

# THE MBE<sup>®</sup>

MULTISTATE BAR EXAMINATION

## *Sample MBE II*

July 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 July 1991.

The July 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](http://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](http://www.ncbex.org).

# **SAMPLE MULTISTATE BAR EXAMINATION**

## **TABLE OF CONTENTS**

AM Book .....	2
PM Book .....	50
Answer Key .....	97
Raw Score Conversion Table .....	99
Sample Answer Sheet .....	100

**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. By warranty deed, Marta conveyed Blackacre to Beth and Christine “as joint tenants with right of survivorship.” Beth and Christine are not related. Beth conveyed all her interest to Eugenio by warranty deed and subsequently died intestate. Thereafter, Christine conveyed to Darin by warranty deed.

There is no applicable statute, and the jurisdiction recognizes the common-law joint tenancy.

Title to Blackacre is in

- (A) Darin.
- (B) Marta.
- (C) Darin and Eugenio.
- (D) Darin and the heirs of Beth.

2. Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.

If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin’s best defense?

- (A) Dorwin did not understand that his act was wrongful.
- (B) Dorwin did not desire to cause harm to Peavey.
- (C) Dorwin did not know that he was striking a person.
- (D) Dorwin thought Peavey was about to attack him.

GO ON TO THE NEXT PAGE.

3. Penstock owned a large tract of land on the shore of a lake. Drury lived on a stream that ran along one boundary of Penstock's land and into the lake. At some time in the past, a channel had been cut across Penstock's land from the stream to the lake at a point some distance from the mouth of the stream. From where Drury lived, the channel served as a convenient shortcut to the lake. Erroneously believing that the channel was a public waterway, Drury made frequent trips through the channel in his motorboat. His use of the channel caused no harm to the land through which it passed.

If Penstock asserts a claim for damages against Drury based on trespass, which of the following would be a correct disposition of the case?

- (A) Judgment for Penstock for nominal damages, because Drury intentionally used the channel.
- (B) Judgment for Drury, if he did not use the channel after learning of Penstock's ownership claim.
- (C) Judgment for Drury, because he caused no harm to Penstock's land.
- (D) Judgment for Drury, because when he used the channel he believed it was a public waterway.

**Questions 4-5** are based on the following fact situation.

Structo contracted with Bailey to construct for \$500,000 a warehouse and an access driveway at highway level. Shortly after commencing work on the driveway, which required for the specified level some excavation and removal of surface material, Structo unexpectedly encountered a large mass of solid rock.

4. For this question only, assume the following facts. Structo informed Bailey (accurately) that because of the rock the driveway as specified would cost at least \$20,000 more than figured, and demanded for that reason a total contract price of \$520,000. Since Bailey was expecting warehousing customers immediately after the agreed completion date, he signed a writing promising to pay the additional \$20,000. Following timely completion of the warehouse and driveway, which conformed to the contract in all respects, Bailey refused to pay Structo more than \$500,000.

What is the maximum amount to which Structo is entitled?

- (A) \$500,000, because there was no consideration for Bailey's promise to pay the additional \$20,000.
- (B) \$500,000, because Bailey's promise to pay the additional \$20,000 was exacted under duress.
- (C) \$520,000, because the modification was fair and was made in the light of circumstances not anticipated by the parties when the original contract was made.
- (D) \$520,000, provided that the reasonable value of Structo's total performance was that much or more.

GO ON TO THE NEXT PAGE.

5. For this question only, assume the following facts. Upon encountering the rock formation, Structo, instead of incurring additional costs to remove it, built the access driveway over the rock with a steep grade down to the highway. Bailey, who was out of town for several days, was unaware of this nonconformity until the driveway had been finished. As built, it is too steep to be used safely by trucks or cars, particularly in the wet or icy weather frequently occurring in the area. It would cost \$30,000 to tear out and rebuild the driveway at highway level. As built, the warehouse, including the driveway, has a fair market value of \$550,000. Bailey has paid \$470,000 to Structo, but refuses to pay more because of the nonconforming driveway, which Structo has refused to tear out and rebuild.

If Structo sues Bailey for monetary relief, what is the maximum amount Structo is entitled to recover?

- (A) \$30,000, because the fair market value of the warehouse and driveway “as is” exceeds the contract price by \$50,000 (more than the cost of correcting the driveway).
  - (B) \$30,000, because Structo substantially performed and the cost of correcting the driveway would involve economic waste.
  - (C) \$30,000, minus whatever amount Structo saved by not building the driveway at the specified level.
  - (D) Nothing, because Bailey is entitled to damages for the cost of correcting the driveway.
- 

6. Larson was charged with the murder of a man who had been strangled and whose body was found in some woods near his home. Larson suffers from a neurological problem that makes it impossible for him to remember an occurrence for longer than 48 hours.

After Larson was charged, the police visited him and asked if they might search his home. Larson consented. The police found a diary written by Larson. An entry dated the same day as the victim’s disappearance read, “Indescribable excitement. Why did no one ever tell me that killing gave such pleasure to the master?”

Larson was charged with murder. His attorney has moved to exclude the diary from evidence on the ground that its admission would violate Larson’s privilege against self-incrimination. Counsel has also argued that Larson could not give informed consent to the search because more than 48 hours had passed since the making of the entry and hence he could not remember the existence of the incriminating entry at the time he gave his consent. There is no evidence that the police officers who secured Larson’s consent to the search were aware of his memory impairment.

With regard to the diary, the court should

- (A) admit it, because Larson’s consent was not obtained by intentional police misconduct and Larson was not compelled to make the diary entry.
- (B) admit it, pursuant to the good-faith exception to the exclusionary rule.
- (C) exclude it, because Larson was not competent to consent to a search.
- (D) exclude it, because use of the diary as evidence would violate Larson’s privilege against self-incrimination.

GO ON TO THE NEXT PAGE.

7. In contract litigation between Pixley and Dill, a fact of consequence to the determination of the action is whether Pixley provided Dill with a required notice at Dill’s branch office “in the state capital.” Pixley introduced evidence that he gave notice at Dill’s office in the city of Capitan. Although Capitan is the state’s capital, Pixley failed to offer proof of that fact.

Which of the following statements is most clearly correct with respect to possible judicial notice of the fact that Capitan is the state’s capital?

- (A) The court may take judicial notice even though Pixley does not request it.
- (B) The court may take judicial notice only if Pixley provides the court with an authenticated copy of the statute that designates Capitan as the capital.
- (C) If the court takes judicial notice, the burden of persuasion on the issue of whether Capitan is the capital shifts to Dill.
- (D) If the court takes judicial notice, it should instruct the jury that it may, but is not required to, accept as conclusive the fact that Capitan is the capital.

8. A statute of the state of East Dakota requires each insurance company that offers burglary insurance policies in the state to charge a uniform rate for such insurance to all of its customers residing within the same county in that state. So long as it complies with this requirement, a company is free to charge whatever rate the market will bear for its burglary insurance policies.

An insurance company located in the state of East Dakota files suit in federal district court against appropriate East Dakota state officials to challenge this statute on constitutional grounds. The insurance company wishes to charge customers residing within the same county in East Dakota rates for burglary insurance policies that will vary because they would be based on the specific nature of the customer’s business, on its precise location, and on its past claims record.

In this suit, the court should

- (A) hold the statute unconstitutional, because the statute deprives the insurance company of its liberty or property without due process of law.
- (B) hold the statute unconstitutional, because the statute imposes an undue burden on interstate commerce.
- (C) hold the statute constitutional, because the statute is a reasonable exercise of the state’s police power.
- (D) abstain from ruling on the merits of this case until the state courts have had an opportunity to pass on the constitutionality of this state statute.

GO ON TO THE NEXT PAGE.

9. Dawson was charged with felony murder because of his involvement in a bank robbery. The evidence at trial disclosed that Smith invited Dawson to go for a ride in his new car, and after a while asked Dawson to drive. As Smith and Dawson drove around town, Smith explained to Dawson that he planned to rob the bank and that he needed Dawson to drive the getaway car. Dawson agreed to drive to the bank and to wait outside while Smith went in to rob it. As they approached the bank, Dawson began to regret his agreement to help with the robbery. Once there, Smith got out of the car. As Smith went out of sight inside the bank, Dawson drove away and went home. Inside the bank, Smith killed a bank guard who tried to prevent him from leaving with the money. Smith ran outside and, finding that his car and Dawson were gone, ran down an alley. He was apprehended a few blocks away. Dawson later turned himself in after hearing on the radio that Smith had killed the guard.

The jurisdiction has a death penalty that applies to felony murder.

Consistent with the law and the Constitution, the jury may convict Dawson of

- (A) felony murder and impose the death penalty.
- (B) felony murder but not impose the death penalty.
- (C) bank robbery only.
- (D) no crime.

10. In an automobile negligence action by Popkin against Dwyer, Juilliard testified for Popkin. Dwyer later called Watts, who testified that Juilliard's reputation for truthfulness was bad.

On cross-examination of Watts, Popkin's counsel asks, "Isn't it a fact that when you bought your new car last year, you made a false affidavit to escape paying the sales tax?"

This question is

- (A) proper, because it will indicate Watts's standard of judgment as to reputation for truthfulness.
- (B) proper, because it bears on Watts's credibility.
- (C) improper, because character cannot be proved by specific instances of conduct.
- (D) improper, because one cannot impeach an impeaching witness.

11. David built in his backyard a garage that encroached two feet across the property line onto property owned by his neighbor, Prudence. Thereafter, David sold his property to Drake. Prudence was unaware, prior to David's sale to Drake, of the encroachment of the garage onto her property. When she thereafter learned of the encroachment, she sued David for damages for trespass.

In this action, will Prudence prevail?

- (A) No, unless David was aware of the encroachment when the garage was built.
- (B) No, because David no longer owns or possesses the garage.
- (C) Yes, because David knew where the garage was located, whether or not he knew where the property line was.
- (D) Yes, unless Drake was aware of the encroachment when he purchased the property.

GO ON TO THE NEXT PAGE.



12. Poole sued Darrel for unlawfully using Poole's idea for an animal robot as a character in Darrel's science fiction movie. Darrel admitted that he had received a model of an animal robot from Poole, but he denied that it had any substantial similarity to the movie character. After the model had been returned to Poole, Poole destroyed it.

In order for Poole to testify to the appearance of the model, Poole

- (A) must show that he did not destroy the model in bad faith.
- (B) must give advance notice of his intent to introduce the oral testimony.
- (C) must introduce a photograph of the model if one exists.
- (D) need do none of the above, because the "best evidence rule" applies only to writings, recordings, and photographs.

13. Lanny, the owner of Whiteacre in fee simple, leased Whiteacre to Teri for a term of ten years by properly executed written instrument. The lease was promptly and properly recorded. It contained an option for Teri to purchase Whiteacre by tendering \$250,000 as purchase price any time "during the term of this lease." One year later, Teri, by a properly executed written instrument, purported to assign the option to Oscar, expressly retaining all of the remaining term of the lease. The instrument of assignment was promptly and properly recorded.

Two years later, Lanny contracted to sell Whiteacre to Jones and to convey a marketable title "subject to the rights of Teri under her lease." Jones refused to close because of the outstanding option assigned to Oscar.

Lanny brought an appropriate action against Jones for specific performance.

If judgment is rendered in favor of Lanny, it will be because the relevant jurisdiction has adopted a rule on a key issue as to which various state courts have split.

Which of the following identifies the determinative rule or doctrine upon which the split occurs, and states the position favorable to Lanny?

- (A) In a contract to buy, any form of "subject to a lease" clause that fails to mention expressly an existing option means that the seller is agreeing to sell free and clear of any option originally included in the lease.
- (B) Marketable title can be conveyed so long as any outstanding option not mentioned in the purchase contract has not yet been exercised.
- (C) Options to purchase by lessees are subject to the Rule Against Perpetuities.
- (D) Options to purchase contained in a lease cannot be assigned separately from the lease.

GO ON TO THE NEXT PAGE.

14. Daniel and a group of his friends are fanatical basketball fans who regularly meet at each others' homes to watch basketball games on television. Some of the group are fans of team A, and others are fans of team B. When the group has watched televised games between these two teams, fights sometimes have broken out among the group. Despite this fact, Daniel invited the group to his home to watch a championship game between teams A and B.

During the game, Daniel's guests became rowdy and antagonistic. Fearing that they would begin to fight, and that a fight would damage his possessions, Daniel asked his guests to leave. They refused to go and soon began to fight. Daniel called the police, and Officer was sent to Daniel's home. Officer sustained a broken nose in his efforts to stop the fighting.

Officer brought an action against Daniel alleging that Daniel was negligent in inviting the group to his house to watch this championship game. Daniel has moved to dismiss the complaint.

The best argument in support of this motion would be that

- (A) a rescuer injured while attempting to avert a danger cannot recover damages from the endangered person.
- (B) a police officer is not entitled to a recovery based upon the negligent conduct that created the need for the officer's professional intervention.
- (C) as a matter of law, Daniel's conduct was not the proximate cause of Officer's injury.
- (D) Daniel did not owe Officer a duty to use reasonable care, because Officer was a mere licensee on Daniel's property.

15. In a prosecution of Drew for forgery, the defense objects to the testimony of West, a government expert, on the ground of inadequate qualifications. The government seeks to introduce a letter from the expert's former criminology professor, stating that West is generally acknowledged in his field as well qualified.

On the issue of the expert's qualifications, the letter may be considered by

- (A) the jury, without regard to the hearsay rule.
- (B) the judge, without regard to the hearsay rule.
- (C) neither the judge nor the jury, because it is hearsay not within any exception.
- (D) both the judge and the jury, because the letter is not offered for a hearsay purpose.

GO ON TO THE NEXT PAGE.

**Questions 16-17** are based on the following fact situation.

Responding to County's written advertisement for bids, Tyres was the successful bidder for the sale of tires to County for County's vehicles. Tyres and County entered into a signed, written agreement that specified, "It is agreed that Tyres will deliver all tires required by this agreement to County, in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which Tyres had responded, but not in the bid form, County had stated, "Multiple awards may be issued if they are in the best interests of County." No definite quantity of tires to be bought by County from Tyres was specified in any of these documents.

In January 1991, Tyres learned that County was buying some of its tires from one of Tyres's competitors. Contending that the Tyres-County agreement was a requirements contract, Tyres sued County for the damages caused by County's buying some of its tires from the competitor.

16. If County defends by offering proof of the advertisement concerning the possibility of multiple awards, should the court admit the evidence?
  - (A) Yes, because the provision in the written agreement, "all tires required by this agreement," is ambiguous.
  - (B) Yes, because the advertisement was in writing.
  - (C) No, because of the parol evidence rule.
  - (D) No, because it would make the contract illusory.
  
17. If the court concludes that the Tyres-County contract is an agreement by County to buy its tire requirements from Tyres, Tyres probably will
  - (A) recover under the contracts clause of the United States Constitution.
  - (B) recover under the provisions of the Uniform Commercial Code.
  - (C) not recover, because the agreement lacks mutuality of obligation.
  - (D) not recover, because the agreement is indefinite as to quantity.

GO ON TO THE NEXT PAGE.

18. Supermarket is in a section of town where there are sometimes street fights and where pedestrians are occasionally the victims of pickpockets and muggers. In recognition of the unusual number of robberies in the area, the supermarket posted signs in the store and in its parking lot that read:

Warning: There are pickpockets and muggers at work in this part of the city. Supermarket is not responsible for the acts of criminals.

One evening, Lorner drove to Supermarket to see about a special on turkeys that Supermarket was advertising. She decided that the turkeys were too large and left the store without purchasing anything. In the parking lot, she was attacked by an unknown man who raped her and then ran away.

If Lorner sues Supermarket, the result should be for the

- (A) plaintiff, if Supermarket failed to take reasonable steps to protect customers against criminal attack in its parking lot.
- (B) plaintiff, because Supermarket is liable for harm to business invitees on its premises.
- (C) defendant, if the warning signs were plainly visible to Lorner.
- (D) defendant, because the rapist was the proximate cause of Lorner's injuries.

19. Jones wanted to kill Adams because he believed Adams was having an affair with Jones's wife. Early one morning, armed with a pistol, he crouched behind some bushes on a park hillside overlooking a path upon which Adams frequently jogged. On this morning, however, Jones saw Adams jogging on another path about a half mile away. Nonetheless, Jones fired five shots at Adams. None of the five shots came anywhere close to Adams as he was well out of the range of the pistol Jones was using.

Jones is

- (A) guilty of attempted murder, if he was not aware of the limited range of his pistol.
- (B) guilty of attempted murder, if a reasonable person would not have been aware of the limited range of his pistol.
- (C) not guilty of attempted murder, or any lesser included offense, because, under the circumstances, it was impossible for him to have killed Adams.
- (D) not guilty of attempted murder, but guilty of assault.

GO ON TO THE NEXT PAGE.

20. Widgets are manufactured wholly from raw materials mined and processed in the state of Green. The only two manufacturers of widgets in the United States are also located in that state. However, their widgets are purchased by retailers located in every state. The legislature of the state of Green is considering the adoption of a statute that would impose a tax solely on the manufacture of widgets. The tax is to be calculated at 3% of their wholesale value.

Which of the following arguments would be LEAST helpful to the state in defending the constitutionality of this proposed state tax on widgets?

- (A) At the time widgets are manufactured and taxed they have not yet entered the channels of interstate commerce.
- (B) The economic impact of this tax will be passed on to both in-state and out-of-state purchasers of widgets and, therefore, it is wholly nondiscriminatory in its effect.
- (C) Because of the powers reserved to them by the Tenth Amendment, states have plenary authority to construct their tax system in any manner they choose.
- (D) A tax on the manufacture of widgets may be imposed only by the state in which the manufacturing occurs and, therefore, it is not likely to create the danger of a multiple tax burden on interstate commerce.

21. Blackacre is a large tract of land owned by a religious order known as The Seekers. On Blackacre, The Seekers erected a large residential building where its members reside. Blackacre is surrounded by rural residential properties and its only access to a public way is afforded by an easement over a strip of land 30 feet wide. The easement was granted to The Seekers by deed from Sally, the owner of one of the adjacent residential properties. The Seekers built a driveway on the strip, and the easement was used for 20 years without incident or objection.

Last year, as permitted by the applicable zoning ordinance, The Seekers constructed a 200-bed nursing home and a parking lot on Blackacre, using all of Blackacre that was available for such development. The nursing home was very successful, and on Sundays visitors to the nursing home overflowed the parking facilities on Blackacre and parked all along the driveway from early in the morning through the evening hours. After two Sundays of the resulting congestion and inconvenience, Sally erected a barrier across the driveway on Sundays preventing any use of the driveway by anyone seeking access to Blackacre. The Seekers objected.

Sally brought an appropriate action to terminate the easement.

The most likely result in this action is that the court will hold for

- (A) Sally, because The Seekers excessively expanded the use of the dominant tenement.
- (B) Sally, because the parking on the driveway exceeded the scope of the easement.
- (C) The Seekers, because expanded use of the easement does not terminate the easement.
- (D) The Seekers, because Sally's use of self-help denies her the right to equitable relief.

GO ON TO THE NEXT PAGE.

22. Ralph and Sam were engaged in a heated discussion over the relative merits of their favorite professional football teams when Ralph said, "You have to be one of the dumbest persons around." Sam slapped Ralph. Ralph drew a knife and stabbed Sam in the stomach. Other persons then stepped in and stopped any further fighting. Despite the pleas of the other persons, Sam refused to go to a hospital or to seek medical treatment. About two hours later, he died as the result of a loss of blood. Ralph was charged with the murder of Sam. At trial, medical evidence established that if Sam had been taken to a hospital, he would have survived.

At the end of the case, Ralph moves for a judgment of acquittal or, in the alternative, for an instruction on the elements of voluntary manslaughter.

The court should

- (A) grant the motion for acquittal.
- (B) deny the motion for acquittal, but instruct on manslaughter because there is evidence of adequate provocation.
- (C) deny both motions, because Ralph failed to retreat.
- (D) deny both motions, because malice may be proved by the intentional use of a deadly weapon on a vital part of the body.

23. Three months ago, Bert agreed in writing to buy Sam's single-family residence, Liveacre, for \$110,000. Bert paid Sam a \$5,000 deposit to be applied to the purchase price. The contract stated that Sam had the right at his option to retain the deposit as liquidated damages in the event of Bert's default. The closing was to have taken place last week. Six weeks ago, Bert was notified by his employer that he was to be transferred to another job 1,000 miles away. Bert immediately notified Sam that he could not close, and therefore he demanded the return of his \$5,000. Sam refused, waited until after the contract closing date, listed with a broker, and then conveyed Liveacre for \$108,000 to Conner, a purchaser found by the real estate broker. Conner paid the full purchase price and immediately recorded his deed. Conner knew of the prior contract with Bert. In an appropriate action, Bert seeks to recover the \$5,000 deposit from Sam.

The most probable result will be that Sam

- (A) must return the \$5,000 to Bert, because Sam can no longer carry out his contract with Bert.
- (B) must return the \$5,000 to Bert, because Bert was legally justified in not completing the contract.
- (C) must return \$3,000 to Bert, because Sam's damages were only \$2,000.
- (D) may keep the \$5,000 deposit, because Bert breached the contract.

GO ON TO THE NEXT PAGE.

24. Rollem, an automobile retailer, had an adult daughter, Betsy, who needed a car in her employment but had only \$3,000 with which to buy one. Rollem wrote to her, "Give me your \$3,000 and I'll give you the car on our lot that we have been using as a demonstrator." Betsy thanked her father and paid him the \$3,000. As both Rollem and Betsy knew, the demonstrator was reasonably worth \$10,000. After Betsy had paid the \$3,000, but before the car had been delivered to her, one of Rollem's sales staff sold and delivered the same car to a customer for \$10,000. Neither the salesperson nor the customer was aware of the transaction between Rollem and Betsy.

Does Betsy, after rejecting a tendered return of the \$3,000 by Rollem, have an action against him for breach of contract?

- (A) Yes, because Rollem's promise was supported by bargained-for consideration.
- (B) Yes, because Rollem's promise was supported by the moral obligation a father owes his child as to the necessities of modern life.
- (C) No, because the payment of \$3,000 was inadequate consideration to support Rollem's promise.
- (D) No, because the salesperson's delivery of the car to the customer made it impossible for Rollem to perform.

25. Peter, who was 20 years old, purchased a new, high-powered sports car that was marketed with an intended and recognized appeal to youthful drivers. The car was designed with the capability to attain speeds in excess of 100 miles per hour. It was equipped with tires designed and tested only for a maximum safe speed of 85 miles per hour. The owner's manual that came with the car stated that "continuous driving over 90 miles per hour requires high-speed-capability tires," but the manual did not describe the speed capability of the tires sold with the car.

Peter took his new car out for a spin on a straight, smooth country road where the posted speed limit was 55 miles per hour. Intending to test the car's power, he drove for a considerable distance at over 100 miles per hour. While he was doing so, the tread separated from the left rear tire, causing the car to leave the road and hit a tree. Peter sustained severe injuries.

Peter has brought a strict product liability action in tort against the manufacturer of the car. You should assume that pure comparative fault principles apply to this case.

Will Peter prevail?

- (A) No, because Peter's driving at an excessive speed constituted a misuse of the car.
- (B) No, because the car was not defective.
- (C) Yes, if the statement in the manual concerning the tires did not adequately warn of the danger of high-speed driving on the tires mounted on the car.
- (D) Yes, unless Peter's driving at a speed in excess of the posted speed limit was negligence per se that, by the law of the jurisdiction, was not excusable.

GO ON TO THE NEXT PAGE.



26. In a federal court diversity action by Plant against Decord on an insurance claim, a question arose whether the court should apply a presumption that, where both husband and wife were killed in a common accident, the husband died last.

Whether this presumption should be applied is to be determined according to

- (A) traditional common law.
  - (B) federal statutory law.
  - (C) the law of the state whose substantive law is applied.
  - (D) the federal common law.
27. Plagued by neighborhood youths who had been stealing lawn furniture from his back yard, Armando remained awake nightly watching for them. One evening Armando heard noises in his backyard. He yelled out, warning intruders to leave. Receiving no answer, he fired a shotgun filled with nonlethal buckshot into bushes along his back fence where he believed the intruders might be hiding. A six-year-old child was hiding in the bushes and was struck in the eye by some of the pellets, causing loss of sight.

