

MBE PRACTICE EXAM — SESSION 1

Questions 1–100 · dietcokeesq.com

100 questions. Give yourself 3 hours—1.8 minutes per question. The answer key is on the last page; the full explanations, exam tactics, and answer flowcharts are in the annotated PDF and the online version.

Question 1

A shareholder of a car manufacturing company wants to sue the company in federal court for breach of fiduciary duty. What information about the company, besides its place of incorporation, does the shareholder's attorney need in order to determine whether the parties are diverse?

- (A) Where the company distributes its cars.
- (B) Where the company has sufficient minimum contacts.
- (C) Where the company's headquarters is located.
- (D) Where the company's major place of manufacturing is located.

Question 2

Pursuant to an arrest warrant issued by a federal judge, FBI agents arrested a state governor for an alleged violation of federal law. The governor was then placed in a federal lockup facility. A state judge has issued a writ of habeas corpus against the director of the lockup facility on the ground that the federal law in question violates the Tenth Amendment.

Is the writ valid?

- (A) No, because only federal courts can issue habeas writs for individuals in federal custody.
- (B) No, because the arrest was made pursuant to a warrant.
- (C) Yes, because state sovereignty shields the governor from federal coercion.
- (D) Yes, because the Constitution guarantees the availability of habeas corpus.

Question 3

A retailer sent a purchase order to a computer manufacturer requesting the shipment of a specified quantity of laptops. The purchase order stated: "In the event of a breach, the retailer may pursue all remedies available to it under the UCC." The manufacturer received the purchase order and promptly shipped the laptops to the retailer. The manufacturer sent an acknowledgment form to the retailer four days later.

Two days after accepting delivery of the laptops, the retailer received the manufacturer's acknowledgment form, which excluded consequential damages. The same day, the retailer discovered that the laptops were defective.

If the retailer sues the manufacturer for breach of contract, will the retailer be entitled to pursue a claim for consequential damages?

- (A) No, because the retailer and the manufacturer did not enter into a contract.
- (B) No, because a contract was created that included the manufacturer's term excluding consequential damages.
- (C) Yes, because the manufacturer's shipment of the laptops constituted an acceptance of the retailer's offer.
- (D) Yes, because terms supplied by the UCC will govern the contract formed by the conduct of the parties.

Question 4

A company set up a website for the advertisement of goods and services offered by individuals, as well as other public notices.

One of the notices on the site announced that the furnishings in a home at a specified address were free for the taking. Within a few hours of the posting, all the furnishings had been taken.

The notice had been placed by the homeowner's cousin without the homeowner's knowledge. The cousin bore a grudge against the homeowner and had placed the notice while the homeowner was away and had left the door to the home unlocked.

In a negligence action brought by the homeowner against the company, what will be the company's strongest defense?

- (A) The company had no duty to the homeowner.
- (B) The cousin's actions were a proximate cause of the homeowner's loss.
- (C) The First Amendment prohibits all tort actions based upon mere speech.
- (D) There is no evidence of careless conduct by the company.

Question 5

A defendant was charged with conspiracy to possess cocaine with intent to distribute. While on bail with travel restricted to his home state, he purchased an airplane ticket to another country by using an alias. At trial, the prosecution seeks to introduce evidence of the defendant's ticket purchase.

Should the court admit this evidence?

- (A) No, because the evidence does not make any fact of consequence to the trial more or less probable than it would have been without the evidence.
- (B) Yes, because the evidence is relevant both to show the defendant's consciousness of guilt and to show his motive to commit the crime.
- (C) Yes, because the evidence is relevant to show the defendant's consciousness of guilt.
- (D) Yes, because the evidence is relevant to show the defendant's motive to commit the crime.

Question 6

A grantor conveyed a commercial property to a friend "so long as alcoholic beverages are not sold on the property, and if alcoholic beverages are sold on the property, the estate is to end at once." The friend took possession of the property.

Four years later, the friend opened a tavern that sold alcoholic beverages on the property. Six months after the opening, while the friend continued to operate the tavern, the municipality in which the property is located validly condemned the property.

There are no applicable statutes.

To whom should the condemnation proceeds be paid?

- (A) To the friend and the grantor in equal shares, because they both had an interest in the property.
- (B) To the friend, because he was in possession on the date of the condemnation.
- (C) To the friend, because the limitation is an invalid restraint on the sale of alcohol.
- (D) To the grantor, because the friend's estate had ended.

Question 7

A depositor sued her bank in federal court, seeking \$30,000 in damages. The complaint set out the bank's method of calculating interest and alleged that the method violated both federal banking law and state contract law. The bank filed a motion to dismiss, asserting that its method of calculating interest, as described in the complaint, was proper under federal law and that the federal law preempted the depositor's state-law claim.

The court granted the motion to dismiss the depositor's federal claim and reserved ruling on the motion to dismiss the state-law claim. After completing discovery, the bank has moved to dismiss the state-law claim for lack of subject-matter jurisdiction.

How should the court proceed?

- (A) The court may hear the state-law claim, because it is so related to the federal claim that they form part of the same case or controversy.
- (B) The court must hear the state-law claim, because it is so related to the federal claim that they form part of the same case or controversy.
- (C) The court must hear the state-law claim, because the bank raised a federal defense to that claim.
- (D) The court must not hear the state-law claim, because it arises under state law and the depositor seeks less than the minimum amount in controversy.

Question 8

A homeowner visited the websites of numerous local plumbers for service and hourly rate information. The homeowner

called one of the plumbers, told him she had found him through his website, and asked him to unclog a floor drain in her basement. The plumber responded, "Okay, I'll be there tomorrow at three."

The plumber unclogged the drain and gave the homeowner an invoice that reflected the hourly rate for his services as posted on his website. The homeowner refused to pay the full invoice amount, asserting that his hourly rate was higher than that charged by other local plumbers. The homeowner offered to pay him the average of those rates. The plumber demanded payment of the invoiced amount.

Which of the following describes the compensation the plumber is entitled to receive from the homeowner?

- (A) Compensation based on the reasonable value of the plumber's services, because in the absence of an agreement on price, a reasonable price will be supplied.
- (B) Compensation at the invoiced price, because the hourly rate posted on the plumber's website supplied the price term for the parties' agreement.
- (C) Compensation necessary to protect the plumber's reliance interest, because he rendered services based on the homeowner's implied promise to pay.
- (D) Compensation necessary to protect the plumber's restitutionary interest, because there was no meeting of the minds between the parties on price.

Question 9

A reporter writing an article about a politician offered the politician's estranged daughter \$10,000 for information about the politician. The daughter agreed and provided the reporter with the information he sought. Subsequently, the daughter's information appeared in a newspaper article by the reporter, but the reporter refused to pay the daughter. The daughter sued the reporter in state court for breach of contract on the basis of generally applicable state contract law. The reporter has moved to dismiss the action solely on the ground that the daughter's lawsuit violates the freedom of the press clause of the First Amendment.

Is the court likely to grant the reporter's motion to dismiss?

- (A) No, because the daughter is not a state actor.
- (B) No, because the First Amendment does not shield reporters from generally applicable state-law claims.
- (C) Yes, because state contract law as applied to the reporter inhibits freedom of the press without a compelling government interest.
- (D) Yes, because the politician is a public figure and any information about him is in the public domain.

Question 10

A drug-dealing operation consisted of three men: a supplier, a dealer, and a lookout. The supplier became convinced that the lookout was a police informant. He persuaded the dealer that they should kill the lookout to avoid problems. They purchased a gun and ammunition to commit the murder and planned to dispose of the lookout's body by pushing it off a cliff.

