First National Realty Corp. (1970), the best-supported conclusion is:

A. The implied warranty of habitability — generally non-waivable in residential leases — requires landlords to maintain premises in habitable condition; substantial breach permits the tenant to withhold rent, terminate the lease, or seek damages

B. Tenants have no right to withhold rent under traditional landlord-tenant law

C. The warranty applies only to commercial leases rather than residential

D. The warranty applies only to express lease provisions of habitability

164. A residential tenant abandons a lease early. The landlord sues for rent. Under Sommer v. Kridel (1977), the best-supported conclusion is:

A. The landlord has no duty to mitigate damages after tenant abandonment

B. The landlord may collect full rent regardless of mitigation efforts

C. The modern majority rule requires landlords to make reasonable efforts to mitigate damages by attempting to re-lease the premises; the breaching tenant remains liable for the gap between abandonment and re-lease but not for damages that could have been avoided by reasonable diligence

D. The landlord must accept any substitute tenant offered by the breaching tenant

165. A landlord substantially interferes with the tenant's possession, leading to constructive eviction. Under traditional covenant of quiet enjoyment doctrine, the best-supported conclusion is:

A. Every lease includes an implied covenant of quiet enjoyment; substantial interference amounting to constructive eviction permits the tenant to terminate the lease, withhold rent, or recover damages — provided notice is given and the tenant vacates within a reasonable time

B. The covenant applies only to express provisions in the lease

C. The covenant applies only to commercial leases rather than residential

D. Tenants have no remedy for landlord interference with quiet enjoyment

166. An easement appurtenant benefits a parcel; the parcel is sold to a new owner. Under traditional easement doctrine, the best-supported conclusion is:

A. The easement is extinguished upon sale of the dominant estate to another

B. An easement appurtenant transfers automatically with the dominant estate to its new owner; the easement is incident to the dominant land and benefits whoever holds it, without requiring separate transfer documentation; the burden also runs to successors of the servient estate with notice

C. The easement requires separate transfer documentation in the deed

D. Easement transfers are governed by separate written agreements between parties

167. A licensor grants permission to use land. The licensor attempts to revoke. Under traditional license doctrine, the best-supported conclusion is:

A. Licenses are irrevocable in all circumstances under traditional doctrine

B. Licenses are governed only by easement doctrine in modern law

C. Licenses are unenforceable in modern law regardless of circumstances

D. A license is revocable permission to use another's land, freely revocable by the licensor at any time unless coupled with an interest or estoppel applies (the licensee has substantially relied to her detriment, in which case the license may be enforced as an easement by estoppel)

168. A cotenant in sole possession seeks contribution from other cotenants for maintenance expenses; she also receives rents from third parties. Under traditional cotenancy doctrine, the best-supported conclusion is:

A. Cotenants owe no contribution to each other for any expenses

B. Cotenants must share all expenses equally regardless of ownership shares

C. Cotenants must accept whatever the possessing cotenant decides about expenses

D. A cotenant in possession may demand contribution from other cotenants for necessary expenses (taxes, mortgage payments, necessary repairs) in proportion to their ownership interests; she owes an accounting for net rents received from third parties (but not for her own beneficial use absent ouster)

169. In a race-notice jurisdiction, a subsequent BFP without notice recorded after a prior grantee recorded. Under race-notice statute, the best-supported conclusion is:

A. In a race-notice jurisdiction, a subsequent BFP for value without notice prevails over a prior unrecorded grantee only if she records first; if the prior grantee records first, the prior grantee prevails; recording order is determinative when notice is satisfied

B. The first to record always prevails regardless of notice or BFP status

C. Notice alone determines priority in race-notice jurisdictions

D. The first to receive the deed always prevails regardless of recording

170. In a notice jurisdiction, a subsequent BFP without notice recorded after a prior unrecorded grantee. Under the notice statute, the best-supported conclusion is:

A. The first to record prevails regardless of notice status of either party

B. The first to receive the deed prevails regardless of recording order

C. In a notice jurisdiction, a subsequent BFP for value without notice prevails over a prior unrecorded grantee regardless of recording order; the dispositive question is whether the later purchaser took without notice, not who records first

D. Notice and recording are equally dispositive of priority in notice jurisdictions

171. A subsequent purchaser fails to investigate facts suggesting a prior interest in the property. Under traditional inquiry-notice doctrine, the best-supported conclusion is:

A. Only actual notice charges a purchaser with knowledge of prior interests

B. Only record notice from the recording system charges knowledge of interests

C. Notice is determined entirely by the purchaser's subjective awareness of facts

D. Inquiry notice charges a purchaser with knowledge of facts that reasonable inquiry would have revealed; circumstances suggesting a prior interest (visible possession, suspicious title gaps, unusual references) trigger a duty to investigate; failure to inquire destroys BFP protection

172. Plaintiff sues Defendant grantor on a covenant of seisin in a warranty deed. Under traditional deed-covenants doctrine, the best-supported conclusion is:

A. All deed covenants run to subsequent grantees automatically

B. Present covenants are breached upon any interference with title later

C. Future covenants are breached at delivery of the deed by the grantor

D. A general warranty deed contains present covenants (seisin, right to convey, against encumbrances), breached at delivery (and traditionally not running to subsequent grantees), and future covenants (warranty, quiet enjoyment, further assurance), breached upon interference and running to subsequent grantees; the covenant of seisin is a present covenant breached at delivery if the grantor did not own the property

173. A railroad employee negligently dislodges a package from a passenger, causing an unforeseeable chain of events leading to injury to a distant plaintiff. Under Palsgraf v. Long Island Railroad Co. (1928), the best-supported conclusion is:

A. The railroad is liable because its employee was negligent in some respect

B. Cardozo's majority opinion limits duty to foreseeable plaintiffs within the zone of danger; a negligent act gives rise to liability only to those whose injury was foreseeable; Palsgraf was outside the foreseeable zone and the railroad owed her no duty

C. Andrews's dissent governs all proximate cause cases under modern doctrine

D. The court applies strict liability without regard to foreseeability of plaintiff

174. A consumer is injured by a defective product sold through a chain of distribution; the manufacturer never sold directly to the consumer. Under MacPherson v. Buick Motor Co. (1916), the best-supported conclusion is:

A. The consumer has no remedy without contractual privity with the manufacturer

B. The consumer must sue the immediate seller in the chain of distribution

C. The consumer must show fraud rather than negligence for recovery

D. A manufacturer of an inherently dangerous product owes a duty of care to the ultimate consumer regardless of contractual privity; Cardozo's opinion eliminated the privity requirement for negligence claims arising from defective products that are reasonably certain to cause harm if negligently made

175. A consumer is injured by a defective product. Under Greenman v. Yuba Power Products, Inc. (1963) and Restatement (Second) § 402A, the best-supported conclusion is:

A. The manufacturer is liable only on a negligence theory of recovery

B. The manufacturer is liable only on warranty theories of recovery

C. The manufacturer is liable only with privity of contract with the consumer

D. A manufacturer of a product who places it on the market knowing that it is to be used without inspection for defects is strictly liable for personal injuries caused by the defect; negligence and contractual privity are not required; the defect may be in manufacturing, design, or warning

176. A commercial seller markets a product in a defective condition unreasonably dangerous to the user. Under Restatement (Second) § 402A, the best-supported conclusion is:

A. The seller is liable only on warranty theories of recovery

B. A commercial seller of a product in a defective condition unreasonably dangerous to the user or consumer is strictly liable for physical harm caused by the defect; the product must reach the user or consumer without substantial change; due care is not a defense

C. The seller is liable only with proof of negligence in design or manufacture

D. The seller is liable only with contractual privity with the consumer

177. A consumer is injured by a product alleged to have a design defect. Under Restatement (Third) of Torts: Products Liability (1998), the best-supported conclusion is:

A. A product is defective in design if the foreseeable risks of harm posed by the product could have been reduced by adopting a reasonable alternative design and the omission of the alternative renders the product not reasonably safe; the analysis is risk-utility focused, with reasonable alternative design typically required for design-defect liability