If Armando is charged with second-degree assault, which is defined in the jurisdiction as “maliciously causing serious physical injury to another,” he is

- (A) not guilty, because the child was trespassing and he was using what he believed was nondeadly force.
- (B) not guilty, because he did not intend to kill or to cause serious physical injury.
- (C) guilty, because he recklessly caused serious physical injury.
- (D) guilty, because there is no privilege to use force against a person who is too young to be criminally responsible.

28. Twenty percent of the residents of Green City are members of minority racial groups. These residents are evenly distributed among the many different residential areas of the city. The five city council members of Green City are elected from five single-member electoral districts that are nearly equally populated. No candidate has ever been elected to the city council who was a member of a minority racial group.

A group of citizens who are members of minority racial groups file suit in federal district court seeking a declaratory judgment that the single-member districts in Green City are unconstitutional. They claim that the single-member districting system in that city diminishes the ability of voters who are members of minority racial groups to affect the outcome of city elections. They seek an order from the court forcing the city to adopt an at-large election system in which the five candidates with the greatest vote totals would be elected to the city council. No state or federal statutes are applicable to the resolution of this suit.

Which of the following constitutional provisions provides the most obvious basis for plaintiffs’ claim in this suit?

- (A) The Thirteenth Amendment.
- (B) The due process clause of the Fourteenth Amendment.
- (C) The privileges and immunities clause of the Fourteenth Amendment.
- (D) The Fifteenth Amendment.

GO ON TO THE NEXT PAGE.



29. Loomis, the owner and operator of a small business, encourages “wellness” on the part of his employees and supports various physical-fitness programs to that end. Learning that one of his employees, Graceful, was a dedicated jogger, Loomis promised to pay her a special award of \$100 if she could and would run one mile in less than six minutes on the following Saturday. Graceful thanked him, and did in fact run a mile in less than six minutes on the day specified. Shortly thereafter, however, Loomis discovered that for more than a year Graceful had been running at least one mile in less than six minutes every day as a part of her personal fitness program. He refused to pay the \$100.

In an action by Graceful against Loomis for breach of contract, which of the following best summarizes the probable decision of the court?

- (A) Loomis wins, because it is a compelling inference that Loomis’s promise did not induce Graceful to run the specified mile.
- (B) Loomis wins, because Graceful’s running of the specified mile was beneficial, not detrimental, to her in any event.
- (C) Graceful wins, because running a mile in less than six minutes is a significantly demanding enterprise.
- (D) Graceful wins, because she ran the specified mile as requested, and her motives for doing so are irrelevant.

30. Able was the owner of Blackacre, an undeveloped city lot. Able and Baker executed a written document in which Able agreed to sell Blackacre to Baker and Baker agreed to buy Blackacre from Able for \$100,000; the document did not provide for an earnest money down payment. Able recorded the document, as authorized by statute.

Able orally gave Baker permission to park his car on Blackacre without charge prior to the closing. Thereafter, Baker frequently parked his car on Blackacre.

Another property came on the market that Baker wanted more than Blackacre. Baker decided to try to escape any obligation to Able.

Baker had been told that contracts for the purchase and sale of real property require consideration and concluded that because he had made no earnest money down payment, he could refuse to close and not be liable. Baker notified Able of his intention not to close and, in fact, did refuse to close on the date set for the closing. Able brought an appropriate action to compel specific performance by Baker.

If Able wins, it will be because

- (A) Baker’s use of Blackacre for parking constitutes part performance.
- (B) general contract rules regarding consideration apply to real estate contracts.
- (C) the doctrine of equitable conversion applies.
- (D) the document was recorded.

GO ON TO THE NEXT PAGE.

**Questions 31-32** are based on the following fact situation.

Under the terms of a written contract, Karp agreed to construct for Manor a garage for \$10,000. Nothing was said in the parties' negotiations or in the contract about progress payments during the course of the work.

31. For this question only, assume the following facts. After completing 25% of the garage strictly according to Manor's specifications, Karp demanded payment of \$2,000 as a "reasonable progress payment." Manor refused, and Karp abandoned the job.

If each party sues the other for breach of contract, which of the following will the court decide?

- (A) Both parties are in breach, and each is entitled to damages, if any, from the other.
- (B) Only Karp is in breach and liable for Manor's damages, if any.
- (C) Only Manor is in breach and liable for Karp's damages, if any.
- (D) Both parties took reasonable positions, and neither is in breach.

32. For this question only, assume the following facts. After completing 25% of the garage strictly according to Manor's specifications, Karp assigned his rights under the contract to Banquo as security for an \$8,000 loan. Banquo immediately notified Manor of the assignment. Karp thereafter, without legal excuse, abandoned the job before it was half-complete. Karp subsequently defaulted on the loan from Banquo. Karp has no assets. It will cost Manor at least \$8,000 to get the garage finished by another builder.

If Banquo sues Manor for \$8,000, which of the following will the court decide?

- (A) Banquo wins, because the Karp-Manor contract was in existence and Karp was not in breach when Banquo gave Manor notice of the assignment.
- (B) Banquo wins, because Banquo as a secured creditor over Karp is entitled to priority over Manor's unsecured claim against Karp.
- (C) Manor wins, because his right to recoupment on account of Karp's breach is available against Banquo as Karp's assignee.
- (D) Manor wins, because his claim against Karp arose prior to Karp's default on his loan from Banquo.

GO ON TO THE NEXT PAGE.

33. The Sports Championship Revenue Enhancement Act is a federal statute that was enacted as part of a comprehensive program to eliminate the federal budget deficit. That act imposed, for a period of five years, a 50% excise tax on the price of tickets to championship sporting events. Such events included the World Series, the Super Bowl, major college bowl games, and similar championship sports events.

This federal tax is probably

- (A) constitutional, because the compelling national interest in reducing the federal budget deficit justifies this tax as a temporary emergency measure.
- (B) constitutional, because an act of Congress that appears to be a revenue raising measure on its face is not rendered invalid because it may have adverse economic consequences for the activity taxed.
- (C) unconstitutional, because a 50% tax is likely to reduce attendance at championship sporting events and, therefore, is not rationally related to the legitimate interest of Congress in eliminating the budget deficit.
- (D) unconstitutional, because Congress violates the equal protection component of the Fifth Amendment by singling out championship sporting events for this tax while failing to tax other major sporting, artistic, or entertainment events to which tickets are sold.

34. On June 1, Topline Wholesale, Inc., received a purchase-order form from Wonder-Good, Inc., a retailer and new customer, in which the latter ordered 1,000 anti-recoil widgets for delivery no later than August 30 at a delivered total price of \$10,000, as quoted in Topline's current catalog. Both parties are merchants with respect to widgets of all types. On June 2, Topline mailed to Wonder-Good its own form, across the top of which Topline's president had written, "We are pleased to accept your order." This form contained the same terms as Wonder-Good's form except for an additional printed clause in Topline's form that provided for a maximum liability of \$100 for any breach of contract by Topline.

As of June 5, when Wonder-Good received Topline's acceptance form, which of the following is an accurate statement concerning the legal relationship between Topline and Wonder-Good?

- (A) There is no contract, because the liability-limitation clause in Topline's form is a material alteration of Wonder-Good's offer.
- (B) There is no contract, because Wonder-Good did not consent to the liability-limitation clause in Topline's form.
- (C) There is an enforceable contract whose terms include the liability-limitation clause in Topline's form, because liquidation of damages is expressly authorized by the Uniform Commercial Code.
- (D) There is an enforceable contract whose terms do not include the liability-limitation clause in Topline's form.

GO ON TO THE NEXT PAGE.

35. Electco operates a factory that requires the use of very high voltage electricity. Paul owns property adjacent to the Electco plant where he has attempted to carry on a business that requires the use of sensitive electronic equipment. The effectiveness of Paul's electronic equipment is impaired by electrical interference arising from the high voltage currents used in Electco's plant. Paul has complained to Electco several times, with no result. There is no way that Electco, by taking reasonable precautions, can avoid the interference with Paul's operation that arises from the high voltage currents necessary to Electco's operation.

In Paul's action against Electco to recover damages for the economic loss caused to him by the electrical interference, will Paul prevail?

- (A) Yes, because Electco's activity is abnormally dangerous.
- (B) Yes, for loss suffered by Paul after Electco was made aware of the harm its activity was causing to Paul.
- (C) No, unless Electco caused a substantial and unreasonable interference with Paul's business.
- (D) No, because Paul's harm was purely economic and did not arise from physical harm to his person or property.

36. Les leased a barn to his neighbor, Tom, for a term of three years. Tom took possession of the barn and used it for his farming purposes. The lease made Les responsible for structural repairs to the barn, unless they were made necessary by actions of Tom.

One year later, Les conveyed the barn and its associated land to Lottie "subject to the lease to Tom." Tom paid the next month's rent to Lottie. The next day a portion of an exterior wall of the barn collapsed because of rot in the interior structure of the wall. The wall had appeared to be sound, but a competent engineer, on inspection, would have discovered its condition. Neither Lottie nor Tom had the barn inspected by an engineer. Tom was injured as a result of the collapse of the wall.

Les had known that the wall was dangerously weakened by rot and needed immediate repairs, but had not told Tom or Lottie. There is no applicable statute.

Tom brought an appropriate action against Les to recover damages for the injuries he sustained. Lottie was not a party.

Which of the following is the most appropriate comment concerning the outcome of this action?

- (A) Tom should lose, because Lottie assumed all of Les's obligations by reason of Tom's attornment to her.
- (B) Tom should recover, because there is privity between lessor and lessee and it cannot be broken unilaterally.
- (C) Tom should recover, because Les knew of the danger but did not warn Tom.
- (D) Tom should lose, because he failed to inspect the barn.

GO ON TO THE NEXT PAGE.

37. Dahle is charged with possession of heroin. Prosecution witness Walker, an experienced dog trainer, testified that he was in the airport with a dog trained to detect heroin. As Dahle approached, the dog immediately became alert and pawed and barked frantically at Dahle's briefcase. Dahle managed to run outside and throw his briefcase into the river, from which it could not be recovered. After Walker's experience is established, he is asked to testify as an expert that the dog's reaction told him that Dahle's briefcase contained heroin.

Walker's testimony is

- (A) admissible, as evidence of Dahle's guilt.
- (B) admissible, because an expert may rely on hearsay.
- (C) inadmissible, because it is based on hearsay not within any exception.
- (D) inadmissible, because of the unreliability of the reactions of an animal.

38. Doe negligently caused a fire in his house, and the house burned to the ground. As a result, the sun streamed into Peter's yard next door, which previously had been shaded by Doe's house. The sunshine destroyed some delicate and valuable trees in Peter's yard that could grow only in the shade. Peter has brought a negligence action against Doe for the loss of Peter's trees. Doe has moved to dismiss the complaint.

The best argument in support of this motion would be that

- (A) Doe's negligence was not the active cause of the loss of Peter's trees.
- (B) Doe's duty to avoid the risks created by a fire did not encompass the risk that sunshine would damage Peter's trees.
- (C) the loss of the trees was not a natural and probable consequence of Doe's negligence.
- (D) Peter suffered a purely economic loss, which is not compensable in a negligence action.

39. Phillips bought a new rifle and wanted to try it out by doing some target shooting. He went out into the country to an area where he had previously hunted. Much to his surprise, he noticed that the area beyond a clearing contained several newly constructed houses that had not been there before. Between the houses there was a small playground where several children were playing. Nevertheless, Phillips nailed a paper target to a tree and went to a point where the tree was between himself and the playground. He then fired several shots at the target. One of the shots missed the target and the tree and hit and killed one of the children in the playground.

Phillips was convicted of murder. He appealed, contending that the evidence was not sufficient to support a conviction of murder.

The appellate court should

- (A) affirm the conviction, as the evidence is sufficient to support a conviction of murder.
- (B) reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of voluntary manslaughter.
- (C) reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of involuntary manslaughter.
- (D) reverse the conviction and order the case dismissed, because the evidence is sufficient only for a finding of negligence and negligence alone cannot support a criminal conviction.

GO ON TO THE NEXT PAGE.

**Questions 40-41** are based on the following fact situation.

Dominique obtained a bid of \$10,000 to tear down her old building and another bid of \$90,000 to replace it with a new structure in which she planned to operate a sporting goods store. Having only limited cash available, Dominique asked Hardcash for a \$100,000 loan. After reviewing the plans for the project, Hardcash in a signed writing promised to lend Dominique \$100,000 secured by a mortgage on the property and repayable over ten years in equal monthly installments at 10% annual interest. Dominique promptly accepted the demolition bid and the old building was removed, but Hardcash thereafter refused to make the loan. Despite diligent efforts, Dominique was unable to obtain a loan from any other source.

40. Does Dominique have a cause of action against Hardcash?
- (A) Yes, because by having the building demolished, she accepted Hardcash's offer to make the loan.
  - (B) Yes, because her reliance on Hardcash's promise was substantial, reasonable, and foreseeable.
  - (C) No, because there was no bargained-for exchange of consideration for Hardcash's promise to make the loan.
  - (D) No, because Dominique's inability to obtain a loan from any other source demonstrated that the project lacked the financial soundness that was a constructive condition to Hardcash's performance.
41. For this question only, assume that Dominique has a cause of action against Hardcash.
- If she sues him for monetary relief, what is the probable measure of her recovery?
- (A) Expectancy damages, measured by the difference between the value of the new building and the old building, less the amount of the proposed loan (\$100,000).
  - (B) Expectancy damages, measured by the estimated profits from operating the proposed sporting goods store for ten years, less the cost of repaying a \$100,000 loan at 10% interest over ten years.
  - (C) Reliance damages, measured by the \$10,000 expense of removing the old building, adjusted by the decrease or increase in the market value of Dominique's land immediately thereafter.
  - (D) Nominal damages only, because both expectancy and reliance damages are speculative, and there is no legal or equitable basis for awarding restitution.

GO ON TO THE NEXT PAGE.

42. Dan, an eight-year-old, rode his bicycle down his driveway into a busy highway and Driver had to stop her car suddenly to avoid colliding with the bike. Because of the sudden stop, Driver's two-year-old son, Peter, who was sitting on the seat without any restraint, was thrown into the dashboard and injured. Had Peter been properly restrained in a baby car seat, as required by a state safety statute of which his mother was aware, he would not have been injured.

In an action brought on Peter's behalf against Dan's parents to recover for Peter's injuries, Peter will

- (A) not prevail, because parents are not vicariously liable for the negligent acts of their children.
- (B) not prevail, because Peter's injury was attributable to his mother's knowing violation of a safety statute.
- (C) prevail, if Dan's parents knew that he sometimes drove into the highway, and they took no steps to prevent it.
- (D) prevail, if Dan's riding into the highway was negligent and the proximate cause of Peter's injuries.

43. While Hill was in her kitchen, she heard the screech of automobile tires. She ran to the window and saw a tricycle flying through the air. The tricycle had been hit by a car driven by Weber, who had been speeding. She also saw a child's body in the grass adjacent to the street. As a result of her shock from this experience, Hill suffered a heart attack.

In a claim by Hill against Weber, the issue on which Hill's right to recover will depend is whether

- (A) a person can recover damages based on the defendant's breach of a duty owed to another.
- (B) it is foreseeable that a person may suffer physical harm caused solely by an injury inflicted on another.
- (C) a person can recover damages caused by shock unaccompanied by bodily impact.
- (D) a person can recover damages for harm resulting from shock caused solely by another's peril or injury.

44. Suffering from painful and terminal cancer, Willa persuaded Harold, her husband, to kill her to end her misery. As they reminisced about their life together and reaffirmed their love for each other, Harold tried to discourage Willa from giving up. Willa insisted, however, and finally Harold held a gun to her head and killed her.

The most serious degree of criminal homicide of which Harold can be legally convicted is

- (A) no degree of criminal homicide.
- (B) involuntary manslaughter.
- (C) voluntary manslaughter.
- (D) murder.

GO ON TO THE NEXT PAGE.



45. Peterson sued Dylan for libel. After Peterson testified that Dylan wrote to Peterson's employer that Peterson was a thief, Dylan offers evidence that Peterson once stole money from a former employer.

The evidence of Peterson's prior theft is

- (A) admissible, as substantive evidence to prove that Peterson is a thief.
  - (B) admissible, but only to impeach Peterson's credibility.
  - (C) inadmissible, because character may not be shown by specific instances of conduct.
  - (D) inadmissible, because such evidence is more unfairly prejudicial than probative.
46. The Federal Computer Abuse Act establishes the Federal Computer Abuse Commission, authorizes the Commission to issue licenses for the possession of computers on terms that are consistent with the purposes of the act, and makes the unlicensed possession of a computer a crime. The provisions of the Federal Computer Abuse Act are inseverable.

User applied to the Federal Computer Abuse Commission for a license to possess a computer. The Commission held, and User participated in, a trial-type proceeding on User's license application. In that proceeding it was demonstrated that User repeatedly and intentionally used computers to introduce secret destructive computer programs (computer viruses) into electronic data banks without the consent of their owners. As a result, the Commission denied User's application for a license. The license denial was based on a Commission rule authorized by the Computer Abuse Act that prohibited the issuance of computer licenses to persons who had engaged in such conduct. Nevertheless, User retained and continued to use his computer. He was subsequently convicted of the crime of unlicensed possession of a computer. On appeal, he challenges the constitutionality of the licensing provision of the Federal Computer Abuse Act.

In this case, the reviewing court would probably hold that act to be

- (A) constitutional, because the Constitution generally authorizes Congress to enact all laws that are necessary and proper to advance the general welfare, and Congress could reasonably believe that possession of computers by people like User constitutes a threat to the general welfare.
- (B) constitutional, because Congress may use the authority vested in it by the commerce clause to regulate the possession of computers and the provisions of this act do not violate any prohibitory provision of the Constitution.
- (C) unconstitutional, because Congress may not impose a criminal penalty on action that is improper only because it is inconsistent with an agency rule.
- (D) unconstitutional, because the mere possession of a computer is a wholly local matter that is beyond the regulatory authority of Congress.

GO ON TO THE NEXT PAGE.



47. Defendant left her car parked on the side of a hill. Two minutes later, the car rolled down the hill and struck and injured Plaintiff.

In Plaintiff's negligence action against Defendant, Plaintiff introduced into evidence the facts stated above, which are undisputed. Defendant testified that, when she parked her car, she turned the front wheels into the curb and put on her emergency brakes, which were in good working order. She also introduced evidence that, in the weeks before this incident, juveniles had been seen tampering with cars in the neighborhood. The jury returned a verdict in favor of Defendant, and Plaintiff moved for a judgment notwithstanding the verdict.

Plaintiff's motion should be

- (A) granted, because it is more likely than not that Defendant's negligent conduct was the legal cause of Plaintiff's injuries.
- (B) granted, because the evidence does not support the verdict.
- (C) denied, because, given Defendant's evidence, the jury was not required to draw an inference of negligence from the circumstances of the accident.
- (D) denied, if Defendant was in no better position than Plaintiff to explain the accident.

48. Able conveyed Blackacre to Baker by a warranty deed. Baker recorded the deed four days later. After the conveyance but prior to Baker's recording of the deed, Smollett properly filed a judgment against Able.

The two pertinent statutes in the jurisdiction provide the following: 1) 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, and 2) 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.

The recording act has no provision for a grace period.

Smollett joined both Able and Baker in an appropriate action to foreclose the judgment lien against Blackacre.

If Smollett is unsuccessful, it will be because

- (A) Able's warranty of title to Baker defeats Smollett's claim.
- (B) Smollett is not a purchaser for value.
- (C) any deed is superior to a judgment lien.
- (D) four days is not an unreasonable delay in recording a deed.

GO ON TO THE NEXT PAGE.

49. The United States Department of Energy regularly transports nuclear materials through Centerville on the way to a nuclear weapons processing plant it operates in a nearby state. The city of Centerville recently adopted an ordinance prohibiting the transportation of any nuclear materials in or through the city. The ordinance declares that its purpose is to protect the health and safety of the residents of that city.

May the Department of Energy continue to transport these nuclear materials through the city of Centerville?

- (A) No, because the ordinance is rationally related to the public health and safety of Centerville residents.
- (B) No, because the Tenth Amendment reserves to the states certain unenumerated sovereign powers.
- (C) Yes, because the Department of Energy is a federal agency engaged in a lawful federal function and, therefore, its activities may not be regulated by a local government without the consent of Congress.
- (D) Yes, because the ordinance enacted by Centerville is invalid because it denies persons transporting such materials the equal protection of the laws.

50. Dart is charged with the statutory offense of “knowingly violating a regulation of the State Alcoholic Beverage Control Board” and specifically that he knowingly violated regulation number 345-90 issued by the State Alcoholic Beverage Control Board. That regulation prohibits the sale of alcoholic beverages to any person under the age of 18 and also prohibits the sale of any alcoholic beverage to a person over the age of 17 and under the age of 22 without the presentation of such person’s driver’s license or other identification showing the age of the purchaser to be 18 or older.

The evidence showed that Dart was a bartender in a tavern and sold a bottle of beer to a person who was 17 years old and that Dart did not ask for or see the purchaser’s driver’s license or any other identification.

Which of the following, if found by the jury, would be of the most help to Dart?

- (A) The purchaser had a driver’s license that falsely showed his age to be 21.
- (B) Dart had never been told he was supposed to check identification of persons over 17 and under 22 before selling them alcohol.
- (C) Dart did not know that the regulations classified beer as an alcoholic beverage.
- (D) Dart mistakenly believed the purchaser to be 24 years old.

GO ON TO THE NEXT PAGE.

**Questions 51-52** are based on the following fact situation.

In a writing signed by both parties on December 1, Kranc agreed to buy from Schaff a gasoline engine for \$1,000, delivery to be made on the following February 1. Through a secretarial error, the writing called for delivery on March 1, but neither party noticed the error until February 1. Before signing the agreement, Kranc and Schaff orally agreed that the contract of sale would be effective only if Kranc should notify Schaff in writing not later than January 2 that Kranc had arranged to resell the engine to a third person. Otherwise, they agreed orally, "There is no deal." On December 15, Kranc entered into a contract with Trimota to resell the engine to Trimota at a profit.

51. For this question only, assume the following facts. Kranc did not give Schaff notice of the resale until January 25, and Schaff received it by mail on January 26. Meantime, the value of the engine had unexpectedly increased about 75% since December 1, and Schaff renounced the agreement.

If Kranc sues Schaff on February 2 for breach of contract, which of the following is Schaff's best defense?

- (A) The secretarial error in the written delivery-term was a mutual mistake concerning a basic fact, and the agreement is voidable by either party.
- (B) Kranc's not giving written notice by January 2 of his resale was a failure of a condition precedent to the existence of a contract.
- (C) In view of the unexpected 75% increase in value of the engine after December 1, Schaff's performance is excused by the doctrine of commercial frustration.
- (D) The agreement, if any, is unenforceable because a material term was not included in the writing.

52. For this question only, assume the following facts. On December 16, Kranc notified Schaff by telephone of Kranc's resale agreement with Trimota, and explained that a written notice was unfeasible because Kranc's secretary was ill. Schaff replied, "That's okay. I'll get the engine to you on February 1, as we agreed." Having learned, however, that the engine had increased in value about 75% since December 1, Schaff renounced the agreement on February 1.

If Kranc sues Schaff on February 2 for breach of contract, which of the following concepts best supports Kranc's claim?

- (A) Substantial performance.
- (B) Nonoccurrence of a condition subsequent.
- (C) Waiver of condition.
- (D) Novation of buyers.

GO ON TO THE NEXT PAGE.

53. David owned a shotgun that he used for hunting. David knew that his old friend, Mark, had become involved with a violent gang that recently had a shoot-out with a rival gang. David, who was going to a farm to hunt quail, placed his loaded shotgun on the back seat of his car. On his way to the farm, David picked up Mark to give him a ride to a friend's house. After dropping off Mark at the friend's house, David proceeded to the farm, where he discovered that his shotgun was missing from his car. Mark had taken the shotgun and, later in the day, Mark used it to shoot Paul, a member of the rival gang. Paul was severely injured.