The supplier arranged a meeting in a remote area of a state park. After the three men arrived, the supplier fired two shots at the lookout, who fell to the ground. Both the supplier and the dealer believed that the lookout was dead. The dealer subsequently pushed the lookout's body off a nearby cliff. Unbeknownst to the supplier and the dealer, the lookout had been wounded by the bullets but was not dead; he died as a result of the fall from the cliff.

Can the supplier be convicted of murder?

- (A) No, because the shooting and the disposal of the body were separate events that cannot be viewed as a single scheme or plan.
- (B) No, because the supplier did not intend that the fall from the cliff would kill the lookout.
- (C) Yes, because both the shooting and the disposal of the body were part of the original plan to kill the lookout.
- (D) Yes, because the supplier believed that his shots had killed the lookout.

Question 11

An 11-year-old boy was driving a full-size motorcycle on a private road, where the boy was a trespasser. The motorcycle hit a tire that had fallen off a truck driven by a delivery company employee who was making a delivery to an address on the private road. The boy was injured when his motorcycle went out of control after striking the tire.

In a negligence action brought on behalf of the boy against the delivery company, the company contends that the boy was contributorily negligent and that his damages, if any, should be reduced in conformance with the jurisdiction's comparative negligence statute. The boy argues that his conduct should be judged according to the standard of a reasonable child of like age, intelligence, and experience under the circumstances.

Is the boy entitled to be judged according to the standard of care that he has argued for?

- (A) No, because the boy was driving a motorcycle.
- (B) No, because the boy was trespassing on the private road.
- (C) Yes, because comparative negligence applies.
- (D) Yes, because the boy was 11 years old at the time.

Question 12

A woman brought a products liability action against a drug manufacturer in federal court under state law, claiming that the manufacturer had failed to warn that an arthritis drug caused severe hair loss in female patients. In discovery, the manufacturer inadvertently turned over to the woman two documents reflecting communications between the manufacturer's president and its counsel regarding the drug's possible side effects. There were 23 other, similar documents reflecting such communications that were not turned over in discovery.

Although the manufacturer learned of the disclosure during the discovery period, it did not seek the return of the two documents until the day before trial. In response, the woman claimed that the manufacturer had waived the attorney-client privilege as to all 25 documents, including the 23 that had not been turned over.

How should the court rule on the woman's claim of waiver of privilege?

- (A) There was no waiver of the attorney-client privilege, because the disclosure to the woman was inadvertent.
- (B) There was a waiver of the attorney-client privilege regarding only the two disclosed documents.
- (C) There was a waiver of the attorney-client privilege regarding the disclosed documents as well as the other 23 documents, because they all relate to the same subject matter.
- (D) There was a waiver of the attorney-client privilege for all 25 documents if the state law that supplies the rule of decision would support such a result.

Question 13

A mother subdivided vacant land that she owned into three lots. She kept one lot for herself, conveyed another to her daughter, and conveyed the remaining lot to her son. Each conveyance was by a deed of gift containing a covenant specifying that only one single-story home could be constructed on the conveyed lot in order to preserve views of a nearby lake from the mother's lot. The deeds were promptly recorded. The mother then constructed a large three-story house on her lot.

Several years later, the son conveyed his vacant lot to a purchaser using a warranty deed that made no mention of the covenant in the previous deed from the mother. The purchaser promptly recorded her deed.

When the purchaser later began constructing a three-story house similar to the mother's, the mother sued to enjoin the construction.

Should the court grant the injunction?

- (A) No, because the mother is estopped from enforcing the covenant, since she herself constructed a three-story house.
- (B) No, because there was no consideration given for the covenants in the deeds of gift.
- (C) Yes, because the burden of the covenant runs with the land even if the purchaser had no actual notice of the covenant.
- (D) Yes, because the mother is in privity of contract with the purchaser.

Question 14

A plaintiff, a citizen of State A, sued a defendant, a citizen of State B, in a state court in State B. The complaint asserted a \$120,000 claim under state law.

Fifty days after service of the complaint, the plaintiff amended the complaint, adding a second defendant, a citizen of

State C. The amended complaint asserted the \$120,000 state-law claim and a related federal-law claim against both defendants. Twenty-five days after service of the amended complaint, the second defendant removed the action to a federal court in State B with the first defendant's consent.

Was removal proper?

- (A) No, because the first defendant was a citizen of the forum state.
- (B) No, because the notice of removal was untimely.
- (C) Yes, because the amended complaint asserted a claim under federal law.
- (D) Yes, because the parties met the requirements for diversity jurisdiction.

Question 15

A woman agreed to purchase 1,000 tablets of a prescription drug from undercover narcotics agents. The agents told the woman that they would steal the drugs from a pharmacy. The next day, the agents met the woman and told her that they had the tablets in a bag. The bag did in fact contain tablets of the drug, but the agents had not stolen the tablets.

The woman paid the agents. She told them that she did not want to take possession of the bag and that instead they should deliver it to her friend waiting in a car across the street. The agents, after delivering the bag to the woman's friend, arrested both the woman and her friend.

Can the woman properly be convicted of attempting to receive stolen property?

- (A) No, because the agents entrapped the woman.
- (B) No, because the drugs were not stolen property.
- (C) No, because the woman never attempted to possess the drugs.
- (D) Yes.

Question 16

A husband and wife and their four children lived on a farm that the wife had inherited from her father. On numerous occasions, the wife's brother had offered to buy the farm from her, but she had always refused.

The husband died suddenly in an accident. The day after the husband's funeral, the brother and his attorney visited the wife at the farm. The brother again told the wife that he wanted to buy the farm and told her that she would need the proceeds of the sale to support her children. The brother also said that his attorney had drafted an offer to purchase the farm and that the wife needed to sign it right away. The attorney confirmed the need to accept quickly. The wife reluctantly signed the offer and sold the farm to the brother for its fair market value.

A few days after the sale, the wife learned that her husband had a life insurance policy that would provide her with a substantial payout and that she had not needed to sell the farm to support her children.

What would be the wife's strongest argument for rescinding the contract?

- (A) Duress.
- (B) Mistake.
- (C) Unconscionability.
- (D) Undue influence.

Question 17

A federal agency solicited bids to build a bridge on an interstate highway. In evaluating the bids, the agency took into account the cost of the bridge and other specified factors.

A construction company submitted a bid that was lowest in cost, but the agency chose another bidder that offered more advantages on the other factors. The company that submitted the lowest bid sued the federal agency in federal district court. The only relief that the company sought was to enjoin the issuance of a contract to the prevailing bidder. The company was unable to obtain a temporary restraining order or preliminary injunction. The agency awarded the contract to the bidder it had originally selected. Just as the new bridge was completed and opened, the suit came to trial.

How should the court handle this case?

- (A) Award the company the amount of its lost profits.
- (B) Dismiss the suit, because it is now moot.

- (C) Dismiss the suit, because it turns on discretionary decisions of federal officials.
- (D) Hear and determine the case on the merits.

Question 18

A plaintiff who lives near a factory has sued the company that owns it, alleging that a toxin released from the factory caused the plaintiff to suffer a respiratory disease. The company contends that only a small amount of the toxin was released for a brief period, and that in any event the toxin is not known to cause any respiratory disease. The plaintiff has not disputed the minimal amount and brief length of the exposure.

At trial, the plaintiff seeks to call an expert who will testify that in her opinion the toxin released from the factory caused the plaintiff's respiratory disease. The company has objected to the admission of the expert's testimony.