B. Design-defect liability requires only that the product caused harm to consumer

C. Design-defect liability is strict liability without inquiry into reasonable alternatives

D. Design-defect claims have been abolished under modern doctrine

178. A defendant violates a statute designed to protect against the type of harm and class of persons including Plaintiff. Plaintiff is injured as a result. Under negligence-per-se doctrine, the best-supported conclusion is:

A. Negligence per se establishes the standard of care (or, in some jurisdictions, a rebuttable presumption of breach) when (1) the statute was designed to protect the class of persons to which Plaintiff belongs AND (2) against the type of harm Plaintiff suffered; recognized excuses (impossibility, emergency) may apply

B. Statutory violation has no effect on negligence analysis under modern doctrine

C. Statutory violation is conclusive of liability without exception or excuse

D. Negligence per se applies only with explicit legislative authorization

179. A plaintiff is injured under circumstances suggesting negligence but cannot prove specific negligent conduct. Under traditional res ipsa loquitur doctrine, the best-supported conclusion is:

A. The plaintiff must prove specific negligence to recover under tort law

B. Res ipsa loquitur permits an inference (or rebuttable presumption) of negligence when (1) the injury is of a kind that ordinarily does not occur in the absence of negligence, (2) the instrumentality was under the defendant's exclusive control, AND (3) the plaintiff did not contribute to the injury; the doctrine shifts the burden of production

C. Res ipsa loquitur is unconstitutional under modern due process doctrine

D. Res ipsa loquitur applies only with corroborating expert testimony

180. A plaintiff and defendant are both negligent in causing the plaintiff's injury. Under modern comparative-fault doctrine in most jurisdictions, the best-supported conclusion is:

A. In pure contributory-negligence jurisdictions (few remain), any plaintiff fault bars recovery; in modified comparative-fault jurisdictions, plaintiff's recovery is reduced by her percentage of fault and barred above a threshold (50% or 51%); in pure comparative-fault jurisdictions, recovery is reduced but never barred regardless of percentage

B. Plaintiff's fault is irrelevant to recovery in modern tort law

C. Plaintiff's fault categorically bars recovery in all jurisdictions

D. Plaintiff's fault applies only to intentional torts rather than negligence

181. A plaintiff voluntarily participates in an activity with known risks and is injured by an inherent risk. Under traditional assumption-of-risk doctrine, the best-supported conclusion is:

A. Express written waivers of liability for ordinary negligence are generally enforceable if clear, voluntary, and not against public policy; primary (implied) assumption of risk addresses inherent risks of the activity and may defeat duty; secondary assumption of risk has been subsumed into comparative fault in most modern jurisdictions; releases generally do not bar gross negligence

B. Assumption of risk has been abolished in modern tort doctrine entirely

C. Assumption of risk applies only with express written waiver of liability

D. Assumption of risk applies only to intentional torts rather than negligence

182. A defendant engages in blasting operations near plaintiff's property, causing damage despite reasonable care. Under Restatement (Second) §§ 519–520, the best-supported conclusion is:

A. Liability requires proof of negligence in blasting operations

B. Liability requires proof of intent to cause damage from blasting

C. Strict liability does not apply to commercial activities like blasting

D. Restatement (Second) §§ 519–520 impose strict liability for abnormally dangerous activities, examining (a) high degree of risk, (b) likelihood of great harm, (c) inability to eliminate risk by reasonable care, (d) the activity's not being of common usage, (e) inappropriateness to the location, and (f) dangerous attributes outweighing community value; blasting is the paradigm and reasonable care is not a defense

183. A defendant brings dangerous artificial substances onto his land that escape and cause harm to neighbors. Under Rylands v. Fletcher (1868), the best-supported conclusion is:

A. The defendant is liable only on a negligence theory of recovery

B. A person who brings onto his land for his own purposes a thing likely to do mischief if it escapes is strictly liable for damages resulting from its escape; reasonable care is not a defense; the rule is the historical foundation of American strict liability for abnormally dangerous activities

C. The defendant is liable only on a trespass theory of recovery

D. The defendant has no liability without proof of intent to harm

184. A child pulls a chair out from beneath an adult who is about to sit down. The adult sues for battery. Under Garratt v. Dailey (1955), the best-supported conclusion is:

A. Battery requires malicious intent to cause harm to the plaintiff

B. Battery requires the child's appreciation of all consequences of conduct

C. The intent element of battery is satisfied if the actor desires to cause the contact OR is substantially certain that the contact will result; the actor need not desire harm — the intent goes to causing contact, not to causing injury; "substantial certainty" of the consequence suffices

D. Battery requires only that the contact occur without further showing

185. A child kicks another child in school, causing unforeseen serious injury. Under Vosburg v. Putney (1891) and the "eggshell skull" / "thin skull" doctrine, the best-supported conclusion is:

A. The defendant is liable only for foreseeable consequences of the contact

B. The defendant has no liability for unforeseen injuries from contact

C. The intent to inflict any unauthorized contact suffices for battery alone

D. The intent to inflict an unauthorized contact suffices for battery, and the defendant takes the plaintiff as he finds her; the defendant is liable for the full extent of injury caused by the contact, even if the injury was unforeseen — known as the "eggshell skull" or "thin skull" rule

186. A public figure sues a media defendant for defamation arising from criticism of public conduct. Under New York Times Co. v. Sullivan (1964), the best-supported conclusion is:

A. The public figure must prove ordinary negligence by the media defendant

B. The media defendant has absolute privilege regardless of statements published

C. New York Times v. Sullivan requires public officials/figures suing for defamation to prove actual malice — knowledge of falsity or reckless disregard for truth — by clear and convincing evidence; the heightened standard protects "uninhibited, robust, and wide-open" debate on public issues

D. The public figure must prove gross negligence by the defendant

187. A private figure sues a media defendant for defamation on a matter of public concern. Under Gertz v. Robert Welch, Inc. (1974), the best-supported conclusion is:

A. A private-figure plaintiff suing a media defendant on a matter of public concern must prove at least negligence to recover actual damages; presumed and punitive damages require actual malice; strict liability is constitutionally barred for media defendants

B. Private figures must prove actual malice as for public figures

C. Strict liability applies to media defendants in private-figure cases

D. Private figures have no defamation cause of action against media

188. A public figure sues a publication for intentional infliction of emotional distress arising from an outrageous parody. Under Hustler Magazine v. Falwell (1988), the best-supported conclusion is:

A. The public figure may recover for IIED if the parody is outrageous

B. The First Amendment does not protect IIED claims arising from publication

C. The defendant's intent to cause distress always supports IIED liability

D. The First Amendment requires public figures to prove actual malice (knowledge of falsity or reckless disregard) when bringing IIED claims based on speech or publications, paralleling defamation requirements; the heightened standard protects political and social commentary, including outrageous parody

189. A psychotherapist learns of a patient's specific intent to harm an identifiable victim and fails to warn. Under Tarasoff v. Regents of the University of California (1976), the best-supported conclusion is:

A. The psychotherapist has no duty to warn third parties of patient threats

B. The psychotherapist must always disclose all patient information

C. A psychotherapist who knows or reasonably should know of a patient's specific intent to harm an identifiable third party has a duty to take reasonable steps to protect the intended victim; this may include warning the victim, contacting authorities, or other appropriate intervention; the duty represents a significant exception to confidentiality

D. The duty applies only with the patient's express consent to disclosure

190. A bystander witnesses serious injury to a close family member by Defendant. Plaintiff sues for NIED. Under modern bystander NIED doctrine following Dillon v. Legg (1968), the best-supported conclusion is:

A. The modern Dillon v. Legg bystander framework for NIED requires (1) a close relationship between Plaintiff and the directly injured victim, (2) presence at the scene and contemporaneous sensory perception of the injury, AND (3) severe emotional distress; recovery is permitted when these elements are satisfied

B. NIED bystander claims have no recognized basis in modern tort law

C. Bystander NIED requires direct physical impact to the plaintiff

D. NIED bystander claims apply only with explicit statutory authorization

191. Defendant intentionally enters Plaintiff's land without permission. No actual damage occurs. Under traditional trespass-to-land doctrine, the best-supported conclusion is:

A. Trespass requires actual damages for recovery in modern tort law

B. Trespass requires malicious intent to harm the plaintiff

C. Trespass is governed only by nuisance doctrine in modern law

D. Trespass to land is the intentional entry on land in possession of another, without consent or privilege; no actual damage is required, and nominal damages are available to vindicate the right of exclusive possession; the tort protects the possessory interest itself

192. Defendant intentionally exercises dominion over Plaintiff's chattel that so substantially interferes with Plaintiff's rights as to warrant the full value. Under traditional doctrine, the best-supported conclusion is:

A. The remedy is only nominal damages for the interference with chattel

B. The remedy is restitution only without compensatory damages

C. The defendant is liable only on a negligence theory of recovery

D. Conversion is an intentional exercise of dominion or control over a chattel that so substantially interferes with another's right of control that the actor may justly be required to pay the full value; lesser interference may constitute trespass to chattels (lesser damages); the analysis turns on degree of interference

193. Plaintiff sues Defendant for substantial and unreasonable interference with use and enjoyment of land. Under traditional private-nuisance doctrine, the best-supported conclusion is:

A. Private nuisance is defendant's substantial and unreasonable interference with the plaintiff's use and enjoyment of land; the analysis balances nature, character, duration, and extent of interference against the social utility of the activity; the conduct may be lawful but still actionable as a nuisance if the interference is unreasonable

B. Private nuisance requires intent to harm the plaintiff to be actionable

C. Private nuisance is preempted by zoning regulations enforcing land use

D. Private nuisance has been abolished in modern American tort law

194. Plaintiff sues Defendant for public nuisance. Under traditional public-nuisance doctrine, the best-supported conclusion is:

A. Public nuisance is identical to private nuisance in elements and parties

B. Only the government may sue for public nuisance in all circumstances

C. Public nuisance is an unreasonable interference with a right common to the general public; a private plaintiff may sue only if she has suffered special damage distinct in kind from that of the general public; without special injury, only the government typically has standing to abate

D. Public nuisance requires criminal prosecution before civil suit can proceed

195. Defendant moors his boat to Plaintiff's dock during a storm to protect his life and vessel, causing damage to the dock. Under Vincent v. Lake Erie Transportation Co. (1910), the best-supported conclusion is:

A. The defendant has no liability because the act was justified by necessity

B. The defendant is liable for all damages and may also be liable for trespass

C. The defendant is liable only with proof of negligence in mooring

D. Private necessity privileges entry on another's property to prevent serious harm, making the entry not actionable as trespass, but the actor must compensate the property owner for actual damage caused; public necessity (action for public benefit) generally provides a complete defense including against damage claims

196. An employer is sued for injuries caused by an employee's negligence during the course of employment. Under traditional respondeat superior doctrine, the best-supported conclusion is:

A. The employer is liable only with proof of the employer's own fault

B. The employer is liable only for criminal acts of the employee

C. Under respondeat superior, an employer is vicariously liable for an employee's torts committed within the scope of employment, regardless of the employer's own fault; the scope-of-employment inquiry examines motive, time, place, and employer benefit; the doctrine rests on enterprise-risk allocation and insurance capacity

D. The employer has no liability for employee torts under modern doctrine

197. An employer is sued for negligently hiring an employee who committed an off-duty tort. Under modern direct-employer-liability doctrine, the best-supported conclusion is:

A. The employer has no liability for off-duty employee acts in any case

B. Negligent hiring, supervision, and retention provide direct employer liability when respondeat superior fails because the employee acted outside the scope of employment; liability requires foreseeability of harm and a connection between the employer's negligence and the injury

C. The employer is liable only with the employee's express consent to suit

D. Negligent-hiring claims are abolished in modern tort doctrine

198. Multiple defendants concurrently cause Plaintiff an indivisible injury. Under traditional joint-and-several liability, the best-supported conclusion is:

A. Each defendant is liable only for her proportional share of fault

B. The defendants are liable jointly without any right of contribution

C. The defendants share liability only with the plaintiff's consent to allocation

D. Traditional joint and several liability holds each defendant individually liable for the full amount when defendants concurrently cause an indivisible injury, with contribution among them; modern reform statutes in many jurisdictions modify this by replacing it with several-only or threshold-based liability

199. Plaintiff suffers emotional distress without physical impact from Defendant's conduct. Under the modern doctrine following Dillon v. Legg (1968), in contrast to the older direct-impact rule, the best-supported conclusion is:

A. The modern majority abandons the direct-impact rule; recovery for NIED is permitted under the Dillon v. Legg framework or similar approaches focused on foreseeability and the relationship between plaintiff and the negligent conduct, without requiring physical impact; the older direct-impact requirement has been substantially eroded

B. The direct-impact rule remains the modern majority approach in NIED

C. NIED requires both impact and severe distress under modern law

D. NIED has been abolished in all jurisdictions under modern reform

200. A jury awards substantial punitive damages disproportionate to compensatory damages. Defendant challenges on due process grounds. Under State Farm Mutual Auto Insurance Co. v. Campbell (2003), the best-supported conclusion is:

A. Punitive damages are within the jury's discretion regardless of amount

B. Punitive damages are categorically unconstitutional under due process

C. Punitive damages are subject to due process limits under State Farm — evaluated by (1) reprehensibility of the conduct, (2) ratio of punitive to compensatory damages, AND (3) comparison to civil penalties; single-digit ratios are generally constitutionally appropriate, and higher ratios are highly suspect

D. Punitive damages must equal compensatory damages exactly

Practice Exam 9 — Answer Key with Explanations

1. A — Ford Motor extended specific personal jurisdiction to claims where the defendant deliberately cultivated the forum market and the suit arose in the forum involving its product, even when the specific unit was sold elsewhere. The Court rejected a strict "arise from" requirement in favor of a "relate to" test, holding that purposeful market cultivation is sufficiently related to a claim arising from that market.
2. C — Twombly and Iqbal require factual allegations that plausibly suggest unlawful conduct, not merely conduct consistent with both lawful and unlawful behavior. Parallel conduct alone could equally reflect rational independent business judgment and is therefore insufficient under the plausibility standard.
3. B — Under Hanna's two-track Erie analysis, a valid Federal Rule of Civil Procedure that is on point and within the Rules Enabling Act controls in federal court even where it conflicts with state procedural law. The state's contrary service rule yields under the Supremacy Clause.
4. D — Wal-Mart held that Rule 23(a)(2) commonality requires a common contention whose truth or falsity can be resolved on a classwide basis. Subjective discretionary decisions made by thousands of managers across the country do not generate common answers, defeating commonality.