Paul recovered a judgment for his damages against David, as well as Mark, on the ground that David was negligent in allowing Mark to obtain possession of the gun, and was therefore liable jointly and severally with Mark for Paul's damages. The jurisdiction has a statute that allows contribution based upon proportionate fault and adheres to the traditional common-law rules on indemnity.

If David fully satisfies the judgment, David then will have a right to recover from Mark

- (A) indemnity for the full amount of the judgment, because Mark was an intentional tortfeasor.
- (B) contribution only, based on comparative fault, because David himself was negligent.
- (C) one-half of the amount of the judgment.
- (D) nothing, because David's negligence was a substantial proximate cause of the shooting.

54. The legislature of the state of Chetopah enacted a statute requiring that all law enforcement officers in that state be citizens of the United States. Alien, lawfully admitted to permanent residency five years before the enactment of this statute, sought employment as a forensic pathologist in the Chetopah coroner's office. He was denied such a job solely because he was not a citizen.

Alien thereupon brought suit in federal district court against appropriate Chetopah officials seeking to invalidate this citizenship requirement on federal constitutional grounds.

The strongest ground upon which to attack this citizenship requirement is that it

- (A) constitutes an *ex post facto* law as to previously admitted aliens.
- (B) deprives an alien of a fundamental right to employment without the due process of law guaranteed by the Fourteenth Amendment.
- (C) denies an alien a right to employment in violation of the privileges and immunities clause of the Fourteenth Amendment.
- (D) denies an alien the equal protection of the laws guaranteed by the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

55. Olwen owned 80 acres of land, fronting on a town road. Two years ago, Olwen sold to Buck the back 40 acres. The 40 acres sold to Buck did not adjoin any public road. Olwen's deed to Buck expressly granted a right-of-way over a specified strip of Olwen's retained 40 acres, so Buck could reach the town road. The deed was promptly and properly recorded.

Last year, Buck conveyed the back 40 acres to Sam. They had discussed the right-of-way over Olwen's land to the road, but Buck's deed to Sam made no mention of it. Sam began to use the right-of-way as Buck had, but Olwen sued to enjoin such use by Sam.

The court should decide for

- (A) Sam, because he has an easement by implication.
- (B) Sam, because the easement appurtenant passed to him as a result of Buck's deed to him.
- (C) Olwen, because Buck's easement in gross was not transferable.
- (D) Olwen, because Buck's deed failed expressly to transfer the right-of-way to Sam.

56. Dickinson was charged with possession of cocaine. At Dickinson's trial, the prosecution established that, when approached by police on a suburban residential street corner, Dickinson dropped a plastic bag and ran, and that when the police returned to the corner a few minutes later after catching Dickinson, they found a plastic bag containing white powder. Dickinson objects to introduction of this bag (the contents of which would later be established to be cocaine), citing lack of adequate identification.

The objection should be

- (A) overruled, because there is sufficient evidence to find that the bag was the one Dickinson dropped.
- (B) overruled, because the objection should have been made on the basis of incomplete chain of custody.
- (C) sustained, because Dickinson did not have possession of the bag at the time he was arrested.
- (D) sustained, unless the judge makes a finding by a preponderance of the evidence that the bag was the one dropped by Dickinson.

GO ON TO THE NEXT PAGE.

57. Chemco manufactured a liquid chemical product known as XRX. Some XRX leaked from a storage tank on Chemco's property, seeped into the groundwater, flowed to Farmer's adjacent property, and polluted Farmer's well. Several of Farmer's cows drank the polluted well water and died.

If Farmer brings an action against Chemco to recover the value of the cows that died, Farmer will

- (A) prevail, because a manufacturer is strictly liable for harm caused by its products.
- (B) prevail, because the XRX escaped from Chemco's premises.
- (C) not prevail, unless Farmer can establish that the storage tank was defective.
- (D) not prevail, unless Chemco failed to exercise reasonable care in storing the XRX.

58. A threatening telephone call that purports to be from Defendant to Witness is most likely to be admitted against Defendant if

- (A) the caller identified himself as Defendant.
- (B) Witness had previously given damaging testimony against Defendant in another lawsuit.
- (C) Witness had given his unlisted number only to Defendant and a few other persons.
- (D) Witness believes that Defendant is capable of making such threats.

GO ON TO THE NEXT PAGE.

59. The open-air amphitheater in the city park of Rightville has been utilized for concerts and other entertainment programs. Until this year, each of the groups performing in that city facility was allowed to make its own arrangements for sound equipment and sound technicians.

After recurring complaints from occupants of residential buildings adjacent to the city park about intrusive noise from some performances held in the amphitheater, the Rightville City Council passed an ordinance establishing city control over all sound amplification at all programs held there. The ordinance provided that Rightville's Department of Parks would be the sole provider in the amphitheater of sound amplification equipment and of the technicians to operate the equipment "to ensure a proper balance between the quality of the sound at such performances and respect for the privacy of nearby residential neighbors."

Which of the following standards should a court use to determine the constitutionality on its face of this content neutral ordinance?

- (A) The ordinance is narrowly tailored to serve a substantial government interest, and does not unreasonably limit alternative avenues of expression.
- (B) The ordinance is rationally related to a legitimate government interest, and does not unreasonably limit alternative avenues of expression.
- (C) The ordinance is rationally related to a legitimate government interest and restricts the expressive rights involved no more than is reasonable under the circumstances.
- (D) The ordinance is substantially related to a legitimate governmental interest and restricts the expressive rights involved no more than is reasonable in light of the surrounding circumstances.

60. Smith and Penn were charged with murder. Each gave a confession to the police that implicated both of them. Smith later retracted her confession, claiming that it was coerced.

Smith and Penn were tried together. The prosecutor offered both confessions into evidence. Smith and Penn objected. After a hearing, the trial judge found that both confessions were voluntary and admitted both into evidence. Smith testified at trial. She denied any involvement in the crime and claimed that her confession was false and the result of coercion. Both defendants were convicted.

On appeal, Smith contends her conviction should be reversed because of the admission into evidence of Penn's confession.

Smith's contention is

- (A) correct, unless Penn testified at trial.
- (B) correct, whether or not Penn testified at trial.
- (C) incorrect, because Smith testified in her own behalf.
- (D) incorrect, because Smith's own confession was properly admitted into evidence.

GO ON TO THE NEXT PAGE.

61. The state of Orrington wanted to prevent its only major league baseball team, the privately owned and operated Orrington Opossums, from moving to the rival state of Atrium. After a heated political debate in the legislature, Orrington enacted legislation providing for a one-time grant of \$10 million in state funds to the Opossums to cover part of the projected income losses the team would suffer during the next five years if it remained in that state. The legislation required that the team remain in the state for at least ten years if it accepted the grant.

After accepting the grant, the owners of the Opossums decided to build a new \$150 million stadium in Orrington. As plans for the construction of the new stadium proceeded, it became evident that all of the contractors and subcontractors would be white males, and that they had been chosen by the owners of the Opossums without any public bids because these contractors and subcontractors had successfully built the only other new baseball stadium in the region. Several contractors who were females or members of minority racial groups filed suit against the owners of the Opossums in federal district court to compel public solicitation of bids for the construction of its new stadium on an equal opportunity basis, and to enjoin construction of the stadium until compliance was ensured. Their only claim was that the contracting practices of the owners of the Opossums denied them the equal protection of the laws in violation of the Fourteenth Amendment.

In this suit, the court will probably rule that

- (A) the nexus between the actions of the owners of the Opossums and the one-time grant of monies to them by the state is sufficiently substantial to subject their actions to the limitations of the Fourteenth Amendment.
- (B) the intense public preoccupation with the activities of major league baseball teams coupled with the fact that baseball is considered to be our national pastime is sufficient to justify application of the Fourteenth Amendment to the activities of major league teams.
- (C) in the absence of additional evidence of state involvement in the operations or decisions of the owners of the Opossums, a onetime grant of state monies to them is insufficient to warrant treating their actions as subject to the limitations of the Fourteenth Amendment.
- (D) the issues presented by this case are nonjusticiable political questions because there is a lack of judicially manageable standards to resolve them and they are likely to be deeply involved in partisan politics.

GO ON TO THE NEXT PAGE.



**Questions 62-63** are based on the following fact situation.

Walker, who knew nothing about horses, inherited Aberlone, a thoroughbred colt whose disagreeable behavior made him a pest around the barn. Walker sold the colt for \$1,500 to Sherwood, an experienced racehorse-trainer who knew of Walker's ignorance about horses. At the time of sale, Walker said to Sherwood, "I hate to say it, but this horse is bad-tempered and nothing special."

62. For this question only, assume that soon after the sale, Aberlone won three races and earned \$400,000 for Sherwood.

Which of the following additional facts, if established by Walker, would best support his chance of obtaining rescission of the sale to Sherwood?

- (A) Walker did not know until after the sale that Sherwood was an experienced racehorse-trainer.
- (B) At a pre-sale exercise session of which Sherwood knew that Walker was not aware, Sherwood clocked Aberlone in record-setting time, far surpassing any previous performance.
- (C) Aberlone was the only thoroughbred that Walker owned, and Walker did not know how to evaluate young and untested racehorses.
- (D) At the time of the sale, Walker was angry and upset over an incident in which Aberlone had reared and thrown a rider.

63. Which one of the following scenarios would best support an action by Sherwood, rather than Walker, to rescind the sale?
- (A) In his first race after the sale, Aberlone galloped to a huge lead but dropped dead 100 yards from the finish line because of a rare congenital heart defect that was undiscoverable except by autopsy.
  - (B) Aberlone won \$5 million for Sherwood over a three-year racing career but upon being retired was found to be incurably sterile and useless as a breeder.
  - (C) After Aberlone had won three races for Sherwood, it was discovered that by clerical error, unknown to either party, Aberlone's official birth registration listed an undistinguished racehorse as the sire rather than the famous racehorse that in fact was the sire.
  - (D) A week after the sale, Aberlone went berserk and inflicted injuries upon Sherwood that required his hospitalization for six months and a full year for his recovery.

GO ON TO THE NEXT PAGE.

64. Sixty years ago by a properly executed and recorded deed, Albert conveyed Greenacre, a tract of land: "To Louis for life, then to Louis's widow for her life, then to Louis's child or children in equal shares." At that time, Louis, who was Albert's grandson, was six years old.

Shortly thereafter, Albert died testate. Louis was his only heir at law. Albert's will left his entire estate to First Church.

Twenty-five years ago, when he was 41, Louis married Maria who was then 20 years old; they had one child, Norman. Maria and Norman were killed in an automobile accident three years ago when Norman was 21. Norman died testate, leaving his entire estate to the American Red Cross. His father, Louis, was Norman's sole heir at law.

Two years ago, Louis married Zelda. They had no children. This year, Louis died testate, survived by his widow, Zelda, to whom he left his entire estate.

The common-law Rule Against Perpetuities is unchanged by statute in the jurisdiction.

In an appropriate action to determine the ownership of Greenacre, the court should find that title is vested in

- (A) First Church, because the widow of Louis was unborn at the time of conveyance and, hence, the remainder violated the Rule Against Perpetuities.
- (B) Zelda, because her life estate and her inheritance from Louis (who was Albert's sole heir at law and who was Norman's sole heir at law) merged the entire title in her.
- (C) the American Red Cross, because Norman had a vested remainder interest (as the only child of Louis) that it inherited, the life estate to Louis's widow being of no force and effect.
- (D) Zelda for life under the terms of Albert's deed, with the remainder to the American Red Cross as the successor in interest to Norman, Louis's only child.

65. In an automobile collision case brought by Poe against Davies, Poe introduced evidence that Ellis made an excited utterance that Davies ran the red light.

Davies called Witt to testify that later Ellis, a bystander, now deceased, told Witt that Davies went through a yellow light.

Witt's testimony should be

- (A) excluded, because it is hearsay not within any exception.
- (B) excluded, because Ellis is not available to explain or deny the inconsistency.
- (C) admitted only for the purpose of impeaching Ellis.
- (D) admitted as impeachment and as substantive evidence of the color of the light.

GO ON TO THE NEXT PAGE.

66. Plaintiff, a jockey, was seriously injured in a race when another jockey, Daring, cut too sharply in front of her without adequate clearance. The two horses collided, causing Plaintiff to fall to the ground, sustaining injury. The State Racetrack Commission ruled that, by cutting in too sharply, Daring committed a foul in violation of racetrack rules requiring adequate clearance for crossing lanes. Plaintiff has brought an action against Daring for damages in which one count is based on battery.

Will Plaintiff prevail on the battery claim?

- (A) Yes, if Daring was reckless in cutting across in front of Plaintiff's horse.
- (B) Yes, because the State Racetrack Commission determined that Daring committed a foul in violation of rules applicable to racing.
- (C) No, unless Daring intended to cause impermissible contact between the two horses or apprehension of such contact by Plaintiff.
- (D) No, because Plaintiff assumed the risk of accidental injury inherent in riding as a jockey in a horse race.

67. Able entered into a written contract with Baker to sell Greenacre. The contract was dated June 19 and called for a closing date on the following August 19. There was no other provision in the contract concerning the closing date. The contract contained the following clause: "subject to the purchaser, Baker, obtaining a satisfactory mortgage at the current rate." On the date provided for closing, Baker advised Able that he was unable to close because his mortgage application was still being processed by a bank. Able desired to declare the contract at an end and consulted his attorney in regard to his legal position.

Which of the following are relevant in advising Able of his legal position?

- I. Is time of the essence?
  - II. Parol evidence rule.
  - III. Statute of Frauds.
  - IV. Specific performance.
- 
- (A) I and III only.
  - (B) II and IV only.
  - (C) II, III, and IV only.
  - (D) I, II, III, and IV.

GO ON TO THE NEXT PAGE.

68. Lester was engaged to marry Sylvia. One evening, Lester became enraged at the comments of Sylvia's eight-year-old daughter, Cynthia, who was complaining, in her usual fashion, that she did not want her mother to marry Lester. Lester, who had had too much to drink, began beating her. Cynthia suffered some bruises and a broken arm. Sylvia took Cynthia to the hospital. The police were notified by the hospital staff. Lester was indicted for felony child abuse.

Lester pleaded with Sylvia to forgive him and to run away with him. She agreed. They moved out of state and took Cynthia with them. Without the testimony of the child, the prosecution was forced to dismiss the case.

Some time later, Sylvia returned for a visit with her family and was arrested and indicted as an accessory-after-the-fact to child abuse.

At her trial, the court should

- (A) dismiss the charge, because Lester had not been convicted.
- (B) dismiss the charge, because the evidence shows that any aid she rendered occurred after the crime was completed.
- (C) submit the case to the jury, on an instruction to convict only if Sylvia knew Lester had been indicted.
- (D) submit the case to the jury, on an instruction to convict only if her purpose in moving was to prevent Lester's conviction.

69. In response to massive layoffs of employees of automobile assembly plants located in the state of Ames, the legislature of that state enacted a statute which prohibits the parking of automobiles manufactured outside of the United States in any parking lot or parking structure that is owned or operated by the state or any of its instrumentalities. This statute does not apply to parking on public streets.

Which of the following is the strongest argument with which to challenge the constitutionality of this statute?

- (A) The statute imposes an undue burden on foreign commerce.
- (B) The statute denies the owners of foreign-made automobiles the equal protection of the laws.
- (C) The statute deprives the owners of foreign-made automobiles of liberty or property without due process of law.
- (D) The statute is inconsistent with the privileges and immunities clause of the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

70. Pate sued Dr. Doke for psychiatric malpractice and called Dr. Will as an expert witness. During Will's direct testimony, Will identified a text as a reliable authority in the field. He seeks to read to the jury passages from this book on which he had relied in forming his opinion on the proper standard of care.

The passage is

- (A) admissible, as a basis for his opinion and as substantive evidence of the proper standard of care.
- (B) admissible, as a basis for his opinion but not as substantive evidence of the proper standard of care.
- (C) inadmissible, because a witness's credibility cannot be supported unless attacked.
- (D) inadmissible, because the passage should be received as an exhibit and not read to the jury by the witness.

71. The Daily Sun, a newspaper, printed an article that stated:

Kitchen, the popular restaurant on the town square, has closed its doors. Kitchen employees have told the Daily Sun that the closing resulted from the owner's belief that Kitchen's general manager has embezzled thousands of dollars from the restaurant over the last several years. A decision on reopening the restaurant will be made after the completion of an audit of Kitchen's books.

Plaintiff, who is Kitchen's general manager, brought a libel action against the Daily Sun based on the publication of this article. The parties stipulated that Plaintiff never embezzled any funds from Kitchen. They also stipulated that Plaintiff is well known among many people in the community because of his job with Kitchen.

The case went to trial before a jury.

The defendant's motion for a directed verdict in its favor, made at the close of the evidence, should be granted if the

- (A) record contains no evidence that Plaintiff suffered special harm as a result of the publication.
- (B) record contains no evidence that the defendant was negligent as to the truth or falsity of the charge of embezzlement.
- (C) evidence is not clear and convincing that the defendant published the article with "actual malice."
- (D) record contains uncontradicted evidence that the article accurately reported what the employees told the Daily Sun.

GO ON TO THE NEXT PAGE.

72. Surgeon performed a sterilization operation on Patient. After the surgery, Surgeon performed a test that showed that Patient's fallopian tubes were not severed, as was necessary for sterilization. Surgeon did not reveal the failure of the operation to Patient, who three years later became pregnant and delivered a baby afflicted with a severe birth defect that will require substantial medical care throughout its life. The birth defect resulted from a genetic defect unknown to, and undiscoverable by, Surgeon. Patient brought an action on her own behalf against Surgeon, seeking to recover the cost of her medical care for the delivery of the baby, and the baby's extraordinary future medical expenses for which Patient will be responsible.

Which of the following questions is relevant to the lawsuit and currently most difficult to answer?

- (A) Did Surgeon owe a duty of care to the baby in respect to medical services rendered to Patient three years before the baby was conceived?
- (B) Can a person recover damages for a life burdened by a severe birth defect based on a physician's wrongful failure to prevent that person's birth from occurring?
- (C) Did Surgeon owe a duty to Patient to inform her that the sterilization operation had failed?
- (D) Is Patient entitled to recover damages for the baby's extraordinary future medical expenses?

73. Robert walked into a store that had a check-cashing service and tried to cash a \$550 check which was payable to him. The attendant on duty refused to cash the check because Robert did not have two forms of identification, which the store's policies required. Robert, who had no money except for the check and who needed cash to pay for food and a place to sleep, became agitated. He put his hand into his pocket and growled, "Give me the money or I'll start shooting." The attendant, who knew Robert as a neighborhood character, did not believe that he was violent or had a gun. However, because the attendant felt sorry for Robert, he handed over the cash. Robert left the check on the counter and departed. The attendant picked up the check and found that Robert had failed to endorse it.

If Robert is guilty of any crime, he is most likely guilty of

- (A) robbery.
- (B) attempted robbery.
- (C) theft by false pretenses.
- (D) larceny by trick.

GO ON TO THE NEXT PAGE.

**Questions 74-75** are based on the following fact situation.

Kabb, the owner of a fleet of taxis, contracted with Petrol, a dealer in petroleum products, for the purchase and sale of Kabb's total requirements of gasoline and oil for one year. As part of that agreement, Petrol also agreed with Kabb that for one year Petrol would place all his advertising with Ada Artiste, Kabb's wife, who owned her own small advertising agency. When Artiste was informed of the Kabb-Petrol contract, she declined to accept an advertising account from the Deturgid Soap Company because she could not handle both the Petrol and Deturgid accounts during the same year.

74. For this question only, assume the following facts. During the first month of the contract, Kabb purchased substantial amounts of his gasoline from a supplier other than Petrol, and Petrol thereupon notified Artiste that he would no longer place his advertising with her agency.

In an action against Petrol for breach of contract, Artiste probably will

- (A) succeed, because she is a third-party beneficiary of the Kabb-Petrol contract.
- (B) succeed, because Kabb was acting as Artiste's agent when he contracted with Petrol.
- (C) not succeed, because the failure of a constructive condition precedent excused Petrol's duty to place his advertising with Artiste.
- (D) not succeed, because Artiste did not provide any consideration to support Petrol's promise to place his advertising with her.

75. For this question only, make the following assumptions. Artiste was an intended beneficiary under the Kabb-Petrol contract. Kabb performed his contract with Petrol for six months, and during that time Petrol placed his advertising with Artiste. At the end of the six months, Kabb and Artiste were divorced, and Kabb then told Petrol that he had no further obligation to place his advertising with Artiste. Petrol thereupon notified Artiste that he would no longer place his advertising with her.

In an action against Petrol for breach of contract, Artiste probably will

- (A) succeed, because, on the facts of this case, Petrol and Kabb could not, without Artiste's consent, modify their contract so as to discharge Petrol's duties to Artiste.
- (B) succeed, because Kabb acted in bad faith in releasing Petrol from his duty with respect to Artiste.
- (C) not succeed, because, absent a provision in the contract to the contrary, the promisor and promisee of a third-party beneficiary contract retain by law the right to modify or terminate the contract.
- (D) not succeed, because the agency relationship, if any, between Kabb and Artiste terminated upon their divorce.

GO ON TO THE NEXT PAGE.



76. Drew, the owner of a truck leasing company, asked Pat, one of Drew's employees, to deliver \$1,000 to the dealership's main office. The following week, as a result of a dispute over whether the money had been delivered, Drew instructed Pat to come to the office to submit to a lie detector test.

When Pat reported to Drew's office for the test, it was not administered. Instead, without hearing Pat's story, Drew shouted at him, "You're a thief!" and fired him. Drew's shout was overheard by several other employees who were in another office, which was separated from Drew's office by a thin partition. The next day, Pat accepted another job at a higher salary. Several weeks later, upon discovering that the money had not been stolen, Drew offered to rehire Pat.

In a suit for slander by Pat against Drew, Pat will

- (A) prevail, because Pat was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.
- (B) prevail, if Drew should have foreseen that the statement would be overheard by other employees.
- (C) not prevail, if Drew made the charge in good faith, believing it to be true.
- (D) not prevail, because the statement was made to Pat alone and intended for his ears only.

77. Adam owns his home, Blackacre, which was mortgaged to Bank by a duly recorded purchase money mortgage. Last year, Adam replaced all of Blackacre's old windows with new windows.

Each new window consists of a window frame with three inserts: regular windows, storm windows, and screens. The windows are designed so that each insert can be easily inserted or removed from the window frame without tools to adjust to seasonal change and to facilitate the cleaning of the inserts.

The new windows were expensive. Adam purchased them on credit, signed a financing statement, and granted a security interest in the windows to Vend, the supplier of the windows. Vend promptly and properly filed and recorded the financing statement before the windows were installed. Adam stored the old windows in the basement of Blackacre.

This year, Adam has suffered severe financial reverses and has defaulted on his mortgage obligation to Bank and on his obligation to Vend.

Bank brought an appropriate action to enjoin Vend from its proposed repossession of the window inserts.

In the action, the court should rule for

- (A) Bank, because its mortgage was recorded first.
- (B) Bank, because windows and screens, no matter their characteristics, are an integral part of a house.
- (C) Vend, because the inserts are removable.
- (D) Vend, because the availability of the old windows enables Bank to return Blackacre to its original condition.

GO ON TO THE NEXT PAGE.



78. In a suit by Palmer against Denby, Palmer sought to subpoena an audiotape on which Denby had narrated his version of the dispute for his attorney. Counsel for Denby moves to quash the subpoena on the ground of privilege.

The audiotape is most likely to be subject to subpoena if

- (A) Denby played the audiotape for his father to get his reactions.
  - (B) the lawsuit involved alleged criminal behavior by Denby.
  - (C) Denby has been deposed and there is good reason to believe that the audiotape may contain inconsistent statements.
  - (D) Denby is deceased and thus unavailable to give testimony in person.
79. The National Ecological Balance Act prohibits the destruction or removal of any wild animals located on lands owned by the United States without express permission from the Federal Bureau of Land Management. Violators are subject to fines of up to \$1,000 per offense.