At a pretrial hearing to determine the admissibility of the expert's testimony, the expert testified that she based her opinion on several studies provided by the plaintiff's attorney about another substance that is similar to the toxin at issue. These studies show that prolonged exposure to high doses of the similar substance can cause the respiratory disease that the plaintiff suffers from. On cross-examination, the company's attorney elicits from the expert an admission that she did not consider, in forming her opinion, two recent clinical studies, both of which concluded that there was no connection between the toxin at issue and any respiratory disease.

Should the court allow the plaintiff's expert to testify at trial?

- (A) No, because the expert is relying on studies that she read for purposes of preparing her testimony in this litigation.
- (B) No, because the plaintiff has failed to show by a preponderance of the evidence that the expert based her opinion on sufficient facts and data and that she employed a reliable methodology.
- (C) Yes, because the company has not met its burden of showing that the expert's opinion is unreliable.
- (D) Yes, because the sufficiency of an expert's basis for an opinion and the reliability of an expert's methodology are questions of weight for the jury.

Question 19

A homeowner hired a building contractor to rebuild her front porch. The contractor told her that he planned to first rip out the old floorboards and pile them in the front yard. Because she thought that would look unsightly, the homeowner insisted that the contractor loosen each board individually and leave them all in place until he was ready to start replacing them with new boards.

The contractor loosened the boards and left them in place while he went out for lunch. While the contractor was away, a friend of the homeowner's stepped onto the porch to return a borrowed rake. As the friend crossed the porch, the loosened boards shifted and the friend fell, breaking her leg.

If the friend sues to recover for her injury, who is likely to be found liable to her?

- (A) Both the contractor and the homeowner, because neither posted a warning that the porch boards had been loosened.
- (B) Neither the homeowner nor the contractor, because the friend was a licensee.
- (C) The contractor only, because he was an independent contractor and he loosened the boards in a dangerously deceptive fashion without posting a warning.
- (D) The homeowner only, because she insisted on having the old boards removed in a dangerously deceptive fashion and posted no warning.

Question 20

A woman listed her house for sale with a real estate broker. The woman and the broker signed a listing agreement, under which the woman agreed that the broker was to be the woman's sole agent during the six-month period of the listing agreement. The listing agreement was not recorded.

The list price for the house was \$250,000. The broker produced a prospective buyer who offered to purchase the house for \$249,000 and who was prequalified to purchase at that price. The woman rejected the offer, giving no reason for her rejection, and the listing agreement expired the next day.

Three months later, the woman sold the house to a corporation for \$249,000. The broker never had any contact with

the corporation.

Is the broker owed a commission?

- (A) No, because the listing agreement was not recorded.
- (B) No, because the woman sold to a buyer found without the broker's help and after the expiration of the listing agreement.
- (C) Yes, because the broker produced a ready, willing, and able buyer during the term of the listing agreement, and the buyer's offer matched the ultimate sale price.
- (D) Yes, because the woman gave no reason for rejecting the prospective buyer's offer during the listing period.

Question 21

A plaintiff domiciled in State A brought a federal diversity negligence action in State A against a defendant domiciled in State B. The action was based on an accident that had occurred in State C. The defendant was personally served with process at her office in State B, which is located 50 miles from the State A federal courthouse. The defendant travels to State A once each year for a weeklong vacation but has no other State A contacts.

The defendant answered, denying all allegations. One week later, the defendant filed an amended answer, denying all allegations and including the defense of lack of personal jurisdiction. State A has a long-arm statute that permits personal jurisdiction to the constitutional limit.

The defendant has moved for an order dismissing the action based on the personal-jurisdiction challenge asserted in the amended answer.

Should the court issue the order?

- (A) No, because the defendant waived the challenge to personal jurisdiction by failing to include it in her original answer.
- (B) No, because the defendant was personally served with process within 100 miles of the federal courthouse where the action is pending.
- (C) Yes, because the defendant lacks minimum contacts with State A.
- (D) Yes, because service was not delivered to the defendant at her home.

Question 22

A consulting firm orally agreed to employ an executive as its president for the executive's lifetime. The parties negotiated and have agreed to all aspects of the employment except for the executive's salary, on which they remain several thousand dollars apart. The executive has sent a signed letter to the firm confirming the terms to which the parties have orally agreed while acknowledging that the salary has yet to be set. The firm has not responded to the confirmation letter.

Do the parties now have an enforceable contract?

- (A) No, because an agreement for lifetime employment is subject to the statute of frauds, and the confirmation letter fails to satisfy the statute.
- (B) No, because the agreement is too indefinite to be enforced.
- (C) Yes, because the agreement is not subject to the statute of frauds, and the parties must negotiate the executive's salary in good faith.
- (D) Yes, because the confirmation letter satisfies the statute of frauds and evidences the parties' intent to be bound.

Question 23

A woman has sued a man for defamation, alleging that he sent a letter to her employer making false and injurious statements about her. At trial, she proposes to testify about the statements in the letter but does not produce the letter itself or show that it is unavailable.

Should the court allow the woman's testimony about the statements in the letter?

- (A) No, because the statements were made out of court and are hearsay not within any exception.
- (B) No, because the best evidence rule requires an original or duplicate of the letter to prove the letter's contents.
- (C) Yes, because the statements are not being offered for their truth and thus are not hearsay.

(D) Yes, because the statements are those of a party-opponent and therefore are admissible under a hearsay exception.

Question 24

An established cemetery sells “pre-need” funeral plans, which include funeral services, a casket, and a burial plot, in exchange for advance payment. By state statute, any purchaser of a funeral plan of this sort can cancel the purchase at any time, subject to a penalty imposed by the seller of up to 15% of the purchase price.

A former high-level employee of the cemetery, who knew of the limitations specified in the state statute, recently built a new cemetery near the established cemetery. To promote the new cemetery, the former employee sent postcards to local residents asserting that anyone who had already purchased a pre-need funeral plan had “an unlimited right to cancel that plan at any time, for any reason, without penalty.” The postcard also offered a \$100 rebate on a pre-need funeral plan with the new cemetery to anyone who canceled an existing plan elsewhere.

Shortly after the promotion began, several purchasers of funeral plans with the established cemetery canceled their plans and purchased plans from the new cemetery. When the established cemetery withheld penalties from the refund amounts, the purchasers objected and threatened to notify the state consumer protection bureau.

The established cemetery has sued the former employee for tortious interference with contract. The former employee has moved for summary judgment, based on the foregoing facts.

Should the court grant the motion?

- (A) No, because a reasonable jury could conclude that the former employee bribed purchasers in order to take business from the established cemetery.
- (B) No, because the former employee could be found by a jury to have intentionally and improperly interfered with the established cemetery’s contracts.
- (C) Yes, because the established cemetery’s contracts with purchasers were terminable at the option of the purchasers.
- (D) Yes, because the former employee was simply competing with the established cemetery.

Question 25

A federal statute bans trade with any foreign country if the United States does not recognize the government of that country. For many years, the United States refused to recognize a particular country’s government because it deemed the government repressive. The President recently extended diplomatic recognition to the country, but Congress passed a second statute withdrawing that recognition.

A US company has sued the appropriate federal agency, seeking to enjoin enforcement of the second statute. The government has moved to dismiss the action on the ground that it involves a nonjusticiable political question.

Should the court grant the motion?

- (A) No, because the action concerns the validity of a federal statute.
- (B) No, because the political question doctrine applies only to litigation between government entities.
- (C) Yes, because the action involves sensitive issues of foreign affairs.
- (D) Yes, because there is no judicially manageable standard governing diplomatic recognition.

Question 26

A woman was the trustee of a trust fund. The corpus of the fund was invested in certificates of deposit and high-grade bonds. When one of the certificates of deposit, in the amount of \$100,000, matured, the woman cashed the certificate and invested the proceeds under her own name in a speculative stock. In three months, the value of the stock had soared, and the woman sold the stock for \$200,000. With the proceeds of the sale, the woman purchased a \$120,000 certificate of deposit in the name of the trust. She gave the remaining \$80,000 to charity.