5. B — Goodyear and Daimler limited general jurisdiction to forums where the corporation is "essentially at home" — its place of incorporation and principal place of business. Substantial unrelated activities in additional states no longer create general jurisdiction in those states.
6. C — Celotex held that the movant satisfies its initial Rule 56 burden by pointing to the absence of evidence on an essential element of the non-movant's claim, without having to affirmatively negate the claim. The burden then shifts to the non-movant to produce specific record evidence creating a genuine dispute.
7. A — Anderson held that the summary judgment standard incorporates the substantive evidentiary standard at trial. A defamation court must ask whether a reasonable jury could find actual malice by clear and convincing evidence, not by mere preponderance.
8. C — Erie overruled Swift v. Tyson and held there is no federal general common law; federal courts sitting in diversity must apply state substantive law. The elements of state-law tort claims like negligence are governed by state, not federal, common law.
9. D — Klaxon applies Erie's logic to choice of law: a federal court sitting in diversity applies the forum state's choice-of-law rules. This prevents diversity-based forum shopping that would arise from federal courts using different conflicts rules than the state courts in the same forum.
10. D — Burger King upheld personal jurisdiction over a Michigan franchisee in Florida where he had deliberately entered a long-term franchise relationship with a Florida corporation. Purposeful availment, not the physical location of business activities, supplies the constitutional touchstone.
11. C — Twombly held that an antitrust complaint alleging only parallel conduct fails to plausibly suggest the agreement element. Conduct that is equally consistent with lawful and unlawful behavior does not meet Rule 8 plausibility under the heightened standard.
12. A — Asahi produced a fractured plurality on stream-of-commerce: Justice O'Connor required something more than mere awareness, while Justice Brennan accepted awareness alone. Without a majority resolution, the safer reading is that more than placing goods in the stream of commerce is typically required.
13. A — World-Wide Volkswagen rejected the notion that mere foreseeability of a forum-state injury satisfies minimum contacts. The dealer had not purposefully availed itself of Oklahoma; the unilateral act of the consumer driving the car there cannot supply the constitutional contacts.
14. C — Iqbal directs courts to disregard conclusory legal allegations and assess whether the remaining well-pleaded factual content plausibly suggests entitlement to relief. Bare assertions of discriminatory intent without supporting factual context cannot survive a motion to dismiss.
15. B — Walden emphasized that minimum contacts focus on the defendant's connection to the forum itself, not to forum residents. The defendant must himself create those contacts; effects experienced by plaintiffs at home are not enough where the defendant did not direct his conduct into the forum.
16. D — Hertz adopted the "nerve center" test for principal place of business under § 1332(c)(1): the corporation's principal place of business is where its officers direct, control, and coordinate corporate activities. This typically corresponds to corporate headquarters.
17. D — Atlantic Marine held that a valid forum-selection clause controls in all but the most exceptional cases. The plaintiff's chosen forum receives no weight, and the court considers only public-interest factors against the clause in the § 1404(a) analysis.
18. C — Hansberry held that absent class members are bound only when adequately represented in the prior action. Where representation is inadequate, due process prevents preclusion and the absent members may relitigate.

19. D — Shaffer extended International Shoe to all assertions of jurisdiction, including quasi in rem. Mere ownership of unrelated property in the forum is not enough; the defendant must have minimum contacts satisfying the traditional fair-play standard.
20. A — Coleman held that federal habeas review is barred when a state court rejects a claim on an independent and adequate state procedural ground. The petitioner can overcome the bar only by showing cause and prejudice or a fundamental miscarriage of justice.
21. C — Doehr applied Mathews v. Eldridge balancing to ex parte attachment in a tort action and held the procedure unconstitutional. Without notice, prompt hearing, or a bond requirement, the risk of erroneous deprivation outweighed the limited governmental interest in tort cases.
22. D — Mathews established the three-factor balancing test for procedural due process. The court weighs the private interest, the risk of erroneous deprivation and value of additional procedures, and the government interest including fiscal and administrative burdens.
23. A — Lujan articulated the three constitutional elements of Article III standing: concrete and particularized injury in fact that is actual or imminent, traceable to the defendant, and redressable by judicial action. Vague "some day" intentions without specific plans fail the imminence requirement.
24. A — International Shoe replaced Pennoyer's strict territorial framework with the modern minimum contacts test. Jurisdiction is proper where the defendant has sufficient contacts that maintenance of the suit does not offend traditional notions of fair play and substantial justice.
25. D — Section 1367(b), codifying Owen v. Kroger, bars plaintiffs in diversity actions from asserting claims against persons made parties under Rules 14, 19, 20, or 24 when doing so would destroy complete diversity. The structural protection of Strawbridge cannot be circumvented through joinder.
26. A — Phillips Petroleum held that a forum may not apply its own substantive law to nationwide class claims with which it has no significant contacts. Due process requires a sufficient connection between the forum's law and each class member's claim.
27. C — Younger requires federal abstention from enjoining ongoing state criminal proceedings except in extraordinary circumstances such as bad-faith prosecution, a patently invalid statute, or other irreparable injury. Federalism and comity favor allowing the state proceeding to run its course.
28. C — The Rooker-Feldman doctrine precludes federal district courts from reviewing final state-court judgments because appellate review of state-court decisions is reserved exclusively to the U.S. Supreme Court. State-court losers cannot reframe their challenge as a fresh federal action.
29. B — Strawbridge established that 28 U.S.C. § 1332 requires complete diversity — no plaintiff may share state citizenship with any defendant. Shared citizenship on either side of the v. destroys diversity jurisdiction entirely.
30. B — Marbury established judicial review by holding that it is "emphatically the province and duty of the judicial department to say what the law is." A statute that expanded the Court's original jurisdiction beyond the Constitution's grant was therefore void.
31. A — McCulloch upheld the national bank under the Necessary and Proper Clause as a means appropriate to legitimate enumerated ends. Marshall further held that state taxation of federal instrumentalities violated the Supremacy Clause because the power to tax involves the power to destroy.
32. A — Gibbons construed the Commerce Clause broadly to encompass navigation as interstate commerce and held that conflicting state laws yield under the Supremacy Clause. The state's exclusive navigation grant conflicted with federal coasting licenses and was preempted.

33. C — Lopez and Morrison identified three categories of permissible Commerce Clause regulation: channels, instrumentalities, and activities substantially affecting interstate commerce. Non-economic intrastate activity without aggregation does not satisfy the substantial effects category.
34. A — Heart of Atlanta and Katzenbach v. McClung upheld Title II of the 1964 Civil Rights Act under the Commerce Clause. Local accommodations and restaurants substantially affect interstate commerce through interstate travelers and interstate-sourced supplies.
35. A — Strict scrutiny applies to all racial classifications by government; the policy must be narrowly tailored to a compelling interest. Trump v. Hawaii formally repudiated Korematsu, which is no longer valid precedent for upholding race-based detention.
36. C — Brown held that separate educational facilities are inherently unequal and overruled Plessy's separate-but-equal doctrine for public education. State-imposed racial segregation in public schools violates the Equal Protection Clause regardless of facility equalization.
37. D — Loving struck down anti-miscegenation laws on dual grounds: racial classifications receive strict scrutiny under Equal Protection without compelling justification, and marriage is a fundamental right protected by substantive due process.
38. B — Obergefell held that the Fourteenth Amendment requires states to license and recognize same-sex marriages. The right to marry is a fundamental liberty grounded in both substantive due process and Equal Protection.
39. C — Dobbs overruled Roe and Casey and held there is no constitutional right to abortion because it is not deeply rooted in the Nation's history and tradition under Glucksberg. Abortion regulation is returned to the political branches and reviewed under rational basis.
40. B — Heller held that the Second Amendment protects an individual right to keep and bear arms for self-defense, expressly including handgun ownership in the home. Broad handgun prohibitions are unconstitutional under the Amendment.
41. A — Bruen extended Heller to public carry and abandoned means-end scrutiny in favor of a text-history-and-tradition test. Restrictive "proper cause" requirements that effectively prevent ordinary citizens from carrying outside the home are unconstitutional.
42. B — Miranda held that the Fifth Amendment requires that custodial suspects be warned of the rights to silence, that statements may be used against them, to counsel, and to appointed counsel if indigent. Statements obtained without these warnings are presumptively inadmissible in the prosecution's case-in-chief.
43. B — New York Times v. Sullivan requires public officials suing for defamation to prove actual malice — knowledge of falsity or reckless disregard for truth — by clear and convincing evidence. The heightened standard protects uninhibited, robust, and wide-open debate on public issues.
44. A — Texas v. Johnson held that flag burning is expressive conduct protected by the First Amendment. Content-based statutes criminalizing the expression receive strict scrutiny that the state cannot satisfy on the basis of preserving the flag's symbolic value.
45. D — Tinker held that students do not shed First Amendment rights at the schoolhouse gate. Schools may restrict student speech only upon a showing of substantial disruption or interference with school discipline or the rights of others.
46. A — Brandenburg replaced Schenck's "clear and present danger" test with a stricter standard: advocacy may be punished only if directed at producing imminent lawless action and likely to produce such action. Abstract advocacy of violence remains protected speech.
47. A — Gitlow incorporated the First Amendment's free-speech protections against the states through the Fourteenth Amendment Due Process Clause. State speech regulations must meet First Amendment scrutiny just as federal laws do.

