

**THE
MBE[®]**

MULTISTATE BAR EXAMINATION

Sample MBE

February 1991



PREFACE

The Multistate Bar Examination (MBE) is an objective six-hour examination developed by the National Conference of Bar Examiners (NCBE) that contains 200 questions. It was first administered in February 1972, and is currently a component of the bar examination in most U.S. jurisdictions.

From time to time NCBE releases test questions to acquaint test-takers with authentic test materials. This publication consists of the actual 200-item, multiple-choice test that was administered nationally in February 1991. Fifty of these items were initially published in the 1992 MBE Information Booklet and were included in *MBE Questions 1992*.

The February 1991 MBE consisted of questions in the following areas: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. Applicants were directed to choose the best answer from four stated alternatives.

The purpose of this publication is to familiarize you with the format and nature of MBE questions. The questions in this publication should *not* be used for substantive preparation for the MBE. Because of changes in the law since the time the examination was administered, the questions and their keys may no longer be current. The editorial style of questions may have changed over time as well.

Applicants are encouraged to use as additional study aids the MBE Online Practice Exams 1 and 2 (MBE OPE 1 and OPE 2), both available for purchase online at www.ncbex2.org/catalog. These study aids, which include explanations for each option selected, contain questions from more recently administered MBEs that more accurately represent the current content and format of the MBE.

If you use the questions in this publication as a practice exam, you should not rely on your raw score to identify how well you are doing. MBE raw scores are converted to scaled scores through an equating procedure that is designed to ensure that the level of difficulty of the examination remains consistent from administration to administration. The Raw Score Conversion Table should be used to estimate your scaled score.

Additional copies of this publication may be purchased from the National Conference of Bar Examiners, 302 South Bedford Street, Madison, Wisconsin 53703-3622; (608) 280-8550. To order additional copies of this publication or other National Conference publications, visit our website at www.ncbex.org.

SAMPLE MULTISTATE BAR EXAMINATION

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**AM BOOK
TIME—3 HOURS**

Directions: Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives. Answer all questions according to the generally accepted view, except where otherwise noted.

For the purposes of this test, you are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted. You are also to assume relevant application of Article 9 of the UCC concerning fixtures. The Federal Rules of Evidence are deemed to control. The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated to the contrary. You are also to assume that there is no applicable community property law, no guest statute, and no No-Fault Insurance Act unless otherwise specified. In negligence cases, if fault on the claimant’s part is or may be relevant, the statement of facts for the particular question will identify the contributory or comparative negligence rule that is to be applied.

1. Walter, a 16-year-old, purchased an educational chemistry set manufactured by Chemco.

Walter invited his friend and classmate, Peter, to assist him in a chemistry project. Referring to a library chemistry book on explosives and finding that the chemistry set contained all of the necessary chemicals, Walter and Peter agreed to make a bomb. During the course of the project, Walter carelessly knocked a lighted Bunsen burner into a bowl of chemicals from the chemistry set. The chemicals burst into flames, injuring Peter.

In a suit by Peter against Chemco, based on strict liability, Peter will

- (A) prevail, if the chemistry set did not contain a warning that its contents could be combined to form dangerous explosives.
- (B) prevail, because manufacturers of chemistry sets are engaged in an abnormally dangerous activity.
- (C) not prevail, because Walter’s negligence was the cause in fact of Peter’s injury.
- (D) not prevail, if the chemistry set was as safe as possible, consistent with its educational purposes, and its benefits exceeded its risks.

2. On August 1, Geriatrics, Inc., operating a “lifetime care” home for the elderly, admitted Ohlster, who was 84 years old, for a trial period of two months. On September 25, Ohlster and Geriatrics entered into a written lifetime care contract with an effective commencement date of October 1. The full contract price was \$20,000, which, as required by the terms of the contract, Ohlster prepaid to Geriatrics on September 25. Ohlster died of a heart attack on October 2.

In a restitutionary action, can the administratrix of Ohlster’s estate, a surviving sister, recover on behalf of the estate either all or part of the \$20,000 paid to Geriatrics on September 25?

- (A) Yes, because Geriatrics would otherwise be unjustly enriched at Ohlster’s expense.
- (B) Yes, under the doctrine of frustration of purpose.
- (C) No, because Ohlster’s life span and the duration of Geriatrics’ commitment to him was a risk assumed by both parties.
- (D) No, but only if Geriatrics can show that between September 25 and Ohlster’s death it rejected, because of its commitment to Ohlster, an application for lifetime care from another elderly person.

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3. While walking home one evening, Harold, an off-duty police officer, was accosted by Jones, a stranger. Jones had been drinking and mistakenly thought Harold was a man who was having an affair with his wife. Intending to frighten Harold but not to harm him, Jones pulled out a knife, screamed obscenities, and told Harold he was going to kill him. Frightened and reasonably believing Jones was going to kill him and that using deadly force was his only salvation, Harold took out his service revolver and shot and killed Jones. Harold is charged with murder.

Harold's claim of self-defense should be

- (A) sustained, because Harold reasonably believed Jones was planning to kill him and that deadly force was required.
- (B) sustained, because the killing was in hot blood upon sufficient provocation.
- (C) denied, because Jones did not in fact intend to harm Harold and Harold was incorrect in believing that he did.
- (D) denied, because Harold was not defending his home and had an obligation to retreat or to repel with less than deadly force.

4. Anna entered a hospital to undergo surgery and feared that she might not survive. She instructed her lawyer by telephone to prepare a deed conveying Blackacre, a large tract of undeveloped land, as a gift to her nephew, Bernard, who lived in a distant state. Her instructions were followed, and, prior to her surgery, she executed a document in a form sufficient to constitute a deed of conveyance. The deed was recorded by the lawyer promptly and properly as she instructed him to do. The recorded deed was returned to the lawyer by the land record office, Anna, in fact, recovered from her surgery and the lawyer returned the recorded deed to her.

Before Anna or the lawyer thought to inform Bernard of the conveyance, Bernard was killed in an auto accident. Bernard's will left all of his estate to a satanic religious cult. Anna was very upset at the prospect of the cult's acquiring Blackacre.

The local taxing authority assessed the next real property tax bill on Blackacre to Bernard's estate.

Anna brought an appropriate action against Bernard's estate and the cult to set aside the conveyance to Bernard.

If Anna loses, it will be because

- (A) the gift of Blackacre was *inter vivos* rather than *causa mortis*.
- (B) the showing of Bernard's estate as the owner of Blackacre on the tax rolls supplied what otherwise would be a missing essential element for a valid conveyance.
- (C) disappointing Bernard's devisee would violate the religious freedom provisions of the First Amendment to the Constitution.
- (D) delivery of the deed is presumed from the recording of the deed.

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5. In a prosecution of Doris for murder, the government seeks to introduce a properly authenticated note written by the victim that reads: "Doris did it." In laying the foundation for admitting the note as a dying declaration, the prosecution offered an affidavit from the attending physician that the victim knew she was about to die when she wrote the note.

The admissibility of the note as a dying declaration is

- (A) a preliminary fact question for the judge, and the judge must not consider the affidavit.
- (B) a preliminary fact question for the judge, and the judge may properly consider the affidavit.
- (C) a question of weight and credibility for the jury, and the jury must not consider the affidavit.
- (D) a question of weight and credibility for the jury, and the jury may properly consider the affidavit.

6. As Paul, a bartender, was removing the restraining wire from a bottle of champagne produced and bottled by Winery, Inc., the plastic stopper suddenly shot out of the bottle. The stopper struck and injured Paul's eye. Paul had opened other bottles of champagne, and occasionally the stoppers had shot out with great force, but Paul had not been injured.

Paul has brought an action against Winery, Inc., alleging that the bottle that caused his injury was defective and unreasonably dangerous because its label did not warn that the stopper might suddenly shoot out during opening. The state has merged contributory negligence and unreasonable assumption of risk into a pure comparative fault system that is applied in strict products liability actions.

If the jury finds that the bottle was defective and unreasonably dangerous because it lacked a warning, will Paul recover a judgment in his favor?

- (A) No, if the jury finds that a legally sufficient warning would not have prevented Paul's injury.
- (B) No, if a reasonable bartender would have realized that a stopper could eject from the bottle and hit his eye.
- (C) Yes, with damages reduced by the percentage of any contributory fault on Paul's part.
- (D) Yes, with no reduction in damages, because foreseeable lack of caution is the reason for requiring a warning.

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7. Swatter, a baseball star, contracted with the Municipal Symphony Orchestra, Inc., to perform for \$5,000 at a children's concert as narrator of "Peter and the Wolf." Shortly before the concert, Swatter became embroiled in a highly publicized controversy over whether he had cursed and assaulted a baseball fan. The orchestra canceled the contract out of concern that attendance might be adversely affected by Swatter's appearance.

Swatter sued the orchestra for breach of contract. His business agent testified without contradiction that the cancellation had resulted in Swatter's not getting other contracts for performances and endorsements.

The trial court instructed the jury, in part, as follows: "If you find for the plaintiff, you may award damages for losses which at the time of contracting could reasonably have been foreseen by the defendant as a probable result of its breach. However, the law does not permit recovery for the loss of prospective profits of a new business caused by breach of contract."

On Swatter's appeal from a jury verdict for Swatter, and judgment thereon, awarding damages only for the \$5,000 fee promised by the orchestra, the judgment will probably be

- (A) affirmed, because the trial court stated the law correctly.
- (B) affirmed, because the issue of damages for breach of contract was solely a jury question.
- (C) reversed, because the test for limiting damages is what the breaching party could reasonably have foreseen at the time of the breach.
- (D) reversed, because under the prevailing modern view, lost profits of a new business are recoverable if they are established with reasonable certainty.

8. Road Lines is an interstate bus company operating in a five-state area. A federal statute authorizes the Interstate Commerce Commission (ICC) to permit interstate carriers to discontinue entirely any unprofitable route. Road Lines applied to the ICC for permission to drop a very unprofitable route through the sparsely populated Shaley Mountains. The ICC granted that permission even though Road Lines provided the only public transportation into the region.

Foley is the owner of a mountain resort in the Shaley Mountains, whose customers usually arrived on vehicles operated by Road Lines. After exhausting all available federal administrative remedies, Foley filed suit against Road Lines in the trial court of the state in which the Shaley Mountains are located to enjoin the discontinuance by Road Lines of its service to that area. Foley alleged that the discontinuance of service by Road Lines would violate a statute of that state prohibiting common carriers of persons from abandoning service to communities having no alternate form of public transportation.

The state court should

- (A) dismiss the action, because Foley lacks standing to sue.
- (B) direct the removal of the case to federal court, because this suit involves a substantial federal question.
- (C) hear the case on its merits and decide for Foley because, on these facts, a federal agency is interfering with essential state functions.
- (D) hear the case on its merits and decide for Road Lines, because a valid federal law preempts the state statute on which Foley relies.

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9. Shore decided to destroy his dilapidated building in order to collect the insurance money. He hired Parsons to burn down the building. Parsons broke into the building and carefully searched it to make sure no one was inside. He failed, however, to see a vagrant asleep in an office closet. He started a fire. The building was destroyed, and the vagrant died from burns a week later. Two days after the fire, Shore filed an insurance claim in which he stated that he had no information about the cause of the fire.

If Shore is guilty of felony-murder, it is because the vagrant's death occurred in connection with the felony of

- (A) arson.
- (B) fraud.
- (C) conspiracy.
- (D) burglary.

10. Plaintiff challenged the constitutionality of a state tax law, alleging that it violated the equal protection clauses of both the United States Constitution and the state constitution. The state supreme court agreed and held the tax law to be invalid. It said: "We hold that this state tax law violates the equal protection clause of the United States Constitution and also the equal protection clause of the state constitution because we interpret that provision of the state constitution to contain exactly the same prohibition against discriminatory legislation as is contained in the equal protection clause of the Fourteenth Amendment to the United States Constitution."

The state sought review of this decision in the United States Supreme Court, alleging that the state supreme court's determination of the federal constitutional issue was incorrect.

How should the United States Supreme Court dispose of the case if it believes that this interpretation of the federal Constitution by the state supreme court raises an important federal question and is incorrect on the merits?

- (A) Reverse the state supreme court decision, because the equal protection clause of a state constitution must be construed by the state supreme court in a manner that is congruent with the meaning of the equal protection clause of the federal Constitution.
- (B) Reverse the state supreme court decision with respect to the equal protection clause of the federal Constitution and remand the case to the state supreme court for further proceedings, because the state and federal constitutional issues are so intertwined that the federal issue must be decided so that this case may be disposed of properly.
- (C) Refuse to review the decision of the state supreme court, because it is based on an adequate and independent ground of state law.
- (D) Refuse to review the decision of the state supreme court, because a state government may not seek review of decisions of its own courts in the United States Supreme Court.

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11. A federal statute prohibits the construction of nuclear energy plants in this country without a license from the Federal Nuclear Plant Siting Commission. The statute provides that the Commission may issue a license authorizing the construction of a proposed nuclear energy plant 30 days after the Commission makes a finding that the plant will comply with specified standards of safety, technological and commercial feasibility, and public convenience. In a severable provision, the Commission's enabling statute also provides that the Congress, by simple majorities in each house, may veto the issuance of a particular license by the Commission if such a veto occurs within 30 days following the required Commission finding.

Early last year, the Commission found that Safenuke, Inc., met all statutory requirements and, therefore, voted to issue Safenuke, Inc., a license authorizing it to construct a nuclear energy plant. Because they believed that the issuance of a license to Safenuke, Inc., was not in accord with the applicable statutory criteria, a majority of each of the two houses of Congress voted, within the specified 30-day period, to veto the license. On the basis of that veto, the Commission refused to issue the license. Subsequently, Safenuke, Inc., sued the Commission in an appropriate federal district court, challenging the constitutionality of the Commission's refusal to issue the license.

In this suit, the court should hold the congressional veto of the license of Safenuke, Inc., to be

- (A) invalid, because any determination by Congress that particular agency action does not satisfy statutory criteria violates Article III, Section 1 of the Constitution because it constitutes the performance of a judicial function by the legislative branch.
- (B) invalid, because Article I, Section 7 of the Constitution has been interpreted to mean that any action of Congress purporting to alter the legal rights of persons outside of the legislative branch must be presented to the President for his signature or veto.
- (C) valid, because Congress has authority under the commerce clause to regulate the construction of nuclear energy plants.
- (D) valid, because there is a compelling national interest in the close congressional supervision of nuclear plant siting in light of the grave dangers to the public health and safety that are associated with the operation of such plants.

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Questions 12-14 are based on the following fact situation.

A jurisdiction has the following decisional law on questions of principal and accomplice liability:

CASE A: Defendant, a hardware store owner, sold several customers an item known as a “SuperTrucker,” which detects police radar and enables speeders to avoid detection. When one of the devices broke down and the speeder was arrested, he confessed that he often sped, secure in the knowledge that his “SuperTrucker” would warn him of police radar in the vicinity. Held: Defendant guilty as an accomplice to speeding.

CASE B: Defendant told Arnold that Defendant had stored some stereo equipment in a self-storage locker. He gave Arnold a key and asked Arnold to pick up the equipment and deliver it to Defendant’s house. Arnold complied, and removed the equipment from the locker, using the key. In fact, the equipment belonged to Defendant’s neighbor, whose locker key Defendant had found in the driveway. Held: Defendant guilty as an accomplice to burglary.

CASE C: Tooley, a city council member, accepted a bribe from Defendant in exchange for his vote on Defendant’s application for a zoning variance. A statute prohibits the taking of bribes by public officials. Held: Defendant not guilty as an accomplice to Tooley’s violation of the bribery statute.

CASE D: Defendant, an innkeeper, sometimes let his rooms to prostitutes, whom he knew to be using the rooms to ply their trade. He charged the prostitutes the same price as other guests at his inn. Held: Defendant not guilty as an accomplice to prostitution.

12. Lipsky, a college student, purchased narcotics from Speed, whom he believed to be a “street person” but who was in fact an undercover police agent. Lipsky has been charged as an accomplice to the sale of narcotics.

He should be

- (A) convicted on the authority of Case A.
- (B) convicted on the authority of Case B.
- (C) acquitted on the authority of Case C.
- (D) acquitted on the authority of Case D.

13. In this jurisdiction, conviction for statutory rape requires proof of the defendant’s knowledge that the victim is underage. Howard, who knew that Sarah was underage, encouraged George, who was unaware of Sarah’s age, to have sex with Sarah. Howard has been charged as an accomplice to statutory rape.

He should be

- (A) convicted on the authority of Case A.
- (B) convicted on the authority of Case B.
- (C) acquitted on the authority of Case C.
- (D) acquitted on the authority of Case D.

14. Larson, a plastic surgeon, agreed to remove the fingerprints from the hands of “Fingers” Malloy, whom Larson knew to be a safecracker. Larson charged his usual hourly rate for the operation. Afterward, Malloy burglarized a bank safe and was convicted of burglary.

Charged with burglary, Larson should be

- (A) convicted on the authority of Case A.
- (B) convicted on the authority of Case B.
- (C) acquitted on the authority of Case C.
- (D) acquitted on the authority of Case D.

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15. Able and Baker are students in an advanced high school Russian class. During an argument one day in the high school cafeteria, in the presence of other students, Able, in Russian, accused Baker of taking money from Able's locker.

In a suit by Baker against Able based on defamation, Baker will

- (A) prevail, because Able's accusation constituted slander per se.
- (B) prevail, because the defamatory statement was made in the presence of third persons.
- (C) not prevail, unless Able made the accusation with knowledge of falsity or reckless disregard of the truth.
- (D) not prevail, unless one or more of the other students understood Russian.

16. Congressional hearings determined that the use of mechanical power hammers is very dangerous to the persons using them and to persons in the vicinity of the persons using them. As a result, Congress enacted a statute prohibiting the use of mechanical power hammers on all construction projects in the United States. Subsequently, a study conducted by a private research firm concluded that nails driven by mechanical power hammers have longer-lasting joining power than hand-driven nails. After learning about this study, the city council of the city of Green enacted an amendment to its building safety code requiring the use of mechanical power hammers in the construction of all buildings intended for human habitation.

This amendment to the city of Green's building safety code is

- (A) unconstitutional, because it was enacted subsequent to the federal statute.
- (B) unconstitutional, because it conflicts with the provisions of the federal statute.
- (C) constitutional, because the federal statute does not expressly indicate that it supersedes inconsistent state or local laws.
- (D) constitutional, because the long-term safety of human habitations justifies some additional risk to the people engaged in their construction.

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Questions 17-18 are based on the following fact situation.

Under a written agreement Superpastries, Inc., promised to sell its entire output of baked buns at a specified unit price to Bonnie's Buns, Inc., a retailer, for one year. Bonnie's Buns promised not to sell any other supplier's baked buns.

17. For this question only, assume the following facts. Shortly after making the contract, and before Superpastries had tendered any buns, Bonnie's Buns decided that the contract had become undesirable because of a sudden, sharp decline in its customers' demand for baked buns. It renounced the agreement, and Superpastries sues for breach of contract.

Which of the following will the court probably decide?

- (A) Bonnie's Buns wins, because mutuality of obligation was lacking in that Bonnie's Buns made no express promise to buy any of Superpastries' baked buns.
- (B) Bonnie's Buns wins, because the agreement was void for indefiniteness of quantity and total price for the year involved.
- (C) Superpastries wins, because Bonnie's Buns' promise to sell at retail Superpastries' baked buns exclusively, if it sold any such buns at all, implied a promise to use its best efforts to sell Superpastries' one-year output of baked buns.
- (D) Superpastries wins, because under the applicable law both parties to a sale-of-goods contract impliedly assume the risk of price and demand fluctuations.

18. For this question only, assume the following facts. The parties' contract included a provision for termination by either party at any time upon reasonable notice. After six months of performance on both sides, Superpastries, claiming that its old bun-baker had become uneconomical and that it could not afford a new one, dismantled the bun-baker and began using the space for making dog biscuits. Superpastries' output of baked buns having ceased, Bonnie's Buns sued for breach of contract. Bonnie's Buns moves for summary judgment on liability, and Superpastries moves for summary judgment of dismissal.

Which of the following should the court rule?

- (A) Summary judgment for Bonnie's Buns, because as a matter of law Superpastries could not discontinue production of baked buns merely because it was losing money on that product.
- (B) Summary judgment for Superpastries, because its cessation of baked-bun production and Bonnie's Buns' awareness thereof amounted as a matter of law to valid notice of termination as permitted by the contract.
- (C) Both motions denied, because there are triable issues of fact as to whether Superpastries gave reasonable notice of termination or whether its losses from continued production of baked buns were sufficiently substantial to justify cessation of production.
- (D) Both motions denied: Superpastries may legally cease production of baked buns, but under the circumstances it must share with Bonnie's Buns its profits from the manufacture of dog biscuits until the end of the first year.

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19. Dirk is on trial for the brutal murder of Villas. Dirk's first witness, Wesley, testified that in her opinion Dirk is a peaceful and nonviolent person. The prosecution does not cross-examine Wesley, who is then excused from further attendance.

Which one of the following is INADMISSIBLE during the prosecution's rebuttal?

- (A) Testimony by Wesley's former employer that Wesley submitted a series of false expense vouchers two years ago.
- (B) Testimony by a police officer that Dirk has a long-standing reputation in the community as having a violent temper.
- (C) Testimony by a neighbor that Wesley has a long-standing reputation in the community as an untruthful person.
- (D) Testimony by Dirk's former cell mate that he overheard Wesley offer to provide favorable testimony if Dirk would pay her \$5,000.

20. Amos owned Greenfield, a tract of land. His friend Bert wanted to buy Greenfield and offered \$20,000 for it. Amos knew that Bert was insolvent, but replied, "As a favor to you as an old friend, I will sell Greenfield to you for \$20,000, even though it is worth much more, if you can raise the money within one month." Bert wrote the following words, and no more, on a piece of paper: "I agree to sell Greenfield for \$20,000." Amos then signed the piece of paper and gave it to Bert.

Three days later, Amos received an offer of \$40,000 for Greenfield. He asked Bert if he had raised the \$20,000. When Bert answered, "Not yet," Amos told him that their deal was off and that he was going to accept the \$40,000 offer.

The next week, Bert secured a bank commitment to enable him to purchase Greenfield. Bert immediately brought an appropriate action against Amos to compel Amos to convey Greenfield to him. The following points will be raised during the course of the trial.

- I. The parol evidence rule.
- II. Construction of the contract as to time of performance.
- III. Bert's ability to perform.

Which will be relevant to a decision in favor of Bert?

- (A) I only.
- (B) I and II only.
- (C) II and III only.
- (D) I, II, and III.

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21. Modality City has had a severe traffic problem on its streets. As a result, it enacted an ordinance prohibiting all sales to the public of food or other items by persons selling directly from trucks, cars, or other vehicles located on city streets. The ordinance included an inseverable grandfather provision exempting from its prohibition vendors who, for 20 years or more, have continuously sold food or other items from such vehicles located on the streets of Modality City.

Northwind Ice Cream, a retail vendor of ice cream products, qualifies for this exemption and is the only food vendor that does. Yuppee Yogurt is a business similar to Northwind, but Yuppee has been selling to the public directly from trucks located on the streets of Modality City only for the past ten years. Yuppee filed suit in an appropriate federal district court to enjoin enforcement of this ordinance on the ground that it denies Yuppee the equal protection of the laws.

In this case, the court will probably rule that the ordinance is

- (A) constitutional, because it is narrowly tailored to implement the city's compelling interest in reducing traffic congestion and, therefore, satisfies the strict scrutiny test applicable to such cases.
- (B) constitutional, because its validity is governed by the rational basis test, and the courts consistently defer to economic choices embodied in such legislation if they are even plausibly justifiable.
- (C) unconstitutional, because the nexus between the legitimate purpose of the ordinance and the conduct it prohibits is so tenuous and its provisions are so underinclusive that the ordinance fails to satisfy the substantial relationship test applicable to such cases.
- (D) unconstitutional, because economic benefits or burdens imposed by legislatures on the basis of grandfather provisions have consistently been declared invalid by courts as per se violations of the equal protection clause of the Fourteenth Amendment.

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Questions 22-23 are based on the following fact situation.

Doe, the governor of State, signed a death warrant for Rend, a convicted murderer. Able and Baker are active opponents of the death penalty. At a demonstration protesting the execution of Rend, Able and Baker carried large signs that stated, "Governor Doe - Murderer." Television station XYZ broadcast news coverage of the demonstration, including pictures of the signs carried by Able and Baker.

22. If Governor Doe asserts a defamation claim against XYZ, will Doe prevail?

- (A) Yes, because the signs would cause persons to hold Doe in lower esteem.
- (B) Yes, if Doe proves that XYZ showed the signs with knowledge of falsity or reckless disregard of the truth that Doe had not committed homicide.
- (C) No, unless Doe proves he suffered pecuniary loss resulting from harm to his reputation proximately caused by the defendants' signs.
- (D) No, if the only reasonable interpretation of the signs was that the term "murderer" was intended as a characterization of one who would sign a death warrant.