The woman is charged with embezzlement. Under the applicable statute, the degree of the crime (and, hence, the severity of the authorized punishment) depends upon the value of the property embezzled.

Of what crime, if any, could the woman properly be convicted?

- (A) Embezzlement of \$200,000.
- (B) Embezzlement of \$100,000.

- (C) Embezzlement of \$80,000.
- (D) No embezzlement crime.

Question 27

A plaintiff sued a defendant for breach of an implied-in-fact contract. The case went to trial, and after all the evidence was presented, the court issued the following instruction to the jury: "Conduct will create an implied-in-fact contract if the conduct of both parties is intentional, and if each knows, or has reason to know, that the other party will interpret the conduct as an agreement to enter into a contract."

Was the instruction correct?

- (A) No, because an implied-in-fact contract requires some type of writing signed by the party to be charged.
- (B) No, because an implied-in-fact contract requires that the party to be charged have actual, not merely constructive, knowledge of an agreement between the parties.
- (C) Yes, because an implied-in-fact contract can be established by conduct alone.
- (D) Yes, because an implied-in-fact contract does not require proof of an agreement between the parties.

Question 28

A plaintiff filed a federal diversity action against a corporate defendant and the same day mailed to the defendant's managing agent a notice of the complaint and two copies of a request to waive service. Sixty-one days later, after the defendant had failed to return the signed waiver request, answer, or otherwise plead, the plaintiff moved for entry of default and a default judgment. The plaintiff did not file proof of service.

Assume that any relevant state service law is the same as federal law.

Is the court likely to grant the motion?

- (A) No, because the plaintiff failed to effect proper service of process.
- (B) No, because the plaintiff failed to file proof of service.
- (C) Yes, because the defendant should have returned the waiver request within 60 days of service.
- (D) Yes, because the plaintiff mailed notice of the complaint as permitted by the Federal Rules of Civil Procedure.

Question 29

A weed often found growing in vacant lots contains a stimulant that can be extracted by boiling the weed in water. Someone drinking the resulting "tea" can remain awake for long periods of time. However, drinking the tea can also cause paralysis and even death. Because the weed is so readily available, there is no commercial market for it. Congress has enacted a statute that makes possession of the tea a misdemeanor. The statute has no other provisions and is not part of a broader federal statutory scheme.

Is the statute constitutional?

- (A) No, because Congress can regulate only commercial transactions involving drugs.
- (B) No, because possession of the tea is a noncommercial activity with no link to interstate commerce.
- (C) Yes, because boiling water generally involves the use of stoves and fuels that have moved in interstate commerce.
- (D) Yes, because, in the aggregate, the deaths and cases of paralysis caused by the stimulant have a significant economic impact.

Question 30

A woman became extremely intoxicated after a night of heavy drinking at a party. After the party was over, she got into her car and sped off. While driving 70 mph in a 30-mph zone, she struck and killed a pedestrian. Blood tests revealed that her blood alcohol content had been more than twice the legal limit at the time of the accident.

The woman was tried for murder. At the close of the evidence, the court refused to dismiss the murder charge but offered to give a lesser-offense instruction.

What lesser-offense instruction should the defense attorney request?

- (A) Depraved-heart homicide.

- (B) Involuntary manslaughter.
- (C) Voluntary intoxication.
- (D) Voluntary manslaughter.

Question 31

A plaintiff has sued a defendant for negligently causing her injury. The plaintiff alleges that the defendant, who was standing on a scaffold while painting a building, dropped a paint can that struck the plaintiff on the head while she was walking under the scaffold.

At trial, to prove her injury, the plaintiff offers a photograph for admission into evidence. A witness will testify that he took the photograph with his cell phone and that the photograph accurately portrays what he saw. The photograph shows the plaintiff lying on the sidewalk, bleeding from a gash on her head, with a spilled paint can nearby.

Is the photograph admissible?

- (A) No, because the unfair prejudicial effect of the photograph outweighs its probative value.
- (B) No, because there is no testimony establishing that cell-phone technology produces accurate photographs.
- (C) Yes, because the photograph will be authenticated by the witness's testimony.
- (D) Yes, because the photograph is self-authenticating.

Question 32

A landowner hired a tree specialist to cut down four trees, which he pointed out to the specialist before the specialist began work. Although the landowner reasonably believed that all the trees were on his property, three of the trees that were cut down were in fact on a neighbor's property.

Who, if anyone, is liable to the landowner's neighbor for conversion?

- (A) Both the tree specialist and the landowner.
- (B) Neither the tree specialist nor the landowner.
- (C) The landowner only.
- (D) The tree specialist only.

Question 33

A woman executed and delivered to her unmarried nephew a warranty deed conveying her home to him "on the date of his marriage." The nephew promptly recorded the deed.

Several years later, when the nephew was still unmarried, the woman died testate, leaving her entire estate to her sister.

The executor of the woman's estate has asserted that the nephew has no interest in the home.

Is the executor correct?

- (A) No, because the nephew recorded the deed before the woman's death.
- (B) No, because the woman's death did not affect the nephew's future interest in the home.
- (C) Yes, because a deed that does not transfer immediate possession to a grantee is rendered void by the grantor's death.
- (D) Yes, because the nephew did not marry before the woman's death.

Question 34

A defendant was charged with murdering a business rival. Two days before he was killed, the rival visited the police station to communicate his concerns about the defendant, saying to the police, "I think [the defendant] is going to kill me."

At the defendant's murder trial, the defendant moved to exclude the rival's statement to the police on both hearsay and confrontation grounds. The prosecutor responded that the defendant had forfeited both his hearsay and his confrontation objections by killing the rival.

For purposes of the motion, the parties have agreed that the prosecutor can establish to the court, by a preponderance

of the evidence, that the defendant killed the business rival because the rival had stolen a large amount of money from the defendant.

What is the correct ruling on the prosecutor's contention that the defendant has forfeited his objections?

- (A) The defendant has forfeited his confrontation objection but not his hearsay objection.
- (B) The defendant has forfeited his hearsay objection but not his confrontation objection.
- (C) The defendant has forfeited neither objection, because the prosecutor has not shown that the defendant killed the business rival with the intent to keep him from testifying.
- (D) The defendant has forfeited neither objection, because the prosecutor must prove forfeiture by more than a preponderance of the evidence.

Question 35

A passenger domiciled in State A has brought a federal diversity action in State A against a railroad, seeking damages for injuries suffered when the railroad's train, which the passenger boarded in State A, derailed in State B. The railroad is incorporated and has its principal place of business in State B and operates in States A and B. Several other passengers were also injured and have brought individual actions in State B federal court.

The railroad has moved the State A federal court to transfer the action to the State B federal district court. State B has only one federal district.

What is the railroad's best argument in support of the motion?

- (A) The accident occurred in State B and many witnesses are located there.
- (B) The action involves common questions of fact with similar actions pending in State B.
- (C) The railroad is incorporated and has its principal place of business in State B.
- (D) Venue is not proper in State A.

Question 36

A defendant was charged in federal court under the Assimilative Crimes Act, which provides that the criminal law of the state in question applies to crimes committed on federal enclaves within the state. Federal prosecutors charged the defendant with aggravated theft for stealing computer equipment from a store on a federal military base. Under the controlling state's criminal law, the crime of aggravated theft, punishable by up to 10 years in prison, requires that the stolen property be worth \$1,000 or more. If the stolen property is worth less than \$1,000, the crime is simple theft with a maximum punishment of five years in prison.