48. C — Employment Division v. Smith held that neutral, generally applicable laws receive only rational-basis review under the Free Exercise Clause. Religious exemptions are not constitutionally required absent a discriminatory purpose.
49. B — Lukumi held that ordinances targeting religious practice or that are not neutral and generally applicable receive strict scrutiny rather than Smith's deferential standard. The gerrymandered Hialeah ordinances failed strict scrutiny because they targeted Santería sacrifices.
50. D — American Legion held that long-standing monuments and symbols with religious imagery enjoy a presumption of constitutionality. The Court emphasized historical practices and accumulated secular meaning rather than rigid Lemon application.
51. C — Engel held that state-sponsored public-school prayer violates the Establishment Clause regardless of denominational content or voluntary participation. The government may not compose or prescribe religious exercises for public-school students.
52. D — Lemon's three-prong test asked whether the law has a secular purpose, has a primary effect that neither advances nor inhibits religion, and avoids excessive entanglement with religion. Direct aid to parochial schools traditionally raised entanglement concerns, though modern doctrine favors neutral programs under Zelman.
53. D — Mapp incorporated the Fourth Amendment exclusionary rule against the states through the Fourteenth Amendment. States must exclude evidence obtained in Fourth Amendment violations from criminal proceedings.
54. A — Gideon held that the Sixth Amendment right to counsel is fundamental and applies to state felony prosecutions through Fourteenth Amendment incorporation. States must appoint counsel for indigent felony defendants.
55. D — Argersinger extended the right to appointed counsel to any criminal prosecution that results in actual incarceration, regardless of whether the charge is technically a misdemeanor. The actual-imprisonment line, not the felony-misdemeanor distinction, controls.
56. B — Strickland established the two-prong ineffective-assistance test: counsel's performance must be objectively unreasonable under prevailing norms, and the deficient performance must have prejudiced the defendant. Strategic choices receive substantial deference under the performance prong.
57. D — Batson established a three-step process for challenging racially discriminatory peremptory strikes: prima facie case, race-neutral explanation, and judicial determination of purposeful discrimination. J.E.B. v. Alabama extended the analysis to gender-based strikes.
58. C — Apprendi held that any fact, other than a prior conviction, that increases a penalty beyond the statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Judicial fact-finding by preponderance cannot raise the maximum sentence.
59. C — Hadley v. Baxendale limits recoverable consequential damages to losses that arise naturally from the breach or that were within the reasonable contemplation of both parties at contracting. Special damages outside ordinary expectations require notice at formation to be recoverable.
60. B — Lefkowitz held that an advertisement may constitute an offer if it is clear, definite, and explicit, leaving nothing open for negotiation. The fur sale advertisement, with specific terms and quantity, created a power of acceptance in the first-come buyer.
61. B — Hamer v. Sidway held that forbearance from a legal right is legal detriment supporting consideration. The nephew's bargained-for restraint from drinking and smoking was sufficient even though the restraint arguably benefited him.

62. A — Carlill held that the advertisement constituted a unilateral offer accepted by performance. The plaintiff's use of the smoke ball per directions formed a contract and supplied the consideration; use itself was the bargained-for detriment.
63. A — Restatement § 90 makes a promise binding to the extent necessary to prevent injustice when the promisor should reasonably expect it to induce action and it does so. Consideration is not required where reliance has occurred.
64. B — UCC § 2-207 rejects the mirror-image rule: a definite acceptance forms a contract even with different terms. Between merchants, additional terms become part of the contract unless they materially alter, the offer limits acceptance, or the offeror objects in time.
65. D — UCC § 2-205 makes a merchant's signed written firm offer irrevocable for the stated period not exceeding three months, without consideration. The two-month period falls within the cap, so attempted revocation during it is ineffective.
66. D — UCC § 2-209(1) eliminates the consideration requirement for modifications to sale-of-goods contracts; good faith is the touchstone. Section 2-209(2) and (3) address no-oral-modification clauses and Statute-of-Frauds writing requirements, respectively.
67. B — UCC § 2-201(3)(c) removes the writing requirement to the extent goods have been received and accepted. The buyer's acceptance and use of the goods satisfies the Statute of Frauds even without a signed writing.
68. D — Sherwood v. Walker held that mutual mistake about a basic assumption that materially affects the exchange renders the contract voidable. The substantial difference between a barren and pregnant cow constituted such a material mistake, and the risk was not allocated to either party.
69. D — Restatement § 152 makes a contract voidable by the adversely affected party when the parties shared a mistake about a basic assumption, the mistake had a material effect on the exchange, and the affected party did not bear the risk. All three prongs must be satisfied.
70. C — Mills v. Wyman applied the rule that past consideration is no consideration: a moral obligation arising from kindness rendered before any promise generally does not support a present promise. The father's later promise was unenforceable as a matter of contract.
71. A — Hochster v. De La Tour created the doctrine of anticipatory repudiation, allowing the non-breaching party to treat a clear repudiation as an immediate breach. The non-breaching party need not wait for the original performance date before pursuing remedies.
72. B — Jacobs & Youngs v. Kent established that substantial performance entitles the builder to recover the contract price less damages for the minor deviation. When reconstruction would constitute economic waste, damages are measured by diminution in value rather than cost of completion.
73. B — Peevyhouse measured damages by diminution in value ($300) rather than the grossly disproportionate cost of completion ($29,000). The modern Restatement majority disfavors this outcome, but the case continues to illustrate the economic-waste limitation.
74. A — Lucy v. Zehmer applied the objective theory of contracts: the parties' outward manifestations, not their subjective intent, determine contract formation. A reasonable person observing the restaurant-check transaction would have understood a binding agreement, regardless of any private intent to joke.
75. B — Wood v. Lucy implied a duty of reasonable efforts by the exclusive sales agent. Cardozo's reasoning held that the implied promise supplies the consideration and renders the contract enforceable despite the absence of an express promise.

76. B — Drennan applied promissory estoppel to hold the subcontractor's bid irrevocable for a reasonable time after reasonable reliance by the general contractor. The general's reliance in preparing its bid created an option-like protection preventing revocation.
77. D — Restatement § 261 excuses performance only when an event occurred whose non-occurrence was a basic assumption, the event makes performance impracticable (not merely costlier), and the party did not bear the risk. The doctrine is narrowly construed.
78. B — Krell v. Henry established frustration of purpose: a contract is discharged when a party's principal purpose is substantially frustrated by an unforeseen event whose non-occurrence was a basic assumption, and the party did not bear the risk. The coronation room rental was the paradigm case.
79. C — Williams v. Walker-Thomas Furniture set the modern unconscionability framework: procedural unconscionability (oppression or surprise) and substantive unconscionability (overly harsh terms) together permit a court to refuse enforcement. Both elements are required on a sliding-scale in many jurisdictions.
80. C — Hawkins v. McGee — the "hairy hand" case — recognized that a surgeon's specific promise of a medical result is enforceable as a contract independent of malpractice. The patient may recover expectation damages measured by the difference between promised and actual results.
81. A — Restatement § 45 displaces Petterson v. Pattberg's traditional rule by treating beginning performance as creating an option contract. The offeror cannot revoke while the offeree completes performance, protecting reliance during partial performance.
82. C — Quantum meruit permits recovery of the reasonable value of benefits conferred non-officiously where retention without payment would be unjust. The remedy operates outside contract formation and protects against unjust enrichment.
83. D — Specht v. Netscape held that reasonable notice of contract terms is required for binding electronic assent. Terms hidden below a button or not reasonably visible to the user are unenforceable, even where the user clicked through.
84. A — Stilk v. Myrick applied the pre-existing duty rule: performance of a duty already owed does not constitute new consideration for a modified promise. UCC § 2-209 modifies this rule for sale-of-goods contracts, and the rule has been eroded by Restatement § 89.
85. A — Hamer v. Sidway treats forbearance from a lawful activity as legal detriment supporting consideration. The bargained-for restraint creates an enforceable promise even where the promisee gives up nothing of tangible market value.
86. C — Sullivan v. O'Connor allowed reliance damages — patient expenses and worsening of condition — rather than expectation damages in a case involving a surgeon's promise of a cosmetic result. Reliance better reflects what was lost when the result promised was inherently difficult to value.
87. D — Restatement § 311 holds that an intended third-party beneficiary's rights do not vest until the beneficiary materially relies, brings suit, or manifests assent at the parties' request. Until then, the contracting parties may modify or rescind freely.
88. D — Mapp incorporated the Fourth Amendment exclusionary rule against the states. State courts must exclude evidence seized in violation of the Fourth Amendment, just as federal courts do.
89. A — Terry permitted brief investigative stops on reasonable suspicion and protective frisks where the officer reasonably suspects the subject is armed and dangerous. Both standards are below probable cause and reflect the diminished intrusion of brief detention and pat-down.
90. C — Katz held that the Fourth Amendment protects persons rather than places, and a search occurs whenever the government violates a reasonable expectation of privacy that society recognizes as

reasonable. The conversation in the public phone booth qualified despite the absence of physical trespass.