23. If Doe asserts against XYZ a claim for damages for intentional infliction of emotional distress, will Doe prevail?

- (A) Yes, if the broadcast showing the signs caused Doe to suffer severe emotional distress.
- (B) Yes, because the assertion on the signs was extreme and outrageous.
- (C) No, unless Doe suffered physical harm as a consequence of the emotional distress caused by the signs.
- (D) No, because XYZ did not publish a false statement of fact with "actual malice."

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Questions 24-25 are based on the following fact situation.

On July 18, Snowco, a shovel manufacturer, received an order for the purchase of 500 snow shovels from Acme, Inc., a wholesaler. Acme had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "Acme, Inc., reserves the right to cancel this order at any time before September 1." Snowco's mailed response, saying "We accept your order," was received by Acme on July 21.

24. As of July 22, which of the following is an accurate statement as to whether a contract was formed?
- (A) No contract was formed, because of Acme's reservation of the right to cancel.
 - (B) No contract was formed, because Acme's order was only a revocable offer.
 - (C) A contract was formed, but prior to September 1 it was terminable at the will of either party.
 - (D) A contract was formed, but prior to September 1 it was an option contract terminable only at the will of Acme.

25. For this question only, assume the following facts. Acme did not cancel the order, and Snowco shipped the shovels to Acme on September 15. When the shovels, conforming to the order in all respects, arrived on October 10, Acme refused to accept them.

Which of the following is an accurate statement as of October 10 after Acme rejected the shovels?

- (A) Acme's order for the shovels, even if initially illusory, became a binding promise to accept and pay for them.
- (B) Acme's order was an offer that became an option after shipment by Snowco.
- (C) Acme's right to cancel was a condition subsequent, the failure of which resulted in an enforceable contract.
- (D) In view of Acme's right to cancel its order prior to September 1, the shipment of the shovels on September 15 was only an offer by Snowco.

-
26. A federal statute prohibits the sale or resale, in any place in this country, of any product intended for human consumption or ingestion into the human body that contains designated chemicals known to cause cancer, unless the product is clearly labeled as dangerous.

The constitutionality of this federal statute may most easily be justified on the basis of the power of Congress to

- (A) regulate commerce among the states.
- (B) enforce the Fourteenth Amendment.
- (C) provide for the general welfare.
- (D) promote science and the useful arts.

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27. A federal statute enacted pursuant to the powers of Congress to enforce the Fourteenth Amendment and to regulate commerce among the states prohibits any state from requiring any of its employees to retire from state employment solely because of their age. The statute expressly authorizes employees required by a state to retire from state employment solely because of their age to sue the state government in federal district court for any damages resulting from that state action. On the basis of this federal statute, Retiree sues State X in federal district court. State X moves to dismiss the suit on the ground that Congress lacks authority to authorize such suits against a state.

Which of the following is the strongest argument that Retiree can offer in opposition to the state's motion to dismiss this suit?

- (A) When Congress exercises power vested in it by the Fourteenth Amendment and/or the commerce clause, Congress may enact appropriate remedial legislation expressly subjecting the states to private suits for damages in federal court.
- (B) When Congress exercises power vested in it by any provision of the Constitution, Congress has unlimited authority to authorize private actions for damages against a state.
- (C) While the Eleventh Amendment restrains the federal judiciary, that amendment does not limit the power of Congress to modify the sovereign immunity of the states.
- (D) While the Eleventh Amendment applies to suits in federal court by citizens of one state against another state, it does not apply to such suits by citizens against their own states.

28. At a country auction, Powell acquired an antique cabinet that he recognized as a "Morenci," an extremely rare and valuable collector's item. Unfortunately, Powell's cabinet had several coats of varnish and paint over the original finish. Its potential value could only be realized if these layers could be removed without damaging the original finish. Much of the value of Morenci furniture depends on the condition of a unique oil finish, the secret of which died with Morenci, its inventor.

A professional restorer of antique furniture recommended that Powell use *Restorall* to remove the paint and varnish from the cabinet. Powell obtained and read a sales brochure published by Restorall, Inc., which contained the following statement: "This product will renew all antique furniture. Will not damage original oil finishes."

Powell purchased some *Restorall* and used it on his cabinet, being very careful to follow the accompanying instructions exactly. Despite Powell's care, the original Morenci finish was irreparably damaged. When finally refinished, the cabinet was worth less than 20% of what it would have been worth if the Morenci finish had been preserved.

If Powell sues Restorall, Inc., to recover the loss he has suffered as a result of the destruction of the Morenci finish, will Powell prevail?

- (A) Yes, unless no other known removal technique would have preserved the Morenci finish.
- (B) Yes, if the loss would not have occurred had the statement in the brochure been true.
- (C) No, unless the product was defective when sold by Restorall, Inc.
- (D) No, if the product was not dangerous to persons.

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29. Two adjacent, two-story, commercial buildings were owned by Simon. The first floors of both buildings were occupied by various retail establishments. The second floors were rented to various other tenants. Access to the second floor of each building was reached by a common stairway located entirely in Building 1. While the buildings were being used in this manner, Simon sold Building 1 to Edward by warranty deed which made no mention of any rights concerning the stairway. About two years later Simon sold Building 2 to Dennis. The stairway continued to be used by the occupants of both buildings. The stairway became unsafe as a consequence of regular wear and tear. Dennis entered upon Edward's building and began the work of repairing the stairway. Edward demanded that Dennis discontinue the repair work and vacate Edward's building. When Dennis refused, Edward brought an action to enjoin Dennis from continuing the work.

Judgment should be for

- (A) Edward, because Dennis has no rights in the stairway.
- (B) Edward, because Dennis's rights in the stairway do not extend beyond the normal life of the existing structure.
- (C) Dennis, because Dennis has an easement in the stairway and an implied right to keep the stairway in repair.
- (D) Dennis, because Dennis has a right to take whatever action is necessary to protect himself from possible tort liability to persons using the stairway.

30. Hydro-King, Inc., a high-volume, pleasure-boat retailer, entered into a written contract with Zuma, signed by both parties, to sell Zuma a power boat for \$12,000. The manufacturer's price of the boat delivered to Hydro-King was \$9,500. As the contract provided, Zuma paid Hydro-King \$4,000 in advance and promised to pay the full balance upon delivery of the boat. The contract contained no provision for liquidated damages. Prior to the agreed delivery date, Zuma notified Hydro-King that he would be financially unable to conclude the purchase; and Hydro-King thereupon resold the same boat that Zuma had ordered to a third person for \$12,000 cash.

If Zuma sues Hydro-King for restitution of the \$4,000 advance payment, which of the following should the court decide?

- (A) Zuma's claim should be denied, because, as the party in default, he is deemed to have lost any right to restitution of a benefit conferred on Hydro-King.
- (B) Zuma's claim should be denied, because, but for his repudiation, Hydro-King would have made a profit on two boat-sales instead of one.
- (C) Zuma's claim should be upheld in the amount of \$4,000 minus the amount of Hydro-King's lost profit under its contract with Zuma.
- (D) Zuma's claims should be upheld in the amount of \$3,500 (\$4,000 minus \$500 as statutory damages under the UCC).

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31. Deeb was charged with stealing furs from a van. At trial, Wallace testified she saw Deeb take the furs.

The jurisdiction in which Deeb is being tried does not allow in evidence lie detector results. On cross-examination by Deeb's attorney, Wallace was asked, "The light was too dim to identify Deeb, wasn't it?" She responded, "I'm sure enough that it was Deeb that I passed a lie detector test administered by the police." Deeb's attorney immediately objects and moves to strike.

The trial court should

- (A) grant the motion, because the question was leading.
- (B) grant the motion, because the probative value of the unresponsive testimony is substantially outweighed by the danger of unfair prejudice.
- (C) deny the motion, because it is proper rehabilitation of an impeached witness.
- (D) deny the motion, because Deeb's attorney "opened the door" by asking the question.

32. Park sued Officer Dinet for false arrest. Dinet's defense was that, based on a description he heard over the police radio, he reasonably believed Park was an armed robber. Police radio dispatcher Brigg, reading from a note, had broadcast the description of an armed robber on which Dinet claims to have relied.

The defendant offers the following items of evidence:

- I. Dinet's testimony relating the description he heard.
- II. Brigg's testimony relating the description he read over the radio.
- III. The note containing the description Brigg testifies he read over the radio.

Which of the following are admissible on the issue of what description Dinet heard?

- (A) I and II only.
- (B) I and III only.
- (C) II and III only.
- (D) I, II, and III.

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33. Aris was the owner in fee simple of adjoining lots known as Lot 1 and Lot 2. He built a house in which he took up residence on Lot 1. Thereafter, he built a house on Lot 2, which he sold, house and lot, to Baker. Consistent with the contract of sale and purchase, the deed conveying Lot 2 from Aris to Baker contained the following clause:

In the event Baker, his heirs or assigns, decide to sell the property hereby conveyed and obtain a purchaser ready, willing, and able to purchase Lot 2 and the improvements thereon on terms and conditions acceptable to Baker, said Lot 2 and improvements shall be offered to Aris, his heirs or assigns, on the same terms and conditions. Aris, his heirs or assigns, as the case may be, shall have ten days from said offer to accept said offer and thereby to exercise said option.

Three years after delivery and recording of the deed and payment of the purchase price, Baker became ill and moved to a climate more compatible with his health. Baker's daughter orally offered to purchase the premises from Baker at its then fair market value. Baker declined his daughter's offer but instead deeded Lot 2 to his daughter as a gift.

Immediately thereafter, Baker's daughter sold Lot 2 to Charles at the then fair market value of Lot 2. The sale was completed by the delivery of deed and payment of the purchase price. At no time did Baker or his daughter offer to sell Lot 2 to Aris.

Aris learned of the conveyance to Baker's daughter and the sale by Baker's daughter to Charles one week after the conveyance of Lot 2 from Baker's daughter to Charles. Aris promptly brought an appropriate action against Charles to enforce rights created in him by the deed of Aris to Baker. Aris tendered the amount paid by Charles into the court for whatever disposition the court deemed proper. The common-law Rule Against Perpetuities is unmodified by statute.

Which of the following will determine whether Aris will prevail?

- I. The parol evidence rule.
- II. The Statute of Frauds.
- III. The type of recording statute of the jurisdiction in question.
- IV. The Rule Against Perpetuities.

- (A) I only.
- (B) IV only.
- (C) I and IV only.
- (D) II and III only.

34. Perez sued Dawson for damages arising out of an automobile collision. At trial, Perez called Minter, an eyewitness to the collision. Perez expected Minter to testify that she had observed Dawson's automobile for five seconds prior to the collision and estimated Dawson's speed at the time of the collision to have been 50 miles per hour. Instead, Minter testified that she estimated Dawson's speed to have been 25 miles per hour.

Without finally excusing Minter as a witness, Perez then called Wallingford, a police officer, to testify that Minter had told him during his investigation at the accident scene that Dawson "was doing at least 50."

Wallingford's testimony is

- (A) admissible as a present sense impression.
- (B) admissible to impeach Minter.
- (C) inadmissible, because Perez may not impeach his own witness.
- (D) inadmissible, because it is hearsay not within any exception.

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35. After waiting until all the customers had left, Max entered a small grocery store just before closing time. He went up to the lone clerk in the store and said, "Hand over all the money in the cash register or you will get hurt." The clerk fainted and struck his head on the edge of the counter. As Max went behind the counter to open the cash register, two customers entered the store. Max ran out before he was able to open the register drawer.

On this evidence Max could be convicted of

- (A) robbery.
- (B) assault and robbery.
- (C) attempted robbery.
- (D) assault and attempted robbery.

36. Palko is being treated by a physician for asbestosis, an abnormal chest condition that was caused by his on-the-job handling of materials containing asbestos. His physician has told him that the asbestosis is not presently cancerous, but that it considerably increases the risk that he will ultimately develop lung cancer.

Palko brought an action for damages, based on strict product liability, against the supplier of the materials that contained asbestos. The court in this jurisdiction has ruled against recovery of damages for negligently inflicted emotional distress in the absence of physical harm.

If the supplier is subject to liability to Palko for damages, should the award include damage for emotional distress he has suffered arising from his knowledge of the increased risk that he will develop lung cancer?

- (A) No, because Palko's emotional distress did not cause his physical condition.
- (B) No, unless the court in this jurisdiction recognizes a cause of action for an increased risk of cancer.
- (C) Yes, because the supplier of a dangerous product is strictly liable for the harm it causes.
- (D) Yes, because Palko's emotional distress arises from bodily harm caused by his exposure to asbestos.

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37. Dalton is on trial for burglary. During cross-examination of Dalton, the prosecutor wants to inquire about Dalton's earlier conviction for falsifying a credit application.

Which of the following facts concerning the conviction would be the best reason for the trial court's refusing to allow such examination?

- (A) Dalton was released from prison 12 years ago.
- (B) Dalton was put on probation rather than imprisoned.
- (C) It was for a misdemeanor rather than a felony.
- (D) It is on appeal.

Questions 38-39 are based on the following fact situation.

Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.

The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment.

After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics.

38. If the driver moves to suppress the use as evidence of the marijuana and cocaine found in the search of the truck, the court should
- (A) grant the motion as to both the marijuana and the cocaine.
 - (B) grant the motion as to the marijuana but deny it as to the cocaine.
 - (C) deny the motion as to the marijuana but grant it as to the cocaine.
 - (D) deny the motion as to both the marijuana and the cocaine.
39. If the young woman moves to suppress the use as evidence of the heroin, the court should
- (A) grant the motion, because she did not fit the description given by the informant and her mere presence does not justify the search.
 - (B) grant the motion, because the police should have seized her purse and then obtained a warrant to search it.
 - (C) deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck.
 - (D) deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed.

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40. Len owned two adjoining parcels known as Lot 1 and Lot 2. Both parcels fronted on Main Street and abutted a public alley in the rear. Lot 1 was improved with a commercial building that covered all of the Main Street frontage of Lot 1; there was a large parking lot on the rear of Lot 1 with access from the alley only.

Fifteen years ago, Len leased Lot 1 to Tenny for 15 years. Tenny has continuously occupied Lot 1 since that time. Thirteen years ago, without Len's permission, Tenny began to use a driveway on Lot 2 as a better access between Main Street and the parking lot than the alley.

Eight years ago, Len conveyed Lot 2 to Owen and, five years ago, Len conveyed Lot 1 to Tenny by a deed that recited "together with all the appurtenances."

Until last week, Tenny continuously used the driveway over Lot 2 to Tenny's parking lot in the rear of Lot 1.

Last week Owen commenced construction of a building on Lot 2 and blocked the driveway used by Tenny. Tenny has commenced an action against Owen to restrain him from blocking the driveway from Main Street to the parking lot at the rear of Lot 1.

The period of time to acquire rights by prescription in the jurisdiction is ten years.

If Tenny loses, it will be because

- (A) Len owned both Lot 1 and Lot 2 until eight years ago.
- (B) Tenny has access to the parking lot from the alley.
- (C) mere use of an easement is not adverse possession.
- (D) no easement was mentioned in the deed from Len to Owen.

41. Dewar, a developer, needing a water well on one of his projects, met several times about the matter with Waterman, a well driller. Subsequently, Waterman sent Dewar an unsigned typewritten form captioned "WELL DRILLING PROPOSAL" and stating various terms the two had discussed but not agreed upon, including a "proposed price of \$5,000." The form concluded, "This proposal will not become a contract until signed by you [Dewar] and then returned to and signed by me [Waterman]."

Dewar signed the form and returned it to Waterman, who neglected to sign it but promptly began drilling the well at the proposed site on Dewar's project. After drilling for two days, Waterman told Dewar during one of Dewar's daily visits that he would not finish unless Dewar would agree to pay twice the price recited in the written proposal. Dewar refused, Waterman quit, and Dewar hired Subbo to drill the well to completion for a price of \$7,500.

In an action by Dewar against Waterman for damages, which of the following is the probable decision?

- (A) Dewar wins, because his signing of Waterman's form constituted an acceptance of an offer by Waterman.
- (B) Dewar wins, because Waterman's commencement of performance constituted an acceptance by Waterman of an offer by Dewar and an implied promise by Waterman to complete the well.
- (C) Waterman wins, because he never signed the proposal as required by its terms.
- (D) Waterman wins, because his commencement of performance merely prevented Dewar from revoking his offer, made on a form supplied by Waterman, and did not obligate Waterman to complete the well.

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42. In an action brought against Driver by Walker's legal representative, the only proofs that the legal representative offered on liability were that: (1) Walker, a pedestrian, was killed instantly while walking on the shoulder of the highway; (2) Driver was driving the car that struck Walker; and (3) there were no living witnesses to the accident other than Driver, who denied negligence.

Assume the jurisdiction has adopted a rule of pure comparative negligence.

If, at the end of the plaintiff's case, Driver moves for a directed verdict, the trial judge should

- (A) grant the motion, because the legal representative has offered no specific evidence from which reasonable jurors may conclude that Driver was negligent.
- (B) grant the motion, because it is just as likely that Walker was negligent as that Driver was negligent.
- (C) deny the motion, unless Walker was walking with his back to traffic, in violation of the state highway code.
- (D) deny the motion, because, in the circumstances, negligence on the part of Driver may be inferred.

43. Smith joined a neighborhood gang. At a gang meeting, as part of the initiation process, the leader ordered Smith to kill Hardy, a member of a rival gang. Smith refused, saying he no longer wanted to be part of the group. The leader, with the approval of the other members, told Smith that he had become too involved with the gang to quit and that they would kill him if he did not accomplish the murder of Hardy. The next day Smith shot Hardy to death while Hardy was sitting on his motorcycle outside a restaurant.

Smith is charged with first-degree murder. First-degree murder is defined in the jurisdiction as the intentional premeditated killing of another. Second-degree murder is all other murder at common law.

If Smith killed Hardy because of the threat to his own life, Smith should be found

- (A) not guilty, because of the defense of duress.
- (B) not guilty, because of the defense of necessity.
- (C) guilty of first-degree murder.
- (D) guilty of second-degree murder.

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Questions 44-45 are based on the following fact situation.

Ohner and Planner signed a detailed writing in which Planner, a landscape architect, agreed to landscape and replant Ohner's residential property in accordance with a design prepared by Planner and incorporated in the writing. Ohner agreed to pay \$10,000 for the work upon its completion. Ohner's spouse was not a party to the agreement, and had no ownership interest in the premises.

44. For this question only, assume the following facts. Shortly before the agreement was signed, Ohner and Planner orally agreed that the writing would not become binding on either party unless Ohner's spouse should approve the landscaping design.

If Ohner's spouse disapproves the design and Ohner refuses to allow Planner to proceed with the work, is evidence of the oral agreement admissible in Planner's action against Ohner for breach of contract?

- (A) Yes, because the oral agreement required approval by a third party.
- (B) Yes, because the evidence shows that the writing was intended to take effect only if the approval occurred.
- (C) No, because the parol evidence rule bars evidence of a prior oral agreement even if the latter is consistent with the terms of a partial integration.
- (D) No, because the prior oral agreement contradicted the writing by making the parties' duties conditional.

45. For this question only, assume the following facts. At Ohner's insistence, the written Ohner-Planner agreement contained a provision that neither party would be bound unless Ohner's law partner, an avid student of landscaping, should approve Planner's design. Before Planner commenced the work, Ohner's law partner, in the presence of both Ohner and Planner, expressly disapproved the landscaping design. Nevertheless, Ohner ordered Planner to proceed with the work, and Planner reluctantly did so. When Planner's performance was 40% complete, Ohner repudiated his duty, if any, to pay the contract price or any part thereof.

If Planner now sues Ohner for damages for breach of contract, which of the following concepts best supports Planner's claim?

- (A) Substantial performance.
- (B) Promissory estoppel.
- (C) Irrevocable waiver of condition.
- (D) Unjust enrichment.

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46. A federal law provides that all motor vehicle tires discarded in this country must be disposed of in facilities licensed by the federal Environmental Protection Agency. Pursuant to this federal law and all proper federal procedural requirements, that agency has adopted very strict standards for the licensing of such facilities. As a result, the cost of disposing of tires in licensed facilities is substantial. The state of East Dakota has a very large fleet of motor vehicles, including trucks used to support state-owned commercial activities and police cars. East Dakota disposes of used tires from both kinds of state motor vehicles in a state-owned and -operated facility. This state facility is unlicensed, but its operation in actual practice meets most of the standards imposed by the federal Environmental Protection Agency on facilities it licenses to dispose of tires.

Consistent with United States Supreme Court precedent, may the state of East Dakota continue to dispose of its used tires in this manner?

- (A) No, because a state must comply with valid federal laws that regulate matters affecting interstate commerce.
- (B) No, because some of the tires come from vehicles that are used by the state solely in its commercial activities.
- (C) Yes, because some of the tires come from vehicles that are used by the state in the performance of core state governmental functions such as law enforcement.
- (D) Yes, because the legitimate needs of the federal government are satisfied by the fact that the unlicensed state disposal scheme meets, in actual practice, most of the federal standards for the licensing of such facilities.

47. Arnold and Beverly owned a large tract of land, Blackacre, in fee simple as joint tenants with rights of survivorship. While Beverly was on an extended safari in Kenya, Arnold learned that there were very valuable coal deposits within Blackacre, but he made no attempt to inform Beverly. Thereupon, Arnold conveyed his interest in Blackacre to his wife, Alice, who immediately reconveyed that interest to Arnold. The common-law joint tenancy is unmodified by statute.

Shortly thereafter, Arnold was killed in an automobile accident. His will, which was duly probated, specifically devised his one-half interest in Blackacre to Alice.

Beverly then returned from Kenya and learned what had happened. Beverly brought an appropriate action against Alice, who claimed a one-half interest in Blackacre, seeking a declaratory judgment that she, Beverly, was the sole owner of Blackacre.

In this action, who should prevail?

- (A) Alice, because Arnold and Beverly were tenants in common at the time of Arnold's death.
- (B) Alice, because Arnold's will severed the joint tenancy.
- (C) Beverly, because the joint tenancy was reestablished by Alice's reconveyance to Arnold.
- (D) Beverly, because Arnold breached his fiduciary duty as her joint tenant.

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48. Dent operates a residential rehabilitation center for emotionally disturbed and ungovernable children who have been committed to his custody by their parents or by juvenile authorities. The center's purpose is to modify the behavior of the children through a teaching program carried out in a family-like environment. Though the children are not permitted to leave the center without his permission, there are no bars or guards to prevent them from doing so. It has been held in the state where the center is located that persons having custody of children have the same duties and responsibilities that they would have if they were the parents of the children.

Camden, aged 12, who had been in Dent's custody for six months, left the center without permission. Dent became aware of Camden's absence almost immediately, but made no attempt to locate him or secure his return, though reports reached him that Camden had been seen in the vicinity. Thirty-six hours after Camden left the center, Camden committed a brutal assault upon Pell, a five-year-old child, causing Pell to suffer extensive permanent injury.

If an action is brought against Dent on behalf of Pell to recover damages for Pell's injuries, will Pell prevail?

- (A) No, because parents are not personally liable for their child's intentional torts.
- (B) Yes, if Camden was old enough to be liable for battery.
- (C) Yes, because Camden was in Dent's custody.
- (D) No, unless Dent knew or had reason to know that Camden had a propensity to attack younger children.

49. Deetz was prosecuted for homicide. He testified that he shot in self-defense. In rebuttal, Officer Watts testified that he came to the scene in response to a telephone call from Deetz. Watts offers to testify that he asked, "What is the problem here, sir?" and Deetz replied, "I was cleaning my gun and it went off accidentally."

The offered testimony is

- (A) admissible, as an excited utterance.
- (B) admissible, to impeach Deetz and as evidence that he did not act in self-defense.
- (C) inadmissible, because of Deetz's privilege against self-incrimination.
- (D) inadmissible, because it tends to exculpate without corroboration.

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50. Landco owns and operates a 12-story apartment building containing 72 apartments, 70 of which are rented. Walker has brought an action against Landco alleging that while he was walking along a public sidewalk adjacent to Landco's apartment building a flower pot fell from above and struck him on the shoulder, causing extensive injuries. The action was to recover damages for those injuries.

If Walker proves the foregoing facts and offers no other evidence explaining the accident, will his claim survive a motion for directed verdict offered by the defense?

- (A) Yes, because Walker was injured by an artificial condition of the premises while using an adjacent public way.
- (B) Yes, because such an accident does not ordinarily happen in the absence of negligence.
- (C) No, if Landco is in no better position than Walker to explain the accident.
- (D) No, because there is no basis for a reasonable inference that Landco was negligent.

51. At the time of his death last week, Test owned Blackacre, a small farm. By his duly probated will, drawn five years ago, Test did the following:

- (1) devised Blackacre "to Arthur for the life of Baker, then to Casper";
- (2) gave "all the rest, residue and remainder of my Estate, both real and personal, to my friend Fanny."

At his death, Test was survived by Arthur, Casper, Sonny (Test's son and sole heir), and Fanny. Baker had died a week before Test.