The value of the equipment was disputed. The prosecutor offered evidence that the computer equipment was worth more than \$1,000, but an expert witness called by the defense testified that the equipment was worth much less.

The defense attorney has requested that the trial court instruct the jury on the lesser included offense of simple theft. The prosecution objects, arguing that the court should only instruct on the charged offense of aggravated theft.

Upon the defense attorney's request, should the trial court instruct the jury on the lesser included offense of simple theft?

- (A) No, because a court cannot instruct on an offense not charged by the prosecution.
- (B) No, because the value of the stolen computer equipment is only a sentencing factor and not an offense element.
- (C) Yes, because a court must instruct on all lesser included offenses.
- (D) Yes, because the jury could rationally find the defendant not guilty of the greater offense but guilty of the lesser included offense.

Question 37

In response to a nationwide increase in drug-related crime, Congress passed a statute creating a new agency responsible for enforcing federal drug laws. The statute authorizes the President to appoint the agency's director with the advice and consent of the Senate and prohibits the President from removing the director without the Senate's consent. The President appointed a director, and the Senate confirmed the appointment.

Recently, the President has become dissatisfied with the director's strict approach to drug-law enforcement and wishes to remove the director. Because a majority of senators favor strict drug-law enforcement, the Senate has refused to

consent to the director's removal.

May the President constitutionally remove the director without the Senate's consent?

- (A) No, because Congress created the director position and may properly impose conditions for the director's appointment and removal.
- (B) No, because the President's removal of principal officers of the United States is subject to the advice and consent of the Senate.
- (C) Yes, because congressional participation in the decision to remove a presidential appointee violates the separation of powers.
- (D) Yes, because Congress cannot limit the ability of the President to remove any employee of the executive branch.

Question 38

A contractor agreed to build a wood-frame house for a landowner for \$300,000. The parties agreed that the price would increase by the amount that the cost of lumber for the job exceeded the then- current cost of \$30 per 100 board feet. The landowner reduced the agreement to writing but inadvertently failed to include in the written contract the price-escalation clause relating to the cost of lumber. Both parties signed the contract without noticing the omission.

When the contractor purchased lumber for the job, the price of the lumber had risen to \$60 per 100 board feet. When the contractor submitted a final bill that included the increased price of lumber, the landowner refused to pay the increased price for the lumber on the grounds that the price-escalation clause was missing from the written contract.

If the contractor sues the landowner to recover the additional cost, will the contractor be likely to prevail?

- (A) No, because the contractor's remedy for mistake is avoidance of the contract.
- (B) No, because the parol evidence rule will bar introduction of evidence of the price-escalation clause.
- (C) Yes, because since the parties were both mistaken as to the content of the writing, the court will reform the writing to express their agreement.
- (D) Yes, because the contract will be construed against the landowner, who drafted it.

Question 39

A woman wanted to purchase a tract of land but could not immediately obtain a loan. Her friend agreed to loan her the entire purchase price if, immediately following the purchase, the woman would deed the land to him. They also agreed that the woman would have 10 years in which to repay the loan and that the friend would deed the land back to the woman when the loan was fully repaid. Lastly, they agreed that during the 10-year period the woman could live on the land. The deed to the friend did not refer to their agreement.

At the end of the 10th year and after the loan had been repaid, the woman demanded that the friend deed the land back to her. The friend refused, claiming that he owned the land and that the payments the woman had made over the preceding 10 years were rent, not loan repayments.

The woman sued to compel the friend to convey the land to her.

Is she likely to prevail?

- (A) No, because a rebuttable presumption arises under these facts that the transaction was a lease, and the presumption has not been rebutted.
- (B) No, because the contract between the woman and her friend merged into the deed.
- (C) Yes, because the parties agreed that the woman could live on the land.
- (D) Yes, because the woman's agreement with the friend constituted an equitable mortgage.

Question 40

A defendant was charged with murder. At trial, the prosecutor called a witness who testified that a friend had told him that there was "bad blood" between the defendant and the victim. After the witness was excused, the defense attorney moved to strike the portion of the testimony that included the friend's statement, arguing that the statement was inadmissible.

Has the issue of admissibility been preserved for appeal?

- (A) No, because an objection must be made before the evidence is presented to the jury.

- (B) No, because the defense failed to make a timely objection stating the specific ground for objection.
- (C) Yes, because admission of the statement affected the defendant's right to confront witnesses.
- (D) Yes, because the defense objected to the statement during the trial.

Question 41

A man who was visiting a shooting range misunderstood a signal that indicated shooting in progress and walked in front of another customer who was shooting toward a target. The man was hit by a bullet and seriously injured.

The man sued the customer, the owner of the range, and the manufacturer of the signaling apparatus. The jurisdiction prohibits a plaintiff from recovering against a defendant whose fault is less than or equal to that of the plaintiff.

If the jury determines that the man was 25% responsible and that each defendant was also 25% responsible, will the man be able to recover damages, and if so, how much from each defendant?

- (A) The man will be able to recover 25% of his damages from each defendant.
- (B) The man will be able to recover 25% of his damages from the customer but nothing from the owner or the manufacturer.
- (C) The man will be able to recover 75% of his damages from any defendant.
- (D) The man will not be able to recover damages.

Question 42

Members of a political organization protested against US foreign policy by blocking the entrance to a military base. After several members were arrested, the organization's leader called for "even bigger demonstrations next week to halt operations at the base."

The US Attorney in the jurisdiction brought a federal civil action against the organization and its leader, seeking an injunction against protests that interfered with the base's operations. With the complaint, the US Attorney moved for a temporary restraining order (TRO) to "enjoin any blockade of the base's entrance or other disruption of base activity until the court can hear motions for a preliminary and a permanent injunction." The US Attorney attached an affidavit certifying the unsuccessful efforts she had made to locate the organization and its leader and to notify them of the motion. The court immediately held a hearing and issued the TRO in a one-sentence order that did not describe the acts to be restrained but instead incorporated by reference the allegations of the complaint and the TRO motion.

Did the court properly grant the TRO?

- (A) No, because the order did not describe in reasonable detail the acts to be restrained.
- (B) No, because the organization and its leader did not receive notice of the hearing.
- (C) Yes, because damages would be inadequate to address the harm alleged in the complaint.
- (D) Yes, because the planned demonstrations threatened imminent irreparable harm.

Question 43

A federal statute provides that the President must expend all funds appropriated by Congress, and that appropriated funds must be used only for the purposes named in the relevant appropriations act.

An appropriations statute directs that \$300 million be spent on planting wildflowers along public highways. Considering the statute to be a waste of money, the President has announced two decisions. First, he will spend half of the money to train troops. Second, he will retain the remaining funds in the federal treasury and not spend them at all.

Are the President's decisions constitutional?

- (A) Both decisions are constitutional.
- (B) Only the decision to spend the funds to train troops is constitutional.
- (C) Only the decision to retain the remaining funds is constitutional.
- (D) Neither decision is constitutional.

Question 44

A stockholder sued a corporation for losses he allegedly suffered when the price of the corporation's publicly traded stock dropped. The price drop occurred shortly after it was publicly revealed that the corporation had released false

earnings reports. At trial, the stockholder seeks to testify that, in his opinion, the drop in the corporation's stock price was directly attributable to the public revelation about the false earnings reports. The stockholder has conceded that he has no formal education or training in economics or the stock market.

Should the stockholder be permitted to testify to his opinion?