After substantial property damage was inflicted on residents of the state of Arkota by hungry coyotes, the state legislature passed the Coyote Bounty Bill, which offers \$25 for each coyote killed or captured within the state. The Kota National Forest, owned by the federal government, is located entirely within the state of Arkota. Many coyotes live in the Kota National Forest.

Without seeking permission from the Bureau of Land Management, Hunter shot several coyotes in the Kota National Forest and collected the bounty from the state of Arkota. As a result, he was subsequently tried in federal district court, convicted, and fined \$1,000 for violating the National Ecological Balance Act. Hunter appealed his conviction to the United States Court of Appeals.

On appeal, the Court of Appeals should hold the National Ecological Balance Act, as applied to Hunter, to be

- (A) constitutional, because the property clause of Article IV, Section 3, of the Constitution authorizes such federal statutory controls and sanctions.
- (B) constitutional, because Article I, Section 8, of the Constitution authorizes Congress to enact all laws necessary and proper to advance the general welfare.
- (C) unconstitutional, because Congress may not use its delegated powers to override the Tenth Amendment right of the state of Arkota to legislate in areas of traditional state governmental functions, such as the protection of the property of its residents.
- (D) unconstitutional, because Congress violates the full faith and credit clause of Article IV when it punishes conduct that has been authorized by state action.

GO ON TO THE NEXT PAGE.

80. A kidnapping statute in State A makes it a crime for a person, including a parent, to “take a child from the custody of his custodial parent, knowing he has no privilege to do so.”

After a bitter court battle Ann and Dave were divorced and Ann was given custody of their daughter, Maria. Dave later moved to State B where he brought an action to obtain custody of Maria. A local judge awarded him custody. His attorney incorrectly advised him that, under this award, he was entitled to take Maria away from Ann. Dave drove to State A, picked Maria up at her preschool, and took her back to State B with him.

He was indicted for kidnapping in State A, extradited from State B, and tried. At trial, he testified that he had relied on his attorney’s advice in taking Maria, and that at the time he believed his conduct was not illegal.

If the jury believes his testimony, Dave should be

- (A) acquitted, because he acted on the advice of an attorney.
- (B) acquitted, because he lacked a necessary mental element of the crime.
- (C) convicted, because reliance on an attorney’s advice is not a defense.
- (D) convicted, provided a reasonable person would have known that the attorney’s advice was erroneous.

81. Owen, the owner of Greenacre, a tract of land, mortgaged Greenacre to ABC Bank to secure his preexisting obligation to ABC Bank. The mortgage was promptly and properly recorded. Owen and Newton then entered into a valid written contract for the purchase and sale of Greenacre, which provided for the transfer of “a marketable title, free of encumbrances.” The contract did not expressly refer to the mortgage.

Shortly after entering into the contract, Newton found another property that much better suited her needs and decided to try to avoid her contract with Owen. When Newton discovered the existence of the mortgage, she asserted that the title was encumbered and that she would not close. Owen responded by offering to provide for payment and discharge of the mortgage at the closing from the proceeds of the closing. Newton refused to go forward, and Owen brought an appropriate action against her for specific performance.

If the court holds for Owen in this action, it will most likely be because

- (A) the mortgage is not entitled to priority because it was granted for preexisting obligations.
- (B) the doctrine of equitable conversion supports the result.
- (C) Owen’s arrangements for the payment of the mortgage fully satisfied Owen’s obligation to deliver marketable title.
- (D) the existence of the mortgage was not Newton’s real reason for refusing to close.

GO ON TO THE NEXT PAGE.

82. Pawn sued Dalton for injuries received when she fell down a stairway in Dalton's apartment building. Pawn, a guest in the building, alleged that she caught the heel of her shoe in a tear in the stair carpet. Pawn calls Witt, a tenant, to testify that Young, another tenant, had said to him a week before Pawn's fall: "When I paid my rent this morning, I told the manager he had better fix that torn carpet."

Young's statement, reported by Witt, is

- (A) admissible, to prove that the carpet was defective.
  - (B) admissible, to prove that Dalton had notice of the defect.
  - (C) admissible, to prove both that the carpet was defective and that Dalton had notice of the defect.
  - (D) inadmissible, because it is hearsay not within any exception.
83. A law of the state of Wonatol imposed a generally applicable sales tax payable by the vendor. That law exempted from its provisions the sale of "all magazines, periodicals, newspapers, and books." In order to raise additional revenue, the state legislature eliminated that broad exemption and substituted a narrower exemption. The new, narrower exemption excluded from the state sales tax only the sale of those "magazines, periodicals, newspapers, and books that are published or distributed by a recognized religious faith and that consist wholly of writings sacred to such a religious faith."

Magazine is a monthly publication devoted to history and politics. Magazine paid under protest the sales tax due on its sales according to the amended sales tax law. Magazine then filed suit against the state in an appropriate state court for a refund of the sales taxes paid. It contended that the state's elimination of the earlier, broader exemption and adoption of the new, narrower exemption restricted to sacred writings of recognized religious faiths violates the First and Fourteenth Amendments to the Constitution.

In this case, the court will probably rule that

- (A) Magazine lacks standing to sue for a refund of sales taxes imposed by a generally applicable state law because Article III of the Constitution precludes taxpayers from bringing such suits.
- (B) the Eleventh Amendment bars the state court from exercising jurisdiction over this suit in the absence of a law of Wonatol expressly waiving the state's immunity.
- (C) the new, narrower exemption from the state sales tax law violates the establishment clause of the First and Fourteenth Amendments by granting preferential state support to recognized religious faiths for the communication of their religious beliefs.
- (D) the new, narrower exemption from the state sales tax law violates the freedom of the press guaranteed by the First and Fourteenth Amendments because it imposes a prior restraint on nonreligious publications that are required to pay the tax.

GO ON TO THE NEXT PAGE.

84. For five years, Rancher had kept his horse in a ten-acre field enclosed by a six-foot woven wire fence with six inches of barbed wire on top. The gate to the field was latched and could not be opened by an animal. Rancher had never had any trouble with people coming onto his property and bothering the horse, and the horse had never escaped from the field. One day, however, when Rancher went to the field, he found that the gate was open and the horse was gone. Shortly before Rancher's discovery, Driver was driving with due care on a nearby highway when suddenly Rancher's horse darted in front of his car. When Driver attempted to avoid hitting the horse, he lost control of the car, which then crashed into a tree. Driver was injured.

Driver sued Rancher to recover damages for his injuries and Rancher moved for summary judgment.

If the facts stated above are undisputed, the judge should

- (A) deny the motion, because, pursuant to the doctrine of *res ipsa loquitur*, a jury could infer that Rancher was negligent.
- (B) deny the motion, because an animal dangerous to highway users escaped from Rancher's property and caused the collision.
- (C) grant the motion, because there is no evidence that Rancher was negligent.
- (D) grant the motion, because Rancher did not knowingly permit the horse to run at large.

85. Defendant was prosecuted for bankruptcy fraud. Defendant's wife, now deceased, had testified adversely to Defendant during earlier bankruptcy proceedings that involved similar issues. Although the wife had been cross-examined, no serious effort was made to challenge her credibility despite the availability of significant impeachment information. At the fraud trial, the prosecutor offers into evidence the testimony given by Defendant's wife at the bankruptcy proceeding.

This evidence should be

- (A) admitted, under the hearsay exception for former testimony.
- (B) admitted, because it is a statement by a person identified with a party.
- (C) excluded, because it is hearsay not within any exception.
- (D) excluded, because Defendant has the right to prevent use of his spouse's testimony against him in a criminal case.

GO ON TO THE NEXT PAGE.

**Questions 86-87** are based on the following fact situation.

Mermaid owns an exceptionally seaworthy boat that she charters for sport fishing at a \$500 daily rate. The fee includes the use of the boat with Mermaid as the captain, and one other crew member, as well as fishing tackle and bait. On May 1, Phinney agreed with Mermaid that Phinney would have the full-day use of the boat on May 15 for himself and his family for \$500. Phinney paid an advance deposit of \$200 and signed an agreement that the deposit could be retained by Mermaid as liquidated damages in the event Phinney canceled or failed to appear.

86. For this question only, assume the following facts. At the time of contracting, Mermaid told Phinney to be at the dock at 5 a.m. on May 15. Phinney and his family, however, did not show up on May 15 until noon. Meantime, Mermaid agreed at 10 a.m. to take Tess and her family out fishing for the rest of the day. Tess had happened to come by and inquire about the possibility of such an outing. In view of the late hour, Mermaid charged Tess \$400 and stayed out two hours beyond the customary return time. Phinney's failure to appear until noon was due to the fact that he had been trying to charter another boat across the bay at a lower rate and had gotten lost after he was unsuccessful in getting such a charter.

Which of the following is an accurate statement concerning the rights of the parties?

- (A) Mermaid can retain the \$200 paid by Phinney, because it would be difficult for Mermaid to establish her actual damages and the sum appears to have been a reasonable forecast in light of anticipated loss of profit from the charter.
- (B) Mermaid is entitled to retain only \$50 (10% of the contract price) and must return \$150 to Phinney.
- (C) Mermaid must return \$100 to Phinney in order to avoid her own unjust enrichment at Phinney's expense.
- (D) Mermaid must return \$100 to Phinney, because the liquidated-damage clause under the circumstances would operate as a penalty.

GO ON TO THE NEXT PAGE.

87. For this question only, assume the following facts. On May 15 at 1 a.m., the Coast Guard had issued offshore “heavy weather” warnings and prohibited all small vessels the size of Mermaid’s from leaving the harbor. This prohibition remained in effect throughout the day. Phinney did not appear at all on May 15, because he had heard the weather warnings on his radio.

Which of the following is an accurate statement?

- (A) The contract is discharged because of impossibility, and Phinney is entitled to return of his deposit.
  - (B) The contract is discharged because of mutual mistake concerning an essential fact, and Phinney is entitled to return of his deposit.
  - (C) The contract is not discharged, because its performance was possible in view of the exceptional seaworthiness of Mermaid’s boat, and Phinney is not entitled to return of his deposit.
  - (D) The contract is not discharged, and Phinney is not entitled to return of his deposit, because the liquidated-damage clause in effect allocated the risk of bad weather to Phinney.
- 

88. Eight years ago, Orben, prior to moving to a distant city, conveyed Blackacre, an isolated farm, to his son, Sam, by a quitclaim deed. Sam paid no consideration. Sam, who was 19 years old, without formal education, and without experience in business, took possession of Blackacre and operated the farm but neglected to record his deed. Subsequently, Orben conveyed Blackacre to Fred by warranty deed. Fred, a substantial land and timber promoter, paid valuable consideration for the deed to him. He was unaware of Sam’s possession, his quitclaim deed, or his relationship to Orben. Fred promptly and properly recorded his deed and began removing timber from the land. Immediately upon learning of Fred’s actions, Sam recorded his deed and brought an appropriate action to enjoin Fred from removing the timber and to quiet title in Sam. 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 this action, Fred should

- (A) prevail, because a warranty deed for valuable consideration takes priority over a quitclaim deed without consideration.
- (B) prevail, because Orben’s subsequent conveyance to Fred revoked the gift to Sam.
- (C) lose, because Sam’s possession charged Fred with notice.
- (D) lose, because the equities favor Sam.

GO ON TO THE NEXT PAGE.

89. Brown owned Blackacre, a tract of undeveloped land. Blackacre abuts Whiteacre, a tract of land owned by Agency, the state's governmental energy agency. At Whiteacre, Agency has operated a waste-to-electricity recycling facility for 12 years. Blackacre and Whiteacre are in a remote area and Whiteacre is the only developed parcel of real estate within a ten-mile radius. The boundary line between Blackacre and Whiteacre had never been surveyed or marked on the face of the earth.

During the past 12 years, some of the trucks bringing waste to the Agency facility have dumped their loads so that the piles of waste extend from Whiteacre onto a portion of Blackacre. However, prior to the four-week period during each calendar year when the Agency facility is closed for inspection and repairs, the waste piles are reduced to minimal levels so that during each of the four-week closures no waste was, in fact, piled on Blackacre. Neither Brown nor any representative of Agency knew the facts about the relation of the boundary line to the waste piles.

The time for acquiring title by adverse possession in the jurisdiction is ten years.

Last year, Brown died, and his son, Silas, succeeded him as the owner of Blackacre. Silas became aware of the facts, demanded that Agency stop using Blackacre for the piling of waste, and, when Agency refused his demand, brought an appropriate action to enjoin any such use of Blackacre in the future.

If Agency prevails in that action, it will be because

- (A) the facts constitute adverse possession and title to the portion of Blackacre concerned has vested in Agency.
- (B) Brown's failure to keep himself informed as to Agency's use of Blackacre and his failure to object constituted implied consent to the continuation of that use.
- (C) the interest of the public in the conversion of waste to energy overrides any entitlement of Silas to equitable remedies.
- (D) the power of eminent domain of the state makes the claim of Silas moot.

90. Defendant was charged with possession of cocaine with intent to distribute. He had been stopped while driving a car and several pounds of cocaine were found in the trunk. In his opening statement, defendant's counsel asserted that his client had no key to the trunk and no knowledge of its contents. The prosecutor offers the state motor vehicle registration, shown to have been found in the glove compartment of the car, listing Defendant as the owner.

The registration should be

- (A) admitted, as a statement against interest.
- (B) admitted, as evidence of Defendant's close connection with the car and, therefore, knowledge of its contents.
- (C) excluded, unless authenticated by testimony of or certification by a state official charged with custody of vehicle registration records.
- (D) excluded, as hearsay not within any exception.

GO ON TO THE NEXT PAGE.



91. Donald was arrested in Marilyn’s apartment after her neighbors had reported sounds of a struggle and the police had arrived to find Donald bent over Marilyn’s prostrate body. Marilyn was rushed to the hospital where she lapsed into a coma. Despite the explanation that he was trying to revive Marilyn after she suddenly collapsed, Donald was charged with attempted rape and assault after a neighbor informed the police that she had heard Marilyn sobbing, “No, please no, let me alone.”

At trial, the forensic evidence was inconclusive. The jury acquitted Donald of attempted rape but convicted him of assault. While he was serving his sentence for assault, Marilyn, who had never recovered from the coma, died. Donald was then indicted and tried on a charge of felony murder. In this common-law jurisdiction, there is no statute that prevents a prosecutor from proceeding in this manner, but Donald argued that a second trial for felony murder after his original trial for attempted rape and assault would violate the double jeopardy clause.

His claim is

- (A) correct, because he was acquitted of the attempted rape charge.
- (B) correct, because he was convicted of the assault charge.
- (C) incorrect, because Marilyn had not died at the time of the first trial and he was not placed in jeopardy for murder.
- (D) incorrect, because he was convicted of the assault charge.

92. Ogle owned Greenacre, a tract of land, in fee simple. Five years ago, he executed and delivered to Lilly an instrument in the proper form of a warranty deed that conveyed Greenacre to Lilly “for and during the term of her natural life.” No other estate or interest or person taking an interest was mentioned. Lilly took possession of Greenacre and has remained in possession.

Fifteen months ago, Ogle died, leaving a will that has been duly admitted to probate. The will, *inter alia*, had the following provision:

“I devise Greenacre to Mina for her natural life and from and after Mina’s death to Rex, his heirs and assigns, forever.”

Administration of Ogle’s estate has been completed. Mina claims the immediate right to possession of Greenacre. Rex also asserts a right to immediate possession.

In an appropriate lawsuit to which Lilly, Mina, and Rex are parties, who should be adjudged to have the right to immediate possession?

- (A) Lilly, because no subsequent act of Ogle would affect her life estate.
- (B) Mina, because Ogle’s will was the final and definitive expression of his intent.
- (C) Mina, because Lilly’s estate terminated with the death of Ogle.
- (D) Rex, because Lilly’s estate terminated with Ogle’s death and all that Ogle had was the right to transfer his reversion in fee simple.

GO ON TO THE NEXT PAGE.

93. Devlin was charged with murder. Several witnesses testified that the crime was committed by a person of Devlin's general description who walked with a severe limp. Devlin in fact walks with a severe limp. He objected to a prosecution request that the court order him to walk across the courtroom in order to display his limp to the jury to assist it in determining whether Devlin was the person that the witnesses had seen.

Devlin's objection will most likely be

- (A) sustained, because the order sought by the prosecution would violate Devlin's privilege against self-incrimination.
- (B) sustained, because the order sought by the prosecution would constitute an illegal search and seizure.
- (C) denied, because the order sought by the prosecution is a legitimate part of a proper courtroom identification process.
- (D) denied, because a criminal defendant has no legitimate expectation of privacy.

94. A statute of the state of Kiowa provided state monetary grants to private dance, theater, and opera groups located in that state. The statute required recipients of such grants to use the granted monies for the acquisition, construction, and maintenance of appropriate facilities for the public performance of their performing arts. The last section of the statute conditioned the award of each such grant on the recipient's agreement to refrain from all kinds of political lobbying calculated to secure additional tax support for the performing arts.

The strongest constitutional basis for an attack upon the validity of the last section of the statute would be based upon the

- (A) commerce clause.
- (B) obligation of contracts clause.
- (C) Fifth Amendment.
- (D) First and Fourteenth Amendments.

95. Penkov suffered a severe loss when his manufacturing plant, located in a shallow ravine, was flooded during a sustained rainfall. The flooding occurred because City had failed to maintain its storm drain, which was located on City land above Penkov's premises, and because Railroad had failed to maintain its storm drain, which was located on Railroad land below Penkov's premises. The flooding would not have occurred if either one of the two storm drains had been maintained properly.

Penkov sued Railroad to recover compensation for his loss. The evidence in the case established that the failures of the two drains were caused by the respective negligence of City and Railroad. There is no special rule insulating City from liability.

In his action against Railroad, Penkov should recover

- (A) nothing, because he should have joined City, without whose negligence he would have suffered no loss.
- (B) nothing, unless he introduces evidence that enables the court reasonably to apportion responsibility between City and Railroad.
- (C) one-half his loss, in the absence of evidence that enables the court to allocate responsibility fairly between City and Railroad.
- (D) all of his loss, because but for Railroad's negligence none of the flooding would have occurred.

GO ON TO THE NEXT PAGE.

96. Smith asked Jones if he would loan him \$500, promising to repay the amount within two weeks. Jones loaned him the \$500. The next day Smith took the money to the race track and lost all of it betting on horse races. He then left town for six months. He has not repaid Jones.

Smith has committed

- (A) both larceny by trick and obtaining money by false pretenses (although he can only be convicted of one offense).
- (B) larceny by trick only.
- (C) obtaining money by false pretenses only.
- (D) neither larceny by trick nor obtaining money by false pretenses.

97. Assume that Congress passed and the President signed the following statute:

“The appellate jurisdiction of the United States Supreme Court shall not extend to any case involving the constitutionality of any state statute limiting the circumstances in which a woman may obtain an abortion, or involving the constitutionality of this statute.”

The strongest argument against the constitutionality of this statute is that

- (A) Congress may not exercise its authority over the appellate jurisdiction of the Supreme Court in a way that seriously interferes with the establishment of a supreme and uniform body of federal constitutional law.
- (B) Congress may only regulate the appellate jurisdiction of the Supreme Court over cases initially arising in federal courts.
- (C) the appellate jurisdiction of the Supreme Court may only be altered by constitutional amendment.
- (D) the statute violates the equal protection clause of the Fourteenth Amendment.

98. The federal statute admitting the state of Blue to the Union granted Blue certain public lands, and established some very ambiguous conditions on the subsequent disposition of these lands by Blue. This federal statute also required the new state to write those exact same conditions into its state constitution. One hundred years later, a statute of Blue dealing with the sale of these public lands was challenged in a state court lawsuit on the ground that it was inconsistent with the conditions contained in the federal statute, and with the provisions of the Blue Constitution that exactly copy the conditions contained in the federal statute. The trial court decision in this case was appealed to the Blue Supreme Court. In its opinion, the Blue Supreme Court dealt at length with the ambiguous language of the federal statute and with cases interpreting identical language in federal statutes admitting other states to the union. The Blue Supreme Court opinion did not discuss the similar provisions of the Blue Constitution, but it did hold that the challenged Blue statute is invalid because it is “inconsistent with the language of the federal statute and therefore is inconsistent with the identical provisions of our state constitution.”

If the losing party in the Blue Supreme Court seeks review of the decision of that court in the United States Supreme Court, the United States Supreme Court should

- (A) accept the case for review and determine the validity and interpretation of the federal statute if it is an important and substantial question.
- (B) ask the Blue Supreme Court to indicate more clearly whether it relied on the state constitutional provision in rendering its decision.
- (C) decline to review the case on the ground that the decision of the Blue Supreme Court rests on an adequate and independent state ground.
- (D) decline to review the case because a decision by a state supreme court concerning the proper disposition of state public lands is not reviewable by the United States Supreme Court.

99. Trawf, the manager of a state fair, contracted with Schweinebauch, a renowned hog breeder, to exhibit Schweinebauch's world champion animal, Megahawg, for the three weeks of the annual fair, at the conclusion of which Schweinebauch would receive an honorarium of \$300. Two days before the opening of the fair, Megahawg took sick with boarsitis, a communicable disease among swine, and, under the applicable state quarantine law, very probably could not be exhibited for at least a month.

Upon learning this, Trawf can legally pursue which of the following courses of action with respect to his contract with Schweinebauch?

- (A) Suspend his own performance, demand assurances from Schweinebauch, and treat a failure by Schweinebauch to give them as an actionable repudiation.
- (B) Suspend his own performance and recover damages from Schweinebauch for breach of contract unless Schweinebauch at once supplies an undiseased hog of exhibition quality as a substitute for Megahawg.
- (C) Terminate his own performance and treat Megahawg's illness as discharging all remaining duties under the contract.
- (D) Terminate the contract, but only if he (Trawf) seeks promptly to obtain for the exhibit a suitable substitute for Megahawg from another hog owner.

100. The manager of a department store noticed that Paula was carrying a scarf with her as she examined various items in the blouse department. The manager recognized the scarf as an expensive one carried by the store. Paula was trying to find a blouse that matched a color in the scarf, and, after a while, found one. The manager then saw Paula put the scarf into her purse, pay for the blouse, and head for the door. The manager, who was eight inches taller than Paula, blocked Paula's way to the door and asked to see the scarf in Paula's purse. Paula produced the scarf, as well as a receipt for it, showing that it had been purchased from the store on the previous day. The manager then told Paula there was no problem, and stepped out of her way.

If Paula brings a claim against the store based on false imprisonment, the store's best defense would be that

- (A) by carrying the scarf in public view and then putting it into her purse, Paula assumed the risk of being detained.
- (B) the manager had a reasonable belief that Paula was shoplifting and detained her only briefly for a reasonable investigation of the facts.
- (C) Paula should have realized that her conduct would create a reasonable belief that facts existed warranting a privilege to detain.
- (D) Paula was not detained, but was merely questioned about the scarf.

**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. A proposed federal statute would prohibit all types of discrimination against black persons on the basis of their race in every business transaction executed anywhere in the United States by any person or entity, governmental or private.

Is this proposed federal statute likely to be constitutional?

- (A) Yes, because it could reasonably be viewed as an exercise of Congress’s authority to enact laws for the general welfare.
- (B) Yes, because it could reasonably be viewed as a means of enforcing the provisions of the Thirteenth Amendment.
- (C) No, because it would regulate purely local transactions that are not in interstate commerce.
- (D) No, because it would invade the powers reserved to the states by the Tenth Amendment.

102. Sam told Horace, his neighbor, that he was going away for two weeks and asked Horace to keep an eye on his house. Horace agreed. Sam gave Horace a key to use to check on the house.

Horace decided to have a party in Sam’s house. He invited a number of friends. One friend, Lewis, went into Sam’s bedroom, took some of Sam’s rings, and put them in his pocket.

Which of the following is true?

- (A) Horace and Lewis are guilty of burglary.
- (B) Horace is guilty of burglary and Lewis is guilty of larceny.
- (C) Horace is guilty of trespass and Lewis is guilty of larceny.
- (D) Lewis is guilty of larceny and Horace is not guilty of any crime.

GO ON TO THE NEXT PAGE.