Title to Blackacre is now in

- (A) Arthur for life, remainder to Casper.
- (B) Casper, in fee simple.
- (C) Sonny, in fee simple.
- (D) Fanny, in fee simple.

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Questions 52-53 are based on the following fact situation.

Gyro, an expert in lifting and emplacing equipment atop tall buildings, contracted in a signed writing to lift and emplace certain air-conditioning equipment atop Tower's building. An exculpatory clause in the contract provided that Gyro would not be liable for any physical damage to Tower's building occurring during installation of the air-conditioning equipment. There was also a clause providing for per diem damages if Gyro did not complete performance by a specified date and a clause providing that "time is of the essence." Another clause provided that any subsequent agreement for extra work under the contract must be in writing and signed by both parties.

With ample time remaining under the contract for commencement and completion of his performance, Gyro notified Tower that he was selling his business to Copter, who was equally expert in lifting and emplacing equipment atop tall buildings, and that Copter had agreed to "take over the Gyro-Tower contract."

52. If Tower refuses to accept Copter's services, which of the following clauses in the Gyro-Tower contract will best support Tower's contention that Gyro's duties under the contract were not delegable without Tower's consent?

- (A) The exculpatory clause.
- (B) The liquidated-damage clause.
- (C) The "time is of the essence" clause.
- (D) The extra-work clause.

53. For this question only, assume that Tower orally agreed with Gyro to accept Copter's services and that Copter performed on time but negligently installed the wrong air-conditioning equipment.

Will Tower succeed in an action against Gyro for damages for breach of contract?

- (A) Yes, because Tower did not agree to release Gyro from liability under the Gyro-Tower contract.
- (B) Yes, because Tower received no consideration for the substitution of Copter for Gyro.
- (C) No, because by accepting the substitution of Copter for Gyro, Tower effected a novation, and Gyro was thereby discharged of his duties under the Gyro-Tower contract.
- (D) No, because the liquidated-damage clause in the Gyro-Tower contract provided only for damages caused by delay in performance.

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54. Allen owned Greenacre in fee simple of record on January 10. On that day, Maria loaned Allen \$50,000 and Allen mortgaged Greenacre to Maria as security for the loan. The mortgage was recorded on January 18.

Allen conveyed Greenacre to Barnes for a valuable consideration on January 11. Maria did not know of this, nor did Barnes know of the mortgage to Maria, until both discovered the facts on January 23, the day on which Barnes recorded Allen's deed.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." There is no provision for a period of grace and there is no other relevant statutory provision.

Maria sued Barnes to establish that her mortgage was good against Greenacre.

The court should decide for

- (A) Barnes, because he paid valuable consideration without notice before Maria recorded her mortgage.
- (B) Barnes, because Maria's delay in recording means that she is estopped from asserting her priority in time.
- (C) Maria, because Barnes did not record his deed before her mortgage was recorded.
- (D) Maria, because after the mortgage to her, Allen's deed to Barnes was necessarily subject to her mortgage.

55. Frank owned two adjacent parcels, Blackacre and Whiteacre. Blackacre fronts on a poor unpaved public road, while Whiteacre fronts on Route 20, a paved major highway. Fifteen years ago, Frank conveyed to his son, Sam, Blackacre "together with a right-of-way 25 feet wide over the east side of Whiteacre to Route 20." At that time, Blackacre was improved with a ten-unit motel.

Ten years ago, Frank died. His will devised Whiteacre "to my son, Sam, for life, remainder to my daughter, Doris." Five years ago, Sam executed an instrument in the proper form of a deed, purporting to convey Blackacre and Whiteacre to Joe in fee simple. Joe then enlarged the motel to 12 units. Six months ago, Sam died and Doris took possession of Whiteacre. She brought an appropriate action to enjoin Joe from using the right-of-way.

In this action, who should prevail?

- (A) Doris, because merger extinguished the easement.
- (B) Doris, because Joe has overburdened the easement.
- (C) Joe, because he has an easement by necessity.
- (D) Joe, because he has the easement granted by Frank to Sam.

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56. Park sued Dunlevy for copyright infringement for using in Dunlevy's book some slightly disguised house plans on which Park held the copyright. Park is prepared to testify that he heard Dunlevy's executive assistant for copyright matters say that Dunlevy had obtained an advance copy of the plans from Park's office manager.

Park's testimony is

- (A) admissible as reporting a statement of an employee of a party opponent.
- (B) admissible as a statement of a co-conspirator.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because there is no showing that the assistant was authorized to speak for Dunlevy.

57. Congress enacted a statute providing grants of federal funds for the restoration and preservation of courthouses that were built before 1900 and are still in use. The statute contains an inseverable condition requiring that any courthouse restored with the aid of such a grant must be equipped with ramps and other facilities necessary to accommodate physically handicapped people.

A law of the state of Blue requires public buildings in Blue to have ramps and other facilities for handicapped people. It exempts from those requirements any building that is more than 70 years old if the State Board of Architects finds that the installation of such facilities would destroy the architectural integrity of the building.

The Red County Courthouse in the state of Blue was built in 1895 and is still in use. It does not contain ramps or other special facilities for handicapped people. The State Board of Architects has determined that the installation of those facilities would destroy the architectural integrity of the building. Nevertheless, the County Board of Red County applies for a federal grant to restore and preserve that county's courthouse.

If the County Board of Red County restores the Red County Courthouse with the aid of a federal restoration and preservation grant, is the board bound to install ramps and other facilities for handicapped people in that building?

- (A) Yes, because Congress may impose reasonable conditions related to the public welfare on grants of federal funds to public bodies when the public bodies are free to accept or reject the grants.
- (B) Yes, because the rights of handicapped and disabled people are fundamental rights that take precedence, as a constitutional matter, over considerations of architectural integrity.
- (C) No, because the Constitution does not authorize the federal government to direct the actions of the states or any of their political subdivisions with respect to matters affecting their own governmental buildings.
- (D) No, because any acceptance of this condition by the Red County Board of Supervisors would, as a matter of law, be considered to be under duress.

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58. Arnold decided to destroy an old warehouse that he owned because the taxes on the structure exceeded the income that he could receive from it. He crept into the building in the middle of the night with a can of gasoline and a fuse and set the fuse timer for 30 minutes. He then left the building. The fuse failed to ignite, and the building was not harmed.

Arson is defined in this jurisdiction as “The intentional burning of any building or structure of another, without the consent of the owner.” Arnold believed, however, that burning one’s own building was arson, having been so advised by his lawyer.

Has Arnold committed attempted arson?

- (A) Yes, because factual impossibility is no defense.
- (B) Yes, because a mistake of law even on the advice of an attorney is no defense.
- (C) No, because his mistake negated a necessary mental state.
- (D) No, because even if his actions had every consequence he intended, they would not have constituted arson.

59. “Look-alike drugs” is the term used to describe nonprescription drugs that look like narcotic drugs and are sold on the streets as narcotic drugs. After extensive hearings, Congress concluded that the sale of look-alike drugs was widespread in this country and was creating severe health and law enforcement problems. To combat these problems, Congress enacted a comprehensive statute that regulates the manufacture, distribution, and sale of all nonprescription drugs in the United States.

Which of the following sources of constitutional authority can most easily be used to justify the authority of Congress to enact this statute?

- (A) The spending power.
- (B) The commerce clause.
- (C) The general welfare clause.
- (D) The enforcement powers of the Fourteenth Amendment.

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60. After several well-publicized deaths caused by fires in products made from highly flammable fabrics, the state of Orange enacted a statute prohibiting “the manufacture or assembly of any product in this state which contains any fabric that has not been tested and approved for flame retardancy by the Zetest Testing Company.” The Zetest Testing Company is a privately owned and operated business located in Orange.

For many years, Fabric Mill, located in the state of Orange, has had its fabric tested for flame retardancy by the Alpha Testing Company, located in the state of Green. Alpha Testing Company is a reliable organization that uses a process for testing and approving fabrics for flame retardancy identical in all respects to that used by the Zetest Testing Company.

Because Fabric Mill wishes to continue to have its fabric tested solely by Alpha Testing Company, Fabric Mill files an action in Orange state court challenging the constitutionality of the Orange statute as applied to its circumstances.

In this suit, the court should hold the statute to be

- (A) constitutional, because it is reasonably related to the protection of the reputation of the fabric industry located in the state of Orange.
- (B) constitutional, because it is a legitimate means of protecting the safety of the public.
- (C) unconstitutional, because it denies to Fabric Mill the equal protection of the laws.
- (D) unconstitutional, because it imposes an unreasonable burden on interstate commerce.

61. Peter and Donald were in the habit of playing practical jokes on each other on their respective birthdays. On Peter’s birthday, Donald sent Peter a cake containing an ingredient that he knew had, in the past, made Peter very ill. After Peter had eaten a piece of the cake, he suffered severe stomach pains and had to be taken to the hospital by ambulance. On the way to the hospital, the ambulance driver suffered a heart attack, which caused the ambulance to swerve from the road and hit a tree. As a result of the collision, Peter suffered a broken leg.

In a suit by Peter against Donald to recover damages for Peter’s broken leg, Peter will

- (A) prevail, because Donald knew that the cake would be harmful or offensive to Peter.
- (B) prevail, only if the ambulance driver was negligent.
- (C) not prevail, because Donald could not reasonably be expected to foresee injury to Peter’s leg.
- (D) not prevail, because the ambulance driver’s heart attack was a superseding cause of Peter’s broken leg.

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62. Decker, charged with armed robbery of a store, denied that he was the person who had robbed the store.

In presenting the state's case, the prosecutor seeks to introduce evidence that Decker had robbed two other stores in the past year.

This evidence is

- (A) admissible, to prove a pertinent trait of Decker's character and Decker's action in conformity therewith.
- (B) admissible, to prove Decker's intent and identity.
- (C) inadmissible, because character must be proved by reputation or opinion and may not be proved by specific acts.
- (D) inadmissible, because its probative value is substantially outweighed by the danger of unfair prejudice.

63. Twenty-five years ago, Seller conveyed Blackacre to Buyer by a warranty deed. Seller at that time also executed and delivered an instrument in the proper form of a deed, purporting to convey Whiteacre to Buyer. Seller thought she had title to Whiteacre but did not; therefore, no title passed by virtue of the Whiteacre deed. Whiteacre consisted of three acres of brushland adjoining the west boundary of Blackacre. Buyer has occasionally hunted rabbits on Whiteacre, but less often than annually. No one else came on Whiteacre except occasional rabbit hunters.

Twenty years ago, Buyer planted a row of evergreens in the vicinity of the opposite (east) boundary of Blackacre and erected a fence just beyond the evergreens to the east. In fact both the trees and the fence were placed on Greenacre, owned by Neighbor, which bordered the east boundary of Blackacre. Buyer was unsure of the exact boundary, and placed the trees and the fence in order to establish his rights up to the fence. The fence is located ten feet within Greenacre.

Now, Buyer has had his property surveyed and the title checked and has learned the facts.

The period of time to acquire title by adverse possession in the jurisdiction is 15 years.

Buyer consulted his lawyer, who properly advised that, in an appropriate action, Buyer would probably obtain title to

- (A) Whiteacre but not to the ten-foot strip of Greenacre.
- (B) the ten-foot strip of Greenacre but not to Whiteacre.
- (C) both Whiteacre and the ten-foot strip of Greenacre.
- (D) neither Whiteacre nor the ten-foot strip of Greenacre.

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Questions 64-65 are based on the following fact situation.

Elda, the aged mother of Alice and Barry, both adults, wished to employ a live-in companion so that she might continue to live in her own home. Elda, however, had only enough income to pay one-half of the companion's \$2,000 monthly salary. Learning of their mother's plight, Alice and Barry agreed with each other in a signed writing that on the last day of January and each succeeding month during their mother's lifetime, each would give Elda \$500. Elda then hired the companion.

Alice and Barry made the agreed payments in January, February, and March. In April, however, Barry refused to make any payment and notified Alice and Elda that he would make no further payments.

64. Will Elda succeed in an action for \$500 brought against Barry after April 30?

- (A) Yes, because by making his first three payments, Barry confirmed his intent to contract.
- (B) Yes, because Elda is an intended beneficiary of a contract between Alice and Barry.
- (C) No, because a parent cannot sue her child for breach of a promise for support.
- (D) No, because Alice and Barry intended their payments to Elda to be gifts.

65. For this question only, assume that there is a valid contract between Alice and Barry and that Elda has declined to sue Barry.

Will Alice succeed in an action against Barry in which she asks the court to order Barry to continue to make his payments to Elda under the terms of the Alice-Barry contract?

- (A) Yes, because Alice's remedy at law is inadequate.
- (B) Yes, because Alice's burden of supporting her mother will be increased if Barry does not contribute his share.
- (C) No, because a court will not grant specific performance of a promise to pay money.
- (D) No, because Barry's breach of contract has caused no economic harm to Alice.

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66. Mom owned Blackacre, a two-family apartment house on a small city lot not suitable for partition-in-kind. Upon Mom's death, her will devised Blackacre to "my sons, Joe and John."

A week ago, Ken obtained a money judgment against Joe, and properly filed the judgment in the county where Blackacre is located. A statute in the jurisdiction provides: any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

Joe needed cash, but John did not wish to sell Blackacre. Joe commenced a partition action against John and Ken.

Assume that the court properly ordered a partition by judicial sale.

After the sale, Ken's judgment will be a lien on

- (A) all of Blackacre.
- (B) only a one-half interest in Blackacre.
- (C) all of the proceeds of sale of Blackacre.
- (D) only the portion of the proceeds of sale due Joe.

67. Suspecting that Scott had slain his wife, police detectives persuaded one of Scott's employees to remove a drinking glass from Scott's office so that it could be used for fingerprint comparisons with a knife found near the body. The fingerprints matched. The prosecutor announced that he would present comparisons and evidence to the grand jury. Scott's lawyer immediately filed a motion to suppress the evidence of the fingerprint comparisons to bar its consideration by the grand jury, contending that the evidence was illegally acquired.

The motion should be

- (A) granted, because, if there was no probable cause, the grand jury should not consider the evidence.
- (B) granted, because the employee was acting as a police agent and his seizure of the glass without a warrant was unconstitutional.
- (C) denied, because motions based on the exclusionary rule are premature in grand jury proceedings.
- (D) denied, because the glass was removed from Scott's possession by a private citizen and not a police officer.

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Questions 68-70 are based on the following fact situation.

Dora, who was eight years old, went to the grocery store with her mother. Dora pushed the grocery cart while her mother put items into it. Dora's mother remained near Dora at all times. Peterson, another customer in the store, noticed Dora pushing the cart in a manner that caused Peterson no concern. A short time later, the cart Dora was pushing struck Peterson in the knee, inflicting serious injury.

68. If Peterson brings an action, based on negligence, against the grocery store, the store's best defense will be that
- (A) a store owes no duty to its customers to control the use of its shopping carts.
 - (B) a store owes no duty to its customers to control the conduct of other customers.
 - (C) any negligence of the store was not the proximate cause of Peterson's injury.
 - (D) a supervised child pushing a cart does not pose an unreasonable risk to other customers.
69. If Peterson brings an action, based on negligence, against Dora's mother, will Peterson prevail?
- (A) Yes, if Dora was negligent.
 - (B) Yes, because Dora's mother is responsible for any harm caused by Dora.
 - (C) Yes, because Dora's mother assumed the risk of her child's actions.
 - (D) Yes, if Dora's mother did not adequately supervise Dora's actions.
70. If Peterson brings an action, based on negligence, against Dora, Dora's best argument in defense would be that
- (A) Dora exercised care commensurate with her age, intelligence, and experience.
 - (B) Dora is not subject to tort liability.
 - (C) Dora was subject to parental supervision.
 - (D) Peterson assumed the risk that Dora might hit Peterson with the cart.

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71. Adam entered into a valid written contract to sell Blackacre, a large tract of land, to Betsy. At that time, Blackacre was owned by Adam's father, Fred; Adam had no title to Blackacre and was not the agent of Fred.

After the contract was executed and before the scheduled closing date, Fred died intestate, leaving Adam as his sole heir. Shortly thereafter, Adam received an offer for Blackacre that was substantially higher than the purchase price in the contract with Betsy. Adam refused to close with Betsy although she was ready, willing, and able to close pursuant to the contract.

Betsy brought an appropriate action for specific performance against Adam.

In that action, Betsy should be awarded

- (A) nothing, because Adam had no authority to enter into the contract with Betsy.
- (B) nothing, because the doctrine of after-acquired title does not apply to executory contracts.
- (C) judgment for specific performance, because Adam acquired title prior to the scheduled closing.
- (D) judgment for specific performance, to prevent unjust enrichment of Adam.

72. Dayton operates a collection agency. He was trying to collect a \$400 bill for medical services rendered to Pratt by Doctor.

Dayton went to Pratt's house and when Martina, Pratt's mother, answered the door, Dayton told Martina he was there to collect a bill owed by Pratt. Martina told Dayton that because of her illness, Pratt had been unemployed for six months, that she was still ill and unable to work, and that she would pay the bill as soon as she could.

Dayton, in a loud voice, demanded to see Pratt and said that if he did not receive payment immediately, he would file a criminal complaint charging her with fraud. Pratt, hearing the conversation, came to the door. Dayton, in a loud voice, repeated his demand for immediate payment and his threat to use criminal process.

If Pratt asserts a claim against Dayton, based on infliction of emotional distress, will Pratt prevail?

- (A) Yes, if Pratt suffered severe emotional distress as a result of Dayton's conduct.
- (B) Yes, unless the bill for medical services was valid and past due.
- (C) No, unless Pratt suffered physical harm as a result of Dayton's conduct.
- (D) No, if Dayton's conduct created no risk of physical harm to Pratt.

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73. Public schools in the state of Green are financed, in large part, by revenue derived from real estate taxes imposed by each school district on the taxable real property located in that district. Public schools also receive other revenue from private gifts, federal grants, student fees, and local sales taxes. For many years, Green has distributed additional funds, which come from the state treasury, to local school districts in order to equalize the funds available on a per-student basis for each public school district. These additional funds are distributed on the basis of a state statutory formula that considers only the number of students in each public school district and the real estate tax revenue raised by that district. The formula does not consider other revenue received by a school district from different sources.

The school boards of two school districts, together with parents and schoolchildren in those districts, bring suit in federal court to enjoin the state from allocating the additional funds from the state treasury to individual districts pursuant to this formula. They allege that the failure of the state, in allocating this additional money, to take into account a school district's sources of revenue other than revenue derived from taxes levied on real estate located there violates the equal protection clause of the Fourteenth Amendment. The complaint does not allege that the allocation of the additional state funds based on the current statutory formula has resulted in a failure to provide minimally adequate education to any child.

Which of the following best describes the appropriate standard by which the court should review the constitutionality of the state statutory funding formula?

- (A) Because classifications based on wealth are inherently suspect, the state must demonstrate that the statutory formula is necessary to vindicate a compelling state interest.
- (B) Because the statutory funding formula burdens the fundamental right to education, the state must demonstrate that the formula is necessary to vindicate a compelling state interest.
- (C) Because no fundamental right or suspect classification is implicated in this case, the plaintiffs must demonstrate that the funding allocation formula bears no rational relationship to any legitimate state interest.
- (D) Because the funding formula inevitably leads to disparities among the school districts in their levels of total funding, the plaintiffs must only demonstrate that the funding formula is not substantially related to the furtherance of an important state interest.

74. A car driven by Dan entered land owned by and in the possession of Peter, without Peter's permission.

Which, if any, of the following allegations, without additional facts, would provide a sufficient basis for a claim by Peter against Dan?

- I. Dan intentionally drove his car onto Peter's land.
 - II. Dan negligently drove his car onto Peter's land.
 - III. Dan's car damaged Peter's land.
- (A) I only.
 - (B) III only.
 - (C) I, II, or III.
 - (D) Neither I, nor II, nor III.

75. In which of the following cases is Morrow most likely to be convicted if she is charged with receiving stolen property?
- (A) Morrow bought a car from Aster, who operates a used car lot. Before the purchase, Aster told Morrow that the car had been stolen, which was true. Unknown to Morrow, Aster is an undercover police agent who is operating the lot in cooperation with the police in exchange for leniency in connection with criminal charges pending against him.
 - (B) Morrow bought a car from Ball. Before the purchase, Ball told Morrow that the car was stolen. Ball had stolen the car with the help of Eames, who, unknown to Morrow or Ball, was an undercover police agent who feigned cooperation with Ball in the theft of the car.
 - (C) Morrow bought a car from Cooper. Before the purchase, Cooper told Morrow that the car was stolen. Unknown to Morrow, Cooper had stolen the car from a parking lot and had been caught by the police as he was driving it away. He agreed to cooperate with the police and carry through with his prearranged sale of the car to Morrow.
 - (D) Morrow bought a car from Dixon. Before the purchase, Dixon told Morrow that the car was stolen. Unknown to Morrow, Dixon was in fact the owner of the car but had reported it to the police as stolen and had collected on a fraudulent claim of its theft from his insurance company.

76. Barrel, a retailer of guns in State X, U.S.A., received on June 1 the following signed letter from Slidebolt, a gun-wholesaler in another state: "We have just obtained 100 of the assault rifles you inquired about and can supply them for \$250 each. We can guarantee shipment no later than August 1."

On June 10, Slidebolt sold and delivered the same rifles to another merchant for \$300 each. Unaware of that transaction, Barrel on the morning of June 11 mailed Slidebolt a letter rejecting the latter's offer, but, changing his mind an hour later, retrieved from his local post office the letter of rejection and immediately dispatched to Slidebolt a letter of acceptance, which Slidebolt received on June 14.

On June 9, a valid federal statute making the interstate sale of assault rifles punishable as a crime had become effective, but neither Barrel nor Slidebolt was aware until June 15 that the statute was already in effect.

As between Barrel and Slidebolt, which of the following is an accurate statement?

- (A) No contract was formed, because Slidebolt's June 10 sale of the rifles to another merchant revoked the offer to Barrel.
- (B) If a contract was formed, it is voidable because of mutual mistake.
- (C) If a contract was formed, it is unenforceable because of supervening impracticability.
- (D) No contract was formed, because Barrel's June 11 rejection was effective on dispatch.

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77. Palmco owns and operates a beachfront hotel. Under a contract with City to restore a public beach, Dredgeco placed a large and unavoidably dangerous stone-crushing machine on City land near Palmco's hotel. The machine creates a continuous and intense noise that is so disturbing to the hotel guests that they have canceled their hotel reservations in large numbers, resulting in a substantial loss to Palmco.

Palmco's best chance to recover damages for its financial losses from Dredgeco is under the theory that the operation of the stone-crushing machine constitutes

- (A) an abnormally dangerous activity.
- (B) a private nuisance.
- (C) negligence.
- (D) a trespass.

78. The constitution of State X authorizes a five-member state reapportionment board to redraw state legislative districts every ten years. In the last state legislative reapportionment, the board, by a unanimous vote, divided the greater Green metropolitan area, composed of Green City and several contiguous townships, into three equally populated state legislative districts. The result of that districting was that 40% of the area's total black population resided in one of those districts, 45% of the area's total black population resided in the second of those districts, and 15% resided in the third district.

Jones is black, is a registered voter, and is a resident of Green City. Jones brings suit in an appropriate court against the members of the state reapportionment board, seeking declaratory and injunctive relief that would require the boundary lines of the state legislative districts in the greater Green metropolitan area to be redrawn. His only claim is that the current apportionment violates the Fifteenth Amendment and the equal protection clause of the Fourteenth Amendment because it improperly dilutes the voting power of the blacks who reside in that area.

If no federal statute is applicable, which of the following facts, if proven, would most strongly support the validity of the action of the state reapportionment board?

- (A) In drawing the current district lines, the reapportionment board precisely complied with state constitutional requirements that state legislative districts be compact and follow political subdivision boundaries to the maximum extent feasible.
- (B) The reapportionment board was composed of three white members and two black members and both of the board's black members were satisfied that its plan did not improperly dilute the voting power of the blacks who reside in that area.
- (C) Although the rate of voter registration among blacks is below that of voter registration among whites in the greater Green metropolitan area, two black legislators have been elected from that area during the last 15 years.
- (D) The total black population of the greater Green metropolitan area amounts to only 15% of the population that is required to comprise a single legislative district.

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79. Paulsen Corporation sued Dorr for ten fuel oil deliveries not paid for. Dorr denied that the deliveries were made. At trial, Paulsen calls its office manager, Wicks, to testify that Paulsen employees always record each delivery in duplicate, give one copy to the customer, and place the other copy in Paulsen's files; that he (Wicks) is the custodian of those files; and that his examination of the files before coming to court revealed that the ten deliveries were made.

Wicks's testimony that the invoices show ten deliveries is

- (A) admissible, because it is based on regularly kept business records.
- (B) admissible, because Wicks has first-hand knowledge of the contents of the records.
- (C) inadmissible, because the records must be produced in order to prove their contents.
- (D) inadmissible, because the records are self-serving.