- (A) No, because he is not qualified to offer opinion testimony based on scientific, technical, or other specialized knowledge relating to stock price changes.
- (B) No, because his personal interest in the outcome of the action renders his opinion insufficiently probative.
- (C) Yes, because his opinion is rationally based on his perception as a stockholder and will be helpful to the trier of fact.
- (D) Yes, because property owners such as the stockholder are entitled to express an opinion on changes in the value of their property.

Question 45

A man offered to sell illegal drugs to an undercover police officer, who immediately arrested the man. The officer searched the man but found no drugs in his possession.

The jurisdiction follows the common law of conspiracy and solicitation, and uses the dangerous- proximity test for attempt.

What crime, if any, has the man committed?

- (A) Conspiracy to distribute controlled substances.
- (B) Attempted distribution of controlled substances.
- (C) Solicitation.
- (D) No crime.

Question 46

A client emailed an attorney from whom he regularly sought advice, asking, "Please give me an opinion on the attached documents." Without responding to the email, the attorney immediately began reviewing the documents and working on the requested opinion. Two days later, the client sent the attorney a second email stating, "Please ignore my previous email. I have taken care of the problem." Minutes later, the attorney emailed a reply stating, "I have already completed the work."

The attorney has billed the client for the time she spent working on the requested opinion.

Is the attorney entitled to recover?

- (A) No, because the attorney failed to timely notify the client that she had begun the work.
- (B) No, because the client revoked his offer before the attorney's acceptance.
- (C) Yes, because a contract was formed when the attorney began working on the requested opinion.
- (D) Yes, because the attorney's email accepted the client's offer, which was irrevocable for a reasonable time.

Question 47

A doctor ordered chest X-rays for a patient who smoked cigarettes. After the consulting radiologist told the doctor that the X-rays looked normal, the doctor told the patient that he was in good health. In fact, the radiologist had missed signs of cancer on the X-rays that a trained radiologist, acting competently, would have detected.

After another X-ray of the patient's chest, performed one year later, showed advanced lung cancer, the doctor discovered that the radiologist had misinterpreted the patient's earlier X-rays. The patient died within four months of the later X-ray, because by then his cancer had become untreatable.

In a wrongful death suit against the radiologist based on only the facts set out above, a jury found the radiologist negligent and awarded \$3 million in compensatory damages and \$21 million in punitive damages.

Is the radiologist likely to have the punitive damages award vacated on appeal?

- (A) No, because a 7 to 1 ratio of punitive to compensatory damages is constitutionally permissible.
- (B) No, because an award of punitive damages is appropriate for medical malpractice that results in death or serious injury.

(C) Yes, because punitive damages awards are not authorized unless there is proof of willful or wanton misconduct on the defendant's part.

(D) Yes, because the patient smoked cigarettes and therefore was contributorily negligent.

Question 48

A woman purchased a house, financing the purchase with a 30-year mortgage granted to a local bank, which the bank promptly recorded.

Five years later, the woman lost her job, had difficulty making her mortgage payments, and defaulted on several payments. The bank notified the woman that it would accelerate the mortgage debt as permitted by the mortgage. The woman tried to sell the house but could not find a buyer. The woman wants to avoid the publicity of a foreclosure sale and protect her credit rating. The house is not encumbered by any other liens.

The woman has asked the bank if it would accept a deed to the house and relieve her from any further liability on the loan. The bank is receptive to the woman's proposal.

Is the woman's proposal a viable foreclosure substitute under these facts?

(A) No, because such a transaction would be a clog on the woman's equitable right of redemption.

(B) No, because this is residential property for which a foreclosure sale is required.

(C) Yes, because the proposal is voluntary and the bank would receive unencumbered title from the woman.

(D) Yes, because the transaction would constitute a valid short sale by the woman.

Question 49

A day before the applicable statutory limitations period expired, a worker filed a federal diversity action for defamation against her former employer, alleging that the employer had falsely and publicly accused her of stealing trade secrets. In describing the events that led to the false accusations, the complaint quoted a statement of a competitor made to the employer about the worker's alleged theft.

During discovery, the worker deposed the competitor. One week after discovery closed, the worker moved to amend the complaint to add the competitor as a defendant. The competitor opposed the motion on the ground that the statutory limitations period had expired.

Is the court likely to grant the motion?

(A) No, because discovery has closed, and the competitor will be prejudiced.

(B) No, because the amendment would not relate back and thus would be futile.

(C) Yes, because leave to amend should be freely granted when the underlying action was timely.

(D) Yes, because the allegations against the competitor arise out of the same factual circumstances and relate back to the allegations in the original complaint.

Question 50

State authorities received information that a man had been making threats against his ex-wife. To determine whether the man was serious, an undercover officer introduced himself to the man at a bar. The officer said that he had previously taken care of problems for angry spouses. After some discussion in which the man expressed his extreme anger at his ex-wife, the man offered the officer \$5,000 to kill her. The officer agreed and made arrangements to meet the man at the bar the next day to collect the \$5,000 payment. When the man showed up the next day at the bar, authorities immediately arrested him.

The jurisdiction defines attempt, solicitation, and misprision of a felony as at common law, and also punishes bilateral conspiracies. The crimes below are listed in descending order of seriousness.

What is the most serious crime of which the man can properly be convicted?

(A) Attempted murder.

(B) Conspiracy to commit murder.

(C) Solicitation of murder.

(D) Misprision of a felony.

Question 51

An heir hired an appraiser to appraise various items of personal property that she had inherited, including an original oil painting. The appraiser told the heir that he had no expertise in appraising art and recommended that she hire an art appraiser to value the painting. The heir, doubting that the painting was valuable, declined to follow the appraiser's advice and decided to sell the painting at a yard sale. She set the price at \$100, assuming that this price reflected the painting's approximate value. A neighbor, who knew nothing about art, purchased the painting from the heir at the asking price. The neighbor and the heir later discovered that the painting was worth over \$900,000.

Would the heir be likely to prevail in an action to rescind the contract?

- (A) No, because the heir bore the risk of any mistake as to the true value of the painting.
- (B) No, because the neighbor possessed no specialized knowledge of the true value of the painting.
- (C) Yes, because enforcement of the contract would be unconscionable, given its disadvantageous impact on the heir.
- (D) Yes, because the parties were mutually mistaken as to the true value of the painting at the time of the sale.

Question 52

After a car buyer failed to make timely payments on her auto loan and failed to respond to notices of default properly sent to her home address, the loan company hired a collection agency to repossess the car.

An employee of the agency went to the buyer's home and knocked on the front door. When the buyer answered, the employee explained that he was there to repossess the car and asked for the car keys. The buyer handed the employee the keys but then asked the employee to allow her to retrieve her laptop computer from the car. The employee declined the request, explaining to the buyer that any possessions in the car could be reclaimed from the company after the car was repossessed. After pleading unsuccessfully with the employee, the buyer shoved the employee away from the door with such force that the employee fell and suffered a broken wrist. The buyer then ran to the car, which was unlocked, and retrieved the laptop.

The employee has sued the buyer for battery. The buyer has moved for summary judgment, arguing that she was privileged to act as she did.

Should the trial court grant the buyer's motion?

- (A) No, because a fact-finder could reasonably conclude that the buyer used excessive force in attempting to defend her property.
- (B) No, because after the buyer handed the keys to the employee, the car was no longer her property.
- (C) Yes, because a possessor can use nonlethal force to protect his or her property.
- (D) Yes, because the buyer complied with the law by returning the car keys and acted reasonably in asking to retrieve the laptop.

Question 53

A defendant has been charged with selling cocaine. On the night of the alleged sale, a police officer arrested a woman and found a large package of cocaine in her car. The woman was brought to the police station for questioning. During her interrogation, she admitted to a police officer that she had sold cocaine and said that she had obtained the cocaine from the defendant, who was a local supplier.