103. John's father, Jeremiah, died in Hospital. Hospital maintains a morgue with refrigerated drawers a bit larger than a human body. Jeremiah's body was placed in such a drawer awaiting pickup by a mortician. Before the mortician called for the body, a Hospital orderly placed two opaque plastic bags in the drawer with Jeremiah's body. One bag contained Jeremiah's personal effects, and the other contained an amputated leg from some other Hospital patient. It is stipulated that Hospital was negligent to allow the amputated leg to get into Jeremiah's drawer. The mortician delivered the two opaque plastic bags to John, assuming both contained personal effects. John was shocked when he opened the bag containing the amputated leg. John sued Hospital to recover for his emotional distress. At the trial, John testified that the experience had been extremely upsetting, that he had had recurring nightmares about it, and that his family and business relationships had been adversely affected for a period of several months. He did not seek medical or psychiatric treatment for his emotional distress.

Who should prevail?

- (A) John, because of the sensitivity people have regarding the care of the bodies of deceased relatives.
- (B) John, because hospitals are strictly liable for mishandling dead bodies.
- (C) Hospital, because John did not require medical or psychiatric treatment.
- (D) Hospital, because John suffered no bodily harm.

104. Able was the owner of Greenacre, a large tract of land. Able entered into a binding written contract with Baker for the sale and purchase of Greenacre for \$125,000. The contract required Able to convey marketable record title.

Baker decided to protect his interest and promptly and properly recorded the contract.

Thereafter, but before the date scheduled for the closing, Charlie obtained and properly filed a final judgment against Able in the amount of \$1 million in a personal injury suit. 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."

The recording act of the jurisdiction authorizes recording of contracts and also 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."

There are no other relevant statutory provisions.

At the closing, Baker declined to accept the title of Able on the ground that Charlie's judgment lien encumbered the title he would receive and rendered it unmarketable. Able brought an appropriate action against Baker for specific performance of the contract and joined Charlie as a party.

In this action, the judgment should be for

- (A) Able, because in equity a purchaser takes free of judgment liens.
- (B) Able, because the contract had been recorded.
- (C) Baker, because Able cannot benefit from Baker's action in recording the contract.
- (D) Baker, because the statute creating judgment liens takes precedence over the recording act.



105. Post sued Dint for dissolution of their year-long partnership. One issue concerned the amount of money Post had received in cash. It was customary for Dint to give Post money from the cash register as Post needed it for personal expenses. Post testified that, as he received money, he jotted down the amounts in the partnership ledger. Although Dint had access to the ledger, he made no changes in it. The ledger was admitted into evidence. Dint seeks to testify to his memory of much larger amounts he had given Post.

Dint's testimony is

- (A) admissible, because it is based on Dint's firsthand knowledge.
- (B) admissible, because the ledger entries offered by a party opponent opened the door.
- (C) inadmissible, because the ledger is the best evidence of the amounts Post received.
- (D) inadmissible, because Dint's failure to challenge the accuracy of the ledger constituted an adoptive admission.

106. In a signed writing, Nimrod contracted to purchase a 25-foot travel trailer from Trailco for \$15,000, cash on delivery no later than June 1. Nimrod arrived at the Trailco sales lot on Sunday, May 31, to pay for and take delivery of the trailer, but refused to do so when he discovered that the spare tire was missing.

Trailco offered to install a spare tire on Monday when its service department would open, but Nimrod replied that he did not want the trailer and would purchase another one elsewhere.

Which of the following is accurate?

- (A) Nimrod had a right to reject the trailer, but Trailco was entitled to a reasonable opportunity to cure the defect.
- (B) Nimrod had a right to reject the trailer and terminate the contract under the perfect tender rule.
- (C) Nimrod was required to accept the trailer, because the defect could be readily cured.
- (D) Nimrod was required to accept the trailer, because the defect did not substantially impair its value.

GO ON TO THE NEXT PAGE.



107. Oker owned in fee simple two adjoining lots, Lots 1 and 2. He conveyed in fee simple Lot 1 to Frank. The deed was in usual form of a warranty deed with the following provision inserted in the appropriate place:

“Grantor, for himself, his heirs and assigns, does covenant and agree that any reasonable expense incurred by grantee, his heirs and assigns, as the result of having to repair the retaining wall presently situated on Lot 1 at the common boundary with Lot 2, shall be reimbursed one-half the costs of repairs; and by this provision the parties intend a covenant running with the land.”

Frank conveyed Lot 1 in fee simple to Sara by warranty deed in usual and regular form. The deed omitted any reference to the retaining wall or any covenant. Fifty years after Oker’s conveyance to Frank, Sara conveyed Lot 1 in fee simple to Tim by warranty deed in usual form; this deed omitted any reference to the retaining wall or the covenant.

There is no statute that applies to any aspect of the problems presented except a recording act and a statute providing for acquisition of title after ten years of adverse possession.

All conveyances by deeds were for a consideration equal to fair market value.

The deed from Oker to Frank was never recorded. All other deeds were promptly and properly recorded.

Lot 2 is now owned by Henry, who took by intestate succession from Oker, now dead.

Tim expended \$3,500 on the retaining wall. Then he obtained all of the original deeds in the chain from Oker to him. Shortly thereafter, Tim discovered the covenant in Oker’s deed to Frank. He demanded that Henry pay \$1,750, and when Henry refused, Tim instituted an appropriate action to recover that sum from Henry. In such action, Henry asserted all defenses available to him.

If judgment is for Henry, it will be because

- (A) Tim is barred by adverse possession.
- (B) Frank’s deed from Oker was never recorded.
- (C) Tim did not know about the covenant until after he had incurred the expenses and, hence, could not have relied on it.
- (D) Tim’s expenditures were not proved to be reasonable and customary.

108. While Prudence was leaving an elevator, it suddenly dropped several inches, causing her to fall. An investigation of the accident revealed that the elevator dropped because it had been negligently maintained by the Acme Elevator Company. Acme had a contract with the owner of the building to inspect and maintain the elevator. Prudence’s fall severely aggravated a preexisting physical disability.

If Prudence sues Acme Elevator Company for damages for her injuries, she should recover

- (A) nothing, if Acme could not reasonably have been expected to foresee the extent of the harm that Prudence suffered as a result of the accident.
- (B) nothing, if the accident would not have caused significant harm to an ordinarily prudent elevator passenger.
- (C) damages for the full amount of her disability, because a tortfeasor must take its victim as it finds her.
- (D) damages for the injury caused by the falling elevator, including the aggravation of her preexisting disability.

GO ON TO THE NEXT PAGE.

109. Dix is on trial for killing Vetter. The prosecutor calls Winn to testify that after being shot, Vetter said, "Dix did it." Before the testimony is given, Dix's lawyer asks for a hearing on whether Vetter believed his death was imminent when he made the statement.

Before permitting evidence of the dying declaration, the judge should hear evidence on the issue from

- (A) both sides, with the jury not present, and decide whether Winn may testify to Vetter's statement.
- (B) both sides, with the jury present, and decide whether Winn may testify to Vetter's statement.
- (C) both sides, with the jury present, and allow the jury to determine whether Winn may testify to Vetter's statement.
- (D) the prosecutor only, with the jury not present, and if the judge believes a jury could reasonably find that Vetter knew he was dying, permit Winn to testify to the statement, with Dix allowed to offer evidence on the issue as a part of the defendant's case.

110. Police received an anonymous tip that Tusitala was growing marijuana in her backyard, which was surrounded by a 15-foot high, solid wooden fence. Officer Boa was unable to view the yard from the street, so he used a police helicopter to fly over Tusitala's house. Boa identified a large patch of marijuana plants growing right next to the house and used this observation to obtain a search warrant.

Tusitala is prosecuted for possession of marijuana and moves to suppress use of the marijuana in evidence.

The court should

- (A) grant the motion, because the only purpose of Boa's flight was to observe the yard.
- (B) grant the motion, because Tusitala had a reasonable expectation of privacy in the curtilage around her house and the police did not have a warrant.
- (C) deny the motion, because a warrant is not required for a search of a residential yard.
- (D) deny the motion, because Tusitala had no reasonable expectation of privacy from aerial observation.

GO ON TO THE NEXT PAGE.

111. Buyem faxed the following signed message to Zeller, his long-time widget supplier:  
“Urgently need blue widgets. Ship immediately three gross at your current list price of \$600.” Upon receipt of the fax, Zeller shipped three gross of red widgets to Buyem, and faxed to Buyem the following message:  
“Temporarily out of blue. In case red will help, am shipping three gross at the same price. Hope you can use them.”

Upon Buyem’s timely receipt of both the shipment and Zeller’s fax, which of the following best describes the rights and duties of Buyem and Zeller?

- (A) Buyem may accept the shipment, in which case he must pay Zeller the list price, or he must reject the shipment and recover from Zeller for total breach of contract.
- (B) Buyem may accept the shipment, in which case he must pay Zeller the list price, or he may reject the shipment, in which case he has no further rights against Zeller.
- (C) Buyem may accept the shipment, in which case he must pay Zeller the list price, less any damages sustained because of the nonconforming shipment, or he may reject the shipment and recover from Zeller for total breach of contract, subject to Zeller’s right to cure.
- (D) Buyem may accept the shipment, in which case he must pay Zeller the list price, less any damages sustained because of the nonconforming shipment, or he may reject the shipment provided that he promptly covers by obtaining conforming widgets from another supplier.

112. Members of a religious group calling itself the Friends of Lucifer believe in Lucifer as their Supreme Being. The members of this group meet once a year on top of Mt. Snow, located in a U.S. National Park, to hold an overnight encampment and a midnight dance around a large campfire. They believe this overnight encampment and all of its rituals are required by Lucifer to be held on the top of Mt. Snow. U.S. National Park Service rules that have been consistently enforced prohibit all overnight camping and all campfires on Mt. Snow because of the very great dangers overnight camping and campfires would pose in that particular location. As a result, the park Superintendent denied a request by the Friends of Lucifer for a permit to conduct these activities on top of Mt. Snow. The park Superintendent, who was known to be violently opposed to cults and other unconventional groups had, in the past, issued permits to conventional religious groups to conduct sunrise services in other areas of that U.S. National Park.

The Friends of Lucifer brought suit in Federal Court against the U.S. National Park Service and the Superintendent of the park to compel issuance of the requested permit.

As a matter of constitutional law, the most appropriate result in this suit would be a decision that denial of the permit was

- (A) invalid, because the free exercise clause of the First Amendment prohibits the Park Service from knowingly interfering with religious conduct.
- (B) invalid, because these facts demonstrate that the action of the Park Service purposefully and invidiously discriminated against the Friends of Lucifer.
- (C) valid, because the establishment clause of the First Amendment prohibits the holding of religious ceremonies on federal land.
- (D) valid, because religiously motivated conduct may be subjected to nondiscriminatory time, place, and manner restrictions that advance important public interests.

113. Park sued Davis Co. for injuries suffered in the crash of Park's dune buggy, allegedly caused by a defective auto part manufactured by Davis Co. Davis Co. claims that the part was a fraudulent imitation, not produced by Davis Co.

Which of the following is NOT admissible on the issue of whether the part was manufactured by Davis Co.?

- (A) The fact that the defective part bears Davis Co.'s insignia or trademark.
- (B) Testimony that the part was purchased from a parts house to which Davis Co. regularly sold parts.
- (C) The part itself and a concededly genuine part manufactured by Davis Co. (for the jury's comparison).
- (D) A judgment for another plaintiff against Davis Co. in another case involving substantially similar facts.

114. Anna entered into a valid written contract to purchase Blackacre, a large tract of land, from Jones for its fair market value of \$50,000. The contract was assignable by Anna. Anna duly notified Jones to convey title to Anna and Charles, Charles being Anna's friend whom Anna had not seen for many years.

When Anna learned that Charles would have to sign certain documents in connection with the closing, she prevailed upon her brother, Donald, to attend the closing and pretend to be Charles. Anna and Donald attended the closing, and Jones executed an instrument in the proper form of a deed, purporting to convey Blackacre to Anna and Charles, as tenants in common. Donald pretended that he was Charles, and he signed Charles's name to all the required documents. Anna provided the entire \$50,000 consideration for the transaction. The deed was promptly and properly recorded.

Unknown to Anna or Donald, Charles had died several months before the closing. Charles's will, which was duly probated, devised "All my real estate to my nephew, Nelson" and the residue of his estate to Anna.

Anna and Nelson have been unable to agree as to the status or disposition of Blackacre. Nelson brought an appropriate action against Jones and Anna to quiet legal title to an undivided one-half interest in Blackacre.

The court should hold that legal title to Blackacre is vested

- (A) all in Jones.
- (B) all in Anna.
- (C) one-half in Anna and one-half in Jones.
- (D) one-half in Anna and one-half in Nelson.

GO ON TO THE NEXT PAGE.

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

Staff, Inc., a flour wholesaler, contracted to deliver to Eclair, a producer of fine baked goods, her flour requirements for a one-year period. Before delivery of the first scheduled installment, Staff sold its business and “assigned” all of its sale contracts to Miller, Inc., another reputable and long-time flour wholesaler. Staff informed Eclair of this transaction.

115. For this question only, assume that when Miller tendered the first installment to Eclair in compliance with the Staff-Eclair contract, Eclair refused to accept the goods.

Which of the following arguments, if any, legally support(s) Eclair’s rejection of the goods?

- I. Executory requirements contracts are nonassignable.
- II. Duties under an executory bilateral contract are assumable only by an express promise to perform on the part of the delegatee.
- III. Language of “assignment” in the transfer for value of a bilateral sale-of-goods contract affects only a transfer of rights, not a delegation of duties.

- (A) I only.
- (B) II and III only.
- (C) I and II and III.
- (D) Neither I nor II nor III.

116. For this question only, assume that Eclair accepted Miller’s delivery of the first installment under the Staff-Eclair contract, but that Eclair paid the contract price for that installment to Staff and refused to pay anything to Miller.

In an action by Miller against Eclair for the contractual amount of the first installment, which of the following, if any, will be an effective defense for Eclair?

- I. Eclair had not expressly agreed to accept Miller as her flour supplier.
- II. Eclair’s payment of the contractual installment to Staff discharged her obligation.
- III. Staff remained obligated to Eclair even though Staff had assigned the contract to Miller.

- (A) I only.
- (B) II only.
- (C) I and III only.
- (D) Neither I nor II nor III.

GO ON TO THE NEXT PAGE.

117. On October 22, Officer Jones submitted an application for a warrant to search 217 Elm Street for cocaine. In the application, Officer Jones stated under oath that he believed there was cocaine at that location because of information supplied to him on the morning of October 22 by Susie Schultz. He described Schultz as a cocaine user who had previously supplied accurate information concerning the use of cocaine in the community and summarized what Schultz had told him as follows: the previous night, October 21, Schultz was in Robert Redd's house at 217 Elm Street. Redd gave her cocaine. She also saw three cellophane bags containing cocaine in his bedroom.

The warrant was issued and a search of 217 Elm Street was conducted on October 22. The search turned up a quantity of marijuana but no cocaine. Robert Redd was arrested and charged with possession of marijuana. Redd moved to suppress the use of the marijuana as evidence contending that Susie Schultz was not in 217 Elm Street on October 21 or at any other time.

If, after hearing evidence, the judge concludes that the statement in the application attributed to Susie Schultz is incorrect, the judge should grant the motion to suppress

- (A) because the application contains a material statement that is false.
- (B) because of the false statement and because no cocaine was found in the house.
- (C) only if he also finds that Susie Schultz's statement was a deliberate lie.
- (D) only if he also finds that Officer Jones knew the statement was false.

118. The Personnel Handbook of Green City contains all of that city's personnel policies. One section of the handbook states that "where feasible and practicable supervisors are encouraged to follow the procedures specified in this Handbook before discharging a city employee." Those specified procedures include a communication to the employee of the reasons for the contemplated discharge and an opportunity for a pretermination trial-type hearing at which the employee may challenge those reasons. After a year of service, Baker, the secretary to the Green City Council, was discharged without receiving any communication of reasons for her contemplated discharge and without receiving an opportunity for a pretermination trial-type hearing. Baker files suit in federal district court to challenge her discharge solely on constitutional grounds.

Which of the following best describes the initial burden of persuasion in that suit?

- (A) The Green City Council must demonstrate that its personnel handbook created no constitutionally protected interest in city employment or in the procedures by which such employment is terminated.
- (B) The Green City Council must demonstrate that Baker's termination was for good cause.
- (C) Baker must demonstrate that state law creates a constitutionally protected interest in her employment or in the procedures by which her employment is terminated.
- (D) Baker must demonstrate that she reasonably believed that she could work for Green City for as long as she wished.

GO ON TO THE NEXT PAGE.

119. Dean was prosecuted in federal court for making threats against the President of the United States. Dean was a voluntary patient in a private psychiatric hospital and told a nurse, shortly before the President came to town, that Dean planned to shoot the President. The nurse reported the threat to FBI agents.

Dean's motion to prevent the nurse from testifying is likely to be

- (A) successful, because the statement was made in a medical setting.
- (B) successful, because the nurse violated a confidence in reporting the statement.
- (C) unsuccessful, because the statement was not within any privilege.
- (D) unsuccessful, because Dean had not been committed involuntarily by court order.

120. Able, who owned Blackacre, a residential lot improved with a dwelling, conveyed it for a valuable consideration to Baker. The dwelling had been constructed by a prior owner. Baker had inspected Blackacre prior to the purchase and discovered no defects. After moving in, Baker became aware that sewage seeped into the basement when the toilets were flushed. Able said that this defect had been present for years and that he had taken no steps to hide the facts from Baker. Baker paid for the necessary repairs and brought an appropriate action against Able to recover his cost of repair.

If Baker wins, it will be because

- (A) Able failed to disclose a latent defect.
- (B) Baker made a proper inspection.
- (C) the situation constitutes a health hazard.
- (D) Able breached the implied warranty of habitability and fitness for purpose.

GO ON TO THE NEXT PAGE.



121. Gardner's backyard, which is landscaped with expensive flowers and shrubs, is adjacent to a golf course. While Driver was playing golf on the course, a thunderstorm suddenly came up. As Driver was returning to the clubhouse in his golf cart, lightning struck a tree on the course, and the tree began to fall in Driver's direction. In order to avoid being hit by the tree, Driver deliberately steered his cart onto Gardner's property, causing substantial damage to Gardner's expensive plantings.

In an action by Gardner against Driver to recover damages for the harm to his plantings, Gardner will

- (A) prevail, because, although occasioned by necessity, Driver's entry onto Gardner's property was for Driver's benefit.
- (B) prevail, for nominal damages only, because Driver was privileged to enter Gardner's property.
- (C) not prevail, because the lightning was an act of God.
- (D) not prevail, because Driver's entry onto Gardner's property was occasioned by necessity and therefore privileged.

122. Steve, in desperate need of money, decided to hold up a local convenience store. Determined not to harm anyone, he carried a toy gun that resembled a real gun. In the store, he pointed the toy gun at the clerk and demanded money. A customer who entered the store and saw the robbery in progress pulled his own gun and fired at Steve. The bullet missed Steve but struck and killed the clerk.

Steve was charged with felony murder.

His best argument for being found NOT guilty is that he

- (A) did not intend to kill.
- (B) did not commit the robbery because he never acquired any money from the clerk.
- (C) did not intend to create any risk of harm.
- (D) is not responsible for the acts of the customer.

GO ON TO THE NEXT PAGE.

123. Client consulted Lawyer about handling the sale of Client's building, and asked Lawyer what her legal fee would be. Lawyer replied that her usual charge was \$100 per hour, and estimated that the legal work on behalf of Client would cost about \$5,000 at that rate. Client said, "Okay; let's proceed with it," and Lawyer timely and successfully completed the work. Because of unexpected title problems, Lawyer reasonably spent 75 hours on the matter and shortly thereafter mailed Client a bill for \$7,500, with a letter itemizing the work performed and time spent. Client responded by a letter expressing his good-faith belief that Lawyer had agreed to a total fee of no more than \$5,000. Client enclosed a check in the amount of \$5,000 payable to Lawyer and conspicuously marked, "Payment in full for legal services in connection with the sale of Client's building." Despite reading the "Payment in full..." language, Lawyer, without any notation of protest or reservation of rights, endorsed and deposited the check to her bank account. The check was duly paid by Client's bank. A few days later, Lawyer unsuccessfully demanded payment from Client of the \$2,500 difference between the amount of her bill and the check, and now sues Client for that difference.

What, if anything, can Lawyer recover from Client?

- (A) Nothing, because the risk of unexpected title problems in a real-property transaction is properly allocable to the seller's attorney and thus to Lawyer in this case.
- (B) Nothing, because the amount of Lawyer's fee was disputed in good faith by Client, and Lawyer impliedly agreed to an accord and satisfaction.
- (C) \$2,500, because Client agreed to an hourly rate for as many hours as the work reasonably required, and the sum of \$5,000 was merely an estimate.
- (D) The reasonable value of Lawyer's services in excess of \$5,000, if any, because there was no specific agreement on the total amount of Lawyer's fee.

124. Pauline and Doris own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height.

Last year Doris decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on the parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project.

As Doris's new building was in the course of construction, Pauline realized that the shadows it would create would place her (Pauline's) building in such deep shade that the rent she could charge for space in her building would be substantially reduced.

Pauline brought an appropriate action against Doris to enjoin the construction in order to eliminate the shadow problem and for damages. Pauline presented uncontroverted evidence that her evaluation as to the impact of the shadow on the fair rental value of her building was correct. There is no statute or ordinance (other than the building and zoning ordinances) that is applicable to the issues before the court.

The court should

- (A) grant to Pauline the requested injunction.
- (B) award Pauline damages measured by the loss of rental value, but not an injunction.
- (C) grant judgment for Doris, because she had secured all the necessary governmental approvals for the new building.
- (D) grant judgment for Doris, because Pauline has no legal right to have sunshine continue to reach the windows of her building.

GO ON TO THE NEXT PAGE.

**Questions 125-126** are based on the following fact situation.

Dumont, a real estate developer, was trying to purchase land on which he intended to build a large commercial development. Perkins, an elderly widow, had rejected all of Dumont's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of Dumont's planned development. Finally, Dumont offered her \$250,000. He told her that it was his last offer and that if she rejected it, state law authorized him to have her property condemned.

Perkins then consulted her nephew, a law student, who researched the question and advised her that Dumont had no power of condemnation under state law. Perkins had been badly frightened by Dumont's threat, and was outraged when she learned that Dumont had lied to her.

125. If Perkins sues Dumont for damages for emotional distress, will she prevail?
- (A) Yes, if Dumont's action was extreme and outrageous.
  - (B) Yes, because Perkins was frightened and outraged.
  - (C) No, if Perkins did not suffer emotional distress that was severe.
  - (D) No, if it was not Dumont's purpose to cause emotional distress.
126. If Perkins asserts a claim based on misrepresentation against Dumont, will she prevail?
- (A) Yes, if Dumont knew he had no legal power of condemnation.
  - (B) Yes, if Dumont tried to take unfair advantage of a gross difference between himself and Perkins in commercial knowledge and experience.
  - (C) No, if Dumont's offer of \$250,000 equaled or exceeded the market value of Perkins's property.
  - (D) No, because Perkins suffered no pecuniary loss.
127. State Y employs the Model Penal Code or American Law Institute test for insanity, and requires the state to prove sanity, when it is in issue, beyond a reasonable doubt. At Askew's trial for murder, he pleaded insanity. The state put on an expert psychiatrist who had examined Askew. He testified that, in his opinion, Askew was sane at the time of the murder. Askew's attorney did not introduce expert testimony on the question of sanity. Rather, he presented lay witnesses who testified that, in their opinion, Askew was insane at the time of the murder. At the end of the trial, each side moves for a directed verdict on the question of sanity.
- Which of the following correctly describes the judge's situation?
- (A) She may grant a directed verdict for the defense if she believes that the jury could not find the prosecution to have proved sanity beyond a reasonable doubt.
  - (B) She may grant a directed verdict for the prosecution if she believes that Askew's witnesses on the insanity question are not believable.
  - (C) She may not grant a directed verdict for the defense, because the state had expert testimony and the defense only lay witnesses.
  - (D) She may grant a directed verdict for the prosecution if she is convinced by their experts that Askew was sane beyond a reasonable doubt.