80. Dan entered the police station and announced that he wanted to confess to a murder. The police advised Dan of the Miranda warnings, and Dan signed a written waiver. Dan described the murder in detail and pinpointed the location where a murder victim had been found a few weeks before. Later, a court-appointed psychiatrist determined that Dan was suffering from a serious mental illness that interfered with his ability to make rational choices and to understand his rights and that the psychosis had induced his confession.

Dan's confession is

- (A) admissible, because there was no coercive police conduct in obtaining Dan's statement.
- (B) admissible, because Dan was not in custody.
- (C) inadmissible, because Dan's confession was a product of his mental illness and was therefore involuntary.
- (D) inadmissible, because under these circumstances, there was no valid waiver of Miranda warnings.

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81. Leaseco owned Blackacre, a tract of 100 acres. Six years ago, Leaseco leased a one-acre parcel, Oneacre, located in the northeasterly corner of Blackacre, for a term of 30 years, to Eatco. Eatco intended to and did construct a fast-food restaurant on Oneacre.

The lease provided that:

1. Eatco was to maintain Oneacre and improvements thereon, to maintain full insurance coverage on Oneacre, and to pay all taxes assessed against Oneacre.
2. Leaseco was to maintain the access roads and the parking lot areas platted on those portions of Blackacre that adjoined Oneacre and to permit the customers of Eatco to use them in common with the customers of the other commercial users of the remainder of Blackacre.
3. Eatco was to pay its share of the expenses for the off-site improvements according to a stated formula.

Five years ago, Leaseco sold Oneacre to Jones, an investor; the conveyance was made subject to the lease to Eatco. However, Jones did not assume the obligations of the lease and Leaseco retained the remainder of Blackacre. Since that conveyance five years ago, Eatco has paid rent to Jones.

Eatco refused to pay its formula share of the off-site improvement costs as provided in the lease. Leaseco brought an appropriate action against Eatco to recover such costs.

The most likely outcome would be in favor of

- (A) Leaseco, because the use of the improvements by the customers of Eatco imposes an implied obligation on Eatco.
- (B) Leaseco, because the conveyance of Oneacre to Jones did not terminate Eatco's covenant to contribute.
- (C) Eatco, because the conveyance of Oneacre to Jones terminated the privity of estate between Leaseco and Eatco.
- (D) Eatco, because Jones, as Eatco's landlord, has the obligation to pay the maintenance costs by necessary implication.

82. While Patty was riding her horse on what she thought was a public path, the owner of a house next to the path approached her, shaking a stick and shouting, "Get off my property." Unknown to Patty, the path on which she was riding crossed the private property of the shouting owner. When Patty explained that she thought the path was a public trail, the man cursed her, approached Patty's horse, and struck the horse with the stick. As a result of the blow, the horse reared, causing Patty to fear that she would fall. However, Patty managed to stay on the horse, and then departed. Neither Patty nor the horse suffered bodily harm.

If Patty brings an action for damages against the property owner, the result should be for

- (A) Patty, for trespass to her chattel property.
- (B) Patty, for battery and assault.
- (C) the defendant, because Patty suffered no physical harm.
- (D) the defendant, because he was privileged to exclude trespassers from his property.

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83. Five years ago, Sally acquired Blackacre, improved with a 15-year-old dwelling. This year Sally listed Blackacre for sale with Bill, a licensed real estate broker. Sally informed Bill of several defects in the house that were not readily discoverable by a reasonable inspection, including a leaky basement, an inadequate water supply, and a roof that leaked. Paul responded to Bill's advertisement, was taken by Bill to view Blackacre, and decided to buy it. Bill saw to it that the contract specified the property to be "as is" but neither Bill nor Sally pointed out the defects to Paul, who did not ask about the condition of the dwelling. After closing and taking possession, Paul discovered the defects, had them repaired, and demanded that Sally reimburse him for the cost of the repairs. Sally refused and Paul brought an appropriate action against Sally for damages.

If Sally wins, it will be because

- (A) Sally fulfilled the duty to disclose defects by disclosure to Bill.
- (B) the contract's "as is" provision controls the rights of the parties.
- (C) Bill became the agent of both Paul and Sally and thus knowledge of the defects was imputed to Paul.
- (D) the seller of a used dwelling that has been viewed by the buyer has no responsibility toward the buyer.

84. In which of the following situations would a court applying common-law doctrine be most likely to convict Defendant of the crime charged, despite Defendant's mistake?
- (A) Defendant was charged with bigamy. He married his neighbor four years after her husband was reported missing at sea. The rescued husband returns alive. A state statute provides that a person is presumed dead after five years of unexplained absence. Defendant believed the statutory period was three years.
 - (B) Defendant was charged with murder after he shot and killed a man who had extorted money from him. Defendant mistakenly thought the victim had raised his hand to shoot, when, in fact, the victim was shaking his fist at Defendant to frighten him.
 - (C) Defendant was charged with assault with intent to rape a woman who he mistakenly believed had agreed to have sexual intercourse with him.
 - (D) Defendant was charged with burglary. He had broken into an office where he once worked and had taken a typewriter that he erroneously believed had been given to him before he was fired.

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Questions 85-86 are based on the following fact situation.

Spender owed Midas \$1,000, plus interest at 8% until paid, on a long-overdue promissory note, collection of which would become barred by the statute of limitations on June 30. On the preceding April 1, Spender and Midas both signed a writing in which Spender promised to pay the note in full on the following December 31, plus interest at 8% until that date, and Midas promised not to sue on the note in the meantime. Midas, having received some advice from his nonlawyer brother-in-law, became concerned about the legal effect of the April 1 agreement. On May 1, acting pro se as permitted by the rules of the local small claims court, he filed suit to collect the note.

85. Assuming that there is no controlling statute, is the April 1 agreement an effective defense for Spender?
- (A) Yes, because Spender's promise to pay interest until December 31 was consideration for Midas's promise not to sue.
 - (B) Yes, because the law creates a presumption that Spender relied on Midas's promise not to sue.
 - (C) No, because there was no consideration for Midas's promise not to sue, in that Spender was already obligated to pay \$1,000 plus interest at 8% until the payment date.
 - (D) No, because Spender's April 1 promise is enforceable with or without consideration.

86. For this question only, assume that on January 2 of the following year Midas's suit has not come to trial, Spender has not paid the note, Midas has retained a lawyer, and the lawyer, with leave of court, amends the complaint to add a second count to enforce the promise Spender made in the April 1 agreement.

Does the new count state a claim upon which relief can be granted?

- (A) Yes, because Spender's failure to pay the note, plus interest, on December 31 makes Midas's breach of promise not to sue before that date no longer material.
- (B) Yes, because Spender's April 1 promise is enforceable by reason of his moral obligation to pay the debt.
- (C) No, because such relief would undermine the policy of the statute of limitations against enforcement of stale claims.
- (D) No, because Spender's April 1 promise was lawfully conditioned upon Midas's forbearing to sue prior to December 31.

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87. Which of the following acts by the United States Senate would be constitutionally IMPROPER?
- (A) The Senate decides, with the House of Representatives, that a disputed state ratification of a proposed constitutional amendment is valid.
 - (B) The Senate determines the eligibility of a person to serve as a senator.
 - (C) The Senate appoints a commission to adjudicate finally a boundary dispute between two states.
 - (D) The Senate passes a resolution calling on the President to pursue a certain foreign policy.

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88. While driving his car, Plaintiff sustained injuries in a three-car collision. Plaintiff sued the drivers of the other two cars, D-1 and D-2, and each defendant crossclaimed against the other for contribution. The jurisdiction has adopted a rule of pure comparative negligence and allows contribution based upon proportionate fault. The rule of joint and several liability has been retained.

The jury has found that Plaintiff sustained damages in the amount of \$100,000, and apportioned the causal negligence of the parties as follows: Plaintiff 40%, D-1 30%, and D-2 30%.

How much, if anything, can Plaintiff collect from D-1, and how much, if anything, can D-1 then collect from D-2 in contribution?

- (A) Nothing, and then D-1 can collect nothing from D-2.
- (B) \$30,000, and then D-1 can collect nothing from D-2.
- (C) \$40,000, and then D-1 can collect \$10,000 from D-2.
- (D) \$60,000, and then D-1 can collect \$30,000 from D-2.

89. Pater and his adult daughter, Carmen, encountered Tertius, an old family friend, on the street. Carmen said to Tertius, "How about lending me \$1,000 to buy a used car? I'll pay you back with interest one year from today." Pater added, "And if she doesn't pay it back as promised, I will." Tertius thereupon wrote out and handed to Carmen his personal check, payable to her, for \$1,000, and Carmen subsequently used the funds to buy a used car. When the debt became due, both Carmen and Pater refused to repay it, or any part of it.

In an action by Tertius against Pater to recover \$1,000 plus interest, which of the following statements would summarize Pater's best defense?

- (A) He received no consideration for his conditional promise to Tertius.
- (B) His conditional promise to Tertius was not to be performed in less than a year from the time it was made.
- (C) His conditional promise to Tertius was not made for the primary purpose of benefiting himself (Pater).
- (D) The loan by Tertius was made without any agreement concerning the applicable interest rate.

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90. Hal and Wan owned Blackacre as joint tenants, upon which was situated a two-family house. Hal lived in one of the two apartments and rented the other apartment to Tent. Hal got in a fight with Tent and injured him. Tent obtained and properly filed a judgment for \$10,000 against Hal.

The statute in the jurisdiction reads: Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

Wan, who lived in a distant city, knew nothing of Tent's judgment. Before Tent took any further action, Hal died. The common-law joint tenancy is unmodified by statute.

Wan then learned the facts and brought an appropriate action against Tent to quiet title to Blackacre.

The court should hold that Tent has

- (A) a lien against the whole of Blackacre, because he was a tenant of both Hal and Wan at the time of the judgment.
- (B) a lien against Hal's undivided one-half interest in Blackacre, because his judgment was filed prior to Hal's death.
- (C) no lien, because Wan had no actual notice of Tent's judgment until after Hal's death.
- (D) no lien, because Hal's death terminated the interest to which Tent's lien attached.

91. In litigation on a federal claim, Plaintiff had the burden of proving that Defendant received a notice. Plaintiff relied on the presumption of receipt by offering evidence that the notice was addressed to Defendant, properly stamped, and mailed. Defendant, on the other hand, testified that she never received the notice.

Which of the following is correct?

- (A) The jury must find that the notice was received.
- (B) The jury may find that the notice was received.
- (C) The burden shifts to Defendant to persuade the jury of nonreceipt.
- (D) The jury must find that the notice was not received, because the presumption has been rebutted and there is uncontradicted evidence of nonreceipt.

92. In a medical malpractice suit by Payne against Dr. Dock, Payne seeks to introduce a properly authenticated photocopy of Payne's hospital chart. The chart contained a notation made by a medical resident that an aortic clamp had broken during Payne's surgery. The resident made the notation in the regular course of practice, but had no personal knowledge of the operation, and cannot remember which of the operating physicians gave him the information.

The document is

- (A) admissible as a record of regularly conducted activity.
- (B) admissible as recorded recollection.
- (C) inadmissible as a violation of the best evidence rule.
- (D) inadmissible, because it is hearsay within hearsay.

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93. Parr sued Davis for damages for physical injuries allegedly caused by Davis's violation of the federal civil rights law. The incident occurred wholly within the state of Chippewa but the case was tried in federal court. The Chippewa state code says, "The common-law privileges are preserved intact in this state."

At trial, Davis called Dr. Webb, Parr's physician, to testify to confidential statements made to him by Parr in furtherance of medical treatment for the injuries allegedly caused by Davis. Parr objects, claiming a physician-patient privilege.

The court should apply

- (A) state law and recognize the claim of privilege.
- (B) federal law and recognize the claim of privilege.
- (C) state law and reject the claim of privilege.
- (D) federal law and reject the claim of privilege.

94. Kathy, a two-year-old, became ill with meningitis. Jim and Joan, her parents, were members of a group that believed fervently that if they prayed enough, God would not permit their child to die. Accordingly, they did not seek medical aid for Kathy and refused all offers of such aid. They prayed continuously. Kathy died of the illness within a week.

Jim and Joan are charged with murder in a common-law jurisdiction.

Their best defense to the charge is that

- (A) they did not intend to kill or to harm Kathy.
- (B) they were pursuing a constitutionally protected religious belief.
- (C) Kathy's death was not proximately caused by their conduct.
- (D) they neither premeditated nor deliberated.

95. In a prosecution of Dahle for assault, Wharton is called to testify that the victim, Valerian, had complained to Wharton that Dahle was the assailant.

Wharton's testimony is most likely to be admitted if Wharton is

- (A) a doctor, whom Valerian consulted for treatment.
- (B) a minister, whom Valerian consulted for counseling.
- (C) Valerian's husband, whom she telephoned immediately after the event.
- (D) a police officer, whom Valerian called on instructions from her husband.

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Questions 96-97 are based on the following fact situation.

Betty Bower, an adult, asked Jeff Geetus to lend her \$1,000. Geetus replied that he would do so only if Bower's father, Cash, would guarantee the loan. At Bower's request, Cash mailed a signed letter to Geetus: "If you lend \$1,000 to my daughter, I will repay it if she doesn't." On September 15, Geetus, having read Cash's letter, lent \$1,000 to Bower, which Bower agreed to repay in installments of \$100 plus accrued interest on the last day of each month beginning October 31. Cash died on September 16. Later that same day, unaware of Cash's death, Geetus mailed a letter to Cash advising that he had made the \$1,000 loan to Bower on September 15.

Bower did not pay the installments due on October 31, November 30, or December 31, and has informed Geetus that she will be unable to make repayments in the foreseeable future.

96. On January 15, Geetus is entitled to a judgment against Bower for which of the following amounts?
- (A) Nothing, because if he sues before the entire amount is due, he will be splitting his cause of action.
 - (B) \$300 plus the accrued interest, because Bower's breach is only a partial breach.
 - (C) \$1,000 plus the accrued interest, because Bower's unexcused failure to pay three installments is a material breach.
 - (D) \$1,000 plus the accrued interest, because the failure to pay her debts as they come due indicates that Bower is insolvent and Geetus is thereby entitled to accelerate payment of the debt.

97. For this question only, assume that Bower's entire \$1,000 debt is due and that she has failed to repay any part of it. In an action by Geetus against Cash's estate for \$1,000 plus accrued interest, which of the following, if any, will serve as (an) effective defense(s) for Cash's estate?
- I. There was no consideration to support Cash's promise, because he did not receive any benefit.
 - II. Cash died before Geetus accepted his offer.
 - III. Cash died before Geetus notified him that his offer had been accepted.
- (A) I only.
 - (B) II only.
 - (C) I and III only.
 - (D) Neither I nor II nor III.
-

98. At Darrow's trial for stealing an automobile, Darrow called a character witness, Goode, who testified that Darrow had an excellent reputation for honesty. In rebuttal, the prosecutor calls Wick to testify that he recently saw Darrow cheat on a college examination.

This evidence should be

- (A) admitted, because Darrow has "opened the door" to the prosecutor's proof of bad character evidence.
- (B) admitted, because the cheating involves "dishonesty or false statement."
- (C) excluded, because it has no probative value on any issue in the case.
- (D) excluded, because Darrow's cheating can be inquired into only on cross-examination of Goode.

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99. The Federal Family Film Enhancement Act assesses an excise tax of 10% on the price of admission to public movie theaters when they show films that contain actual or simulated scenes of human sexual intercourse.

Which of the following is the strongest argument against the constitutionality of this federal act?

- (A) The act imposes a prior restraint on the freedom of speech protected by the First Amendment.
- (B) The act is not rationally related to any legitimate national interest.
- (C) The act violates the equal protection concepts embodied in the due process clause of the Fifth Amendment because it imposes a tax on the price of admission to view certain films and not on the price of admission to view comparable live performances.
- (D) The act imposes a tax solely on the basis of the content of speech without adequate justification and, therefore, it is prohibited by the freedom of speech clause of the First Amendment.

100. Desmond fell while attempting to climb a mountain, and lay unconscious and critically injured on a ledge that was difficult to reach. Pearson, an experienced mountain climber, was himself seriously injured while trying to rescue Desmond. Pearson's rescue attempt failed, and Desmond died of his injuries before he could be reached.

Pearson brought an action against Desmond's estate for compensation for his injuries. In this jurisdiction, the traditional common-law rules relating to contributory negligence and assumption of risk remain in effect.

Will Pearson prevail in his action against Desmond's estate?

- (A) Yes, if his rescue attempt was reasonable.
- (B) Yes, because the law should not discourage attempts to assist persons in helpless peril.
- (C) No, unless Desmond's peril arose from his own failure to exercise reasonable care.
- (D) No, because Pearson's rescue attempt failed and therefore did not benefit Desmond.

STOP

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

**PM BOOK
TIME—3 HOURS**

Directions: Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives. Answer all questions according to the generally accepted view, except where otherwise noted.

For the purposes of this test, you are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted. You are also to assume relevant application of Article 9 of the UCC concerning fixtures. The Federal Rules of Evidence are deemed to control. The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated to the contrary. You are also to assume that there is no applicable community property law, no guest statute, and no No-Fault Insurance Act unless otherwise specified. In negligence cases, if fault on the claimant’s part is or may be relevant, the statement of facts for the particular question will identify the contributory or comparative negligence rule that is to be applied.

101. At a party for coworkers at Defendant’s home, Victim accused Defendant of making advances toward his wife. Victim and his wife left the party. The next day at work, Defendant saw Victim and struck him on the head with a soft-drink bottle. Victim fell into a coma and died two weeks after the incident.

This jurisdiction defines aggravated assault as an assault with any weapon or dangerous implement and punishes it as a felony. It defines murder as the unlawful killing of a person with malice aforethought or in the course of an independent felony.

Defendant may be found guilty of murder

- (A) only if the jury finds that Defendant intended to kill Victim.
- (B) only if the jury finds that Defendant did not act in a rage provoked by Victim’s accusations.
- (C) if the jury finds that Defendant intended either to kill or to inflict serious bodily harm.
- (D) if the jury finds that the killing occurred in the course of an aggravated assault.

102. As a result of an accident at the NPP nuclear power plant, a quantity of radioactive vapor escaped from the facility and two members of the public were exposed to excessive doses of radiation. According to qualified medical opinion, that exposure will double the chance that these two persons will ultimately develop cancer. However, any cancer that might be caused by this exposure will not be detectable for at least ten years. If the two exposed persons do develop cancer, it will not be possible to determine whether it was caused by this exposure or would have developed in any event.

If the exposed persons assert a claim for damages against NPP shortly after the escape of the radiation, which of the following questions will NOT present a substantial issue?

- (A) Will the court recognize that the plaintiffs have suffered a present legal injury?
- (B) Can the plaintiffs prove the amount of their damages?
- (C) Can the plaintiffs prove that any harm they may suffer was caused by this exposure?
- (D) Can the plaintiffs prevail without presenting evidence of specific negligence on the part of NPP?

103. A city ordinance makes the city building inspector responsible for ensuring that all buildings in that city are kept up to building code standards, and requires the inspector to refer for prosecution all known building code violations. Another ordinance provides that the city building inspector may be discharged for "good cause." The building inspector took a newspaper reporter through a number of run-down buildings in a slum neighborhood. After using various epithets and slurs to describe the occupants of these buildings, the building inspector stated to the reporter: "I do not even try to get these buildings up to code or to have their owners prosecuted for code violations because if these buildings are repaired, the people who live in them will just wreck them again." The reporter published these statements in a story in the local newspaper. The building inspector admitted he made the statements.

On the basis of these statements, the city council discharged the building inspector.

Is the action of the city council constitutional?

- (A) Yes, because the statements demonstrate that the building inspector has an attitude toward a certain class of persons that interferes with the proper performance of the obligations of his job.
- (B) Yes, because the building inspector is a government employee and a person holding such a position may not make public comments inconsistent with current governmental policy.
- (C) No, because the statements were lawful comments on a matter of public concern.
- (D) No, because the statements were published in a newspaper that is protected by the First and Fourteenth Amendments.

104. In preparation for a mountain-climbing expedition, Alper purchased the necessary climbing equipment from Outfitters, Inc., a retail dealer in sporting goods. A week later, Alper fell from a rock face when a safety device he had purchased from Outfitters malfunctioned because of a defect in its manufacture. Thereafter, Rollins was severely injured when he tried to reach and give assistance to Alper on the ledge to which Alper had fallen. Rollins's injury was not caused by any fault on his own part.

If Rollins brings an action against Outfitters, Inc., to recover damages for his injuries, will Rollins prevail?

- (A) No, unless Outfitters could have discovered the defect by a reasonable inspection of the safety device.
- (B) No, because Rollins did not rely on the representation of safety implied from the sale of the safety device by Outfitters.
- (C) Yes, unless Alper was negligent in failing to test the safety device.
- (D) Yes, because injury to a person in Rollins's position was foreseeable if the safety device failed.

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105. Pitt sued Dill for damages for back injuries received in a car wreck. Dill disputed the damages and sought to prove that Pitt's disability, if any, resulted from a childhood horseback riding accident. Pitt admitted the childhood accident, but contended it had no lasting effect.

Pitt calls Dr. Webb, an orthopedist who had never examined Pitt, and poses to Webb a hypothetical question as to the cause of the disability that omits any reference to the horseback riding accident. The question was not provided to opposing counsel before trial.

The best ground for objecting to this question would be that

- (A) Webb lacked firsthand knowledge concerning Pitt's condition.
 - (B) the hypothetical question omitted a clearly significant fact.
 - (C) hypothetical questions are no longer permitted.
 - (D) sufficient notice of the hypothetical question was not given to opposing counsel before trial.
106. Daggett was prosecuted for murder of Vales, whose body was found one morning in the street near Daggett's house. The state calls Witt, a neighbor, to testify that during the night before the body was found he heard Daggett's wife scream, "You killed him! You killed him!"

Witt's testimony is

- (A) admissible as a report of a statement of belief.
- (B) admissible as a report of an excited utterance.
- (C) inadmissible, because it reports a privileged spousal communication.
- (D) inadmissible on spousal immunity grounds, but only if the wife objects.

107. Orin owned in fee simple Blueacre, a farm of 300 acres. He died and by will duly admitted to probate devised Blueacre to his surviving widow, Wilma, for life with remainder in fee simple to his three children, Cindy, Clara, and Carter. All three children survived Orin.

At the time of Orin's death, there existed a mortgage on Blueacre that Orin had given ten years before to secure a loan for the purchase of the farm. At his death, there remained unpaid \$40,000 in principal, payable in installments of \$4,000 per year for the next ten years. In addition, there was due interest at the rate of 10% per annum, payable annually with the installment of principal. Wilma took possession and out of a gross income of \$50,000 per year realized \$25,000 net after paying all expenses and charges except the installment of principal and interest due on the mortgage.

Carter and Cindy wanted the three children, including Clara, to each contribute one-third of the amounts needed to pay the mortgage installments. Clara objected, contending that Wilma should pay all of these amounts out of the profits she had made in operation of the farm. When foreclosure of the mortgage seemed imminent, Clara sought legal advice.

If Clara obtained sound advice relating to her rights, she was told that

- (A) her only protection would lie in instituting an action for partition to compel the sale of the life estate of Wilma and to obtain the value of Clara's one-third interest in remainder.
- (B) she could obtain appropriate relief to compel Wilma personally to pay the sums due because the income is more than adequate to cover these amounts.
- (C) she could be compelled personally to pay her share of the amounts due because discharge of the mortgage enhances the principal.
- (D) she could not be held personally liable for any amount but that her share in remainder could be lost if the mortgage installments are not paid.

Questions 108-109 are based on the following fact situation.

Tune Corporation, a radio manufacturer, and Bill's Comex, Inc., a retailer, after extensive negotiations entered into a final, written agreement in which Tune agreed to sell and Bill's agreed to buy all of its requirements of radios, estimated at 20 units per month, during the period January 1, 1988, and December 31, 1990, at a price of \$50 per unit. A dispute arose in late December, 1990, when Bill's returned 25 undefective radios to Tune for full credit after Tune had refused to extend the contract for a second three-year period.

In an action by Tune against Bill's for damages due to return of the 25 radios, Tune introduces the written agreement, which expressly permitted the buyer to return defective radios for credit but was silent as to return of undefective radios for credit. Bill's seeks to introduce evidence that during the three years of the agreement it had returned, for various reasons, 125 undefective radios, for which Tune had granted full credit. Tune objects to the admissibility of this evidence.

108. The trial court will probably rule that the evidence proffered by Bill's is
- (A) inadmissible, because the evidence is barred by the parol evidence rule.
 - (B) inadmissible, because the express terms of the agreement control when those terms are inconsistent with the course of performance.
 - (C) admissible, because the evidence supports an agreement that is not within the relevant statute of frauds.
 - (D) admissible, because course-of-performance evidence, when available, is considered the best indication of what the parties intended the writing to mean.

109. For this question only, assume the following facts. When Bill's returned the 25 radios in question, it included with the shipment a check payable to Tune for the balance admittedly due on all other merchandise sold and delivered to Bill's. The check was conspicuously marked, "Payment in full for all goods sold to Bill's to date." Tune's credit manager, reading this check notation and knowing that Bill's had also returned the 25 radios for full credit, deposited the check without protest in Tune's local bank account. The canceled check was returned to Bill's a week later.