By the time of the defendant's trial, the woman has left the country. The prosecutor calls the police officer to testify that the woman told him that the defendant was her cocaine supplier. The defendant's attorney objects.

Is the woman's statement to the police officer admissible to prove that the defendant sold cocaine?

- (A) No, because it is hearsay not within any exception.
- (B) No, because the prosecutor has not shown that the woman's attendance at trial could not have been procured through process or other reasonable means.
- (C) Yes, as the statement of the defendant's coconspirator.
- (D) Yes, as the woman's declaration against penal interest.

Question 54

A seller signed a valid contract with a buyer for the sale of a restaurant building. The contract provided that the closing would occur at the office of the seller's attorney 30 days after the date of the contract.

Twenty days later, the buyer asked the seller if the closing could be postponed for 15 days beyond the scheduled closing date. The seller authorized her attorney to email the buyer saying that the closing date would be extended for 15 days but that "time is now of the essence." The buyer emailed back that the change was reasonable and thanked them.

On the rescheduled closing date, the buyer was in a car accident on the way to the closing and was hospitalized for a month. When the buyer was released from the hospital, he told the seller and her attorney that he was now ready to close. They responded that the buyer had breached the contract and that there would be no closing.

Can the buyer still enforce the contract?

- (A) No, because it was the buyer who had requested the change in the closing date.
- (B) No, because time was made "of the essence" as to the rescheduled closing date.
- (C) Yes, because the buyer's failure to appear at the rescheduled closing was justified.
- (D) Yes, because the original contract was silent concerning time being "of the essence."

Question 55

A new federal statute establishes a five-member commission on cultural heritage sites. The statute directs the commission to develop regulations to protect such sites on federal public lands and to implement the regulations through specified fact-finding and adjudicatory functions. The commission is not under the supervision or control of any federal agency.

Which, if any, of the following methods of appointing the commission members would be constitutional?

- (A) Members are appointed by a specially designated panel of federal judges.
- (B) Members are appointed by the Speaker of the House of Representatives, with the advice and consent of both houses of Congress.
- (C) Members are appointed by the President, with the advice and consent of the Senate.
- (D) None of these appointment methods would be constitutional.

Question 56

At the close of a two-week federal jury trial, the court asked the parties to submit proposed jury instructions. The court selected some of the proposed instructions, reformulated others, and charged the jury accordingly. The parties made no objections. The jury returned a verdict for the plaintiff, and the court entered judgment on the verdict.

The defendant appealed, arguing that several of the court's instructions were plain error.

What is the plaintiff's best argument in response?

- (A) Any errors in the instructions did not affect the defendant's substantial rights.
- (B) The defendant waived the appeal by failing to first move for a new trial.
- (C) The court has discretion as to what instructions to give and can be reversed on appeal only for abuse of that discretion.
- (D) The defendant waived the errors in the instructions by not objecting to them at trial.

Question 57

Two women decided to rob a bank. They asked a friend to drive them to the bank without telling him that they intended to rob it. The friend waited in his car outside the bank while the women went in. Suddenly, the two women rushed from the bank holding bags of money as alarms sounded. The friend drove the women back to their apartment.

What crime, if any, has the friend committed?

- (A) Accessory after the fact to bank robbery.
- (B) Accomplice to bank robbery.
- (C) Conspiracy to commit bank robbery.
- (D) No crime.

Question 58

An engineer and a real estate developer entered into a written professional-services contract. The contract stated that in return for \$10,000, the engineer was to “complete a feasibility study and a master plan, and use best efforts to obtain county approval of the [developer’s planned] project.”

The engineer submitted a completed feasibility study and master plan to the developer. Despite the engineer’s best efforts, however, the county did not approve the project. Because of this outcome, the developer refused to pay the engineer for any of the engineer’s services.

In a breach of contract action by the engineer against the developer, which party will likely prevail?

- (A) The developer, because an express condition to the developer’s performance obligation failed to occur.
- (B) The developer, because the engineer breached the contract by failing to obtain the county’s approval of the project.
- (C) The engineer, because the developer breached the contract by not paying once the developer’s obligation to pay the engineer became due.
- (D) The engineer, because the failure of an express condition to the developer’s obligation to pay the engineer was excused by governmental action.

Question 59

A defendant has been charged with being a felon in possession of a firearm. He has maintained that he was only an overnight guest in the apartment in which the firearm was recovered. At trial, the prosecution seeks to offer various items of evidence found at the apartment, including mail addressed to the defendant at that apartment, various receipts bearing the defendant’s credit card information, and clothing of a size that would fit the defendant. The prosecution wishes to use the testimony of the law enforcement officer who found the items in the apartment during a search to authenticate them.

After hearing the officer’s testimony, what standard should the court use in determining whether the items have been properly authenticated?

- (A) Whether the prosecution has made a clear and convincing showing that the items are what the prosecution claims them to be.
- (B) Whether there is sufficient evidence to establish a chain of custody of the items.
- (C) Whether there is sufficient evidence to support a finding that the items are what the prosecution claims them to be.
- (D) Whether, by a preponderance of the evidence, the items in question are what the prosecution claims them to be.

Question 60

The federal government hired a private contractor to repair and maintain the roads in a national park located wholly within a state. In a written agreement, the government agreed to pay the contractor an annual fixed fee and to reimburse the contractor for all expenses associated with the work. The agreement provided that the contractor must pay for all materials and expenses from a special bank account into which the government would deposit required payments and reimbursements.

The state collected a generally applicable sales tax from the contractor on materials purchased for the work with money from the special bank account.

Was the state’s imposition of the sales tax constitutional in this situation?

- (A) No, because the federal government is immune from any taxes levied by a state.
- (B) No, because the tax was paid from an account directly funded with federal money and the entire economic cost of the tax was borne by the federal government.
- (C) Yes, because payment of the tax did not unduly interfere with the contractor’s performance of the work and was not an undue burden on a federal function.
- (D) Yes, because the tax did not discriminate against the federal government or its contractors, and the materials were purchased by the contractor rather than by the federal government.

Question 61

Twenty years ago, a woman conveyed land to a city so long as the city used the land “for park purposes.” The deed was promptly recorded.

Seventeen years ago, the city discontinued using the land as a park. Because the city needed additional parking for nearby city buildings, it paved the land and has used it as a parking lot ever since.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Last year, the woman died intestate, leaving a son as her only heir. The son sued the city, claiming ownership of the land, but the court found against him.

What is the most likely explanation for the court’s decision?

- (A) The city acquired the land by adverse possession.
- (B) The son’s interest ended as a result of the changing needs of the city.
- (C) The son’s interest lapsed on the death of the woman.
- (D) The woman retained no interest in the land after she conveyed it to the city.

Question 62

A recently installed elevator suddenly started free-falling down the elevator shaft while carrying passengers. Frightened, a passenger pried the inside doors open and impulsively stuck his arm through them to try to stop the fall. As a result, his arm was broken. The elevator eventually stopped without causing further injuries.

In a negligence action brought by the injured passenger against the company that installed and maintained the elevator, the injured passenger has asked the trial judge to instruct the jury that it may find the company negligent on a theory of *res ipsa loquitur*. In response, the company has argued that the passenger’s conduct caused his injuries.

How should the judge rule?

- (A) The judge should deny the passenger’s request, because it is possible that the company was not negligent.
- (B) The judge should deny the passenger’s request, because the jury could find that the conduct of the passenger contributed to his injuries.
- (C) The judge should grant the passenger’s request but should also instruct the jurors to consider any carelessness of the passenger in awarding damages if they find the company liable.
- (D) The judge should grant the passenger’s request, because the passenger acted reasonably considering the stress of the situation.