91. D — California v. Acevedo unified the automobile-search rules: police with probable cause to believe a container in a vehicle holds contraband may search the container without a warrant. The container does not require independent warrant authorization beyond the vehicle's mobility-based exception.
92. A — Carroll v. United States established the automobile exception to the warrant requirement: warrantless searches of vehicles on probable cause are permitted because of the vehicle's mobility and the lesser expectation of privacy in vehicles compared to homes.
93. A — Chimel limited search incident to arrest to the arrestee's person and the area within his immediate control. Searches beyond this lunge-and-grab zone without exigent circumstances or other exception require a separate warrant.
94. D — Arizona v. Gant narrowed Belton: vehicle search incident to arrest is permitted only when the arrestee is unsecured and within reaching distance of the passenger compartment, or it is reasonable to believe the vehicle contains evidence of the arrest offense. A handcuffed, removed arrestee satisfies neither prong.
95. B — Crawford replaced Ohio v. Roberts's reliability analysis with a categorical rule for testimonial hearsay. Testimonial statements against criminal defendants require both declarant unavailability and a prior opportunity for cross-examination.
96. A — Ohio v. Roberts permitted admission of hearsay against criminal defendants on a showing of "adequate indicia of reliability" — either a firmly rooted exception or particularized guarantees of trustworthiness. Crawford v. Washington overruled this approach for testimonial statements.
97. B — Melendez-Diaz and Bullcoming applied Crawford to forensic-analyst reports: the report is testimonial and requires the analyst's testimony subject to cross-examination. Surrogate testimony without personal knowledge does not cure the Confrontation Clause problem.
98. C — Maryland v. Buie permits a limited protective sweep of areas immediately adjacent to the place of arrest based on a reasonable belief that the area harbors a person posing danger. Sweeps beyond immediately adjacent areas require articulable facts supporting reasonable suspicion.
99. A — Edwards v. Arizona requires all interrogation to cease once a custodial suspect unambiguously invokes the right to counsel, until counsel is present or the suspect initiates further communication. Statements obtained in violation are inadmissible regardless of Miranda compliance.
100. B — Massiah held that once adversary judicial proceedings have commenced — through indictment, preliminary hearing, or arraignment — the Sixth Amendment right to counsel attaches. The government may not deliberately elicit incriminating statements about the charged offense without counsel.
101. C — Brady held that suppression of evidence favorable to the accused that is material to guilt or punishment violates due process, regardless of prosecutorial good or bad faith. Materiality means a reasonable probability that disclosure would have produced a different outcome.
102. A — Strickland's two-prong test requires deficient performance under prevailing professional norms and prejudice in the form of a reasonable probability of a different outcome. Strategic choices receive substantial deference, and both prongs are required.
103. C — Padilla v. Kentucky held that effective counsel must advise noncitizen clients of deportation consequences attached to guilty pleas. Failure to advise or affirmative misadvice is deficient performance, and the defendant must show a reasonable probability he would have rejected the plea.

104. B — North Carolina v. Pearce held that a presumption of vindictiveness arises when the same judge imposes a higher sentence after retrial. The presumption may be rebutted by objective on-the-record reasons reflecting conduct or events after the original sentence.
105. C — Wong Sun excludes evidence obtained as a result of a constitutional violation as fruit of the poisonous tree. The taint may be removed by attenuation, independent source, or inevitable discovery, with the court examining the connection between violation and statement.
106. D — Robinson v. California barred punishment for the status of being a drug addict as cruel and unusual punishment. The Eighth Amendment requires that punishment attach to an act, not to a condition or disease.
107. D — Coker and Kennedy categorically bar the death penalty for non-homicide offenses against individuals. Death is constitutionally disproportionate to crimes that do not result in the death of the victim.
108. C — Atkins v. Virginia categorically bars execution of intellectually disabled offenders. The disability is established through clinical criteria including significant intellectual deficits, significant adaptive-behavior deficits, and onset before adulthood.
109. C — Roper v. Simmons categorically bars the death penalty for offenses committed by persons under 18. Juvenile diminished culpability and capacity for change support the categorical exclusion.
110. B — Miller v. Alabama held that mandatory life without parole for juvenile offenders violates the Eighth Amendment. Sentencers must conduct an individualized hearing considering the juvenile's youth and its attendant characteristics before imposing such a sentence.
111. D — Graham v. Florida categorically bars life without parole for juveniles convicted of non-homicide offenses. States must provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation.
112. B — Furman invalidated arbitrary capital sentencing, and Gregg upheld guided-discretion statutes that channel sentencing through specified aggravating and mitigating factors with individualized consideration. Both components are constitutionally required for valid death-penalty procedures.
113. C — Ring v. Arizona extended Apprendi to capital sentencing: aggravating factors that subject a defendant to the death penalty must be found by a jury. Such factors function as the functional equivalent of elements of a greater offense.
114. B — McCleskey v. Kemp held that statistical evidence of racial disparity in capital sentencing does not by itself establish an Eighth Amendment or Equal Protection violation. The defendant must show purposeful discrimination in his particular case.
115. D — Wolf v. Colorado held that the Fourth Amendment applied to the states through the Fourteenth Amendment but that the exclusionary rule was not required. Mapp v. Ohio overruled this aspect and made the exclusionary rule applicable to state criminal proceedings.
116. C — Berghuis v. Thompkins requires unambiguous invocation of the right to silence. Mere silence does not invoke the right, and statements made after warnings without invocation may be admissible if voluntary.
117. A — Rule 401 sets a low relevance threshold: any tendency to make a material fact more or less probable than it would be without the evidence. Other rules may exclude relevant evidence, but the relevance inquiry itself is forgiving.
118. B — Rule 403 permits exclusion of relevant evidence only when its probative value is substantially outweighed by unfair prejudice, confusion, misleading the jury, undue delay, waste,

or needless cumulation. The rule strongly favors admission and gives the trial court substantial discretion.

119. D — Daubert and Rule 702 impose a gatekeeping function on the trial court, examining factors like testability, peer review, error rate, controlling standards, and general acceptance. The reliability inquiry replaced Frye's pure general-acceptance test in federal court.

120. D — The Daubert factors — testability, peer review and publication, error rate, controlling standards, and general acceptance — are flexible and not all apply in every case. The court conducts a context-specific reliability and fit inquiry under Rule 702.

121. C — Kumho Tire extended Daubert's gatekeeping function to all expert testimony under Rule 702, including technical and other specialized knowledge. The same flexible reliability analysis applies whether the testimony is scientific or experiential.

122. D — Rule 801(d)(2)(A) categorically excludes the opposing party's own statement from the hearsay definition. The statement is admissible as non-hearsay and requires no exception or further foundation.

123. B — Rule 803(2) admits excited utterances that relate to a startling event and are made while the declarant is under the stress of excitement caused by the event. The stress condition, not strict contemporaneity, is the touchstone of the exception.

124. C — Rule 803(1) admits present sense impressions describing or explaining an event made while or immediately after the declarant perceived it. Contemporaneity supplies the reliability rationale, and unavailability is not required.

125. B — Rule 803(3) admits statements of the declarant's then-existing state of mind, emotion, sensation, or physical condition. The exception is limited when offered to prove the fact remembered or believed, with a narrow exception for wills.