Which of the following defenses would best serve Bill's?

- (A) Tune's deposit of the check and its return to Bill's after payment estopped Tune thereafter to assert that Bill's owed any additional amount.
- (B) By depositing the check without protest and with knowledge of its wording, Tune discharged any remaining duty to pay on the part of Bill's.
- (C) By depositing the check without protest and with knowledge of its wording, Tune entered into a novation discharging any remaining duty to pay on the part of Bill's.
- (D) The parties' good-faith dispute over return of the radios suspended the duty of Bill's, if any, to pay any balance due.

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110. Plaintiff was a passenger in a car that was struck in the rear by a car driven by First. The collision resulted from First's negligence in failing to keep a proper lookout. Plaintiff's physician found that the collision had aggravated a mild osteoarthritic condition in her lower back and had brought on similar, but new, symptoms in her neck and upper back.

Six months after the first accident, Plaintiff was a passenger in a car that was struck in the rear by a car driven by Second. The collision resulted from Second's negligence in failing to keep a proper lookout. Plaintiff's physician found that the second collision had caused a general worsening of Plaintiff's condition, marked by a significant restriction of movement and muscle spasms in her back and neck. The physician believes Plaintiff's worsened condition is permanent, and he can find no basis for apportioning responsibility for her present worsened condition between the two automobile collisions.

Plaintiff brought an action for damages against First and Second. At the close of Plaintiff's evidence, as outlined above, each of the defendants moved for a directed verdict in his favor on the ground that Plaintiff had failed to produce evidence on which the jury could determine how much damage each defendant had caused. The jurisdiction adheres to the common-law rules regarding joint and several liability.

Plaintiff's best argument in opposition to the defendants' motions would be that the defendants are jointly and severally liable for Plaintiff's entire harm, because

- (A) the wrongdoers, rather than their victim, should bear the burden of the impossibility of apportionment.
- (B) the defendants breached a common duty that each of them owed to Plaintiff.
- (C) each of the defendants was the proximate cause in fact of all of Plaintiff's damages.
- (D) the defendants are joint tortfeasors who aggravated Plaintiff's preexisting condition.

111. Adam had promised Bob that, if at any time Adam decided to sell his summer cottage property known as Blackacre, he would give Bob the opportunity to purchase Blackacre.

At a time when Bob was serving overseas with the United States Navy, Adam decided to sell Blackacre and spoke to Barbara, Bob's mother. Before Bob sailed, he had arranged for Barbara to become a joint owner of his various bank accounts so that Barbara would be able to pay his bills when he was gone. When she heard from Adam, Barbara took the necessary funds from Bob's account and paid Adam \$20,000, the fair market value of Blackacre. Adam executed and delivered to Barbara a deed in the proper form purporting to convey Blackacre to Bob. Barbara promptly and properly recorded the deed.

Shortly thereafter, Barbara learned that Bob had been killed in an accident at sea one week before the delivery of the deed. Bob's Last Will, which has now been duly probated, leaves his entire estate to First Church. Barbara is the sole heir-at-law of Bob.

There is no statute dealing with conveyances to dead persons.

Title to Blackacre is now in

- (A) First Church.
- (B) Barbara.
- (C) Adam free and clear.
- (D) Adam, subject to a lien to secure \$20,000 to Bob's estate.

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112. Darby was prosecuted for sexually abusing his 13-year-old stepdaughter, Wendy. Wendy testified to Darby's conduct. On cross-examination, defense counsel asks Wendy, "Isn't it true that shortly before you complained that Darby abused you, he punished you for maliciously ruining some of his phonograph records?"

The question is

- (A) proper, because it relates to a possible motive for Wendy to accuse Darby falsely.
- (B) proper, because Wendy's misconduct is relevant to her character for veracity.
- (C) improper, because the incident had nothing to do with Wendy's truthfulness.
- (D) improper, because it falls outside the scope of direct examination.

113. David entered the county museum at a time when it was open to the public, intending to steal a Picasso etching. Once inside, he took what he thought was the etching from an unlocked display case and concealed it under his coat. However, the etching was a photocopy of an original that had been loaned to another museum. A sign over the display case containing the photocopy said that similar photocopies were available free at the entrance. David did not see the sign.

Burglary in the jurisdiction is defined as "entering a building unlawfully with the intent to commit a crime."

David is guilty of

- (A) burglary and larceny.
- (B) burglary and attempted larceny.
- (C) larceny.
- (D) attempted larceny.

114. Insurance is provided in the state of Shoshone only by private companies. Although the state insurance commissioner inspects insurance companies for solvency, the state does not regulate their rates or policies. An insurance company charges higher rates for burglary insurance to residents of one part of a county in Shoshone than to residents of another section of the same county because of the different crime rates in those areas.

Foster is a resident of that county who was charged the higher rate by the insurance company because of the location of her residence. Foster sues the insurance company, alleging that the differential in insurance rates unconstitutionally denies her the equal protection of the laws.

Will Foster's suit succeed?

- (A) Yes, because the higher crime rate in Foster's neighborhood demonstrates that the county police are not giving persons who reside there the equal protection of the laws.
- (B) Yes, because the insurance rate differential is inherently discriminatory.
- (C) No, because the constitutional guarantee of equal protection of the laws is not applicable to the actions of these insurance companies.
- (D) No, because there is a rational basis for the differential in insurance rates.

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Questions 115-116 are based on the following fact situation.

Jack, a bank teller, was fired by Morgan, the president of the bank. Jack decided to take revenge against Morgan, but decided against attempting it personally, because he knew Morgan was protected around the clock by bank security guards. Jack knew that Chip had a violent temper and was very jealous. Jack falsely told Chip that Chip's wife, Elsie, was having an affair with Morgan. Enraged, Chip said, "What am I going to do?" Jack said, "If it were my wife, I'd just march into his office and blow his brains out." Chip grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed Chip.

115. If charged with murder of Chip, Jack should be found
- (A) guilty, based upon extreme recklessness.
 - (B) guilty, based upon transferred intent.
 - (C) not guilty, because he did not intend for Chip to be shot by the security guard.
 - (D) not guilty, because he did not shoot Chip and he was not acting in concert with the security guard.
116. If charged with attempted murder of Morgan, Jack should be found
- (A) guilty, because he intended to kill Morgan and used Chip to carry out his plan.
 - (B) guilty, because he was extremely reckless as to Morgan.
 - (C) not guilty, because Morgan was never in imminent danger of being killed.
 - (D) not guilty, because Chip, if successful, would be guilty of no more than manslaughter and an accessory cannot be guilty of a higher crime than the principal.
117. The National AIDS Prevention and Control Act is a new, comprehensive federal statute that was enacted to deal with the public health crisis caused by the AIDS virus. Congress and the President were concerned that inconsistent lower court rulings with respect to the constitutionality, interpretation, and application of the statute might adversely affect or delay its enforcement and, thereby, jeopardize the public health. As a result, they included a provision in the statute providing that all legal challenges concerning those matters may be initiated only by filing suit directly in the United States Supreme Court.
- The provision authorizing direct review of the constitutionality, interpretation, or application of this statute only in the United States Supreme Court is
- (A) constitutional, because it is authorized by the Article I power of Congress to enact all laws that are "necessary and proper" to implement the general welfare.
 - (B) constitutional, because Article III provides that the jurisdiction of the United States Supreme Court is subject to such exceptions and such regulations as Congress shall make.
 - (C) unconstitutional, because it denies persons who wish to challenge this statute the equal protection of the laws by requiring them to file suit in a court different from that in which persons who wish to challenge other statutes may file suit.
 - (D) unconstitutional, because it is inconsistent with the specification in Article III of the original jurisdiction of the United States Supreme Court.

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118. Miller was indicted in a state court in January 1985 for a robbery and murder that occurred in December 1982. He retained counsel, who filed a motion to dismiss on the ground that Miller had been prejudiced by a 25-month delay in obtaining the indictment. Thereafter, Miller, with his counsel, appeared in court for arraignment and stated that he wished to plead guilty.

The presiding judge asked Miller whether he understood the nature of the charges, possible defenses, and maximum allowable sentences. Miller replied that he did, and the judge reviewed all of those matters with him. He then asked Miller whether he understood that he did not have to plead guilty. When Miller responded that he knew that, the judge accepted the plea and sentenced Miller to 25 years.

Six months later, Miller filed a motion to set aside his guilty plea on each of the following grounds.

Which of these grounds provides a constitutional basis for relief?

- (A) The judge did not rule on his motion to dismiss before accepting the guilty plea.
- (B) The judge did not determine that Miller had robbed and killed the victim.
- (C) The judge did not determine whether Miller understood that he had a right to jury trial.
- (D) The judge did not determine whether the prosecutor's file contained any undisclosed exculpatory material.

119. Sally told Michael she would like to have sexual intercourse with him and that he should come to her apartment that night at 7 p.m. After Michael arrived, he and Sally went into the bedroom. As Michael started to remove Sally's blouse, Sally said she had changed her mind. Michael tried to convince her to have intercourse with him, but after ten minutes of her sustained refusals, Michael left the apartment. Unknown to Michael, Sally was 15 years old. Because she appeared to be older, Michael believed her to be about 18 years old.

A statute in the jurisdiction provides: "A person commits rape in the second degree if he has sexual intercourse with a girl, not his wife, who is under the age of 16 years."

If Michael is charged with attempting to violate this statute, he is

- (A) guilty, because no mental state is required as to the element of age.
- (B) guilty, because he persisted after she told him she had changed her mind.
- (C) not guilty, because he reasonably believed she had consented and voluntarily withdrew after she told him she had changed her mind.
- (D) not guilty, because he did not intend to have intercourse with a girl under the age of 16.

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Questions 120-121 are based on the following fact situation.

Alice entered into a contract with Paul by the terms of which Paul was to paint Alice's office for \$1,000 and was required to do all of the work over the following weekend so as to avoid disruption of Alice's business.

120. For this question only, assume the following facts. If Paul had started to paint on the following Saturday morning, he could have finished before Sunday evening. However, he stayed home that Saturday morning to watch the final game of the World Series on TV, and did not start to paint until Saturday afternoon. By late Saturday afternoon, Paul realized that he had underestimated the time it would take to finish the job if he continued to work alone. Paul phoned Alice at her home and accurately informed her that it was impossible to finish the work over the weekend unless he hired a helper. He also stated that to do so would require an additional charge of \$200 for the work. Alice told Paul that she apparently had no choice but to pay "whatever it takes" to get the work done as scheduled.

Paul hired Ted to help finish the painting and paid Ted \$200. Alice has offered to pay Paul \$1,000. Paul is demanding \$1,200.

How much is Paul likely to recover?

- (A) \$1,000 only, because Alice received no consideration for her promise to pay the additional sum.
- (B) \$1,000 only, because Alice's promise to pay "whatever it takes" is too uncertain to be enforceable.
- (C) \$1,200, in order to prevent Alice's unjust enrichment.
- (D) \$1,200, because the impossibility of Paul's completing the work alone discharged the original contract and a new contract was formed.

121. For this question only, assume the following facts. Paul commenced work on Saturday morning, and had finished half the painting by the time he quit work for the day. That night, without the fault of either party, the office building was destroyed by fire.

Which of the following is an accurate statement?

- (A) Both parties' contractual duties are discharged, and Paul can recover nothing from Alice.
- (B) Both parties' contractual duties are discharged, but Paul can recover in quasi-contract from Alice.
- (C) Only Paul's contractual duty is discharged, because Alice's performance (payment of the agreed price) is not impossible.
- (D) Only Paul's contractual duty is discharged, and Paul can recover his reliance damages from Alice.

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122. The state of Erehwon has a statute providing that an unsuccessful candidate in a primary election for a party's nomination for elected public office may not become a candidate for the same office at the following general election by nominating petition or by write-in votes.

Sabel sought her party's nomination for governor in the May primary election. After losing in the primary, Sabel filed nominating petitions containing the requisite number of signatures to become a candidate for the office of governor in the following general election. The chief elections officer of Erehwon refused to certify Sabel's petitions solely because of the above statute. Sabel then filed suit in federal district court challenging the constitutionality of this Erehwon statute.

As a matter of constitutional law, which of the following is the proper burden of persuasion in this suit?

- (A) Sabel must demonstrate that the statute is not necessary to achieve a compelling state interest.
- (B) Sabel must demonstrate that the statute is not rationally related to a legitimate state interest.
- (C) The state must demonstrate that the statute is the least restrictive means of achieving a compelling state interest.
- (D) The state must demonstrate that the statute is rationally related to a legitimate state interest.

123. Rohan executed and delivered a promissory note and a mortgage securing the note to Acme Mortgage Company, which was named as payee in the note and as mortgagee in the mortgage. The note included a statement that the indebtedness evidenced by the note was "subject to the terms of a contract between the maker and the payee of the note executed on the same day" and that the note was "secured by a mortgage of even date." The mortgage was promptly and properly recorded. Subsequently, Acme sold the Rohan note and mortgage to XYZ Bank and delivered to XYZ Bank a written assignment of the Rohan note and mortgage. The assignment was promptly and properly recorded. Acme retained possession of both the note and the mortgage in order to act as collecting agent. Later, being short of funds, Acme sold the note and mortgage to Peterson at a substantial discount. Acme executed a written assignment of the note and mortgage to Peterson and delivered to him the note, the mortgage, and the assignment. Peterson paid value for the assignment without actual knowledge of the prior assignment to XYZ Bank and promptly and properly recorded his assignment. The principal of the note was not then due, and there had been no default in payment of either interest or principal.

If the issue of ownership of the Rohan note and mortgage is subsequently raised in an appropriate action by XYZ Bank to foreclose, the court should hold that

- (A) Peterson owns both the note and the mortgage.
- (B) XYZ Bank owns both the note and the mortgage.
- (C) Peterson owns the note and XYZ Bank owns the mortgage.
- (D) XYZ Bank owns the note and Peterson owns the mortgage.

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124. In order to provide funds for a system of new major airports near the ten largest cities in the United States, Congress levies a tax of \$25 on each airline ticket issued in the United States. The tax applies to every airline ticket, even those for travel that does not originate in, terminate at, or pass through any of those ten large cities.

As applied to the issuance in the United States of an airline ticket for travel between two cities that will not be served by any of the new airports, this tax is

- (A) constitutional, because Congress has broad discretion in choosing the subjects of its taxation and may impose taxes on subjects that have no relation to the purpose for which those tax funds will be expended.
- (B) constitutional, because an exemption for the issuance of tickets for travel between cities that will not be served by the new airports would deny the purchasers of all other tickets the equal protection of the laws.
- (C) unconstitutional, because the burden of the tax outweighs its benefits for passengers whose travel does not originate in, terminate at, or pass through any of the ten largest cities.
- (D) unconstitutional, because the tax adversely affects the fundamental right to travel.

125. Stoven, who owned Craigmont in fee simple, mortgaged Craigmont to Ulrich to secure a loan of \$100,000. The mortgage was promptly and properly recorded. Stoven later mortgaged Craigmont to Martin to secure a loan of \$50,000. The mortgage was promptly and properly recorded. Subsequently, Stoven conveyed Craigmont to Fritsch. About a year later, Fritsch borrowed \$100,000 from Zorn, an elderly widow, and gave her a mortgage on Craigmont to secure repayment of the loan. Zorn did not know about the mortgage held by Martin. The understanding between Fritsch and Zorn was that Fritsch would use the \$100,000 to pay off the mortgage held by Ulrich and that Zorn would, therefore, have a first mortgage on Craigmont. Zorn's mortgage was promptly and properly recorded. Fritsch paid the \$100,000 received from Zorn to Ulrich and obtained and recorded a release of the Ulrich mortgage.

The \$50,000 debt secured by the Martin mortgage was not paid when it was due, and Martin brought an appropriate action to foreclose, joining Stoven, Fritsch, and Zorn as defendants and alleging that Martin's mortgage was senior to Zorn's mortgage on Craigmont.

If the court rules that Zorn's mortgage is entitled to priority over Martin's mortgage, which of the following determinations are necessary to support that ruling?

- I. Ulrich's mortgage was originally senior to Martin's mortgage.
- II. Zorn is entitled to have Ulrich's mortgage revived for her benefit, and Zorn is entitled to be subrogated to Ulrich's original position as senior mortgagee.
- III. There are no countervailing equities in favor of Martin.

- (A) I and II only.
- (B) I and III only.
- (C) II and III only.
- (D) I, II, and III.

126. Paul sued Dyer for personal injuries sustained when Dyer's car hit Paul, a pedestrian. Immediately after the accident, Dyer got out of his car, raced over to Paul, and said, "Don't worry, I'll pay your hospital bill."

Paul's testimony concerning Dyer's statement is

- (A) admissible, because it is an admission of liability by a party opponent.
 - (B) admissible, because it is within the excited utterance exception to the hearsay rule.
 - (C) inadmissible to prove liability, because it is an offer to pay medical expenses.
 - (D) inadmissible, provided that Dyer kept his promise to pay Paul's medical expenses.
127. One evening, Parnell had several drinks and then started to drive home. As he was proceeding down Main Boulevard, an automobile pulled out of a side street to his right. Parnell's car struck this automobile broadside. The driver of the other car was killed as a result of the collision. A breath analysis test administered after the accident showed that Parnell satisfied the legal definition of intoxication.

If Parnell is prosecuted for manslaughter, his best chance for acquittal would be based on an argument that

- (A) the other driver was contributorily negligent.
- (B) the collision would have occurred even if Parnell had not been intoxicated.
- (C) because of his intoxication he lacked the *mens rea* needed for manslaughter.
- (D) driving while intoxicated requires no *mens rea* and so cannot be the basis for misdemeanor manslaughter.

128. Seisin and Vendee, standing on Greenacre, orally agreed to its sale and purchase for \$5,000, and orally marked its bounds as "that line of trees down there, the ditch that intersects them, the fence on the other side, and that street on the fourth side."

In which of the following is the remedy of reformation most appropriate?

- (A) As later reduced to writing, the agreement by clerical mistake included two acres that are actually beyond the fence.
- (B) Vendee reasonably thought that two acres beyond the fence were included in the oral agreement but Seisin did not. As later reduced to writing, the agreement included the two acres.
- (C) Vendee reasonably thought that the price orally agreed upon was \$4,500, but Seisin did not. As later reduced to writing, the agreement said \$5,000.
- (D) Vendee reasonably thought that a dilapidated shed backed up against the fence was to be torn down and removed as part of the agreement, but Seisin did not. As later reduced to writing, the agreement said nothing about the shed.

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129. Airco operates an aircraft maintenance and repair business serving the needs of owners of private airplanes. Flyer contracted with Airco to replace the engine in his plane with a more powerful engine of foreign manufacture. Airco purchased the replacement engine through a representative of the manufacturer and installed it in Flyer's plane. A short time after it was put into use, the new engine failed, and the plane crashed into a warehouse owned by Landers, destroying the warehouse and its contents. Airco was guilty of no negligence in the procurement, inspection, or installation of the engine. The failure of the engine was caused by a defect that would not be disclosed by inspection and testing procedures available to an installer. There was no negligence on the part of Flyer, who escaped the disabled plane by parachute.

Landers recovered a judgment for damages from Flyer for the destruction of his warehouse and its contents, and Flyer has asserted a claim against Airco to recover compensation on account of that liability.

In that action, Flyer will recover

- (A) full compensation, because the engine was defective.
- (B) no compensation, because Airco was not negligent.
- (C) contribution only, because Airco and Flyer were equally innocent.
- (D) no compensation, because Landers's judgment established Flyer's responsibility to Landers.

130. To encourage the growth of its population, the state of Axbridge established a program that awarded \$1,000 to the parents of each child born within the state, provided that at the time of the child's birth the mother and father of the newborn were citizens of the United States.

The Lills are aliens who are permanent residents of the United States and have resided in Axbridge for three years. When their first child was born two months ago, they applied for and were denied the \$1,000 award by Axbridge officials on the sole ground that they are not citizens of the United States. The Lills filed suit in federal court contending that their exclusion from the award program was unconstitutional. Assume no federal statute addresses this question.

In this case, the court should hold that the exclusion of aliens from the Axbridge award program is

- (A) constitutional, because the Tenth Amendment reserves to the states plenary authority over the spending of state funds.
- (B) constitutional, because Axbridge has a legitimate interest in encouraging the growth of its population, and a rational legislature could believe that families in which both parents are United States citizens are more likely to stay in Axbridge and contribute to its future prosperity than those in which one or both of the parents are aliens.
- (C) unconstitutional, because strict scrutiny governs judicial review of such state classifications based on alienage, and Axbridge cannot demonstrate that this classification is necessary to advance a compelling state interest.
- (D) unconstitutional, because state classifications based on alienage are impermissible unless explicitly authorized by an act of Congress.

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131. While driving at a speed in excess of the statutory limit, Dant negligently collided with another car, and the disabled vehicles blocked two of the highway's three northbound lanes. When Page approached the scene two minutes later, he slowed his car to see if he could help those involved in the collision. As he slowed, he was rear-ended by a vehicle driven by Thomas. Page, who sustained damage to his car and was seriously injured, brought an action against Dant to recover damages. The jurisdiction adheres to the traditional common-law rules pertaining to contributory negligence.

If Dant moves to dismiss the action for failure to state a claim upon which relief may be granted, should the motion be granted?

- (A) Yes, because it was Thomas, not Dant, who collided with Page's car and caused Page's injuries.
- (B) Yes, if Page could have safely passed the disabled vehicles in the traffic lane that remained open.
- (C) No, because a jury could find that Page's injury arose from a risk that was a continuing consequence of Dant's negligence.
- (D) No, because Dant was driving in excess of the statutory limit when he negligently caused the first accident.

132. Olin owned Blueacre, a valuable tract of land located in York County. Olin executed a document in the form of a warranty deed of Blueacre, which was regular in all respects except that the only language designating the grantees in each of the granting and *habendum* clauses was: "The leaders of all the Protestant Churches in York County." The instrument was acknowledged as required by statute and promptly and properly recorded. Olin told his lawyer, but no one else, that he had made the conveyance as he did because he abhorred sectarianism in the Protestant movement and because he thought that the leaders would devote the asset to lessening sectarianism.

Olin died suddenly and unexpectedly a week later, leaving a will that bequeathed and devised his entire estate to Plum. After probate of the will became final and the administration on Olin's estate was closed, Plum instituted an appropriate action to quiet title to Blueacre and properly served as defendant each Protestant church situated in the county.

The only evidence introduced consisted of the chain of title under which Olin held, the probated will, the recorded deed, the fact that no person knew about the deed except Olin and his lawyer, and the conversation Olin had with his lawyer described above.

In such action, judgment should be for

- (A) Plum, because there is inadequate identification of grantees in the deed.
- (B) Plum, because the state of the evidence would not support a finding of delivery of the deed.
- (C) the defendants, because a deed is *prima facie* valid until rebutted.
- (D) the defendants, because recording established delivery *prima facie* until rebutted.

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133. Old City police officers shot and killed Jones's friend as he attempted to escape arrest for an armed robbery he had committed. Jones brought suit in federal district court against the Old City Police Department and the city police officers involved, seeking only a judgment declaring unconstitutional the state statute under which the police acted. That newly enacted statute authorized the police to use deadly force when necessary to apprehend a person who has committed a felony. In his suit, Jones alleged that the police would not have killed his friend if the use of deadly force had not been authorized by the statute.

The federal district court should

- (A) decide the case on its merits, because it raises a substantial federal question.
- (B) dismiss the action, because it involves a nonjusticiable political question.
- (C) dismiss the action, because it does not present a case or controversy.
- (D) dismiss the action, because the Eleventh Amendment prohibits federal courts from deciding cases of this type.

134. Dooley and Melville were charged with conspiracy to dispose of a stolen diamond necklace. Melville jumped bail and cannot be found. Proceeding to trial against Dooley alone, the prosecutor calls Wixon, Melville's girlfriend, to testify that Melville confided to her that "Dooley said I still owe him some of the money from selling that necklace."

Wixon's testimony is

- (A) admissible as evidence of a statement by party-opponent Dooley.
- (B) admissible as evidence of a statement against interest by Melville.
- (C) inadmissible, because Melville's statement was not in furtherance of the conspiracy.
- (D) inadmissible, because Melville is not shown to have firsthand knowledge that the necklace was stolen.

135. Pocket, a bank vice president, took substantial kickbacks to approve certain loans that later proved worthless. Upon learning of the kickbacks, Dudd, the bank's president, fired Pocket, telling him, "If you are not out of this bank in ten minutes, I will have the guards throw you out bodily." Pocket left at once.

If Pocket asserts a claim against Dudd based on assault, will Pocket prevail?

- (A) No, because the guards never touched Pocket.
- (B) No, because Dudd gave Pocket ten minutes to leave.
- (C) Yes, if Dudd intended to cause Pocket severe emotional distress.
- (D) Yes, because Dudd threatened Pocket with a harmful or offensive bodily contact.