GO ON TO THE NEXT PAGE.

128. Trelawney worked at a day-care center run by the Happy Faces Day Care Corporation. At the center, one of the young charges, Smith, often arrived with bruises and welts on his back and legs. A statute in the jurisdiction requires all day-care workers to report to the police cases where there is probable cause to suspect child abuse and provides for immediate removal from the home of any suspected child abuse victims. Trelawney was not aware of this statute. Nevertheless, he did report Smith's condition to his supervisor, who advised him to keep quiet about it so the day-care center would not get into trouble for defaming a parent. About two weeks after Trelawney first noticed Smith's condition, Smith was beaten to death by his father. Trelawney has been charged with murder in the death of Smith. The evidence at trial disclosed, in addition to the above, that the child had been the victim of beatings by the father for some time, and that these earlier beatings had been responsible for the marks that Trelawney had seen. Smith's mother had been aware of the beatings but had not stopped them because she was herself afraid of Smith's father.

Trelawney's best argument that he is NOT guilty of murder is

- (A) he was not aware of the duty-to-report statute.
- (B) he lacked the mental state necessary to the commission of the crime.
- (C) his omission was not the proximate cause of death.
- (D) the day-care corporation, rather than Trelawney, was guilty of the omission, which was sanctioned by its supervisory-level agent.

**Questions 129-130** are based on the following fact situation.

Perkins and Morton were passengers sitting in adjoining seats on a flight on Delval Airline. There were many empty seats on the aircraft.

During the flight, a flight attendant served Morton nine drinks. As Morton became more and more obviously intoxicated and attempted to engage Perkins in a conversation, Perkins chose to ignore Morton. This angered Morton, who suddenly struck Perkins in the face, giving her a black eye.

129. If Perkins asserts a claim for damages against Delval Airline based on negligence, Perkins will
- (A) not recover, because a person is not required by law to come to the assistance of another who is imperiled by a third party.
  - (B) not recover, if Perkins could easily have moved to another seat.
  - (C) recover, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.
  - (D) recover, if the flight attendants should have perceived Morton's condition and acted to protect Perkins before the blow was struck.
130. If Perkins asserts a claim for damages against Delval Airline based on battery, she will
- (A) prevail, because she suffered an intentionally inflicted harmful or offensive contact.
  - (B) prevail, if the flight attendant acted recklessly in continuing to serve liquor to Morton.
  - (C) not prevail, because Morton was not acting as an agent or employee of Delval Airline.
  - (D) not prevail, unless she can establish some permanent injury from the contact.

GO ON TO THE NEXT PAGE.

131. Terrorists in the foreign country of Ruritania kidnapped the United States ambassador to that country. They threatened to kill her unless the President of the United States secured the release of an identified person who was a citizen of Ruritania and was held in a prison of the state of Aurora in the United States pursuant to a valid conviction by that state.

The President responded by entering into an agreement with Ruritania which provided that Ruritania would secure the release of the United States ambassador on a specified date in return for action by the President that would secure the release of the identified person held in the Aurora prison. The President then ordered the governor of Aurora to release the prisoner in question. The governor refused. No federal statutes are applicable.

Which of the following is the strongest constitutional argument for the authority of the President to take action in these circumstances requiring the governor of Aurora to release the Aurora prisoner?

- (A) The power of the President to conduct the foreign affairs of the United States includes a plenary authority to take whatever action the President deems wise to protect the safety of our diplomatic agents.
- (B) The power of the President to appoint ambassadors authorizes him to take any action that he may think desirable to protect them from injury because, upon appointment, those officials become agents of the President.
- (C) The power of the President to negotiate with foreign nations impliedly authorizes the President to make executive agreements with them which prevail over state law.
- (D) The duty of the President to execute faithfully the laws authorizes him to resolve finally any conflicts between state and federal interests, making the determination of such matters wholly nonjusticiable.

132. Damson was charged with murder, and Wagner testified for the prosecution. On cross-examination of Wagner, Damson seeks to elicit an admission that Wagner was also charged with the same murder and that the prosecutor told her, "If you testify against Damson, we will drop the charges against you after the conclusion of Damson's trial."

The evidence about the prosecutor's promise is

- (A) admissible, as proper impeachment of Wagner.
- (B) admissible, as an admission by an agent of a party-opponent.
- (C) inadmissible, because the law encourages plea-bargaining.
- (D) inadmissible, because the evidence is hearsay not within any exception.

GO ON TO THE NEXT PAGE.

**Questions 133-134** are based on the following fact situation.

On November 1, Debbit, an accountant, and Barrister, a lawyer, contracted for the sale by Debbit to Barrister of the law books Debbit had inherited from his father. Barrister agreed to pay the purchase price of \$10,000 when Debbit delivered the books on December 1.

On November 10, Barrister received a signed letter from Debbit that stated: "I have decided to dispose of the book stacks containing the law books you have already purchased. If you want the stacks, I will deliver them to you along with the books on December 1 at no additional cost to you. Let me know before November 15 whether you want them. I will not sell them to anyone else before then." On November 14, Barrister faxed and Debbit received the following message: "I accept your offer of the stacks." Debbit was not a merchant with respect to either law books or book stacks.

133. Debbit is contractually obligated to deliver the stacks because

- (A) Barrister provided a new bargained-for exchange by agreeing to take the stacks.
- (B) Debbit's letter (received by Barrister on November 10) and Barrister's fax-message of November 14 constituted an effective modification of the original sale-of-books contract.
- (C) Barrister's fax-message of November 14 operated to rescind unilaterally the original sale-of-books contract.
- (D) Debbit's letter (received by Barrister on November 10) waived the bargained-for consideration that would otherwise be required.

134. For this question only, assume that on November 12 Debbit told Barrister that he had decided not to part with the stacks.

Will this communication operate as a legally effective revocation of his offer to deliver the stacks?

- (A) Yes, because Barrister had a pre-existing obligation to pay \$10,000 for the law books.
- (B) Yes, because Debbit was not a merchant with respect to book stacks.
- (C) No, because Debbit had given a signed assurance that the offer would be held open until November 15.
- (D) No, because by delaying his acceptance until November 14, Barrister detrimentally relied on Debbit's promise not to sell the stacks to anyone else in the meantime.

GO ON TO THE NEXT PAGE.



135. Seller owned Blackacre, improved with an aging four-story warehouse. The warehouse was built to the lot lines on all four sides. On the street side, recessed loading docks permitted semi-trailers to be backed in. After the tractors were unhooked, the trailers extended into the street and occupied most of one lane of the street. Over the years, as trailers became larger, the blocking of the street became more severe. The municipality advised Seller that the loading docks could not continue to be used because the trailers blocked the street; it gave Seller 90 days to cease and desist.

During the 90 days, Seller sold and conveyed Blackacre by warranty deed for a substantial consideration to Buyer. The problem of the loading docks was not discussed in the negotiations.

Upon expiration of the 90 days, the municipality required Buyer to stop using the loading docks. This action substantially reduced the value of Blackacre.

Buyer brought an appropriate action against Seller seeking cancellation of the deed and return of all monies paid.

Such action should be based upon a claim of

- (A) misrepresentation.
- (B) breach of the covenant of warranty.
- (C) failure of consideration.
- (D) mutual mistake.

136. Prescott sued Doxie for fraud. After verdict for Prescott, Doxie talked with juror Wall about the trial.

Doxie's motion for a new trial would be most likely granted if Wall is willing to testify that he voted for Prescott because he

- (A) misunderstood the judge's instructions concerning the standard of proof in a fraud case.
- (B) was feeling ill and needed to get home quickly.
- (C) relied on testimony that the judge had stricken and ordered the jury to disregard.
- (D) learned from a court clerk that Doxie had been accused of fraud in several recent lawsuits.

137. Despondent over losing his job, Wilmont drank all night at a bar. While driving home, he noticed a car following him and, in his intoxicated state, concluded he was being followed by robbers. In fact, a police car was following him on suspicion of drunk driving. In his effort to get away, Wilmont sped through a stop sign and struck and killed a pedestrian. He was arrested by the police.

Wilmont is prosecuted for manslaughter.

He should be

- (A) acquitted, because he honestly believed he faced an imminent threat of death or severe bodily injury.
- (B) acquitted, because his intoxication prevented him from appreciating the risk he created.
- (C) convicted, because he acted recklessly and in fact was in no danger.
- (D) convicted, because he acted recklessly and his apprehension of danger was not reasonable.

GO ON TO THE NEXT PAGE.



138. Ody, owner of Profitacre, executed an instrument in the proper form of a deed, purporting to convey Profitacre “to Leon for life, then to Ralph in fee simple.” Leon, who is Ody’s brother and Ralph’s father, promptly began to manage Profitacre, which is valuable income-producing real estate. Leon collected all rents and paid all expenses, including real estate taxes. Ralph did not object, and this state of affairs continued for five years until 1987. In that year, Leon executed an instrument in the proper form of a deed, purporting to convey Profitacre to Mona. Ralph, no admirer of Mona, asserted his right to ownership of Profitacre. Mona asserted her ownership and said that if Ralph had any rights he was obligated to pay real estate taxes, even though Leon had been kind enough to pay them in the past. Income from Profitacre is ample to cover expenses, including real estate taxes.

In an appropriate action to determine the rights of the parties, the court should decide

- (A) Leon’s purported deed forfeited his life estate, so Ralph owns Profitacre in fee simple.
- (B) Mona owns an estate for her life, is entitled to all income, and must pay real estate taxes; Ralph owns the remainder interest.
- (C) Mona owns an estate for the life of Leon, is entitled to all income, and must pay real estate taxes; Ralph owns the remainder interest.
- (D) Mona owns an estate for the life of Leon and is entitled to all income; Ralph owns the remainder interest, and must pay real estate taxes.

139. Homer and Ethel were jointly in possession of Greenacre in fee simple as tenants in common. They joined in a mortgage of Greenacre to Fortunoff Bank. Homer erected a fence along what he considered to be the true boundary between Greenacre and the adjoining property, owned by Mitchell. Shortly thereafter, Homer had an argument with Ethel and gave up his possession to Greenacre. The debt secured by the mortgage had not been paid.

Mitchell surveyed his land and found that the fence erected a year earlier by Homer did not follow the true boundary. Part of the fence was within Greenacre. Part of the fence encroached on Mitchell’s land. Mitchell and Ethel executed an agreement fixing the boundary line in accordance with the fence constructed by Homer. The agreement, which met all the formalities required in the jurisdiction, was promptly and properly recorded.

A year after the agreement was recorded, Homer temporarily reconciled his differences with Ethel and resumed joint possession of Greenacre. Thereafter, Homer repudiated the boundary line agreement and brought an appropriate action against Mitchell and Ethel to quiet title along the original true boundary.

In such action, Homer will

- (A) win, because Fortunoff Bank was not a party to the agreement.
- (B) win, because one tenant in common cannot bind another tenant in common to a boundary line agreement.
- (C) lose, because the agreement, as a matter of law, was mutually beneficial to Ethel and Homer.
- (D) lose, because Ethel was in sole possession of said premises at the time the agreement was signed.

GO ON TO THE NEXT PAGE.

140. At the trial of an action against Grandmother on behalf of Patrick, the following evidence has been introduced. Grandson and his friend, Patrick, both aged eight, were visiting at Grandmother's house when, while exploring the premises, they discovered a hunting rifle in an unlocked gun cabinet. They removed it from the cabinet and were examining it when the rifle, while in Grandson's hands, somehow discharged. The bullet struck and injured Patrick. The gun cabinet was normally locked. Grandmother had opened it for dusting several days before the boys' visit, and had then forgotten to relock it. She was not aware that it was unlocked when the boys arrived.

If the defendant moves for a directed verdict in her favor at the end of the plaintiff's case, that motion should be

- (A) granted, because Grandmother is not legally responsible for the acts of Grandson.
- (B) granted, because Grandmother did not recall that the gun cabinet was unlocked.
- (C) denied, because a firearm is an inherently dangerous instrumentality.
- (D) denied, because a jury could find that Grandmother breached a duty of care she owed to Patrick.

**Questions 141-142** are based on the following fact situation.

On November 15, Joiner in a signed writing contracted with Galley for an agreed price to personally remodel Galley's kitchen according to specifications provided by Galley, and to start work on December 1. Joiner agreed to provide all materials for the job in addition to all of the labor required.

141. For this question only, assume that on November 26 Joiner without legal excuse repudiated the contract and that Galley, after a reasonable and prolonged effort, could not find anyone to remodel his kitchen for a price approximating the price agreed to by Joiner.

If one year later Galley brings an action for specific performance against Joiner, which of the following will provide Joiner with the best defense?

- (A) An action for equitable relief not brought within a reasonable time is barred by laches.
- (B) Specific performance is generally not available as a remedy to enforce a contractual duty to perform personal services.
- (C) Specific performance is generally not available as a remedy in the case of an anticipatory repudiation.
- (D) Specific performance is not available as a remedy where even nominal damages could have been recovered as a remedy at law.

142. For this question only, assume the following facts. On November 26, Galley without legal excuse repudiated the contract. Notwithstanding Galley's repudiation, however, Joiner subsequently purchased for \$5,000 materials that could only be used in remodeling Galley's kitchen, and promptly notified Galley, "I will hold you to our contract." If allowed to perform, Joiner would have made a profit of \$3,000 on the job.

If Galley refuses to retract his repudiation, and Joiner sues him for damages, what is the maximum that Joiner is entitled to recover?

- (A) Nothing, because he failed to mitigate his damages.
- (B) \$3,000, his expectancy damages.
- (C) \$5,000, on a restitutionary theory.
- (D) \$5,000, his reliance damages, plus \$3,000, his expectancy damages.

**Questions 143-144** are based on the following fact situation.

The police suspected that Yancey, a 16-year-old high school student, had committed a series of burglaries. Two officers went to Yancey's high school and asked the principal to call Yancey out of class and to search his backpack. While the officers waited, the principal took Yancey into the hall where she asked to look in his backpack. When Yancey refused, the principal grabbed it from him, injuring Yancey's shoulder in the process. In the backpack, she found jewelry that she turned over to the officers.

The officers believed that the jewelry had been taken in one of the burglaries. They arrested Yancey, took him to the station, and gave him Miranda warnings. Yancey asked to see a lawyer. The police called Yancey's parents to the station. When Yancey's parents arrived, the police asked them to speak with Yancey. They put them in a room and secretly recorded their conversation with a concealed electronic device. Yancey broke down and confessed to his parents that he had committed the burglaries.

Yancey was charged with the burglaries.

143. Yancey moves to suppress the use of the jewelry.

The court should

- (A) deny the motion on the ground that the search was incident to a lawful arrest.
- (B) deny the motion on the ground that school searches are reasonable if conducted by school personnel on school grounds on the basis of reasonable suspicion.
- (C) grant the motion on the ground that the search was conducted with excessive force.
- (D) grant the motion on the ground that the search was conducted without probable cause or a warrant.

144. Assume for this question only that the court denied the motion to suppress the jewelry. Yancey moves to suppress the use of the statement Yancey made to his parents.

The best argument for excluding it would be that

- (A) Yancey was in custody at the time the statement was recorded.
- (B) the police did not comply with Yancey's request for a lawyer.
- (C) once Yancey had invoked his right to counsel, it was improper for the police to listen to any of his private conversations.
- (D) the meeting between Yancey and his parents was arranged by the police to obtain an incriminating statement.

GO ON TO THE NEXT PAGE.

145. A newly enacted federal statute appropriates \$100 million in federal funds to support basic research by universities located in the United States. The statute provides that “the ten best universities in the United States” will each receive \$10 million. It also provides that “the ten best universities” shall be “determined by a poll of the presidents of all the universities in the nation, to be conducted by the United States Department of Education.” In responding to that poll, each university president is required to apply the well-recognized and generally accepted standards of academic quality that are specified in the statute. The provisions of the statute are inseverable.

Which of the following statements about this statute is correct?

- (A) The statute is unconstitutional, because the reliance by Congress on a poll of individuals who are not federal officials to determine the recipients of its appropriated funds is an unconstitutional delegation of legislative power.
- (B) The statute is unconstitutional, because the limitation on recipients to the ten best universities is arbitrary and capricious and denies other high quality universities the equal protection of the laws.
- (C) The statute is constitutional, because Congress has plenary authority to determine the objects of its spending and the methods used to achieve them, so long as they may reasonably be deemed to serve the general welfare and do not violate any prohibitory language in the Constitution.
- (D) The validity of the statute is nonjusticiable, because the use by Congress of its spending power necessarily involves political considerations that must be resolved finally by those branches of the government that are closest to the political process.

146. Which of the following fact patterns most clearly suggests an implied-in-fact contract?

- (A) A county tax assessor mistakenly bills Algernon for taxes on Bathsheba’s property, which Algernon, in good faith, pays.
- (B) Meddick, a physician, treated Ryder without Ryder’s knowledge or consent, while Ryder was unconscious as the result of a fall from his horse.
- (C) Asphalt, thinking that he was paving Customer’s driveway, for which Asphalt had an express contract, mistakenly paved Nabor’s driveway while Nabor looked on without saying anything or raising any objection.
- (D) At her mother’s request, Iris, an accountant, filled out and filed her mother’s “E-Z” income-tax form (a simple, short form).

GO ON TO THE NEXT PAGE.

147. Ashton owned Woodsedge, a tract used for commercial purposes, in fee simple and thereafter mortgaged it to First Bank. She signed a promissory note secured by a duly executed and recorded mortgage. There was no “due on sale” clause, that is, no provision that, upon sale, the whole balance then owing would become due and owing. Ashton conveyed Woodsedge to Beam “subject to a mortgage to First Bank, which the grantee assumes and agrees to pay.” Beam conveyed Woodsedge to Carter “subject to an existing mortgage to First Bank.” A copy of the note and the mortgage that secured it had been exhibited to each grantee.

After Carter made three timely payments, no further payments were made by any party. In fact, the real estate had depreciated to a point where it was worth less than the debt.

There is no applicable statute or regulation.

In an appropriate foreclosure action, First Bank joined Ashton, Beam, and Carter as defendants. At the foreclosure sale, although the fair market value for Woodsedge in its depreciated state was obtained, a deficiency resulted.

First Bank is entitled to collect a deficiency judgment against

- (A) Ashton only.
- (B) Ashton and Beam only.
- (C) Beam and Carter only.
- (D) Ashton, Beam, and Carter.

148. Landco purchased a large tract of land intending to construct residential housing on it. Landco hired Poolco to build a large in-ground swimming pool on the tract. The contract provided that Poolco would carry out blasting operations that were necessary to create an excavation large enough for the pool. The blasting caused cracks to form in the walls of Plaintiff’s home in a nearby residential neighborhood.

In Plaintiff’s action for damages against Landco, Plaintiff should

- (A) prevail, only if Landco retained the right to direct and control Poolco’s construction of the pool.
- (B) prevail, because the blasting that Poolco was hired to perform damaged Plaintiff’s home.
- (C) not prevail, if Poolco used reasonable care in conducting the blasting operations.
- (D) not prevail, if Landco used reasonable care to hire a competent contractor.

GO ON TO THE NEXT PAGE.

149. The state of Atlantica spends several million dollars a year on an oyster conservation program. As part of that program, the state limits, by statute, oyster fishing in its coastal waters to persons who have state oyster permits. In order to promote conservation, it issues only a limited number of oyster permits each year. The permits are effective for only one year from the date of their issuance and are awarded on the basis of a lottery, in which there is no differentiation between resident and nonresident applicants. However, each nonresident who obtains a permit is charged an annual permit fee that is \$5 more than the fee charged residents.

Fisher, Inc., is a large fishing company that operates from a port in another state and is incorporated in that other state. Each of the boats of Fisher, Inc., has a federal shipping license that permits it “to engage in all aspects of the coastal trade, to fish and to carry cargo from place to place along the coast, and to engage in other lawful activities along the coast of the United States.” These shipping licenses are authorized by federal statute. Assume no other federal statutes or administrative rules apply.

Although it had previously held an Atlantica oyster permit, Fisher, Inc., did not obtain a permit in that state’s lottery this year.

Which of the following is the strongest argument that can be made in support of a continued right of Fisher, Inc., to fish for oysters this year in the coastal waters of Atlantica?

- (A) Because the Atlantica law provides higher permit charges for nonresidents, it is an undue burden on interstate commerce.
- (B) Because the Atlantica law provides higher permit charges for nonresidents, it denies Fisher, Inc., the privileges and immunities of state citizenship.
- (C) Because it holds a federal shipping license, Fisher, Inc., has a right to fish for oysters in Atlantica waters despite the state law.
- (D) Because Fisher, Inc., previously held an Atlantica oyster permit and Atlantica knows that company is engaged in a continuing business operation, the refusal to grant Fisher, Inc., a permit this year is a taking of its property without due process of law.

GO ON TO THE NEXT PAGE.



150. The United States Department of the Interior granted Concessionaire the food and drink concession in a federal park located in the state of New Senora. Concessionaire operated his concession out of federally owned facilities in the park. The federal statute authorizing the Interior Department to grant such concessions provided that the grantees would pay only a nominal rental for use of these federal facilities because of the great benefit their concessions would provide to the people of the United States.

The legislature of the state of New Senora enacted a statute imposing an occupancy tax on the occupants of real estate within that state that is not subject to state real estate taxes. The statute was intended to equalize the state tax burden on such occupants with that on people occupying real estate that is subject to state real estate taxes. Pursuant to that statute, the New Senora Department of Revenue attempted to collect the state occupancy tax from Concessionaire because the federal facilities occupied by Concessionaire were not subject to state real estate taxes. Concessionaire sued to invalidate the state occupancy tax as applied to him.

The strongest ground upon which Concessionaire could challenge the occupancy tax is that it violates the

- (A) commerce clause by unduly burdening the interstate tourist trade.
- (B) privileges and immunities clause of the Fourteenth Amendment by interfering with the fundamental right to do business on federal property.
- (C) equal protection of the laws clause of the Fourteenth Amendment because the tax treats him less favorably than federal concessionaires in other states who do not have to pay such occupancy taxes.
- (D) supremacy clause of Article VI and the federal statute authorizing such concessions.

151. Davis has a small trampoline in his backyard which, as he knows, is commonly used by neighbor children as well as his own. The trampoline is in good condition, is not defective in any way, and normally is surrounded by mats to prevent injury if a user should fall off. Prior to leaving with his family for the day, Davis leaned the trampoline up against the side of the house and placed the mats in the garage.

While the Davis family was away, Philip, aged 11, a new boy in the neighborhood, wandered into Davis's yard and saw the trampoline. Philip had not previously been aware of its presence, but, having frequently used a trampoline before, he decided to set it up, and started to jump. He lost his balance on one jump and took a hard fall on the bare ground, suffering a serious injury that would have been prevented by the mats.

An action has been brought against Davis on Philip's behalf to recover damages for the injuries Philip sustained from his fall. In this jurisdiction, the traditional common-law rules pertaining to contributory negligence have been replaced by a pure comparative negligence rule.

In his action against Davis, will Philip prevail?

- (A) No, if children likely to be attracted by the trampoline would normally realize the risk of using it without mats.
- (B) No, if Philip failed to exercise reasonable care commensurate with his age, intelligence, and experience.
- (C) No, because Philip entered Davis's yard and used the trampoline without Davis's permission.
- (D) No, because Philip did not know about the trampoline before entering Davis's yard and thus was not "lured" onto the premises.

GO ON TO THE NEXT PAGE.



152. Deben was charged with using a forged prescription from a Dr. Kohl to obtain Percodan® from Smith's Drugstore on May 1. At trial, Smith identified Deben as the customer, but Deben testified that he had not been in the store.

In rebuttal, the prosecutor calls Wallman and Witler to testify that on May 1 a man they identified as Deben had presented prescriptions for Percodan® from a Dr. Kohl at, respectively, Wallman's Drugs and Witler's Drugstore.

Wallman's and Witler's testimony is

- (A) admissible, to prove a pertinent trait of Deben's character and Deben's action in conformity therewith.
- (B) admissible, to identify the man who presented the prescription at Smith's Drugstore.
- (C) inadmissible, because it proves specific acts rather than reputation or opinion.
- (D) inadmissible, because other crimes may not be used to show propensity.