126. B — Rule 803(5) admits past recollection recorded when the witness once had knowledge but now lacks sufficient recollection, and the record was made or adopted when fresh in memory. The record is read into evidence but received as an exhibit only if offered by the adverse party.

127. C — Rule 803(6) admits business records made at or near the time by a person with knowledge, kept in the regular course of a regularly conducted activity, with regular record-making practice and proper authentication. The opponent may show lack of trustworthiness.

128. C — Rule 803(8) admits public records setting out the office's activities, matters observed by a public officer with a duty to report (excluding law-enforcement observations in criminal cases against the defendant), or factual findings from a legally authorized investigation.

129. B — Rule 804(b)(2) admits dying declarations where the declarant believed death was imminent, the statement concerns the cause or circumstances of impending death, and the declarant is unavailable. The exception applies in homicide prosecutions and civil cases.

130. C — Rule 804(b)(3) admits statements against penal, pecuniary, or proprietary interest where the declarant is unavailable and a reasonable person would not have made the statement unless believing it true. Criminal-liability statements require corroborating circumstances clearly indicating trustworthiness.

131. C — Rule 404(a) bars character evidence offered to prove conduct on a particular occasion (propensity). Rule 404(b)(2) admits other-acts evidence for non-character purposes like motive, opportunity, intent, plan, knowledge, identity, or absence of mistake, subject to Rule 403 balancing.

132. B — Rule 404(b) admits other-acts evidence only for non-propensity purposes such as motive, opportunity, intent, plan, knowledge, identity, or absence of mistake. The proponent must articulate a permissible purpose, and Rule 403 balancing applies.

133. C — Rule 405(b) permits proof by specific instances when character is an essential element of a claim or defense. Rule 405(a) restricts the methods to reputation and opinion testimony on direct, with specific instances available only on cross-examination.

134. D — Rule 406 admits evidence of a person's habit or an organization's routine practice to prove conduct in accordance with the habit. Habit is distinguished from character by its specificity, regularity, and semi-automatic nature.

135. D — Rule 407 excludes subsequent remedial measures offered to prove negligence, culpable conduct, defect, or need for warning. The evidence may be admitted for other purposes including impeachment, ownership, control, or feasibility when controverted.

136. C — Rule 408 bars compromise offers and conduct or statements in negotiations when offered to prove or disprove validity or amount of a disputed claim or for impeachment by inconsistent statement. The rule does not bar such evidence offered for other purposes such as bias.

137. A — Rule 410 excludes withdrawn guilty pleas, nolo contendere pleas, statements during plea negotiations with prosecutors, and statements in proceedings regarding such pleas. The rule applies in civil or criminal cases against the defendant who made the plea or statement.

138. B — Rule 412 — the rape-shield rule — bars evidence of a victim's prior sexual behavior or predisposition with limited exceptions: physical-evidence source, prior conduct with the defendant on consent, and constitutional rights. The probative-versus-prejudice balance is heightened.

139. B — Rule 501 directs federal courts to apply common-law privileges as interpreted in the light of reason and experience. State privilege law governs in civil cases where state law supplies the rule of decision.

140. C — Rule 502 provides that inadvertent disclosure does not waive privilege if the disclosure was inadvertent, the holder took reasonable steps to prevent disclosure, and the holder promptly took reasonable steps to rectify the error. The rule protects against waiver from clawback-able mistakes.

141. B — Jaffee v. Redmond recognized the federal psychotherapist-patient privilege protecting confidential communications between a patient and a licensed psychotherapist, including licensed social workers performing therapy. The privilege belongs to the patient and is not subject to ad hoc balancing.

142. B — Trammel v. United States lodged the testimonial spousal privilege with the testifying spouse, who may choose whether to testify against her defendant spouse. The defendant cannot prevent voluntary testimony, while the separate marital communications privilege still protects confidential spousal communications.

143. A — Upjohn Co. v. United States extended attorney-client privilege to communications between corporate counsel and any employee about matters relevant to legal advice for the corporation. The Court rejected the narrow control-group test that had limited privilege to senior management.

144. D — Rule 612 permits a witness to refresh recollection using a writing; the writing is not substantive evidence (the testimony controls), but the adverse party may inspect, cross-examine, and introduce relevant portions. Rule 803(5) separately governs recorded recollection as substantive evidence.

145. A — Pierson v. Post held that title in wild animals requires capture or mortal wounding with continued pursuit. Mere pursuit, without occupancy or manifested control, is insufficient to defeat a subsequent captor's claim.

146. B — Common-law adverse possession requires actual, open and notorious, hostile, exclusive, and continuous possession for the statutory period. All five elements must be satisfied throughout the entire period.

147. D — Mannilo v. Gorski adopted the objective approach to the hostility element: hostility is satisfied by use inconsistent with the true owner's rights, regardless of the possessor's subjective good or bad faith. Most modern jurisdictions follow this view.

148. B — The classical Rule Against Perpetuities voids a contingent interest that might vest more than 21 years after the death of a measuring life in being at creation. A child of A reaching 25 might be born after A's death and might not reach 25 within the perpetuities period.

149. C — Marvin v. Marvin held that cohabitation agreements may be enforced under contract principles as long as the consideration is not explicit sexual services. Express agreements, implied contracts, and equitable remedies are all potentially available.

150. A — In a pure race jurisdiction, the first to record prevails regardless of notice or BFP status. Defendant's prior recording defeats Plaintiff's prior unrecorded interest even though Plaintiff received the deed first.

151. D — Tulk v. Moxhay made equitable servitudes enforceable in equity against successors with notice when the original parties intended to bind successors and the covenant touches and concerns the land. Horizontal privity, required for real covenants at law, is not required in equity.

152. B — An easement by necessity requires common ownership at severance, strict necessity for access (not mere convenience), and necessity arising at the time of severance. The easement passes with the dominant estate.

153. A — Brown v. Voss held that using an easement appurtenant to benefit land beyond the original dominant estate is unauthorized misuse. The limitation applies regardless of whether burden on the servient estate is actually increased.

154. B — Sanborn v. McLean recognized reciprocal negative servitudes implied from a developer's common scheme. Sale of substantial property with uniform restrictions and circumstances showing intent to benefit all parcels bind subsequent purchasers with notice.

155. C — Equitable conversion treats the buyer as the equitable owner upon execution of an enforceable land-sale contract. Under the English majority rule, risk of loss passes to the buyer at execution; the UVDA places risk on the seller until possession or title transfer, and contractual allocation may modify either default.

156. A — Marketable title must be free from reasonable doubt and undisclosed defects. An undisclosed easement materially affecting value or use renders title unmarketable, supporting the buyer's claim for breach.

157. B — Joint tenancy requires the four unities at creation — time, title, interest, and possession. Without all four, the cotenancy defaults to tenancy in common.

158. B — Riddle v. Harmon eliminated the artificial strawman requirement for severance. A joint tenant may sever the joint tenancy by self-conveyance manifesting clear intent to sever, creating a tenancy in common.

159. A — Tenancy by the entirety treats the entirety property as an indivisible unit. Neither spouse may unilaterally convey or encumber, and creditors of one spouse generally cannot reach entirety property to satisfy individual debts.

160. C — Spur Industries v. Del E. Webb permitted the developer who came to the nuisance to obtain injunctive relief but required indemnification of the industrial operator for moving costs. Equitable principles allow nuanced remedies when residential development encroaches on prior industrial use.

161. B — Boomer v. Atlantic Cement awarded permanent damages instead of an injunction where granting an injunction would cause grossly disproportionate harm and the public interest supported continued operation. Damages compensate the plaintiffs without forcing the plant to close.

162. A — Edwards v. Habib recognized that retaliatory eviction violates public policy. Landlords may not refuse renewal or evict in retaliation for a tenant's exercise of statutory rights including code-violation reports.

163. A — The implied warranty of habitability, recognized in Javins, is generally non-waivable in residential leases and requires landlords to maintain premises in habitable condition. Substantial breach permits the tenant to withhold rent, terminate, or seek damages.