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136. Lee contracted with Mover, an interstate carrier, to ship household goods from the state of Green to his new home in the state of Pink. A federal statute provides that all liability of an interstate mover to a shipper for loss of or damage to the shipper's goods in transit is governed exclusively by the contract between them. The statute also requires the mover to offer a shipper at least two contracts with different levels of liability. In full compliance with that federal statute, Mover offered Lee a choice between two shipping agreements that provided different levels of liability on the part of Mover. The more expensive contract provided that Mover was fully liable in case of loss or damage. The less expensive contract limited Mover's liability in case of loss or damage to less than full value. Lee voluntarily signed the less expensive contract with Mover, fixing Mover's liability at less than the full value of the shipment.

Mover's truck was involved in an accident in the state of Pink. The accident was entirely a product of the negligence of Mover's driver. Lee's household goods were totally destroyed. In accordance with the contract, Mover reimbursed Lee for less than the full value of the goods. Lee then brought suit against Mover under the tort law of the state of Pink claiming that he was entitled to be reimbursed for the full value of the goods. Mover filed a motion to dismiss.

In this suit, the court should

- (A) dismiss the case, because the federal statute governing liability of interstate carriers is the supreme law of the land and preempts state tort law.
- (B) dismiss the case, because the contractual relationship between Lee and Mover is governed by the obligation of contracts clause of the Constitution.
- (C) deny the motion to dismiss, because the full faith and credit clause of the Constitution requires that state tort law be given effect.
- (D) deny the motion to dismiss, because it is unconstitutional for a federal statute to authorize Mover to contract out of any degree of liability for its own negligence.

137. John asked Doris to spend a weekend with him at his apartment and promised her they would get married on the following Monday. Doris agreed and also promised John that she would not tell anyone of their plans. Unknown to Doris, John had no intention of marrying her. After Doris came to his apartment, John told Doris he was going for cigarettes. He called Doris's father and told him that he had his daughter and would kill her if he did not receive \$100,000. John was arrested on Sunday afternoon when he went to pick up the \$100,000. Doris was still at the apartment and knew nothing of John's attempt to get the money.

John is guilty of

- (A) kidnapping.
- (B) attempted kidnapping.
- (C) kidnapping or attempted kidnapping but not both.
- (D) neither kidnapping nor attempted kidnapping.

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138. Metro City operates a cemetery pursuant to a city ordinance. The ordinance requires the operation of the city cemetery to be supported primarily by revenues derived from the sale of cemetery lots to individuals. The ordinance further provides that the purchase of a cemetery lot entitles the owner to perpetual care of the lot, and entitles the owner to erect on the lot, at the owner's expense, a memorial monument or marker of the owner's choice, subject to certain size restrictions. The Metro City ordinance requires the city to maintain the cemetery, including mowing the grass, watering flowers, and plowing snow, and provides for the expenditure of city tax funds for such maintenance if revenues from the sale of cemetery lots are insufficient. Although cemetery lots are sold at full fair market value, which includes the current value of perpetual care, the revenue from the sale of such lots has been insufficient in recent years to maintain the cemetery. As a result, a small amount of city tax funds has also been used for that purpose.

A group of Metro City taxpayers brings suit against Metro City challenging the constitutionality of the city ordinance insofar as it permits the owner of a cemetery lot to erect a religious memorial monument or marker on his or her lot.

Is this suit likely to be successful?

- (A) No, because only a small amount of city tax funds has been used to maintain the cemetery.
- (B) No, because the purpose of the ordinance is entirely secular, its primary effect neither advances nor inhibits religion, and it does not foster an excessive government entanglement with religion.
- (C) Yes, because city maintenance of any religious object is a violation of the establishment clause of the First Amendment as incorporated into the Fourteenth Amendment.
- (D) Yes, because no compelling governmental interest justifies authorizing private persons to erect religious monuments or markers in a city-operated cemetery.

139. In a civil action for personal injury, Payne alleges that he was beaten up by Dabney during an altercation in a crowded bar. Dabney's defense is that he was not the person who hit Payne. To corroborate his testimony about the cause of his injuries, Payne seeks to introduce, through the hospital records custodian, a notation in a regular medical record made by an emergency room doctor at the hospital where Payne was treated for his injuries. The notation is: "Patient says he was attacked by Dabney."

The notation is

- (A) inadmissible, unless the doctor who made the record is present at trial and available for cross-examination.
- (B) inadmissible as hearsay not within any exception.
- (C) admissible as hearsay within the exception for records of regularly conducted activity.
- (D) admissible as a statement made for the purpose of medical diagnosis or treatment.

140. Dexter was tried for the homicide of a girl whose strangled body was found beside a remote logging road with her hands taped together. After Dexter offered evidence of alibi, the state calls Wilma to testify that Dexter had taped her hands and tried to strangle her in the same location two days before the homicide but that she escaped.

The evidence is

- (A) admissible, as tending to show Dexter is the killer.
- (B) admissible, as tending to show Dexter's violent nature.
- (C) inadmissible, because it is improper character evidence.
- (D) inadmissible, because it is unfairly prejudicial.

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141. Fruitko, Inc., ordered from Orchard, Inc., 500 bushels of No. 1 Royal Fuzz peaches, at a specified price, "for prompt shipment." Orchard promptly shipped 500 bushels, but by mistake shipped No. 2 Royal Fuzz peaches instead of No. 1. The error in shipment was caused by the negligence of Orchard's shipping clerk.

Which of the following best states Fruitko's rights and duties upon delivery of the peaches?

- (A) Orchard's shipment of the peaches was a counteroffer and Fruitko can refuse to accept them.
- (B) Orchard's shipment of the peaches was a counteroffer but, since peaches are perishable, Fruitko, if it does not want to accept them, must reship the peaches to Orchard in order to mitigate Orchard's losses.
- (C) Fruitko must accept the peaches because a contract was formed when Orchard shipped them.
- (D) Although a contract was formed when Orchard shipped the peaches, Fruitko does not have to accept them.

142. Blackacre was a tract of 100 acres retained by Byron, the owner, after he had developed the adjoining 400 acres as a residential subdivision. Byron had effectively imposed restrictive covenants on each lot in the 400 acres. Chaney offered Byron a good price for a five-acre tract located in a corner of Blackacre far away from the existing 400-acre residential subdivision. Byron conveyed the five-acre tract to Chaney and imposed the same restrictive covenants on the five-acre tract as he had imposed on the lots in the adjoining 400 acres. Byron further covenanted that when he sold the remaining 95 acres of Blackacre he would impose the same restrictive covenants in the deed or deeds for the 95 acres. Byron's conveyance to Chaney was promptly and properly recorded.

However, shortly thereafter, Byron conveyed the remaining 95 acres to Dart for \$100,000 by a deed that made no mention of any restrictive covenants. Dart had no actual knowledge of the restrictive covenants in Chaney's deed. Dart now proposes to build an industrial park which would violate such restrictive covenants if they are applicable.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In an appropriate action by Chaney to enforce the restrictive covenants against Dart's 95-acre tract, if Dart wins it will be because

- (A) the deed imposing the restrictions was not in the chain of title for the 95 acres when Dart bought.
- (B) the disparity in acreage means that the covenant can only be personal to Byron.
- (C) negative reciprocal covenants are not generally recognized.
- (D) a covenant to impose restrictions is an illegal restraint on alienation.

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143. A grand jury indicted Alice on a charge of arson, and a valid warrant was issued for her arrest. Paul, a police officer, arrested Alice and informed her of what the warrant stated. However, hoping that Alice might say something incriminating, he did not give her Miranda warnings. He placed her in the back seat of his patrol car and was driving her to the police station when she said, "Look, I didn't mean to burn the building; it was an accident. I was just burning some papers in a wastebasket."

At the station, after being given Miranda warnings, Alice stated she wished to remain silent and made no other statements.

Alice moved to suppress the use of her statement to Paul as evidence on two grounds: first, that the statement was acquired without giving Miranda warnings, and second, that the police officer had deliberately elicited her incriminating statement after she was in custody.

As to Alice's motion to suppress, the court should

- (A) deny the motion.
- (B) grant the motion only on the basis of the first ground stated.
- (C) grant the motion only on the basis of the second ground stated.
- (D) grant the motion on either ground.

144. Debtor's \$1,000 contractual obligation to Aunt was due on July 1. On the preceding June 15, Aunt called Niece and said, "As my birthday gift to you, you may collect on July 1 the \$1,000 Debtor owes me." Aunt also called Debtor and told him to pay the \$1,000 to Niece on July 1. On July 1, Debtor, saying that he did not like Niece and wouldn't pay anything to her, paid the \$1,000 to Aunt, who accepted it without objection.

Will Niece succeed in an action for \$1,000 against Debtor?

- (A) Yes, because Aunt had effectively assigned the \$1,000 debt to her.
- (B) Yes, because Aunt's calls to Niece and Debtor effected a novation.
- (C) No, because Aunt's acceptance of the \$1,000, without objection, was in effect the revocation of a gratuitous assignment.
- (D) No, because Debtor cannot be compelled to render performance to an assignee whom he finds personally objectionable.

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Questions 145-146 are based on the following fact situation.

Dooley was a pitcher for the City Robins, a professional baseball team. While Dooley was throwing warm-up pitches on the sidelines during a game, he was continuously heckled by some spectators seated in the stands above the dugout behind a wire mesh fence. On several occasions, Dooley turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. Dooley wound up as though he was preparing to pitch in the direction of his catcher; however the ball traveled from his hand at high speed, at a 90-degree angle from the line to the catcher and directly toward the hecklers in the stands. The ball passed through the wire mesh fence and struck Patricia, one of the hecklers.

Patricia brought an action for damages against Dooley and the City Robins, based upon negligence and battery. The trial court directed a verdict for the defendants on the battery count. The jury found for the defendants on the negligence count because the jury determined that Dooley could not foresee that the ball would pass through the wire mesh fence.

Patricia has appealed the judgments on the battery counts, contending that the trial court erred in directing verdicts for Dooley and the City Robins.

145. On appeal, the judgment entered on the directed verdict in Dooley's favor on the battery claim should be
- (A) affirmed, because the jury found on the evidence that Dooley could not foresee that the ball would pass through the fence.
 - (B) affirmed, if there was evidence that Dooley was mentally ill and that his act was the product of his mental illness.
 - (C) reversed and the case remanded, if a jury could find on the evidence that Dooley intended to cause the hecklers to fear being hit.
 - (D) reversed and the case remanded, because a jury could find that Dooley's conduct was extreme and outrageous, and the cause of physical harm to Patricia.
146. For this question only, assume that, on appeal, the court holds that the question of whether Dooley committed a battery is a jury issue.

The judgment entered on the directed verdict in favor of the City Robins should then be

- (A) reversed and the case remanded, because a jury could find the City Robins vicariously liable for a battery committed by Dooley in the course of his employment.
- (B) reversed and the case remanded, only if a jury could find negligence on the part of the Robins' management.
- (C) affirmed, because an employer is not vicariously liable for a servant's battery.
- (D) affirmed, if Dooley's act was a knowing violation of team rules.

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147. The School Board of the city of Rulb issued a rule authorizing public school principals to punish, after a hearing, students who engage in violations of the board's student behavior code. According to the rule, violators of the behavior code may be punished in a variety of ways including being required to sit in designated school confinement rooms during all school hours, with their hands clasped in front of them, for a period of up to 15 school days.

Teddy, a fifth grade student in Rulb Elementary School, was charged with placing chewed bubble gum on a classmate's chair, a violation of the student behavior code. He had never violated the code before and was otherwise an attentive and well-behaved student. After a hearing on the charges, Teddy's principal determined that Teddy had violated the behavior code in the manner charged, and ordered Teddy to spend the next 15 school days in the school confinement room with his hands clasped in front of him. Teddy's parents file suit in federal court challenging, solely on constitutional grounds, the principal's action in ordering Teddy to spend the next 15 school days in the school confinement room with his hands clasped in front of him.

Which of the following arguments would be most helpful to Teddy's parents in this suit?

- (A) Because the school board rule limits the freedom of movement of students and subjects them to bodily restraint, it denies them a privilege and immunity of citizenship guaranteed them by Article IV, Section 2.
- (B) Because the school board rule is substantially overbroad in relation to any legitimate purpose, it constitutes a facial violation of the equal protection clause of the Fourteenth Amendment.
- (C) Because application of the school board rule in this case denies the student freedom of movement and subjects him to bodily restraint in a manner grossly disproportionate to his offense and circumstances, it violates the due process clause of the Fourteenth Amendment.
- (D) Because the school board rule is enforced initially by administrative rather than judicial proceedings, it constitutes a prohibited bill of attainder.

148. Davidson and Smythe were charged with burglary of a warehouse. They were tried separately. At Davidson's trial, Smythe testified that he saw Davidson commit the burglary. While Smythe is still subject to recall as a witness, Davidson calls Smythe's cellmate, Walton, to testify that Smythe said, "I broke into the warehouse alone because Davidson was too drunk to help."

This evidence of Smythe's statement is

- (A) admissible as a declaration against penal interest.
- (B) admissible as a prior inconsistent statement.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because the statement is not clearly corroborated.

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149. On March 1, Hotz Apartments, Inc., received from Koolair, Inc., a letter offering to sell Hotz 1,200 window air conditioners suitable for the apartments in Hotz's buildings. The Koolair offer stated that it would remain open until March 20, but that Hotz's acceptance must be received on or before that date. On March 16, Hotz posted a letter of acceptance. On March 17, Koolair telegraphed Hotz to advise that it was revoking the offer. The telegram reached Hotz on March 17, but Hotz's letter did not arrive at Koolair's address until March 21.

As of March 22, which of the following is a correct statement?

- (A) The telegram revoking the offer was effective upon receipt.
- (B) The offer was revocable at any time for lack of consideration.
- (C) The mail was the only authorized means of revocation.
- (D) Under the terms of Koolair's offer, Hotz's attempted acceptance was ineffective.

150. Dieter parked her car in violation of a city ordinance that prohibits parking within ten feet of a fire hydrant. Because Grove was driving negligently, his car sideswiped Dieter's parked car. Plaintiff, a passenger in Grove's car, was injured in the collision.

If Plaintiff asserts a claim against Dieter to recover damages for his injuries, basing his claim on Dieter's violation of the parking ordinance, will Plaintiff prevail?

- (A) Yes, because Dieter was guilty of negligence per se.
- (B) Yes, if Plaintiff would not have been injured had Dieter's car not been parked where it was.
- (C) No, because Dieter's parked car was not an active or efficient cause of Plaintiff's injury.
- (D) No, if prevention of traffic accidents was not a purpose of the ordinance.

151. Owen owned Greenacre, a tract of land, in fee simple. By warranty deed he conveyed Greenacre to Lafe for life "and from and after the death of Lafe to Rem, her heirs and assigns."

Subsequently Rem died, devising all of her estate to Dan. Rem was survived by Hannah, her sole heir-at-law.

Shortly thereafter Lafe died, survived by Owen, Dan, and Hannah.

Title to Greenacre now is in

- (A) Owen, because the contingent remainder never vested and Owen's reversion was entitled to possession immediately upon Lafe's death.
- (B) Dan, because the vested remainder in Rem was transmitted by her will.
- (C) Hannah, because she is Rem's heir.
- (D) either Owen or Hannah, depending upon whether the destructibility of contingent remainders is recognized in the applicable jurisdiction.

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152. A statute of the state of Illitron declares that after five years of continuous service in their positions all state employees, including faculty members at the state university, are entitled to retain their positions during “good behavior.” The statute also contains a number of procedural provisions. Any state employee who is dismissed after that five-year period must be given reasons for the dismissal before it takes effect. In addition, such an employee must, upon request, be granted a post-dismissal hearing before an administrative board to seek reinstatement and back pay. The statute precludes any other hearing or opportunity to respond to the charges. That post-dismissal hearing must occur within six months after the dismissal takes effect. The burden of proof at such a hearing is on the state, and the board may uphold the dismissal only if it is supported by a preponderance of the evidence. An employee who is dissatisfied with a decision of the board after a hearing may appeal its decision to the state courts. The provisions of this statute are inseverable.

A teacher who had been employed continuously for seven years as a faculty member at the state university was dismissed. A week before the dismissal took effect, she was informed that she was being dismissed because of a charge that she accepted a bribe from a student in return for raising the student’s final grade in her course. At that time she requested an immediate hearing to contest the propriety of her dismissal.

Three months after her dismissal, she was granted a hearing before the state administrative board. The board upheld her dismissal, finding that the charge against her was supported by a preponderance of the evidence presented at the hearing.

The faculty member did not appeal the decision of the state administrative board to the Illitron state courts. Instead, she sought a declaratory judgment in federal district court to the effect that the state statute prescribing the procedures for her dismissal is unconstitutional.

In this case, the federal district court should

- (A) dismiss the suit, because a claim that a state statute is unconstitutional is not ripe for adjudication by a federal court until all judicial remedies in state courts provided for by state law have been exhausted.
- (B) hold the statute unconstitutional, because the due process clause of the Fourteenth Amendment requires a state to demonstrate beyond a reasonable doubt the facts constituting good cause for termination of a state employee.
- (C) hold the statute unconstitutional, because a state may not ordinarily deprive an employee of a property interest in a job without giving the employee an opportunity for some kind of a predissmissal hearing to respond to the charges against that employee.
- (D) hold the statute constitutional, because the due process clause of the Fourteenth Amendment entitles state employees who have a right to their jobs during good behavior only to a statement of reasons for their dismissal and an opportunity for a post-dismissal hearing.

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153. Dorfman's dog ran into the street in front of Dorfman's home and began chasing cars. Peterson, who was driving a car on the street, swerved to avoid hitting the dog, struck a telephone pole, and was injured.

If Peterson asserts a claim against Dorfman, will Peterson prevail?

- (A) Yes, because Dorfman's dog was a cause in fact of Peterson's injury.
 - (B) Yes, if Dorfman knew his dog had a propensity to chase cars and did not restrain it.
 - (C) No, because a dog is a domestic animal.
 - (D) No, unless a statute or ordinance made it unlawful for the owner to allow a dog to be unleashed on a public street.
154. Dower, an inexperienced driver, borrowed a car from Puder, a casual acquaintance, for the express purpose of driving it several blocks to the local drug store. Instead, Dower drove the car, which then was worth \$12,000, 100 miles to Other City. While Dower was driving in Other City the next day, the car was hit by a negligently driven truck and sustained damage that will cost \$3,000 to repair. If repaired, the car will be fully restored to its former condition.

If Puder asserts a claim against Dower based on conversion, Puder should recover a judgment for

- (A) \$12,000.
- (B) \$3,000.
- (C) \$3,000 plus damages for the loss of the use of the car during its repair.
- (D) nothing, unless Dower was negligent and his negligence was a substantial cause of the collision.

155. Miller's, a department store, had experienced a growing incidence of shoplifting. At the store's request, the police concealed Best, a woman who was a detective, at a vantage point above the women's apparel fitting rooms where she could see into these rooms, where customers tried on clothes. Detective Best saw Davis enter a fitting room, stuff a dress into her pocketbook, leave the fitting room, and start for the street door. By prearranged signal, Best notified another police officer near the door, who detained Davis as Davis started to go out into the street. Davis was placed under arrest, and the dress was retrieved from her purse.

Davis is charged with shoplifting.

Her motion to prevent the introduction of the dress into evidence will be

- (A) granted, because the police should have secured a search warrant to search her bag.
- (B) granted, because a customer has a reasonable expectation of privacy while using a department store fitting room.
- (C) denied, because the search and seizure were made incident to a valid arrest based on probable cause.
- (D) denied, because Detective Best could see into the room and thus Davis's activities were legitimately in plain view.

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Questions 156-157 are based on the following fact situation.

Pam and Dora own adjoining lots in the central portion of a city. Each of their lots had an office building. Dora decided to raze the existing building on her lot and to erect a building of greater height. Dora has received all governmental approvals required to pursue her project.

There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.).

156. After Dora had torn down the existing building, she proceeded to excavate deeper. Dora used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards.

Pam notified Dora that cracks were developing in the building situated on Pam's lot. Dora took the view that any subsidence suffered by Pam was due to the weight of Pam's building, and correctly asserted that none would have occurred had Pam's soil been in its natural state. Dora continued to excavate.

The building on Pam's lot did suffer extensive damage, requiring the expenditure of \$750,000 to remedy the defects.

Which of the following is the best comment concerning Pam's action to recover damages from Dora?

- (A) Dora is liable, because she removed necessary support for Pam's lot.
- (B) Dora cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved.
- (C) Once land is improved with a building, the owner cannot invoke the common-law right of lateral support.
- (D) Dora's only obligation was to satisfy all local, state, and federal safety regulations.

157. Assume that no problems with subsidence or other misadventures occurred during construction of Dora's new building. However, when it was completed, Pam discovered that the shadow created by the new higher building placed her building in such deep shade that her ability to lease space was diminished and that the rent she could charge and the occupancy rate were substantially lower. Assume that these facts are proved in an appropriate action Pam instituted against Dora for all and any relief available.

Which of the following is the most appropriate comment concerning this lawsuit?

- (A) Pam is entitled to a mandatory injunction requiring Dora to restore conditions to those existing with the prior building insofar as the shadow is concerned.
- (B) The court should award permanent damages, in lieu of an injunction, equal to the present value of all rents lost and loss on rents for the reasonable life of the building.
- (C) The court should award damages for losses suffered to the date of trial and leave open recovery of future damages.
- (D) Judgment should be for Dora, because Pam has no cause of action.

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158. Deland operates a bank courier service that uses armored trucks to transport money and securities. One of Deland's armored trucks was parked illegally, too close to a street intersection. Pilcher, driving his car at an excessive speed, skidded into the armored truck while trying to make a turn. The truck was not damaged, but Pilcher was injured.

Pilcher has brought an action against Deland to recover damages for his loss resulting from the accident. The jurisdiction follows a pure comparative negligence rule.

In this action, Pilcher should recover

- (A) nothing, because Deland was not an active or efficient cause of Pilcher's loss.
- (B) nothing, if Deland was less negligent than Pilcher.
- (C) his entire loss, reduced by a percentage that reflects the negligence attributed to Pilcher.
- (D) his entire loss, because Deland's truck suffered no damage.

159. Roberts, a professional motorcycle rider, put on a performance in a privately owned stadium during which he leaped his motorcycle over 21 automobiles. Spectators were charged \$5 each to view the jump and were prohibited from using cameras. However, the local television station filmed the whole event from within the stadium without the knowledge or consent of Roberts and showed the film in its entirety on the evening newscast that day. Roberts thereafter brought suit to recover damages from the station for the admittedly unauthorized filming and broadcasting of the act. The television station raised only constitutional defenses.

The court should

- (A) hold against Roberts, because the First and Fourteenth Amendments authorize press coverage of newsworthy entertainment events.
- (B) hold against Roberts, because under the First and Fourteenth Amendments news broadcasts are absolutely privileged.
- (C) find the station liable, because its action deprives Roberts of his property without due process.
- (D) find the station liable, because the First and Fourteenth Amendments do not deprive an entertainer of the commercial value of his or her performances.

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160. Stirrup, a rancher, and Equinox, a fancier of horses, signed the following writing: "For \$5,000, Stirrup will sell to Equinox a gray horse that Equinox may choose from among the grays on Stirrup's ranch."

Equinox refused to accept delivery of a gray horse timely tendered by Stirrup or to choose among those remaining, on the ground that during their negotiations Stirrup had orally agreed to include a saddle, worth \$100, and also to give Equinox the option to choose a gray or a brown horse. Equinox insisted on one of Stirrup's brown horses, but Stirrup refused to part with any of his browns or with the saddle as demanded by Equinox.

If Equinox sues Stirrup for damages and seeks to introduce evidence of the alleged oral agreement, the court probably will

- (A) admit the evidence as to both the saddle and the option to choose a brown horse.
- (B) admit the evidence as to the saddle but not the option to choose a brown horse.
- (C) admit the evidence as to the option to choose a brown horse but not the promise to include the saddle.
- (D) not admit any of the evidence.

161. Testator, whose nephew Bypast was his only heir, died leaving a will that gave his entire estate to charity. Bypast, knowing full well that Testator was of sound mind all of his life, and having no evidence to the contrary, nevertheless filed a suit contesting Testator's will on the ground that Testator was incompetent when the will was signed. Craven, Testator's executor, offered Bypast \$5,000 to settle the suit, and Bypast agreed.

If Craven then repudiates the agreement and the foregoing facts are proved or admitted in Bypast's suit against Craven for breach of contract, is Bypast entitled to recover under the prevailing view?

- (A) Yes, because the Bypast-Craven agreement was a bargained-for exchange.
- (B) Yes, because the law encourages the settlement of disputed claims.
- (C) No, because Bypast did not bring the will contest in good faith.
- (D) No, because an agreement to oust the court of its jurisdiction to decide a will contest is contrary to public policy.

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162. Parker sues Dix for breach of a promise made in a letter allegedly written by Dix to Parker. Dix denies writing the letter.

Which of the following would NOT be a sufficient basis for admitting the letter into evidence?