153. An ordinance of the city of Green requires that its mayor must have been continuously a resident of the city for at least five years at the time he or she takes office. Candidate, who is thinking about running for mayor in an election that will take place next year, will have been a resident of Green for only four and one-half years at the time the mayor elected then takes office. Before he decides whether to run for the position of mayor, Candidate wants to know whether he could lawfully assume that position if he were elected. As a result, Candidate files suit in the local federal district court for a declaratory judgment that the Green five-year-residence requirement is unconstitutional and that he is entitled to a place on his political party's primary election ballot for mayor. He names the chairman of his political party as the sole defendant but does not join any election official. The chairman responds by joining Candidate in requesting the court to declare the Green residence requirement invalid.

In this case, the court should

- (A) refuse to determine the merits of this suit, because there is no case or controversy.
- (B) refuse to issue such a declaratory judgment, because an issue of this kind involving only a local election does not present a substantial federal constitutional question.
- (C) issue the declaratory judgment, because a residency requirement of this type is a denial of the equal protection of the laws.
- (D) issue the declaratory judgment, because Candidate will have substantially complied with the residency requirement.

GO ON TO THE NEXT PAGE.

154. Oliver, owner of Blackacre, needed money. Blackacre was fairly worth \$100,000, so Oliver tried to borrow \$60,000 from Len on the security of Blackacre. Len agreed, but only if Oliver would convey Blackacre to Len outright by warranty deed, with Len agreeing orally to reconvey to Oliver once the loan was paid according to its terms. Oliver agreed, conveyed Blackacre to Len by warranty deed, and Len paid Oliver \$60,000 cash. Len promptly and properly recorded Oliver's deed.

Now, Oliver has defaulted on repayment with \$55,000 still due on the loan. Oliver is still in possession.

Which of the following best states the parties' rights in Blackacre?

- (A) Len's oral agreement to reconvey is invalid under the Statute of Frauds, so Len owns Blackacre outright.
- (B) Oliver, having defaulted, has no further rights in Blackacre, so Len may obtain summary eviction.
- (C) The attempted security arrangement is a creature unknown to the law, hence a nullity; Len has only a personal right to \$55,000 from Oliver.
- (D) Len may bring whatever foreclosure proceeding is appropriate under the laws of the jurisdiction.

155. Big City High School has had a very high rate of pregnancy among its students. In order to assist students who keep their babies to complete high school, Big City High School has established an infant day-care center for children of its students, and also offers classes in child-care. Because the child-care classes are always overcrowded, the school limits admission to those classes solely to Big City High School students who are the mothers of babies in the infant day-care center.

Joe, a student at Big City High School, has legal custody of his infant son. The school provides care for his son in its infant day-care center, but will not allow Joe to enroll in the child-care classes. He brings suit against the school challenging, on constitutional grounds, his exclusion from the child-care classes.

Which of the following best states the burden of persuasion in this case?

- (A) Joe must demonstrate that the admission requirement is not rationally related to a legitimate governmental interest.
- (B) Joe must demonstrate that the admission requirement is not as narrowly drawn as possible to achieve a substantial governmental interest.
- (C) The school must demonstrate that the admission policy is the least restrictive means by which to achieve a compelling governmental interest.
- (D) The school must demonstrate that the admission policy is substantially related to an important governmental interest.

GO ON TO THE NEXT PAGE.

156. Defendant was upset because he was going to have to close his liquor store due to competition from a discount store in a new shopping mall nearby. In desperation, he decided to set fire to his store to collect the insurance. While looking through the basement for flammable material, he lit a match to read the label on a can. The match burned his finger and, in a reflex action, he dropped the match. It fell into a barrel and ignited some paper. Defendant made no effort to put out the fire but instead left the building. The fire spread and the store was destroyed by fire. Defendant was eventually arrested and indicted for arson.

Defendant is

- (A) guilty, if he could have put out the fire before it spread and did not do so because he wanted the building destroyed.
- (B) guilty, if he was negligent in starting the fire.
- (C) not guilty, because even if he wanted to burn the building there was no concurrence between his *mens rea* and the act of starting the fire.
- (D) not guilty, because his starting the fire was the result of a reflex action and not a voluntary act.

157. In his employment, Grinder operates a grinding wheel. To protect his eyes, he wears glasses, sold under the trade name "Safety Glasses," manufactured by Glassco. The glasses were sold with a warning label stating that they would protect only against small, flying objects. One day, the grinding wheel Grinder was using disintegrated and fragments of the stone wheel were thrown off with great force. One large fragment hit Grinder, knocking his safety glasses up onto his forehead. Another fragment then hit and injured his eye.

Grinder brought an action against Glassco for the injury to his eye. The jurisdiction adheres to the traditional common-law rule pertaining to contributory negligence.

In this action, will Grinder prevail?

- (A) Yes, because the safety glasses were defective in that they did not protect him from the disintegrating wheel.
- (B) Yes, because the glasses were sold under the trade name "Safety Glasses."
- (C) No, because the glasses were not designed or sold for protection against the kind of hazard Grinder encountered.
- (D) No, if Grinder will be compensated under the workers' compensation law.

GO ON TO THE NEXT PAGE.

**Questions 158-160** are based on the following fact situation.

Oscar purchased a large bottle of No-Flake dandruff shampoo, manufactured by Shampoo Company. The box containing the bottle stated in part: "**CAUTION**--Use only 1 capful at most once a day. Greater use may cause severe damage to the scalp." Oscar read the writing on the box, removed the bottle, and threw the box away. Oscar's roommate, Paul, asked to use the No-Flake, and Oscar said, "Be careful not to use too much." Paul thereafter used No-Flake twice a day, applying two or three capfuls each time, notwithstanding the label statement that read: "Use no more than one capful per day. See box instructions." The more he used No-Flake, the more inflamed his scalp became, the more it itched, and the more he used. After three weeks of such use, Paul finally consulted a doctor who diagnosed his problem as a serious and irreversible case of dermatitis caused by excessive exposure to the active ingredients in No-Flake. These ingredients are uniquely effective at controlling dandruff, but there is no way to remove a remote risk to a small percentage of persons who may contract dermatitis as the result of applying for prolonged periods of time amounts of No-Flake substantially in excess of the directions. This jurisdiction adheres to the traditional common-law rules pertaining to contributory negligence and assumption of risk.

158. Based upon the foregoing facts, if Paul sues Shampoo Company to recover damages for his dermatitis, his most promising theory of liability will be that the No-Flake shampoo

- (A) had an unreasonably dangerous manufacturing defect.
- (B) had an unreasonably dangerous design defect.
- (C) was inherently dangerous.
- (D) was inadequately labeled to warn of its dangers.

159. If Paul asserts a claim for his injuries against Shampoo Company based on strict liability in tort, which of the following would constitute a defense?

- I. Paul misused the No-Flake shampoo.
  - II. Paul was contributorily negligent in continuing to use No-Flake shampoo when his scalp began to hurt and itch.
  - III. Paul was a remote user and not in privity with Shampoo Company.
- (A) I only.
  - (B) I and II only.
  - (C) II and III only.
  - (D) Neither I, nor II, nor III.

160. If Paul asserts a claim against Oscar for his dermatitis injuries, Oscar's best defense will be that

- (A) Paul was contributorily negligent.
- (B) Paul assumed the risk.
- (C) Oscar had no duty toward Paul, who was a gratuitous donee.
- (D) Oscar had no duty toward Paul, because Shampoo Company created the risk and had a nondelegable duty to foreseeable users.

GO ON TO THE NEXT PAGE.

161. Unprepared for a final examination, Slick asked his girlfriend, Hope, to set off the fire alarms in the university building 15 minutes after the test commenced. Hope did so. Several students were injured in the panic that followed as people were trying to get out of the building. Slick and Hope are prosecuted for battery and for conspiracy to commit battery.

They are

- (A) guilty of both crimes.
- (B) guilty of battery but not guilty of conspiracy.
- (C) not guilty of battery but guilty of conspiracy.
- (D) not guilty of either crime.

162. A statute of the state of Wasminia prohibits the use of state-owned or state-operated facilities for the performance of abortions that are not “necessary to save the life of the mother.” That statute also prohibits state employees from performing any such abortions during the hours they are employed by the state.

Citizen was in her second month of pregnancy. She sought an abortion at the Wasminia State Hospital, a state-owned and state-operated facility. Citizen did not claim that the requested abortion was necessary to save her life. The officials in charge of the hospital refused to perform the requested abortion solely on the basis of the state statute. Citizen immediately filed suit against those officials in an appropriate federal district court. She challenged the constitutionality of the Wasminia statute and requested the court to order the hospital to perform the abortion she sought.

In this case, the court will probably hold that the Wasminia statute is

- (A) unconstitutional, because a limit on the availability of abortions performed by state employees or in state-owned or state-operated facilities to situations in which it is necessary to save the life of the mother impermissibly interferes with the fundamental right of Citizen to decide whether to have a child.
- (B) unconstitutional, because it impermissibly discriminates against poor persons who cannot afford to pay for abortions in privately owned and operated facilities and against persons who live far away from privately owned and operated abortion clinics.
- (C) constitutional, because it does not prohibit a woman from having an abortion or penalize her for doing so, it is rationally related to the legitimate governmental goal of encouraging childbirth, and it does not interfere with the voluntary performance of abortions by private physicians in private facilities.
- (D) constitutional, because the use of state-owned or state-operated facilities and access to the services of state employees are privileges and not rights and, therefore, a state may condition them on any basis it chooses.

GO ON TO THE NEXT PAGE.

163. Oscar, owner of Greenacre, conveyed Greenacre by quitclaim deed as a gift to Ann, who did not then record her deed. Later, Oscar conveyed Greenacre by warranty deed to Belle, who paid valuable consideration, knew nothing of Ann's claim, and promptly and properly recorded. Next, Ann recorded her deed. Then Belle conveyed Greenacre by quitclaim deed to her son Cal as a gift. When the possible conflict with Ann was discovered, Cal recorded his deed.

Greenacre at all relevant times has been vacant unoccupied land.

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." No other statute is applicable.

Cal has sued Ann to establish who owns Greenacre.

The court will hold for

- (A) Cal, because Ann was a donee.
- (B) Cal, because Belle's purchase cut off Ann's rights.
- (C) Ann, because she recorded before Cal.
- (D) Ann, because Cal was a subsequent donee.

164. While Driver was taking a leisurely spring drive, he momentarily took his eyes off the road to look at some colorful trees in bloom. As a result, his car swerved a few feet off the roadway, directly toward Walker, who was standing on the shoulder of the road waiting for a chance to cross. When Walker saw the car bearing down on him, he jumped backwards, fell, and injured his knee.

Walker sued Driver for damages, and Driver moved for summary judgment. The foregoing facts are undisputed.

Driver's motion should be

- (A) denied, because the record shows that Walker apprehended an imminent, harmful contact with Driver's car.
- (B) denied, because a jury could find that Driver negligently caused Walker to suffer a legally compensable injury.
- (C) granted, because the proximate cause of Walker's injury was his own voluntary act.
- (D) granted, because it is not unreasonable for a person to be distracted momentarily.

GO ON TO THE NEXT PAGE.

165. In which of the following situations is the defendant most likely to be convicted, even though he did not intend to bring about the harm that the statute defining the offense is designed to prevent?
- (A) Defendant was the president of an aspirin manufacturing company. A federal inspector discovered that a large number of aspirin tablets randomly scattered through several bottles in a carton ready for shipment were laced with arsenic. Defendant is charged with attempted introduction of adulterated drugs into interstate commerce.
  - (B) Defendant struck Victim in the face with a baseball bat, intending to inflict a serious injury. Victim died after being hospitalized for three days. Defendant is charged with murder.
  - (C) Defendant burglarized a jewelry store, intending to steal some diamonds. As he entered the store, he short-circuited the store's burglar alarm system, thereby preventing a warning of his entry to police. The smoldering wires eventually caused a fire that destroyed the store. Defendant is charged with arson.
  - (D) Defendant wanted to frighten Victim's friend by placing a plastic rattlesnake in his lunch box. When Victim mistakenly took the lunch box and opened it, believing it to be his own, the plastic rattlesnake popped out. As a result of the fright, Victim suffered a heart attack and died. Defendant is charged with manslaughter.

166. Happy-Time Beverages agreed in writing with Fizzy Cola Company to serve for three years as a distributor in a six-county area of Fizzy Cola, which contains a small amount of caffeine. Happy-Time promised in the contract to "promote in good faith the sale of Fizzy Cola" in that area; but the contract said nothing about restrictions on the products that Happy-Time could distribute.

Six months later, Happy-Time agreed with the Cool Cola Company to distribute its caffeine-free cola beverages in the same six-county area.

If Fizzy Cola Company sues Happy-Time for breach of their distribution contract, which of the following facts, if established, would most strengthen Fizzy's case?

- (A) Cool Cola's national advertising campaign disparages the Fizzy Cola product by saying, "You don't need caffeine and neither does your cola."
- (B) Since Happy-Time began to distribute Cool Cola, the sales of Fizzy Cola have dropped 3% in the six-county area.
- (C) Prior to signing the contract with Fizzy Cola Company, a representative of Happy-Time said that the deal with Fizzy would be "an exclusive."
- (D) For many years in the soft-drink industry, it has been uniform practice for distributors to handle only one brand of cola.

GO ON TO THE NEXT PAGE.



167. Dove is on trial for theft. At trial, the prosecutor called John and May Wong. They testified that, as they looked out their apartment window, they saw thieves across the street break the window of a jewelry store, take jewelry, and leave in a car. Mrs. Wong telephoned the police and relayed to them the license number of the thieves' car as Mr. Wong looked out the window with binoculars and read it to her. Neither of them has any present memory of the number. The prosecutor offers as evidence a properly authenticated police tape recording of May Wong's telephone call with her voice giving the license number, which is independently shown to belong to Dove's car.

The tape recording of May Wong's stating the license number is

- (A) admissible, under the hearsay exception for present sense impressions.
- (B) admissible, as nonhearsay circumstantial evidence.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because May Wong never had firsthand knowledge of the license number.

168. Diggers Construction Company was engaged in blasting operations to clear the way for a new road. Diggers had erected adequate barriers and posted adequate warning signs in the vicinity of the blasting. Although Paul read and understood the signs, he entered the area to walk his dog. As a result of the blasting, Paul was hit by a piece of rock and sustained head injuries. The jurisdiction follows the traditional common-law rules governing the defenses of contributory negligence, assumption of risk, and last clear chance.

In an action by Paul against Diggers to recover damages for his injuries, Paul will

- (A) not prevail, if Diggers exercised reasonable care to protect the public from harm.
- (B) not prevail, because Paul understood the signs and disregarded the warnings.
- (C) prevail, because Paul was harmed by Diggers's abnormally dangerous activity.
- (D) prevail, unless Paul failed to use reasonable care to protect himself from harm.

GO ON TO THE NEXT PAGE.

169. Pike sued Day City Community Church for damages he suffered when Pike crashed his motorcycle in an attempt to avoid a cow that had escaped from its corral. The cow and corral belonged to a farm that had recently been left by will to the church. At trial, Pike seeks to ask Defendant's witness, Winters, whether she is a member of that church.

The question is

- (A) improper, because evidence of a witness's religious beliefs is not admissible to impeach credibility.
  - (B) improper, because it violates First Amendment and privacy rights.
  - (C) proper, for the purpose of ascertaining partiality or bias.
  - (D) proper, for the purpose of showing capacity to appreciate the nature and obligation of an oath.
170. Radon is a harmful gas found in the soil of certain regions of the United States. A statute of the state of Magenta requires occupants of residences with basements susceptible to the intrusion of radon to have their residences tested for the presence of radon and to take specified remedial steps if the test indicates the presence of radon above specified levels. The statute also provides that the testing for radon may be done only by testers licensed by a state agency. According to the statute, a firm may be licensed to test for radon only if it meets specified rigorous standards relating to the accuracy of its testing. These standards may easily be achieved with current technology; but the technology required to meet them is 50% more expensive than the technology required to measure radon accumulations in a slightly less accurate manner.

The United States Environmental Protection Agency (EPA) does not license radon testers. However, a federal statute authorizes the EPA to advise on the accuracy of various methods of radon testing and to provide to the general public a list of testers that use methods it believes to be reasonably accurate.

WeTest, a recently established Magenta firm, uses a testing method that the EPA has stated is reasonably accurate. WeTest is also included by the EPA on the list of testers using methods of testing it believes to be reasonably accurate. WeTest applies for a Magenta radon testing license, but its application is denied because WeTest cannot demonstrate that the method of testing for radon it uses is sufficiently accurate to meet the rigorous Magenta statutory standards. WeTest sues appropriate Magenta officials in federal court claiming that Magenta may not constitutionally exclude WeTest from performing the required radon tests in Magenta.

In this suit, the court will probably rule in favor of

- (A) WeTest, because the full faith and credit clause of the Constitution requires Magenta to respect and give effect to the action of the EPA in including WeTest on its list of testers that use reasonably accurate methods.
- (B) WeTest, because the supremacy clause of the Constitution requires Magenta to respect and give effect to the action of the EPA in including WeTest on its list of testers that use reasonably accurate methods.
- (C) Magenta, because the federal statute and the action of the EPA in including WeTest on its list of testers that use reasonably accurate methods are not inconsistent with the more rigorous Magenta licensing requirement, and that requirement is reasonably related to a legitimate public interest.
- (D) Magenta, because radon exposure is limited to basement areas, which, by their very nature, cannot move in interstate commerce.

GO ON TO THE NEXT PAGE.

171. Bitz, an amateur computer whiz, agreed in writing to design for the Presskey Corporation, a distributor of TV game systems, three new games a year for a five-year period. The writing provided, in a clause separately signed by Bitz, that “No modification shall be binding on Presskey unless made in writing and signed by Presskey’s authorized representative.”

Because of family problems, Bitz delivered and Presskey accepted only two game-designs a year for the first three years; but the games were a commercial success and Presskey made no objection. Accordingly, Bitz spent substantial sums on new computer equipment that would aid in speeding up future design work. In the first quarter of the fourth year, however, Presskey terminated the contract on the ground that Bitz had breached the annual-quantity term.

In Bitz’s suit against Presskey for damages, the jury found that the contract had been modified by conduct and the trial court awarded Bitz substantial compensatory damages.

Is this result likely to be reversed on appeal?

- (A) Yes, because the contract’s no-oral-modification clause was not expressly waived by Presskey.
- (B) Yes, because the contract’s no-oral-modification clause was a material part of the agreed exchange and could not be avoided without new consideration.
- (C) No, because the contract’s no-oral-modification clause was unconscionable as against an amateur designer.
- (D) No, because Presskey by its conduct waived the annual-quantity term and Bitz materially changed his position in reasonable reliance on that waiver.

172. Test owned Blackacre, a vacant one-acre tract of land in State. Five years ago, he executed a deed conveying Blackacre to “Church for the purpose of erecting a church building thereon.” Three years ago, Test died leaving Sonny as his sole heir at law. His duly probated will left “all my Estate, both real and personal, to my friend Fanny.”

Church never constructed a church building on Blackacre and last month Church, for a valid consideration, conveyed Blackacre to Developer.

Developer brought an appropriate action to quiet title against Sonny, Fanny, and Church, and joined the appropriate state official. Such official asserted that a charitable trust was created which has not terminated.

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

- (A) Developer.
- (B) Sonny.
- (C) Fanny.
- (D) the state official.

GO ON TO THE NEXT PAGE.

173. Mr. Denby was charged with the sale of narcotics. The federal prosecutor arranged with Mrs. Denby for her to testify against her husband in exchange for leniency in her case. At trial, the prosecution calls Mrs. Denby, who had been granted immunity from prosecution, to testify, among other things, that she saw her husband sell an ounce of heroin.

Which of the following statements is most clearly correct in the federal courts?

- (A) Mrs. Denby cannot be called as a witness over her husband's objection.
- (B) Mrs. Denby can be called as a witness but cannot testify, over Mr. Denby's objection, that she saw him sell heroin.
- (C) Mrs. Denby can refuse to be a witness against her husband.
- (D) Mrs. Denby can be required to be a witness and to testify that she saw her husband sell heroin.

174. Freund, a U.S. west-coast manufacturer, gave Wrench, a hardware retailer who was relocating to the east coast, the following "letter of introduction" to Tuff, an east-coast hardware wholesaler.

This will introduce you to my good friend and former customer, Wrench, who will be seeking to arrange the purchase of hardware inventory from you on credit. If you will let him have the goods, I will make good any loss up to \$25,000 in the event of his default.

/Signed/ Freund

Wrench presented the letter to Tuff, who then sold and delivered \$20,000 worth of hardware to Wrench on credit. Tuff promptly notified Freund of this sale.

Which of the following is NOT an accurate statement concerning the arrangement between Freund and Tuff?

- (A) It was important to enforceability of Freund's promise to Tuff that it be embodied in a signed writing.
- (B) By extending the credit to Wrench, Tuff effectively accepted Freund's offer for a unilateral contract.
- (C) Although Freund received no consideration from Wrench, Freund's promise is enforceable by Tuff.
- (D) Freund's promise is enforceable by Tuff whether or not Tuff gave Freund reasonable notice of the extension of credit to Wrench.

GO ON TO THE NEXT PAGE.

175. The legislature of the state of Gray recently enacted a statute forbidding public utilities regulated by the Gray Public Service Commission to increase their rates more than once every two years. Economy Electric Power Company, a public utility regulated by that commission, has just obtained approval of the commission for a general rate increase. Economy Electric has routinely filed for a rate increase every ten to 14 months during the last 20 years. Because of uncertainties about future fuel prices, the power company cannot ascertain with any certainty the date when it will need a further rate increase; but it thinks it may need such an increase sometime within the next 18 months.

Economy Electric files an action in the federal district court in Gray requesting a declaratory judgment that this new statute of Gray forbidding public utility rate increases more often than once every two years is unconstitutional. Assume no federal statute is relevant.

In this case, the court should

- (A) hold the statute unconstitutional, because such a moratorium on rate increases deprives utilities of their property without due process of law.
- (B) hold the statute constitutional, because the judgment of a legislature on a matter involving economic regulation is entitled to great deference.
- (C) dismiss the complaint, because this action is not ripe for decision.
- (D) dismiss the complaint, because controversies over state-regulated utility rates are outside of the jurisdiction conferred on federal courts by Article III of the Constitution.

176. Daniel is on trial for evading \$100,000 in taxes. The prosecution offers in evidence an anonymous letter to the IRS, identified as being in Daniel's handwriting, saying, "I promised my mother on her deathbed I would try to pay my back taxes. Here is \$10,000. I'll make other payments if you promise not to prosecute. Answer yes by personal ad saying, 'OK on tax deal.'"

The letter is

- (A) admissible, as a statement of present intention or plan.
- (B) admissible, as an admission of a party opponent.
- (C) inadmissible, because it is an effort to settle a claim.
- (D) inadmissible, because the probative value is substantially outweighed by the risk of unfair prejudice.

GO ON TO THE NEXT PAGE.

**Questions 177-178** are based on the following fact situation.

Broker needed a certain rare coin to complete a set that he had contracted to assemble and sell to Collecta. On February 1, Broker obtained such a coin from Hoarda in exchange for \$1,000 and Broker's signed, written promise to re-deliver to Hoarda "not later than December 31 this year" a comparable specimen of the same kind of coin without charge to Hoarda. On February 2, Broker consummated sale of the complete set to Collecta.

On October 1, the market price of rare coins suddenly began a rapid, sustained rise; and on October 15 Hoarda wrote Broker for assurance that the latter would timely meet his coin-replacement commitment. Broker replied, "In view of the surprising market, it seems unfair that I should have to replace your coin within the next few weeks."

177. For this question only, assume the following facts. Having received Broker's message on October 17, Hoarda sued Broker on November 15 for the market value of a comparable replacement-coin as promised by Broker in February. The trial began on December 1.

If Broker moves to dismiss Hoarda's complaint, which of the following is Broker's best argument in support of the motion?