164. C — Sommer v. Kridel requires landlords to make reasonable efforts to mitigate damages by attempting to re-lease the premises after abandonment. The breaching tenant remains liable for the gap but not for damages that could have been avoided through reasonable diligence.

165. A — Every lease includes an implied covenant of quiet enjoyment. Substantial interference amounting to constructive eviction permits the tenant to terminate, withhold rent, or recover damages, provided the tenant vacates within a reasonable time after notice.

166. B — An easement appurtenant transfers automatically with the dominant estate to its new owner. The easement is incident to the dominant land and benefits whoever holds it, and the burden also runs to successors of the servient estate with notice.

167. D — A license is revocable permission to use another's land, freely revocable by the licensor unless coupled with an interest or estoppel applies. Substantial reliance by the licensee may convert the license into an easement by estoppel.

168. D — A cotenant in possession may demand contribution for necessary expenses such as taxes, mortgage payments, and necessary repairs in proportion to ownership interests. She owes an accounting for net rents received from third parties, but not for her own beneficial use absent ouster.

169. A — A race-notice statute requires a subsequent BFP for value to take without notice and to record first. If the prior grantee records before the subsequent BFP, the prior grantee prevails regardless of the subsequent purchaser's BFP status.

170. C — Under a notice statute, a subsequent BFP for value without notice prevails over a prior unrecorded grantee regardless of recording order. The dispositive question is the subsequent purchaser's knowledge at the time of purchase.

171. D — Inquiry notice charges a purchaser with knowledge of facts that reasonable inquiry would have revealed. Circumstances like visible possession, suspicious title gaps, or unusual deed references trigger a duty to investigate, and failure to inquire destroys BFP protection.

172. D — A general warranty deed contains present covenants (seisin, right to convey, against encumbrances) breached at delivery and traditionally not running to subsequent grantees, and future covenants (warranty, quiet enjoyment, further assurance) breached upon interference and running to successors. Seisin is a present covenant breached at delivery if the grantor did not own the land.

173. B — Palsgraf adopted Cardozo's foreseeable-plaintiff limitation on duty: a negligent act gives rise to liability only to those whose injury was foreseeable. Mrs. Palsgraf was outside the foreseeable zone of danger and the railroad owed her no duty.

174. D — MacPherson v. Buick Motor Co. eliminated the privity requirement for negligence claims arising from defective products. A manufacturer owes a duty of care to the ultimate consumer when the product is reasonably certain to cause harm if negligently made.

175. D — Greenman and § 402A established that a manufacturer who places a product on the market knowing it will be used without inspection is strictly liable for personal injuries caused by the defect. Negligence and contractual privity are not required.

176. B — Restatement (Second) § 402A imposes strict liability on commercial sellers of products in a defective condition unreasonably dangerous to the user, where the product reaches the user without substantial change. Due care is not a defense to a defect claim.

177. A — Restatement (Third) of Torts: Products Liability adopts a risk-utility approach to design defects: a product is defective in design when foreseeable risks of harm could have been reduced by a reasonable alternative design and the omission renders the product not reasonably safe. Reasonable alternative design is typically required.

178. A — Negligence per se establishes the standard of care (or rebuttable presumption of breach) when the statute was designed to protect the class of persons including plaintiff and against the type of harm suffered. Recognized excuses like impossibility or emergency may apply.

179. B — Res ipsa loquitur permits an inference of negligence when the injury ordinarily would not occur absent negligence, the instrumentality was under the defendant's exclusive control, and the plaintiff did not contribute. The doctrine shifts the burden of production to the defendant.

180. A — Pure contributory-negligence jurisdictions bar recovery on any plaintiff fault; modified comparative-fault jurisdictions reduce recovery by the plaintiff's percentage and bar above a threshold; pure comparative-fault jurisdictions reduce but never bar. The modern majority is some form of comparative fault.

181. A — Express written waivers of liability for ordinary negligence are generally enforceable if clear, voluntary, and not against public policy. Primary assumption of risk addresses inherent activity risks, and secondary assumption has been largely subsumed into comparative fault; releases generally do not bar gross negligence.

182. D — Restatement (Second) §§ 519–520 impose strict liability for abnormally dangerous activities, evaluated by six factors including risk, magnitude, inability to eliminate risk by reasonable care, common usage, location appropriateness, and value-versus-danger. Blasting is the paradigm activity.

183. B — Rylands v. Fletcher held that a person who brings onto his land for his own purposes a thing likely to do mischief if it escapes is strictly liable for damages from its escape. The case is the historical foundation of American strict liability for abnormally dangerous activities.

184. C — Garratt v. Dailey held that the intent element of battery is satisfied if the actor desires to cause the contact or is substantially certain that the contact will result. The intent goes to the contact, not to injury, and substantial certainty suffices.

185. D — Vosburg v. Putney established the "eggshell skull" rule: the intent to inflict any unauthorized contact suffices for battery, and the defendant takes the plaintiff as he finds her. The defendant is liable for the full extent of injury caused by the contact, even if unforeseen.

186. C — New York Times v. Sullivan requires public officials and public figures suing for defamation to prove actual malice — knowledge of falsity or reckless disregard for truth — by clear and convincing evidence. The heightened standard protects robust public debate.

187. A — Gertz v. Robert Welch held that a private-figure plaintiff suing a media defendant on a matter of public concern must prove at least negligence to recover actual damages. Presumed and punitive damages require actual malice, and strict liability is constitutionally barred.

188. D — Hustler Magazine v. Falwell requires public figures bringing IIED claims based on speech or publications to prove actual malice. The heightened standard parallels defamation and protects political and social commentary, including outrageous parody.

189. C — Tarasoff v. Regents recognized a psychotherapist's duty to take reasonable steps to protect identifiable third-party victims of a patient's specific threats. Reasonable steps may include warning the victim, contacting authorities, or other appropriate intervention.

190. A — Dillon v. Legg's bystander NIED framework requires a close relationship between plaintiff and victim, presence at the scene with contemporaneous sensory perception, and severe emotional distress. Recovery is permitted when these elements are satisfied.

191. D — Trespass to land is the intentional entry on land in possession of another without consent or privilege. No actual damage is required; nominal damages vindicate the right of exclusive possession, and the tort protects the possessory interest itself.

192. D — Conversion is an intentional exercise of dominion over a chattel so substantial as to warrant requiring full value. Lesser interference may constitute trespass to chattels with lesser damages, and the analysis turns on degree of interference.

193. A — Private nuisance is the defendant's substantial and unreasonable interference with the plaintiff's use and enjoyment of land. The analysis balances the nature, character, duration, and extent of interference against the social utility of the activity.

194. C — Public nuisance is an unreasonable interference with a right common to the general public. A private plaintiff may sue only on a showing of special damage distinct in kind from that of the general public; without special injury, only the government typically has standing.

195. D — Vincent v. Lake Erie established the rule of private necessity: entry is privileged against trespass but the actor must compensate the property owner for actual damage. Public necessity, by contrast, provides a complete defense including against damage claims.

196. C — Respondeat superior imposes vicarious liability on employers for torts committed by employees within the scope of employment, regardless of the employer's own fault. The scope inquiry examines motive, time, place, and employer benefit.

197. B — Negligent hiring, supervision, and retention provide direct employer liability where respondeat superior fails because the employee acted outside the scope of employment. Liability requires foreseeability of harm and a connection between the employer's negligence and the injury.

198. D — Traditional joint and several liability holds each defendant individually liable for the full amount of an indivisible injury concurrently caused, with contribution rights among defendants. Many jurisdictions have modified this by statute to several-only or threshold-based liability.

199. A — The modern majority abandons the older direct-impact rule for NIED, permitting recovery under Dillon v. Legg or similar foreseeability-based frameworks without physical impact. The direct-impact requirement has been substantially eroded.

200. C — State Farm v. Campbell evaluated punitive damages under three guideposts: reprehensibility of the conduct, ratio of punitive to compensatory damages, and comparison to civil penalties. Single-digit ratios are generally constitutionally appropriate; higher ratios are highly suspect.