- (A) Testimony by Parker that she is familiar with Dix's signature and recognizes it on the letter.
- (B) Comparison by the trier of fact of the letter with an admitted signature of Dix.
- (C) Opinion testimony of a nonexpert witness based upon familiarity acquired in order to authenticate the signature.
- (D) Evidence that the letter was written in response to one written by Parker to Dix.

163. Will Green probably succeed in an action against Farmer for specific performance?

- (A) Yes, because the court will excuse the delay in tender on the ground that there was a temporary impossibility caused by the tenant's holding over.
- (B) Yes, because time is ordinarily not of the essence in a land-sale contract.
- (C) No, because Green breached by failing to tender the deed and possession on January 15.
- (D) No, because Green's remedy at law for monetary relief is adequate.

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Questions 163-164 are based on the following fact situation.

Green contracted in a signed writing to sell Greenacre, a 500-acre tract of farmland, to Farmer. The contract provided for exchange of the deed and purchase price of \$500,000 in cash on January 15. Possession was to be given to Farmer on the same date. On January 15, Green notified Farmer that because the tenant on Greenacre wrongfully refused to quit the premises until January 30, Green would be unable to deliver possession of Greenacre until then, but he assured Farmer that he would tender the deed and possession on that date. When Green tendered the deed and possession on January 30, Farmer refused to accept either, and refused to pay the \$500,000. Throughout the month of January, the market value of Greenacre was \$510,000, and its fair monthly rental value was \$5,000.

164. For this question only, make the following assumptions. On January 30, Farmer accepted a conveyance and possession of Greenacre and paid the \$500,000 purchase price, but notified Green that he was reserving any rights he might have to damages caused by Green's breach. Farmer intended to use the land for raising cattle and had entered into a contract for the purchase of 500 head of cattle to be delivered to Greenacre on January 15. Because he did not have possession of Greenacre on that date, he had to rent another pasture at a cost of \$2,000 to graze the cattle for 15 days. Green had no reason to know that Farmer intended to use Greenacre for raising cattle or that he was purchasing cattle to be grazed on Greenacre.

In an action by Farmer against Green for damages, Farmer is entitled to recover

- (A) nothing, because by paying the purchase price on January 30, he waived whatever cause of action he may have had.
 - (B) nominal damages only, because the market value of the land exceeded the contract price.
 - (C) \$2,500 only (the fair rental value of Greenacre for 15 days).
 - (D) \$2,500 (the fair rental value of Greenacre for 15 days), plus \$2,000 (the cost of grazing the cattle elsewhere for 15 days).
-

165. Able, owner of Blackacre and Whiteacre, two adjoining parcels, conveyed Whiteacre to Baker and covenanted in the deed to Baker that when he, Able, sold Blackacre he would impose restrictive covenants to prohibit uses that would compete with the filling station that Baker intended to construct and operate on Whiteacre. The deed was not recorded.

Baker constructed and operated a filling station on Whiteacre and then conveyed Whiteacre to Dodd, who continued the filling station use. The deed did not refer to the restrictive covenant and was promptly and properly recorded.

Able then conveyed Blackacre to Egan, who knew about Able's covenant with Baker to impose a covenant prohibiting the filling station use but nonetheless completed the transaction when he noted that no such covenant was contained in Able's deed to him. Egan began to construct a filling station on Blackacre.

Dodd brought an appropriate action to enjoin Egan from using Blackacre for filling station purposes.

If Dodd prevails, it will be because

- (A) Egan had actual knowledge of the covenant to impose restrictions.
- (B) Egan is bound by the covenant because of the doctrine of negative reciprocal covenants.
- (C) business-related restrictive covenants are favored in the law.
- (D) Egan has constructive notice of the possibility of the covenant resulting from the circumstances.

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166. While walking on a public sidewalk, Anson was struck by a piece of lumber that fell from the roof of Bruce's house. Bruce had hired Chase to make repairs to his roof, and the lumber fell through negligence on Chase's part.

If Anson brings an action against Bruce to recover damages for the injury caused to him by Chase's negligence, will Anson prevail?

- (A) Yes, under the *res ipsa loquitur* doctrine.
- (B) Yes, if Chase's act was a breach of a nondelegable duty owed by Bruce to Anson.
- (C) No, if Chase was an independent contractor rather than Bruce's servant.
- (D) No, if Bruce exercised reasonable care in hiring Chase to do the repair work.

167. Owen contracted to sell Vacantacre to Perry. The written contract required Owen to provide evidence of marketable title of record, specified a closing date, stated that "time is of the essence," and provided that at closing, Owen would convey by warranty deed. Perry paid Owen \$2,000 earnest money toward the \$40,000 purchase price.

The title evidence showed that an undivided one-eighth interest in Vacantacre was owned by Alice. Perry immediately objected to title and said he would not close on Owen's title. Owen responded, accurately, that Alice was his daughter who would be trekking in Nepal until two weeks after the specified closing date. He said that she would gladly deed her interest upon her return, and that meanwhile his deed warranting title to all of Vacantacre would fully protect Perry. Owen duly tendered his deed but Perry refused to close.

Perry brought an appropriate action to recover the \$2,000 earnest money promptly after the specified closing date. Owen counterclaimed for specific performance, tendering a deed from himself and Alice, who had by then returned.

The court will hold for

- (A) Owen, because Alice's deed completing the transfer was given within a reasonable time.
- (B) Owen, because his warranty deed would have given Perry adequate interim protection.
- (C) Perry, because Owen's title was not marketable and time was of the essence.
- (D) Perry, because under the circumstances the earnest money amount was excessive.

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168. A statute provides: A person commits the crime of rape if he has sexual intercourse with a female, not his wife, without her consent.

Dunbar is charged with the rape of Sally. At trial, Sally testifies to facts sufficient for a jury to find that Dunbar had sexual intercourse with her, that she did not consent, and that the two were not married. Dunbar testifies in his own defense that he believed that Sally had consented to sexual intercourse and that she was his common-law wife.

At the conclusion of the case, the court instructed the jury that in order to find Dunbar guilty of rape, it must find beyond a reasonable doubt that he had sexual intercourse with Sally without her consent.

The court also instructed the jury that it should find the defendant not guilty if it found either that Sally was Dunbar's wife or that Dunbar reasonably believed that Sally had consented to the sexual intercourse, but that the burden of persuasion as to these issues was on the defendant.

The jury found Dunbar guilty, and Dunbar appealed, contending that the court's instructions on the issues of whether Sally was his wife and whether he reasonably believed she had consented violated his constitutional rights.

Dunbar's constitutional rights were

- (A) violated by the instructions as to both issues.
- (B) violated by the instruction as to whether Sally was his wife, but not violated by the instruction on belief as to consent.
- (C) violated by the instruction on belief as to consent, but not violated by the instruction as to whether Sally was his wife.
- (D) not violated by either part of the instructions.

169. Star, who played the lead role in a television soap opera, was seriously injured in an automobile accident caused by Danton's negligent driving. As a consequence of Star's injury, the television series was canceled, and Penn, a supporting actor, was laid off.

In an action against Danton, can Penn recover for his loss of income attributable to the accident?

- (A) Yes, because Danton's negligence was the cause in fact of Penn's loss.
- (B) Yes, unless Penn failed to take reasonable measures to mitigate his loss.
- (C) No, unless Danton should have foreseen that by injuring Star he would cause harm to Penn.
- (D) No, because Danton's liability does not extend to economic loss to Penn that arises solely from physical harm to Star.

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170. On December 1, Broker contracted with Collecta to sell her one of a certain type of rare coin for \$12,000, delivery and payment to occur on the next March 1. To fulfill that contract, and without Collecta's knowledge, Broker contracted on January 1 to purchase for \$10,000 a specimen of that type coin from Hoarder, delivery and payment to occur on February 1. The market price of such coins had unexpectedly fallen to \$8,000 by February 1, when Hoarder tendered the coin and Broker repudiated.

On February 25, the market in such coins suddenly reversed and had stabilized at \$12,000 on March 1. Broker, however, had failed to obtain a specimen of the coin and repudiated his agreement with Collecta when she tendered the \$12,000 agreed price on March 1.

Later that day, after learning by chance of Broker's dealing with Collecta, Hoarder telephoned Collecta and said: "Listen, Broker probably owes me at least \$2,000 in damages for refusing wrongfully to buy my coin for \$10,000 on February 1 when the market was down to \$8,000. But I'm in good shape in view of the market's recovery since then, and I think you ought to get after the so-and-so."

If Collecta immediately sues Broker for his breach of the Broker-Hoarder contract, which of the following will the court probably decide?

- (A) Broker wins, because Collecta, if a beneficiary at all of the Broker-Hoarder contract, was only an incidental beneficiary.
- (B) Broker wins, because as of March 1 neither Hoarder nor Collecta had sustained any damage from Broker's repudiation of both contracts.
- (C) Collecta wins, because she was an intended beneficiary of the Broker-Hoarder contract, under which damages for Broker's repudiation became fixed on February 1.
- (D) Collecta wins, because she took an effective assignment of Hoarder's claim for damages against Broker when Hoarder suggested that Collecta "get after the so-and-so."

171. In a prosecution of Dale for murdering Vera, Dale testified that the killing had occurred in self defense when Vera tried to shoot him. In rebuttal, the prosecution seeks to call Walter, Vera's father, to testify that the day before the killing, Vera told Walter that she loved Dale so much she could never hurt him.

Walter's testimony is

- (A) admissible within the hearsay exception for statements of the declarant's then existing state of mind.
- (B) admissible, because Vera is unavailable as a witness.
- (C) inadmissible as hearsay not within any exception.
- (D) inadmissible, because Vera's character is not an issue.

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172. For an agreed price of \$20 million, Bildko, Inc., contracted with Venture to design and build on Venture's commercial plot a 15-story office building. In excavating for the foundation and underground utilities, Bildko encountered a massive layer of granite at a depth of 15 feet. By reasonable safety criteria, the building's foundation required a minimum excavation of 25 feet. When the contract was made, neither Venture nor Bildko was aware of the subsurface granite, for the presence of which neither party had hired a qualified expert to test.

Claiming accurately that removal of enough granite to permit the construction as planned would cost him an additional \$3 million and a probable net loss on the contract of \$2 million, Bildko refused to proceed with the work unless Venture would promise to pay an additional \$2.5 million for the completed building.

If Venture refuses and sues Bildko for breach of contract, which of the following will the court probably decide?

- (A) Bildko is excused under the modern doctrine of supervening impossibility, which includes severe impracticability.
- (B) Bildko is excused, because the contract is voidable on account of the parties' mutual mistake concerning an essential underlying fact.
- (C) Venture prevails, because Bildko assumed the risk of encountering subsurface granite that was unknown to Venture.
- (D) Venture prevails, unless subsurface granite was previously unknown anywhere in the vicinity of Venture's construction site.

173. Owen owned Greenacre in fee simple. The small house on Greenacre was occupied, with Owen's oral permission, rent-free, by Able, Owen's son, and Baker, a college classmate of Able. Able was then 21 years old.

Owen, by properly executed instrument, conveyed Greenacre to "my beloved son, Able, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then Greenacre shall become the sole property of my beloved daughter, Anna, her heirs and assigns." At the time of the conveyance, Able and Baker attended a college located several blocks from Greenacre. Neither had earned a college degree.

One week after the delivery of the deed to Able, Able recorded the deed and immediately told Baker that he, Able, was going to begin charging Baker rent since "I am now your landlord." There is no applicable statute.

Able and Baker did not reach agreement, and Able served the appropriate notice to terminate whatever tenancy Baker had. Able then sought, in an appropriate action, to oust Baker.

Who should prevail?

- (A) Able, because the conveyance created a fee simple subject to divestment in Able.
- (B) Able, because Owen's conveyance terminated Baker's tenancy.
- (C) Baker, because Owen's permission to occupy preceded Owen's conveyance to Able.
- (D) Baker, because Baker is a tenant of Owen, not of Able.

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174. Owens owned Whiteacre, a dwelling house situated on a two-acre lot in an area zoned for single-family residential uses only. Although it was not discernible from the outside, Whiteacre had been converted by Owens from a single-family house to a structure that contained three separate apartments, in violation of the zoning ordinance. Further, the conversion was in violation of the building code.

Owens and Peters entered into a valid written contract for the purchase and sale of Whiteacre. The contract provided that Owens was to convey to Peters a marketable title. The contract was silent as to zoning. Peters had fully inspected Whiteacre.

Prior to the closing, Peters learned that Whiteacre did not conform to the zoning ordinance and refused to close although Owens was ready, willing, and able to perform his contract obligations. Owens brought an appropriate action for specific performance against Peters.

In that action, Owens should

- (A) win, because Owens was able to convey a marketable title.
- (B) win, because Peters was charged with knowledge of the zoning ordinance prior to entering the contract.
- (C) lose, because the illegal conversion of Whiteacre creates the risk of litigation.
- (D) lose, because the illegal conversion of Whiteacre was done by Owens rather than by a predecessor.

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Questions 175-176 are based on the following fact situation.

Morten was the general manager and chief executive officer of the Woolen Company, a knitting mill.

Morten delegated all operational decision making to Crouse, the supervising manager of the mill. The child labor laws in the jurisdiction provide, "It is a violation of the law for one to employ a person under the age of 17 years for full-time labor." Without Morten's knowledge, Crouse hired a number of 15- and 16-year-olds to work at the mill full time. He did not ask their ages and they did not disclose them. Crouse could have discovered their ages easily by asking for identification, but he did not do so because he was not aware of the law and believed that company policy was to hire young people.

175. If the statute is interpreted to create strict liability and Crouse is charged with violating it, Crouse is
- (A) guilty, because he should have inquired as to the ages of the children.
 - (B) guilty, because he hired the children.
 - (C) not guilty, because in law the Woolen Company, not Crouse, is the employer of the children.
 - (D) not guilty, because he believed he was following company policy and was not aware of the violation.

176. If the statute is interpreted to create strict liability and Morten is convicted of violating it, his contention that his conviction would violate the federal Constitution is
- (A) correct, because it is a violation of due process to punish without a voluntary act.
 - (B) correct, because criminal liability is personal and the Woolen Company is the employer of the children, not Morten.
 - (C) incorrect, because regulatory offenses are not subject to due process limitations.
 - (D) incorrect, because he was in a position to exercise control over the hiring of employees for Woolen Company.

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177. Ann's three-year-old daughter, Janet, was killed in an automobile accident. At Ann's direction, Janet's body was taken to a mausoleum for interment. Normally, the mausoleum's vaults are permanently sealed with marble plates secured by "tamper-proof" screws. After Janet's body was placed in the mausoleum, however, only a fiberglass panel secured by caulking compound covered her vault. About a month later, Janet's body was discovered in a cemetery located near the mausoleum. It had apparently been left there by vandals who had taken it from the mausoleum.

As a result of this experience, Ann suffered great emotional distress.

If Ann sues the mausoleum for the damages arising from her emotional distress, will she prevail?

- (A) No, because Ann experienced no threat to her own safety.
- (B) No, unless the mausoleum's behavior was extreme and outrageous.
- (C) Yes, if the mausoleum failed to use reasonable care to safeguard the body.
- (D) Yes, unless Ann suffered no physical harm as a consequence of her emotional distress.

178. Wastrel, a notorious spendthrift who was usually broke for that reason, received the following letter from his Uncle Bullion, a wealthy and prudent man: "I understand you're in financial difficulties again. I promise to give you \$5,000 on your birthday next month, but you'd better use it wisely or you'll never get another dime from me." Wastrel thereupon signed a contract with a car dealer to purchase a \$40,000 automobile and to make a \$5,000 down payment on the day after his birthday.

If Wastrel sues Bullion for \$5,000 after the latter learned of the car-purchase contract and then repudiated his promise, which of the following is Bullion's best defense?

- (A) A promise to make a gift in the future is not enforceable.
- (B) Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless the value of the promised gift is substantially equivalent to the promisee's loss by reliance.
- (C) Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless that reliance also results in an economic benefit to the promisor.
- (D) Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless injustice can be avoided only by such enforcement.

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179. Congress passed a bill prohibiting the President from granting a pardon to any person who had not served at least one-third of the sentence imposed by the court which convicted that person. The President vetoed the bill, claiming that it was unconstitutional. Nevertheless, Congress passed it over his veto by a two-thirds vote of each house.

This act of Congress is

- (A) constitutional, because it was enacted over the President's veto by a two-thirds vote of each house.
- (B) constitutional, because it is a necessary and proper means of carrying out the powers of Congress.
- (C) unconstitutional, because it interferes with the plenary power of the President to grant pardons.
- (D) unconstitutional, because a Presidential veto based upon constitutional grounds may be overridden only with the concurrence of three-fourths of the state legislatures.

180. Defendant is on trial for the crime of obstructing justice by concealing records subpoenaed May 1, in a government investigation. The government calls Attorney to testify that on May 3, Defendant asked him how to comply with the regulations regarding the transfer of records to a safe-deposit box in Mexico.

The testimony of Attorney is

- (A) privileged, because it relates to conduct outside the jurisdiction of the United States.
- (B) privileged, because an attorney is required to keep the confidences of his clients.
- (C) not privileged, provided Attorney knew of the concededly illegal purpose for which the advice was sought.
- (D) not privileged, whether or not Attorney knew of the concededly illegal purpose for which the advice was sought.

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181. Prad entered Drug Store to make some purchases. As he was searching the aisles for various items, he noticed a display card containing automatic pencils. The display card was on a high shelf behind a cashier's counter. Prad saw a sign on the counter that read, "No Admittance, Employees Only." Seeing no clerks in the vicinity to help him, Prad went behind the counter to get a pencil. A clerk then appeared behind the counter and asked whether she could help him. He said he just wanted a pencil and that he could reach the display card himself. The clerk said nothing further. While reaching for the display card, Prad stepped sideways into an open shaft and fell to the basement, ten feet below. The clerk knew of the presence of the open shaft, but assumed incorrectly that Prad had noticed it.

Prad sued Drug Store to recover damages for the injuries he sustained in the fall. The jurisdiction has adopted a rule of pure comparative negligence, and it follows traditional common-law rules governing the duties of a land possessor.

Will Prad recover a judgment against Drug Store?

- (A) No, because Prad was a trespasser.
- (B) No, unless Prad's injuries resulted from the defendant's willful or wanton misconduct.
- (C) Yes, because the premises were defective with respect to a public invitee.
- (D) Yes, if the clerk had reason to believe that Prad was unaware of the open shaft.

182. A statute in the jurisdiction defines murder in the first degree as knowingly killing another person after deliberation. Deliberation is defined as "cool reflection for any length of time no matter how brief." Murder in the second degree is defined as "all other murder at common law except felony-murder." Felony-murder is murder in the third degree. Manslaughter is defined by the common law.

At 2 a.m., Duncan held up an all-night liquor store using an assault rifle. During the holdup, two police cars with flashing lights drove up in front of the store. In order to create a situation where the police would hesitate to come into the store (and thus give Duncan a chance to escape out the back) Duncan fired several rounds through the front window of the store. Duncan then ran out the back but upon discovering another police car there, surrendered quietly. One of the shots he fired while in the store struck and killed a burglar who was stealing items from a closed store across the street.

The most serious degree of criminal homicide Duncan is guilty of is

- (A) murder in the first degree.
- (B) murder in the second degree.
- (C) murder in the third degree.
- (D) manslaughter.

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183. Denn is on trial for arson. In its case in chief, the prosecution offers evidence that Denn had secretly obtained duplicate insurance from two companies on the property that burned and that Denn had threatened to kill his ex-wife if she testified for the prosecution.

The court should admit evidence of

- (A) Denn's obtaining duplicate insurance only.
- (B) Denn's threatening to kill his ex-wife only.
- (C) both Denn's obtaining duplicate insurance and threatening to kill his ex-wife.
- (D) neither Denn's obtaining duplicate insurance nor threatening to kill his ex-wife.

184. In the course of a bank holdup, Robber fired a gun at Guard. Guard drew his revolver and returned the fire. One of the bullets fired by Guard ricocheted, striking Plaintiff.

If Plaintiff asserts a claim against Guard based upon battery, will Plaintiff prevail?

- (A) Yes, unless Plaintiff was Robber's accomplice.
- (B) Yes, under the doctrine of transferred intent.
- (C) No, if Guard fired reasonably in his own defense.
- (D) No, if Guard did not intend to shoot Plaintiff.

GO ON TO THE NEXT PAGE.

Questions 185-186 are based on the following fact situation.

Mural, a wallpaper hanger, sent Gennybelle, a general contractor, this telegram:

Will do all paperhanging on new Doctors' Building, per owner's specs, for \$14,000 if you accept within reasonable time after main contract awarded.

/s/ Mural

Three other competing hangers sent Gennybelle similar bids in the respective amounts of \$18,000, \$19,000, and \$20,000. Gennybelle used Mural's \$14,000 figure in preparing and submitting her own sealed bid on Doctors' Building. Before the bids were opened, Mural truthfully advised Gennybelle that the former's telegraphic sub-bid had been based on a \$4,000 computational error and was therefore revoked. Shortly thereafter, Gennybelle was awarded the Doctors' Building construction contract and subsequently contracted with another paperhanger for a price of \$18,000. Gennybelle now sues Mural to recover \$4,000.

185. Which of the following, if proved, would most strengthen Gennybelle's prospect of recovery?

- (A) After Mural's notice of revocation, Gennybelle made a reasonable effort to subcontract with another paperhanger at the lowest possible price.
- (B) Gennybelle had been required by the owner to submit a bid bond and could not have withdrawn or amended her bid on the main contract without forfeiting that bond.
- (C) Mural was negligent in erroneously calculating the amount of his sub-bid.
- (D) Gennybelle dealt with all of her subcontractors in good faith and without seeking to renegotiate (lower) the prices they had bid.

186. Which of the following, if proved, would best support Mural's defense?

- (A) Gennybelle gave Mural no consideration for an irrevocable sub-bid.
- (B) Mural's sub-bid expressly requested Gennybelle's acceptance after awarding of the main contract.
- (C) Even after paying \$18,000 for the paperhanging, Gennybelle would make a net profit of \$100,000 on the Doctors' Building contract.
- (D) Before submitting her own bid, Gennybelle had reason to suspect that Mural had made a computational mistake in figuring his sub-bid.

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187. Roberta Monk, a famous author, had a life insurance policy with Drummond Life Insurance Company. Her son, Peter, was beneficiary. Roberta disappeared from her residence in the city of Metropolis two years ago and has not been seen since. On the day that Roberta disappeared, Sky Airlines Flight 22 left Metropolis for Rio de Janeiro and vanished; the plane's passenger list included a Roberta Rector.

Peter is now suing Drummond Life Insurance Company for the proceeds of his mother's policy. At trial, Peter offers to testify that his mother told him that she planned to write her next novel under the pen name of Roberta Rector.

Peter's testimony is

- (A) admissible as circumstantial evidence that Roberta Monk was on the plane.
- (B) admissible as a party admission, because Roberta and Peter Monk are in privity with each other.
- (C) inadmissible, because Roberta Monk has not been missing more than seven years.
- (D) inadmissible, because it is hearsay not within any exception.

188. Jones and Smith, who were professional rivals, were attending a computer industry dinner where each was to receive an award for achievement in the field of data processing. Smith engaged Jones in conversation and expressed the opinion that if they joined forces, they could do even better. Jones replied that she would not consider Smith as a business partner and when Smith demanded to know why, told him that he, Smith, was incompetent.

The exchange was overheard by Brown, who attended the dinner. Smith suffered emotional distress but no pecuniary loss.

If Smith asserts a claim against Jones based on defamation, will Smith prevail?

- (A) No, because Smith suffered no pecuniary loss.
- (B) No, because Jones's statement was made to Smith and not to Brown.
- (C) No, unless Jones should have foreseen that her statement would be overheard by another person.
- (D) No, unless Jones intended to cause Smith emotional distress.

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189. Ozzie owned and occupied Blackacre, which was a tract of land improved with a one-family house. His friend, Victor, orally offered Ozzie \$50,000 for Blackacre, the fair market value, and Ozzie accepted. Because they were friends, they saw no need for attorneys or written contracts and shook hands on the deal. Victor paid Ozzie \$5,000 down in cash and agreed to pay the balance of \$45,000 at an agreed closing time and place.

Before the closing, Victor inherited another home and asked Ozzie to return his \$5,000. Ozzie refused, and, at the time set for the closing, Ozzie tendered a good deed to Victor and declared his intention to vacate Blackacre the next day. Ozzie demanded that Victor complete the purchase. Victor refused. The fair market value of Blackacre has remained \$50,000.

In an appropriate action brought by Ozzie against Victor for specific performance, if Ozzie loses, the most likely reason will be that

- (A) the agreement was oral.
- (B) keeping the \$5,000 is Ozzie's exclusive remedy.
- (C) Victor had a valid reason for not closing.
- (D) Ozzie remained in possession on the day set for the closing.

190. Small retailers located in the state of Yellow are concerned about the loss of business to certain large retailers located nearby in bordering states. In an effort to deal with this concern, the legislature of Yellow enacted a statute requiring all manufacturers and wholesalers who sell goods to retailers in Yellow to do so at prices that are no higher than the lowest prices at which they sell them to retailers in any of the states that border Yellow. Several manufacturers and wholesalers who are located in states bordering Yellow and who sell their goods to retailers in those states and in Yellow bring an action in federal court to challenge the constitutionality of this statute.