- (A) Broker did not repudiate the contract on October 17, and may still perform no later than the contract deadline of December 31.
- (B) Even if Broker repudiated on October 17, Hoarda's only action would be for specific performance because the coin is a unique chattel.
- (C) Under the doctrine of impossibility, which includes unusually burdensome and unforeseen impracticability, Broker is temporarily excused by the market conditions from timely performance of his coin-replacement obligation.
- (D) Even if Broker repudiated on October 17, Hoarda has no remedy without first demanding in writing that Broker retract his repudiation.

178. For this question only, assume the following facts. After receiving Broker's message on October 17, Hoarda telephoned Broker, who said, "I absolutely will not replace your coin until the market drops far below its present level." Hoarda then sued Broker on November 15 for the market value of a comparable replacement-coin as promised by Broker in February. The trial began on December 1.

If Broker moves to dismiss Hoarda's complaint, which of the following is Hoarda's best argument in opposing the motion?

- (A) Hoarda's implied duty of good faith and fair dealing in enforcement of the contract required her to mitigate her losses on the rising market by suing promptly, as she did, after becoming reasonably apprehensive of a prospective breach by Broker.
- (B) Although the doctrine of anticipatory breach is not applicable under the prevailing view if, at the time of repudiation, the repudiatee owes the repudiator no remaining duty of performance, the doctrine applies in this case because Hoarda, the repudiatee, remains potentially liable under an implied warranty that the coin advanced to Broker was genuine.
- (C) When either party to a sale-of-goods contract repudiates with respect to a performance not yet due, the loss of which will substantially impair the value of the contract to the other, the aggrieved party may in good faith resort to any appropriate remedy for breach.
- (D) Anticipatory repudiation, as a deliberate disruption without legal excuse of an ongoing contractual relationship between the parties, may be treated by the repudiatee at her election as a present tort, actionable at once.

GO ON TO THE NEXT PAGE.



179. Alice owned a commercial property, Eastgate, consisting of a one-story building rented to various retail stores and a very large parking lot. Two years ago, Alice died and left Eastgate to her nephew, Paul, for life, with remainder to her godson, Richard, his heirs and assigns. Paul was 30 years old and Richard was 20 years old when Alice died. The devise of Eastgate was made subject to any mortgage on Eastgate in effect at the time of Alice's death.

When Alice executed her will, the balance of the mortgage debt on Eastgate was less than \$5,000. A year before her death, Alice suffered financial reverses; and in order to meet her debts, she had mortgaged Eastgate to secure a loan of \$150,000. The entire principal of the mortgage remained outstanding when she died. As a result, the net annual income from Eastgate was reduced not only by real estate taxes and regular maintenance costs, but also by the substantial mortgage interest payments that were due each month.

Paul was very dissatisfied with the limited benefit that he was receiving from the life estate. When, earlier this year, Acme, Inc., proposed to purchase Eastgate, demolish the building, pay off the mortgage, and construct a 30-story office building, Paul was willing to accept Acme's offer. However, Richard adamantly refused the offer, even though Richard, as the remainderman, paid the principal portion of each monthly mortgage amortization payment. Richard was independently wealthy and wanted to convert Eastgate into a public park when he became entitled to possession.

When Acme realized that Richard would not change his mind, Acme modified its proposal to a purchase of the life estate of Paul. Acme was ready to go ahead with its building plans, relying upon a large life insurance policy on Paul's life to protect it against the economic risk of Paul's death. Paul's life expectancy was 45 years.

When Richard learned that Paul had agreed to Acme's modified proposal, Richard brought an appropriate action against them to enjoin their carrying it out.

There is no applicable statute.

The best argument for Richard is that

- (A) Acme cannot purchase Paul's life estate, because life estates are not assignable.
- (B) the proposed demolition of the building constitutes waste.
- (C) Richard's payment of the mortgage principal has subrogated him to Paul's rights as a life tenant and bars Paul's assignment of the life estate without Richard's consent.
- (D) continued existence of the one-story building is more in harmony with the ultimate use as a park than the proposed change in use.

GO ON TO THE NEXT PAGE.



180. Doppler is charged with aggravated assault on Vezy, a game warden. Doppler testified that, when he was confronted by Vezy, who was armed and out of uniform, Doppler believed Vezy was a robber and shot in self-defense. The state calls Willy to testify that a year earlier, he had seen Doppler shoot a man without provocation and thereafter falsely claim self-defense.

Willy's testimony is

- (A) admissible, as evidence of Doppler's untruthfulness.
- (B) admissible, as evidence that Doppler did not act in self-defense on this occasion.
- (C) inadmissible, because it is improper character evidence.
- (D) inadmissible, because it is irrelevant to the defense Doppler raised.

181. Eddie worked as the cashier in a restaurant. One night after the restaurant had closed, Eddie discovered that the amount of cash in the cash register did not match the cash register receipt tapes. He took the cash and the tapes, put them in a bag, gave them to Rita, the manager of the restaurant, and reported the discrepancy. Rita immediately accused him of taking money from the register and threatened to fire him if he did not make up the difference. Rita placed the bag in the office safe. Angered by what he considered to be an unjust accusation, Eddie waited until Rita left the room and then reached into the still open safe, took the bag containing the cash, and left.

Eddie is guilty of

- (A) larceny.
- (B) embezzlement.
- (C) either larceny or embezzlement but not both.
- (D) neither larceny nor embezzlement.

182. A grand jury returned an indictment charging Daniels with bank robbery, and when he could not make bond he was jailed pending trial. He had received Miranda warnings when arrested and had made no statement at that time. The prosecutor arranged to have Innis, an informant, placed as Daniels's cellmate and instructed Innis to find out about the bank robbery without asking any direct questions about it. Innis, once in the cell, constantly boasted about the crimes that he had committed. Not to be outdone, Daniels finally declared that he had committed the bank robbery with which he was charged.

At Daniels's trial, his attorney moved to exclude any testimony from Innis concerning Daniels's boast.

The motion should be

- (A) granted, because Daniels's privilege against self-incrimination was violated.
- (B) granted, because Daniels's right to counsel was violated.
- (C) denied, because Daniels had received Miranda warnings.
- (D) denied, because Daniels was not interrogated by Innis.

183. Pamela sued Driver for damages for the death of Pamela's husband Ronald, resulting from an automobile collision. At trial, Driver calls Ronald's doctor to testify that the day before his death, Ronald, in great pain, said, "It was my own fault; there's nobody to blame but me."

The doctor's testimony should be admitted as

- (A) a statement against interest.
- (B) a dying declaration.
- (C) a statement of Ronald's then existing state of mind.
- (D) an excited utterance.

184. Clerk is a clerical worker who has been employed for the past two years in a permanent position in the Wasmania County Public Records Office in the state of Orange. Clerk has been responsible for copying and filing records of real estate transactions in that office. Clerk works in a nonpublic part of the office and has no contact with members of the public. However, state law provides that all real estate records in that office are to be made available for public inspection.

On the day an attempted assassination of the governor of Orange was reported on the radio, Clerk remarked to a coworker, "Our governor is such an evil man, I am sorry they did not get him." Clerk's coworker reported this remark to Clerk's employer, the county recorder. After Clerk admitted making the remark, the county recorder dismissed him stating that "there is no room in this office for a person who hates the governor so much."

Clerk sued for reinstatement and back pay. His only claim is that the dismissal violated his constitutional rights.

In this case, the court should hold that the county recorder's dismissal of Clerk was

- (A) unconstitutional, because it constitutes a taking without just compensation of Clerk's property interest in his permanent position with the county.
- (B) unconstitutional, because in light of Clerk's particular employment duties his right to express himself on a matter of public concern outweighed any legitimate interest the state might have had in discharging him.
- (C) constitutional, because the compelling interest of the state in having loyal and supportive employees outweighs the interest of any state employee in his or her job or in free speech on a matter of public concern.
- (D) nonjusticiable, because public employment is a privilege rather than a right and, therefore, Clerk lacked standing to bring this suit.

185. Slalome, a ski-shop operator, in a telephone conversation with Mitt, a glove manufacturer, ordered 12 pairs of vortex-lined ski gloves at Mitt's list price of \$600 per dozen "for delivery in 30 days." Mitt orally accepted the offer, and immediately faxed to Slalome this signed memo: "Confirming our agreement today for your purchase of a dozen pairs of vortex-lined ski gloves for \$600, the shipment will be delivered in 30 days." Although Slalome received and read Mitt's message within minutes after its dispatch, she changed her mind three weeks later about the purchase and rejected the conforming shipment when it timely arrived.

On learning of the rejection, does Mitt have a cause of action against Slalome for breach of contract?

- (A) Yes, because the gloves were identified to the contract and tendered to Slalome.
- (B) Yes, because Mitt's faxed memo to Slalome was sufficient to make the agreement enforceable.
- (C) No, because the agreed price was \$600 and Slalome never signed a writing evidencing a contract with Mitt.
- (D) No, because Slalome neither paid for nor accepted any of the goods tendered.

GO ON TO THE NEXT PAGE.

186. A burglar stole Collecta's impressionist painting valued at \$400,000. Collecta, who had insured the painting for \$300,000 with Artistic Insurance Co., promised to pay \$25,000 to Snoop, a full-time investigator for Artistic, if he effected the return of the painting to her in good condition. By company rules, Artistic permits its investigators to accept and retain rewards from policyholders for the recovery of insured property. Snoop, by long and skillful detective work, recovered the picture and returned it undamaged to Collecta.

If Collecta refuses to pay Snoop anything, and he sues her for \$25,000, what is the probable result under the prevailing modern rule?

- (A) Collecta wins, because Snoop owed Artistic a preexisting duty to recover the picture if possible.
- (B) Collecta wins, because Artistic, Snoop's employer, had a preexisting duty to return the recovered painting to Collecta.
- (C) Snoop wins, because Collecta will benefit more from return of the \$400,000 painting than from receiving the \$300,000 policy proceeds.
- (D) Snoop wins, because the preexisting duty rule does not apply if the promisee's (Snoop's) duty was owed to a third person.

187. Oren owned Purpleacre, a tract of land, in fee simple. By will duly admitted to probate after his death, Oren devised Purpleacre to "any wife who survives me with remainder to such of my children as are living at her death."

Oren was survived by Wen, his wife, and by three children, Cynthia, Cam, and Camelia. Thereafter, Cam died and by will duly admitted to probate devised his entire estate to David. Cynthia and Camelia were Cam's heirs at law.

Later Wen died. In appropriate lawsuit to which Cynthia, Camelia, and David are parties, title to Purpleacre is at issue.

In such lawsuit, judgment should be that title to Purpleacre is in

- (A) Cynthia, Camelia, and David, because the earliest vesting of remainders is favored and reference to Wen's death should be construed as relating to time of taking possession.
- (B) Cynthia, Camelia, and David, because the provision requiring survival of children violates the Rule Against Perpetuities since the surviving wife might have been a person unborn at the time of writing of the will.
- (C) Cynthia and Camelia, because Cam's remainder must descend by intestacy and is not devisable.
- (D) Cynthia and Camelia, because the remainders were contingent upon surviving the life tenant.

GO ON TO THE NEXT PAGE.

188. Allen and Bradley were law school classmates who had competed for the position of editor of the law review. Allen had the higher grade point average, but Bradley was elected editor, largely in recognition of a long and important note that had appeared in the review over her name.

During the following placement interview season, Allen was interviewed by a representative of a nationally prominent law firm. In response to the interviewer's request for information about the authorship of the law review note, Allen said that he had heard that the note attributed to Bradley was largely the work of another student.

The firm told Bradley that it would not interview her because of doubts about the authorship of the note. This greatly distressed Bradley. In fact the note had been prepared by Bradley without assistance from anyone else.

If Bradley asserts a claim against Allen based on defamation, Bradley will

- (A) recover, because Allen's statement was false.
- (B) recover, if Allen had substantial doubts about the accuracy of the information he gave the interviewer.
- (C) not recover, unless Bradley proves pecuniary loss.
- (D) not recover, because the statement was made by Allen only after the interviewer inquired about the authorship of the note.

189. In an action for breach of contract by Prism against Starr, Prism's probable recovery is

- (A) nothing, because Starr was a minor at the time of the original transaction.
- (B) nothing, because there was no consideration for the promise made by Starr after reaching majority.
- (C) \$75.
- (D) \$100.

190. For this question only, assume that Starr bought the telescope from Prism after reaching her majority and promised to pay \$100 "as soon as I am able."

What effect does this quoted language have on enforceability of the promise?

- (A) None.
- (B) It makes the promise illusory.
- (C) It requires Starr to prove her inability to pay.
- (D) It requires Prism to prove Starr's ability to pay.

GO ON TO THE NEXT PAGE.

**Questions 189-190** are based on the following fact situation.

Sue Starr, a minor both in fact and appearance, bought on credit and took delivery of a telescope from 30-year-old Paul Prism for an agreed price of \$100. Upon reaching her majority soon thereafter, Starr encountered Prism and said, "I am sorry for not having paid you that \$100 for the telescope when the money was due, but I found out it was only worth \$75. So I now promise to pay you \$75." Starr subsequently repudiated this promise and refused to pay Prism anything.

191. Beach owned a tract of land called Blackacre. An old road ran through Blackacre from the abutting public highway. The road had been used to haul wood from Blackacre. Without Beach's permission and with no initial right, Daniel, the owner of Whiteacre, which adjoined Blackacre, traveled over the old road for a period of 15 years to obtain access to Whiteacre, although Whiteacre abutted another public road. Occasionally, Daniel made repairs to the old road.

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

After the expiration of 15 years, Beach conveyed a portion of Blackacre to Carrol. The deed included the following clause: "together with the right to pass and repass at all times and for all purposes over the old road." Carrol built a house fronting on the old road.

The road was severely damaged by a spring flood, and Carrol made substantial repairs to the road. Carrol asked Daniel and Beach to contribute one-third each to the cost of repairing the flood damage. They both refused, and Carrol brought an appropriate action to compel contribution from Beach and Daniel.

In this action, Carrol will

- (A) lose as to both defendants.
- (B) win as to both defendants.
- (C) win as to Beach, but lose as to Daniel.
- (D) win as to Daniel, but lose as to Beach.

192. Prine sued Dover for an assault that occurred March 5 in California. To support his defense that he was in Utah on that date, Dover identifies and seeks to introduce a letter he wrote to his sister a week before the assault in which he stated that he would see her in Utah on March 5.

The letter is

- (A) admissible, within the state of mind exception to the hearsay rule.
- (B) admissible, as a prior consistent statement to support Dover's credibility as a witness.
- (C) inadmissible, because it lacks sufficient probative value.
- (D) inadmissible, because it is a statement of belief to prove the fact believed.

GO ON TO THE NEXT PAGE.

193. Maple City has an ordinance that prohibits the location of “adult theaters and bookstores” (theaters and bookstores presenting sexually explicit performances or materials) in residential or commercial zones within the city. The ordinance was intended to protect surrounding property from the likely adverse secondary effects of such establishments. “Adult theaters and bookstores” are freely permitted in the areas of the city zoned industrial, where those adverse secondary effects are not as likely. Storekeeper is denied a zoning permit to open an adult theater and bookstore in a building owned by him in an area zoned commercial. As a result, Storekeeper brings suit in an appropriate court challenging the constitutionality of the zoning ordinance.

Which of the following statements regarding the constitutionality of this Maple City ordinance is most accurate?

- (A) The ordinance is valid, because a city may enforce zoning restrictions on speech-related businesses to ensure that the messages they disseminate are acceptable to the residents of adjacent property.
- (B) The ordinance is valid, because a city may enforce this type of time, place, and manner regulation on speech-related businesses, so long as this type of regulation is designed to serve a substantial governmental interest and does not unreasonably limit alternative avenues of communication.
- (C) The ordinance is invalid, because a city may not enforce zoning regulations that deprive potential operators of adult theaters and bookstores of their freedom to choose the location of their businesses.
- (D) The ordinance is invalid, because a city may not zone property in a manner calculated to protect property from the likely adverse secondary effects of adult theaters and bookstores.

194. Kingsley was prosecuted for selling cocaine to an undercover police agent. At his trial, he testified that he only sold the drugs to the agent, whom Kingsley knew as “Speedy,” because Speedy had told him that he (Speedy) would be killed by fellow gang members unless he supplied them with cocaine. The prosecution did not cross-examine Kingsley. As rebuttal evidence, however, the prosecutor introduced records, over Kingsley’s objection, showing that Kingsley had two prior convictions for narcotics-related offenses. The court instructed the jury concerning the defense of entrapment and added, also over Kingsley’s objection but in accord with state law, that it should acquit on the ground of entrapment only if it found that the defendant had established the elements of the defense by a preponderance of the evidence. Kingsley was convicted.

On appeal, Kingsley’s conviction should be

- (A) reversed, because it was an error for the court to admit the evidence of his prior convictions as substantive evidence.
- (B) reversed, because it was a violation of due process to impose on the defense a burden of persuasion concerning entrapment.
- (C) reversed, for both of the above reasons.
- (D) affirmed, because neither of the above reasons constitutes a ground for reversal.

GO ON TO THE NEXT PAGE.

**Questions 195-196** are based on the following fact situation.

Pat sustained personal injuries in a three-car collision caused by the concurrent negligence of the three drivers, Pat, Donald, and Drew. In Pat's action for damages against Donald and Drew, the jury apportioned the negligence 30% to Pat, 30% to Donald, and 40% to Drew. Pat's total damages were \$100,000.

195. Assume for this question only that a state statute provides for a system of pure comparative negligence, joint and several liability of concurrent tortfeasors, and contribution based upon proportionate fault.

If Pat chooses to execute against Donald alone, she will be entitled to collect at most

- (A) \$70,000 from Donald, and then Donald will be entitled to collect \$40,000 from Drew.
- (B) \$30,000 from Donald, and then Donald will be entitled to collect \$10,000 from Drew.
- (C) \$30,000 from Donald, and then Donald will be entitled to collect nothing from Drew.
- (D) nothing from Donald, because Donald's percentage of fault is not greater than that of Pat.

196. Assume for this question only that the state has retained the common-law rule pertaining to contribution and that the state's comparative negligence statute provides for a system of pure comparative negligence but abolishes joint and several liability.

If Pat chooses to execute against Donald alone, she will be entitled to collect at most

- (A) \$70,000 from Donald, and then Donald will be entitled to collect \$40,000 from Drew.
- (B) \$30,000 from Donald, and then Donald will be entitled to collect \$10,000 from Drew.
- (C) \$30,000 from Donald, and then Donald will be entitled to collect nothing from Drew.
- (D) nothing from Donald, because Donald's percentage of fault is not greater than that of Pat.

GO ON TO THE NEXT PAGE.



197. Tess Traviata owed Dr. Paula Pulmonary, a physician, \$25,000 for professional services. Dr. Pulmonary orally assigned this claim to her adult daughter, Bridey, as a wedding gift. Shortly thereafter, on suffering sudden, severe losses in the stock market, Dr. Pulmonary assigned by a signed writing the same claim to her stockbroker, Margin, in partial satisfaction of advances legally made by Margin in Dr. Pulmonary's previous stock-market transactions. Subsequently, Traviata, without knowledge of either assignment, paid Dr. Pulmonary the \$25,000 then due, which Dr. Pulmonary promptly lost at a horse track, although she remains solvent.

Assuming that Article 9 of the Uniform Commercial Code does NOT apply to either of the assignments in this situation, which of the following is a correct statement of the parties' rights and liabilities?

- (A) As the assignee prior in time, Bridey can recover \$25,000 from Traviata, who acted at her peril in paying Dr. Pulmonary.
- (B) As the sole assignee for value, Margin can recover \$25,000 from Traviata, who acted at her peril in paying Dr. Pulmonary.
- (C) Neither Bridey nor Margin can recover from Traviata, but Bridey, though not Margin, can recover \$25,000 from Dr. Pulmonary.
- (D) Neither Bridey nor Margin can recover from Traviata, but Margin, though not Bridey, can recover \$25,000 from Dr. Pulmonary.

198. Patten suffered from a serious, though not immediately life-threatening, impairment of his circulatory system. Patten's cardiologist recommended a cardiac bypass operation and referred Patten to Dr. Cutter. Cutter did not inform Patten of the 2% risk of death associated with this operation. Cutter defended his decision not to mention the risk statistics to Patten because "Patten was a worrier and it would significantly lessen his chances of survival to be worried about the nonsurvival rate."

Cutter successfully performed the bypass operation and Patten made a good recovery. However, when Patten learned of the 2% risk of death associated with the operation, he was furious that Cutter had failed to disclose this information to him.

If Patten asserts a claim against Cutter based on negligence, will Patten prevail?

- (A) No, if Cutter used his best personal judgment in shielding Patten from the risk statistic.
- (B) No, because the operation was successful and Patten suffered no harm.
- (C) Yes, if Patten would have refused the operation had he been informed of the risk.
- (D) Yes, because a patient must be told the risk factor associated with a surgical procedure in order to give an informed consent.

GO ON TO THE NEXT PAGE.

199. A statute of the state of Orrington provides that assessments of real property for tax purposes must represent the “actual value” of the property. The Blue County Tax Commission, in making its assessments, has uniformly and consistently determined the “actual value” of real property solely by reference to the price at which the particular property was last sold. In recent years, the market values of real property in Blue County have been rising at the rate of 15% per year.

Owner is required to pay real estate taxes on her home in Blue County that are 200% to 300% higher than those paid by many other owners of similar homes in similar neighborhoods in that county, even though the current market values of their respective homes and Owner’s home are nearly identical. The reason the taxes on Owner’s home are higher than those imposed on the other similar homes in similar neighborhoods is that she bought her home much more recently than the other owners and, therefore, it is assessed at a much higher “actual value” than their homes. Persistent efforts by Owner to have her assessment reduced or the assessments of the others raised by the Blue County Tax Commission have failed.

Owner has now filed suit against the Blue County Tax Commission, charging only that the tax assessment on her property is unconstitutional.

The strongest constitutional argument to support Owner’s claim is that the comparative overvaluation of Owner’s property by the Blue County Tax Commission in making tax assessments over time

- (A) deprives Owner of the equal protection of the laws.
- (B) deprives Owner of a privilege or immunity of national citizenship.
- (C) constitutes a taking of private property for public use without just compensation.
- (D) constitutes an *ex post facto* law.

200. Plaza Hotel sued Plaza House Hotel for infringement of its trade name. To establish a likelihood of name confusion, Plaintiff Plaza Hotel offers a series of memoranda which it had asked its employees to prepare at the end of each day listing instances during the day in which telephone callers, cab drivers, customers, and others had confused the two names.

The memoranda should be

- (A) excluded, because they are more unfairly prejudicial and confusing than probative.
- (B) excluded, because they are hearsay not within any exception.
- (C) admitted, because they are records of regularly conducted business activity.
- (D) admitted, because they are past recollection recorded.

**STOP**

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

## ANSWER KEY

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

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

\*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**

<b>RAW SCORE</b>	<b>SCALED SCORE</b>
161 - 167	170 - 175
154 - 160	163 - 169
147 - 153	157 - 162
140 - 146	151 - 156
133 - 139	145 - 150
126 - 132	139 - 144
119 - 125	133 - 138
112 - 118	126 - 132
105 - 111	120 - 125

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 make scores comparable across test forms. A particular scaled score is intended to represent the same 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.

# 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**

←

1	1	
2	2	
3	3	
4	4	
5	5	
6		
7		
8		
9		
0		

**B APPLICANT NUMBER**

1	1	1	1	1
2	2	2	2	2
3	3	3	3	3
4	4	4	4	4
5	5	5	5	5
6	6	6	6	6
7	7	7	7	7
8	8	8	8	8
9	9	9	9	9
0	0	0	0	0

**C DATE OF BIRTH**

Month	Day	Year
<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
<input type="radio"/> Oct.	0	0
<input type="radio"/> Nov.	0	0
<input type="radio"/> Dec.	0	0

**D SOCIAL SECURITY NUMBER**

1	1	1	0	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9	9
0	0	0	0	0	0	0	0	0	0

**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 ● C D**

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
115	A B C D	135	A B C D	155	A B C D	175	A B C D	195	A B C D
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
117	A B C D	137	A B C D	157	A B C D	177	A B C D	197	A B C D
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
119	A B C D	139	A B C D	159	A B C D	179	A B C D	199	A B C D
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

Printed in U.S.A.

## 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 question 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.