Which of the following arguments offered by these plaintiffs is likely to be most persuasive in light of applicable precedent?

The state statute

- (A) deprives them of their property or liberty without due process of law.
- (B) imposes an unreasonable burden on interstate commerce.
- (C) deprives them of a privilege or immunity of national citizenship.
- (D) denies them the equal protection of the laws.

GO ON TO THE NEXT PAGE.

191. The Pinnars, a retired couple, had lived in their home in a residential neighborhood for 20 years when the Darleys moved into the house next door and built a swimming pool in the back yard. The four young Darley children frequently played in the pool after school. They often were joined by other neighborhood children. The Pinnars were in the habit of reading and listening to classical music in the afternoons. Sometimes they took naps. The boisterous sounds of the children playing in the pool disturbed the Pinnars' customary enjoyment of quiet afternoons.

In the Pinnars' nuisance action for damages against the Darleys, the Pinnars should

- (A) prevail, if the children's noise constituted a substantial interference with the Pinnars' use and enjoyment of their home.
- (B) prevail, because the Pinnars' interest in the quiet enjoyment of their home takes precedence in time over the Darleys' interests.
- (C) not prevail, unless the noise constituted a substantial and unreasonable disturbance to persons of normal sensibilities.
- (D) not prevail, because the children's interest in healthy play has priority over the Pinnars' interest in peace and quiet.

192. Which of the following items of evidence is LEAST likely to be admitted without a supporting witness?

- (A) In a libel action, a copy of a newspaper purporting to be published by Defendant Newspaper Publishing Company.
- (B) In a case involving contaminated food, a can label purporting to identify the canner as Defendant Company.
- (C) In a defamation case, a document purporting to be a memorandum from the Defendant Company president to "All Personnel," printed on Defendant's letterhead.
- (D) In a case involving injury to a pedestrian, a pamphlet on stopping distances issued by the State Highway Department.

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Questions 193-194 are based on the following fact situation.

For several weeks Mater, a wealthy, unemployed widow, and Nirvana Motors, Inc., negotiated unsuccessfully over the purchase price of a new Mark XX Rolls-Royce sedan, which, as Nirvana knew, Mater wanted her son Dilbert to have as a wedding gift. On April 27, Nirvana sent Mater a signed, dated memo saying, "If we can arrive at the same price within the next week, do we have a deal?" Mater wrote "Yes" and her signature at the bottom of this memo and delivered it back to Nirvana on April 29.

On May 1, Mater wrote Nirvana a signed letter offering to buy "one new Mark XX Rolls-Royce sedan, with all available equipment, for \$180,000 cash on delivery not later than June 1." By coincidence, Nirvana wrote Mater a signed letter on May 1 offering to sell her "one new Mark XX Rolls-Royce sedan, with all available equipment, for \$180,000 cash on delivery not later than June 1." These letters crossed in the mails and were respectively received and read by Mater and Nirvana on May 2.

193. If Mater subsequently asserts and Nirvana denies that the parties had a binding contract on May 3, which of the following most persuasively supports Mater's position?
- (A) A sale-of-goods contract may be made in any manner sufficient to show agreement, even though the moment of its making is undetermined.
 - (B) A sale-of-goods contract does not require that an acceptance be a mirror image of the offer.
 - (C) With respect both to the making of an agreement and the requirement of consideration, identical cross-offers are functionally the same as an offer followed by a responsive acceptance.
 - (D) Since Nirvana was a merchant in the transaction and Mater was not, Nirvana is estopped to deny that the parties' correspondence created a binding contract.

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194. For this question only, assume the following facts. On May 4, Mater and Nirvana Motors both signed a single document evidencing a contract for the sale by Nirvana to Mater, “as a wedding gift for Mater’s son Dilbert,” a new Mark XX Rolls-Royce sedan, under the same terms as previously stated in their correspondence. On May 5, Mater handed Dilbert a carbon copy of this document. In reliance on the prospective gift, Dilbert on May 20 sold his nearly new Cheetah (an expensive sports car) to a dealer at a “bargain” price of \$50,000 and immediately informed Mater and Nirvana that he had done so.

On May 25, however, Mater and Nirvana Motors by mutual agreement rescinded in a signed writing “any and all agreements heretofore made between the undersigned parties for the sale-and-purchase of a new Mark XX Rolls-Royce sedan.” Later that day, Nirvana sold for \$190,000 cash to another buyer the only new Mark XX Rolls-Royce that it had in stock or could readily obtain elsewhere. On June 1, Dilbert tendered \$180,000 in cash to Nirvana Motors and demanded delivery to him “within a reasonable time” of a new Mark XX Rolls-Royce sedan with all available equipment.

Nirvana rejected the tender and denied any obligation.

If Dilbert sues Nirvana for breach of contract, which of the following will the court probably decide?

- (A) Dilbert wins, because his rights as an assignee for value of the May 4 Mater-Nirvana contract cannot be cut off by agreement between the original parties.
- (B) Dilbert wins, because his rights as a third-party intended beneficiary became vested by his prejudicial reliance in selling his Cheetah on May 20.
- (C) Nirvana wins, because Dilbert, if an intended beneficiary at all of the Mater-Nirvana contract, was only a donee beneficiary.
- (D) Nirvana wins, because it reasonably and prejudicially relied on its contract of mutual rescission with Mater by selling the only readily available new Mark XX Rolls-Royce sedan to another buyer.

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195. A federally owned and operated office building in the state of West Dakota is heated with a new, pollution-free heating system. However, in the coldest season of the year, this new system is sometimes insufficient to supply adequate heat to the building. The appropriation statute providing the money for construction of the new heating system permitted use of the old, pollution-generating system when necessary to supply additional heat. When the old heating system operates (only about two days in any year), the smokestack of the building emits smoke that exceeds the state of West Dakota's pollution-control standards.

May the operators of the federal office building be prosecuted successfully by West Dakota authorities for violating that state's pollution control standards?

- (A) Yes, because the regulation of pollution is a legitimate state police power concern.
- (B) Yes, because the regulation of pollution is a joint concern of the federal government and the state and, therefore, both of them may regulate conduct causing pollution.
- (C) No, because the operations of the federal government are immune from state regulation in the absence of federal consent.
- (D) No, because the violations of the state pollution-control standards involved here are so *de minimis* that they are beyond the legitimate reach of state law.

196. Jones, who was driving his car at night, stopped the car and went into a nearby tavern for a drink. He left the car standing at the side of the road, projecting three feet into the traffic lane. The lights were on and his friend, Peters, was asleep in the back seat. Peters awoke, discovered the situation, and went back to sleep. Before Jones returned, his car was hit by an automobile approaching from the rear and driven by Davis. Peters was injured.

Peters sued Davis and Jones jointly to recover the damages he suffered resulting from the accident. The jurisdiction has a pure comparative negligence rule and has abolished the defense of assumption of risk. In respect to other issues, the rules of the common law remain in effect.

Peters should recover

- (A) nothing, if Peters was more negligent than either Davis or Jones.
- (B) nothing, unless the total of Davis's and Jones's negligence was greater than Peters's.
- (C) from Davis and Jones, jointly and severally, the amount of damages Peters suffered reduced by the percentage of the total negligence that is attributed to Peters.
- (D) from Davis and Jones, severally, a percentage of Peters's damages equal to the percentage of fault attributed to each of the defendants.

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197. Under the rule allowing exclusion of relevant evidence because its probative value is substantially outweighed by other considerations, which of the following is NOT to be considered?

- (A) The jury may be confused about the appropriate application of the evidence to the issues of the case.
- (B) The evidence is likely to arouse unfair prejudice on the part of the jury.
- (C) The opponent is surprised by the evidence and not fairly prepared to meet it.
- (D) The trial will be extended and made cumbersome by hearing evidence of relatively trivial consequence.

198. On June 1, Buyem, Inc., a widget manufacturer, entered into a written agreement with Mako, Inc., a tool maker, in which Mako agreed to produce and sell to Buyem 12 sets of newly designed dies to be delivered August 1 for the price of \$50,000, payable ten days after delivery. Encountering unexpected expenses in the purchase of special alloy steel required for the dies, Mako advised Buyem that production costs would exceed the contract price; and on July 1 Buyem and Mako signed a modification to the June 1 agreement increasing the contract price to \$60,000. After timely receipt of 12 sets of dies conforming to the contract specifications, Buyem paid Mako \$50,000 but refused to pay more.

Which of the following concepts of the Uniform Commercial Code, dealing expressly with the sale of goods, best supports an action by Mako to recover \$10,000 for breach of Buyem's July 1 promise?

- (A) Bargained-for exchange.
- (B) Promissory estoppel.
- (C) Modification of contracts without consideration.
- (D) Unconscionability in the formation of contracts.

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199. Smith is a new lawyer who has three clients, all of whom are indigent. To improve the appearance of his office, he decided to purchase some new furniture and to pay for it out of future earnings. Wearing an expensive suit borrowed from a friend, Smith went to a furniture store and asked to purchase on credit a desk and various other items of furniture. Smith told the store owner that he was a very able lawyer with a growing practice and that he expected to do very well in the future. The store owner agreed to sell him the items on credit, and Smith promised to make monthly payments of \$800. Smith has never had an income from his practice of more than \$150 a month. Smith's business did not improve, and he did not make any payments to the furniture store. After three months, the store owner repossessed the items.

If Smith is charged with obtaining property by false pretenses, his best argument for being NOT guilty would be that

- (A) even if he misled the store owner, he intended to pay for the items.
- (B) he did not misrepresent any material fact.
- (C) the store owner got his property back and so suffered no harm.
- (D) the store owner could have asked for payment in full at the time of the purchase.

200. Twenty years ago, Test, who owned Blackacre, a one-acre tract of land, duly delivered a deed of Blackacre "to School District so long as it is used for school purposes." The deed was promptly and properly recorded. Five years ago, Test died leaving Sonny as his only heir but, by his duly probated will, he left "all my Estate to my friend Fanny."

Last month, School District closed its school on Blackacre and for valid consideration duly executed and delivered a quitclaim deed of Blackacre to Owner, who planned to use the land for commercial development. Owner has now brought an appropriate action to quiet title against Sonny, Fanny, and School District.

The only applicable statute is a provision in the jurisdiction's probate code which provides that any property interest which is descendible is devisable.

In such action, the court should find that title is now in

- (A) Owner.
- (B) Sonny.
- (C) Fanny.
- (D) School District.

STOP

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

NATIONAL CONFERENCE OF BAR EXAMINERS Multistate Bar Examination

P.M.

SIDE 1

TEST FORM BI015

JURISDICTION CODES
(Use in block A.)

| | |
|---------------------------------|----|
| Alabama | 01 |
| Alaska | 02 |
| Arizona | 03 |
| Arkansas | 04 |
| California | 05 |
| Colorado | 06 |
| Connecticut | 07 |
| Delaware | 08 |
| D.C. | 09 |
| Florida | 10 |
| Georgia | 11 |
| Hawaii | 12 |
| Idaho | 13 |
| Illinois | 14 |
| Indiana | 15 |
| Iowa | 16 |
| Kansas | 17 |
| Kentucky | 18 |
| Louisiana | 19 |
| Maine | 20 |
| Maryland | 21 |
| Massachusetts | 22 |
| Michigan | 23 |
| Minnesota | 24 |
| Mississippi | 25 |
| Missouri | 26 |
| Montana | 27 |
| Nebraska | 28 |
| Nevada | 29 |
| New Hamp. | 30 |
| New Jersey | 31 |
| New Mexico | 32 |
| New York | 33 |
| North Carolina | 34 |
| North Dakota | 35 |
| Ohio | 36 |
| Oklahoma | 37 |
| Oregon | 38 |
| Pennsylvania | 39 |
| Rhode Island | 40 |
| South Carolina | 41 |
| South Dakota | 42 |
| Tennessee | 43 |
| Texas | 44 |
| Utah | 45 |
| Vermont | 46 |
| Virginia | 47 |
| Washington | 48 |
| West Virginia | 49 |
| Wisconsin | 50 |
| Wyoming | 51 |
| Guam | 52 |
| Northern Mariana Islands/Saipan | 53 |
| Virgin Islands | 55 |
| Palsu | 57 |
| All Other | 58 |

A JURISDICTION CODE

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C DATE OF BIRTH

| Month | Day | Year |
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| <input type="radio"/> Jan. | 1 | 1 |
| <input type="radio"/> Feb. | 2 | 2 |
| <input type="radio"/> March | 3 | 3 |
| <input type="radio"/> April | 4 | 4 |
| <input type="radio"/> May | 5 | 5 |
| <input type="radio"/> June | 6 | 6 |
| <input type="radio"/> July | 7 | 7 |
| <input type="radio"/> Aug. | 8 | 8 |
| <input type="radio"/> Sept. | 9 | 9 |
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| <input type="radio"/> Dec. | 0 | 0 |

D SOCIAL SECURITY NUMBER

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USE A SOFT LEAD PENCIL ONLY.

DO NOT FOLD, STAPLE, OR ATTACH TAPE TO THIS SHEET.

BE SURE EACH MARK IS DARK AND COMPLETELY FILLS THE INTENDED OVAL, AS SHOWN IN THE ILLUSTRATION AT THE RIGHT. COMPLETELY ERASE ANY MISTAKES OR STRAY MARKS.

A B C D

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| 101 | A B C D | 121 | A B C D | 141 | A B C D | 161 | A B C D | 181 | A B C D |
| 102 | A B C D | 122 | A B C D | 142 | A B C D | 162 | A B C D | 182 | A B C D |
| 103 | A B C D | 123 | A B C D | 143 | A B C D | 163 | A B C D | 183 | A B C D |
| 104 | A B C D | 124 | A B C D | 144 | A B C D | 164 | A B C D | 184 | A B C D |
| 105 | A B C D | 125 | A B C D | 145 | A B C D | 165 | A B C D | 185 | A B C D |
| 106 | A B C D | 126 | A B C D | 146 | A B C D | 166 | A B C D | 186 | A B C D |
| 107 | A B C D | 127 | A B C D | 147 | A B C D | 167 | A B C D | 187 | A B C D |
| 108 | A B C D | 128 | A B C D | 148 | A B C D | 168 | A B C D | 188 | A B C D |
| 109 | A B C D | 129 | A B C D | 149 | A B C D | 169 | A B C D | 189 | A B C D |
| 110 | A B C D | 130 | A B C D | 150 | A B C D | 170 | A B C D | 190 | A B C D |
| 111 | A B C D | 131 | A B C D | 151 | A B C D | 171 | A B C D | 191 | A B C D |
| 112 | A B C D | 132 | A B C D | 152 | A B C D | 172 | A B C D | 192 | A B C D |
| 113 | A B C D | 133 | A B C D | 153 | A B C D | 173 | A B C D | 193 | A B C D |
| 114 | A B C D | 134 | A B C D | 154 | A B C D | 174 | A B C D | 194 | A B C D |
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| 116 | A B C D | 136 | A B C D | 156 | A B C D | 176 | A B C D | 196 | A B C D |
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| 118 | A B C D | 138 | A B C D | 158 | A B C D | 178 | A B C D | 198 | A B C D |
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| 120 | A B C D | 140 | A B C D | 160 | A B C D | 180 | A B C D | 200 | A B C D |

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ANSWER KEY

| Item | Answer | Subject | Item | Answer | Subject |
|------|--------|------------|------|--------|------------|
| 001 | D | TORTS | 054 | C | REAL PROP. |
| 002 | C | CONTRACTS | 055 | D | REAL PROP. |
| 003 | A | CRIM. LAW | 056 | A | EVIDENCE |
| 004 | D | REAL PROP. | 057 | A | CONST. LAW |
| 005 | B | EVIDENCE | 058 | D | CRIM. LAW |
| 006 | A | TORTS | 059 | B | CONST. LAW |
| 007 | D | CONTRACTS | 060 | D | CONST. LAW |
| 008 | D | CONST. LAW | 061 | A | TORTS |
| 009 | A | CRIM. LAW | 062 | D | EVIDENCE |
| 010 | B | CONST. LAW | 063 | B | REAL PROP. |
| 011 | B | CONST. LAW | 064 | B | CONTRACTS |
| 012 | C | CRIM. LAW | 065 | A | CONTRACTS |
| 013 | B | CRIM. LAW | 066 | D | REAL PROP. |
| 014 | A | CRIM. LAW | 067 | C | CRIM. LAW |
| 015 | D | TORTS | 068 | D | TORTS |
| 016 | B | CONST. LAW | 069 | D | TORTS |
| 017 | C | CONTRACTS | 070 | A | TORTS |
| 018 | C | CONTRACTS | 071 | C | REAL PROP. |
| 019 | A | EVIDENCE | 072 | A | TORTS |
| 020 | D | REAL PROP. | 073 | C | CONST. LAW |
| 021 | B | CONST. LAW | 074 | A | TORTS |
| 022 | D | TORTS | 075 | B | CRIM. LAW |
| 023 | D | TORTS | 076 | B,C* | CONTRACTS |
| 024 | A | CONTRACTS | 077 | B | TORTS |
| 025 | A | CONTRACTS | 078 | A | CONST. LAW |
| 026 | A | CONST. LAW | 079 | C | EVIDENCE |
| 027 | A | CONST. LAW | 080 | A | CRIM. LAW |
| 028 | B | TORTS | 081 | B | REAL PROP. |
| 029 | C | REAL PROP. | 082 | B | TORTS |
| 030 | C | CONTRACTS | 083 | B | REAL PROP. |
| 031 | B | EVIDENCE | 084 | A | CRIM. LAW |
| 032 | D | EVIDENCE | 085 | A | CONTRACTS |
| 033 | B | REAL PROP. | 086 | D | CONTRACTS |
| 034 | B | EVIDENCE | 087 | C | CONST. LAW |
| 035 | C | CRIM. LAW | 088 | D | TORTS |
| 036 | D | TORTS | 089 | C | CONTRACTS |
| 037 | A | EVIDENCE | 090 | D | REAL PROP. |
| 038 | D | CRIM. LAW | 091 | B | EVIDENCE |
| 039 | A | CRIM. LAW | 092 | A | EVIDENCE |
| 040 | A | REAL PROP. | 093 | D | EVIDENCE |
| 041 | B | CONTRACTS | 094 | A | CRIM. LAW |
| 042 | D | TORTS | 095 | C | EVIDENCE |
| 043 | C | CRIM. LAW | 096 | B | CONTRACTS |
| 044 | B | CONTRACTS | 097 | D | CONTRACTS |
| 045 | C | CONTRACTS | 098 | D | EVIDENCE |
| 046 | A | CONST. LAW | 099 | D | CONST. LAW |
| 047 | A | REAL PROP. | 100 | C | TORTS |
| 048 | D | TORTS | 101 | C | CRIM. LAW |
| 049 | B | EVIDENCE | 102 | D | TORTS |
| 050 | D | TORTS | 103 | A | CONST. LAW |
| 051 | B | REAL PROP. | 104 | D | TORTS |
| 052 | A | CONTRACTS | 105 | B | EVIDENCE |
| 053 | A | CONTRACTS | 106 | B | EVIDENCE |

| Item | Answer | Subject | Item | Answer | Subject |
|------|----------|------------|------|--------|------------|
| 107 | D | REAL PROP. | 154 | A | TORTS |
| 108 | D | CONTRACTS | 155 | B | CRIM. LAW |
| 109 | B | CONTRACTS | 156 | B | REAL PROP. |
| 110 | A | TORTS | 157 | D | REAL PROP. |
| 111 | A,B,C,D* | REAL PROP. | 158 | C | TORTS |
| 112 | A | EVIDENCE | 159 | D | CONST. LAW |
| 113 | C | CRIM. LAW | 160 | B | CONTRACTS |
| 114 | C | CONST. LAW | 161 | C | CONTRACTS |
| 115 | A | CRIM. LAW | 162 | C | EVIDENCE |
| 116 | A | CRIM. LAW | 163 | B | CONTRACTS |
| 117 | D | CONST. LAW | 164 | C | CONTRACTS |
| 118 | C | CRIM. LAW | 165 | A | REAL PROP. |
| 119 | D | CRIM. LAW | 166 | B | TORTS |
| 120 | A | CONTRACTS | 167 | C | REAL PROP. |
| 121 | B | CONTRACTS | 168 | B | CRIM. LAW |
| 122 | C | CONST. LAW | 169 | D | TORTS |
| 123 | B | REAL PROP. | 170 | A | CONTRACTS |
| 124 | A | CONST. LAW | 171 | A | EVIDENCE |
| 125 | D | REAL PROP. | 172 | C | CONTRACTS |
| 126 | C | EVIDENCE | 173 | D | REAL PROP. |
| 127 | B | CRIM. LAW | 174 | C | REAL PROP. |
| 128 | A | CONTRACTS | 175 | B | CRIM. LAW |
| 129 | A | TORTS | 176 | D | CRIM. LAW |
| 130 | C | CONST. LAW | 177 | C | TORTS |
| 131 | C | TORTS | 178 | D | CONTRACTS |
| 132 | A | REAL PROP. | 179 | C | CONST. LAW |
| 133 | C | CONST. LAW | 180 | D | EVIDENCE |
| 134 | B | EVIDENCE | 181 | D | TORTS |
| 135 | B | TORTS | 182 | B | CRIM. LAW |
| 136 | A | CONST. LAW | 183 | C | EVIDENCE |
| 137 | D | CRIM. LAW | 184 | C | TORTS |
| 138 | B | CONST. LAW | 185 | B | CONTRACTS |
| 139 | B | EVIDENCE | 186 | D | CONTRACTS |
| 140 | A | EVIDENCE | 187 | A | EVIDENCE |
| 141 | D | CONTRACTS | 188 | C | TORTS |
| 142 | A | REAL PROP. | 189 | A | REAL PROP. |
| 143 | A | CRIM. LAW | 190 | B | CONST. LAW |
| 144 | C | CONTRACTS | 191 | C | TORTS |
| 145 | C | TORTS | 192 | C | EVIDENCE |
| 146 | A | TORTS | 193 | A | CONTRACTS |
| 147 | C | CONST. LAW | 194 | B | CONTRACTS |
| 148 | B | EVIDENCE | 195 | C | CONST. LAW |
| 149 | D | CONTRACTS | 196 | C | TORTS |
| 150 | D | TORTS | 197 | C | EVIDENCE |
| 151 | B | REAL PROP. | 198 | C | CONTRACTS |
| 152 | C | CONST. LAW | 199 | A,B* | CRIM. LAW |
| 153 | B | TORTS | 200 | C | REAL PROP. |

*Immediately following the administration of an MBE, preliminary scoring is conducted to identify any unanticipated item functioning or unusual response patterns. For example, an item might be flagged if a large number of applicants who did well on the test overall selected an option other than the key on that item. Flagged items are then reviewed by the MBE Drafting Committees to assure there are no ambiguities and that they have been keyed correctly. If a content problem is identified, an item may be rekeyed, double-keyed, or eliminated from scoring by having all four options keyed correct. In a typical administration of the MBE, more than one option may be scored as correct on two or three of the 200 items.

MBE RAW SCORE CONVERSION TABLE

| RAW SCORE | SCALED SCORE |
|------------------|---------------------|
| 156 - 162 | 174 - 180 |
| 149 - 155 | 168 - 173 |
| 142 - 148 | 161 - 167 |
| 135 - 141 | 154 - 160 |
| 128 - 134 | 148 - 153 |
| 121 - 127 | 141 - 147 |
| 114 - 120 | 135 - 140 |
| 107 - 113 | 128 - 134 |
| 100 - 106 | 121 - 127 |

The raw score is the total number of correct answers given by an examinee. A statistical procedure is used to convert raw scores to scaled scores to provide comparison of scores across test forms. The scaled score represents a comparable level of achievement for all forms of the MBE and scaled scores on one test form can be used interchangeably with the scaled scores on another test form.

MULTISTATE BAR EXAMINATION

Time—6 hours

This test consists of two parts, one of which will be administered in the morning and one in the afternoon. You will be given three hours to work on each of the parts. Be sure that the question numbers on your answer sheet match the questions numbers in your test booklet. You are not to begin work until the supervisor tells you to do so.

Your score will be based on the number of questions you answer correctly. It is therefore to your advantage to try to answer as many questions as you can. Use your time effectively. Do not hurry, but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one.

YOU ARE TO INDICATE YOUR ANSWERS TO ALL QUESTIONS ON THE SEPARATE ANSWER SHEET. No credit will be given for anything written in the test booklet. After you have decided which of the suggested answers you want to give for a question, blacken the corresponding space on the answer sheet.

Example:

Which of the following is the capital of the United States?

- (A) New York, NY
- (B) Houston, TX
- (C) Washington, DC
- (D) Chicago, IL

Sample Answer

(A) (B) ● (D)

Give only one answer to each question; multiple answers will not be counted. If you wish to change an answer, erase your first mark completely and mark your new choice.