Question 63

A consumer brought a federal diversity action against a manufacturer, seeking damages for products liability claims. In its answer, the manufacturer included the affirmative defense of contributory negligence. Applicable state law had recently abolished contributory negligence as a defense in such actions.

Before trial, the judge allowed the parties to submit proposed jury instructions. The manufacturer’s attorney proposed an instruction that the jury should not return a verdict for the consumer if it found that the consumer had been contributorily negligent. After the close of the evidence, the judge told the parties that he would give the contributory negligence instruction. The consumer’s attorney did not object.

The judge instructed the jury. After the jury began their deliberations, the consumer’s attorney objected to the contributory negligence instruction.

Should the judge consider the objection?

- (A) No, because the consumer’s attorney did not object before the judge gave the instruction.
- (B) No, because the consumer’s attorney did not object when the judge gave the instruction.
- (C) Yes, because the fact that the judge gave the inapplicable instruction constituted plain error that affected the consumer’s substantial rights.
- (D) Yes, because the consumer’s attorney objected within 28 days after the judge gave the instruction.

Question 64

Police officers responding to phone calls of complaining neighbors noticed several broken windows in a home, glass on the ground, and a blood-stained shirt on the front porch. Through a window, the officers saw a man, whose hands were

bleeding, shouting and throwing things, but no one else appeared to be present in the home.

When the officers knocked on the door, the man refused to respond. The officers then asked if he needed medical assistance. The man told them to leave and not come back unless they had a warrant. The officers then entered the home, and the man pointed a shotgun at them. The officers withdrew but later arrested the man for felony assault on a police officer.

Alleging that the warrantless entry violated the Fourth Amendment, the man has moved to suppress the officers' testimony at trial.

Should the court grant the motion to suppress?

- (A) No, because the man lacks standing to complain of an entry under the emergency aid exception to the Fourth Amendment.
- (B) No, because the warrantless entry was reasonable under the emergency aid exception to the Fourth Amendment.
- (C) Yes, because officers cannot use the emergency aid exception to justify a warrantless entry when only the suspect himself needs aid.
- (D) Yes, because the emergency aid exception does not apply when a homeowner clearly and unambiguously invokes his right to a warrant.

Question 65

A state law requires every motor carrier hauling goods on the state's highways to register with and obtain a permit from the state's transportation commission. The purpose of this requirement is to facilitate application of the state's valid police, welfare, and safety regulations to carriers using the state's highways. The fee for registration is nominal, and the commission has no discretion to deny a permit to a carrier that properly registers and pays the registration fee.

Are the state's requirements constitutional when applied to a wholly interstate carrier?

- (A) No, because neither a carrier's registration nor its payment of a nominal fee is necessary to facilitate the application of state laws to motor carriers.
- (B) No, because the requirements impose an undue burden on interstate commerce.
- (C) Yes, because the requirements apply equally to interstate and intrastate carriers and are the only prerequisites to the issuance of the permit.
- (D) Yes, because the requirements are the least restrictive means of serving the state's compelling interest in highway safety.

Question 66

An engineering firm submitted a bid to a municipality for the construction of a new wastewater treatment plant. The firm's bid included a subcontractor's bid to complete the electrical work on the plant for \$100,000.

The municipality awarded the construction contract to the firm. Later that day, before the firm told the subcontractor of the award, the subcontractor told the firm that it was withdrawing its bid because it had recently undertaken a new project that would absorb all its capacity for the next 18 months. The firm nevertheless accepted the subcontractor's bid and demanded that it perform the electrical work on the plant, but the subcontractor refused. The firm had to hire another subcontractor to perform the electrical work, at a cost of \$115,000. The firm completed the construction of the plant at a profit.

Which of the following statements correctly describes the firm's legal rights, if any, against the first subcontractor?

- (A) The firm is entitled to recover nominal damages only, because it completed the construction at a profit.
- (B) The firm is entitled to recover reliance damages, because it detrimentally relied on the first subcontractor's bid when it submitted its own bid to the municipality.
- (C) The firm is entitled to recover expectation damages, because the first subcontractor's bid was irrevocable for a reasonable time and the firm timely accepted it.
- (D) The firm has no rights against the first subcontractor, because the first subcontractor was free to revoke its bid at any time before the firm accepted that bid.

Question 67

A man borrowed money from a bank to finance the purchase of a commercial building. The man signed a promissory note, which was secured by a mortgage on the building. Because the man had few other unencumbered assets, the bank required additional security. The man's mother granted the bank a mortgage on a motel that she owned, but she did not sign a promissory note. Both mortgages were promptly recorded.

Five years later, after real estate values had dropped considerably, the man defaulted on the loan from the bank. After acceleration, the bank initiated foreclosure proceedings against both the commercial building and the motel owned by the mother.

The mother timely objected to the foreclosure proceedings against the motel. The bank responded that it had the right to include both the commercial building and the motel in the foreclosure proceedings.

Who is correct?

- (A) The bank, because the motel was voluntarily mortgaged to secure the man's debt.
- (B) The bank, because the mother is personally liable on any loan secured by the mortgage on the motel.
- (C) The mother, because she did not sign a promissory note.
- (D) The mother, because the bank does not hold an enforceable mortgage on the motel.

Question 68

A plaintiff sued a defendant for injuries she allegedly received when she slipped and fell while shopping in the defendant's grocery store. At trial, the plaintiff calls as a witness another shopper who testifies that she saw the plaintiff slip and fall on an oily substance on the floor of the store.

On cross-examination, the defendant's attorney asks: "Isn't it true that you told an investigator one week after the accident that you did not see [the plaintiff] fall?" The witness denies making the statement.

Later in the trial, the defendant's attorney calls the investigator, who offers to testify that the witness told him, "I never saw [the plaintiff] fall." The plaintiff objects to admission of the investigator's testimony about the witness's out-of-court statement.

Should the court admit the investigator's testimony about the witness's out-of-court statement?

- (A) No, because the statement is inadmissible hearsay not within any hearsay exception.
- (B) No, because the witness denied making the statement.
- (C) Yes, to prove that the plaintiff did not fall and to impeach the witness.
- (D) Yes, but only for the limited purpose of impeaching the witness's trial testimony.

Question 69

A delivery driver backed her truck up to the loading dock of a large home improvement store. Although it was not her job to unload the truck, the driver would sometimes open the truck's rear doors after parking it in position.

On this occasion, when the driver was about to open the rear doors, she observed through the doors' windows that some large boxes appeared to be pressed against the doors. At that point, she sought assistance. Two people who were on the loading dock responded to her request: the store's shipping manager and the manager's adult friend who was a former employee of the store and was visiting to catch up with the manager.

The driver and the friend stood back as the manager opened the doors; no boxes fell out. With the doors open, all three observed a nylon rope that ran tightly across some of the boxes near the doors. As the manager began to cut through the rope, the driver, who with the friend remained at a distance, said, "Are you sure you want to do that?"

A moment later, the friend noticed that the padlock from the truck's rear doors had fallen to the dock floor between him and the truck. Without saying anything to the manager or the driver, the friend took several steps forward to retrieve the lock. At that instant, the manager succeeded in cutting the rope, and the boxes that had been held in place by the rope fell and hit the friend's head, injuring him.

The friend has sued the store for negligence. The jurisdiction has a system of modified comparative fault but also recognizes assumption of risk as a distinct and complete defense.

Assuming that the store has raised an assumption-of-risk defense and that both sides have filed summary judgment motions based on the facts set out above, how should the trial court rule?

- (A) The court should enter judgment as a matter of law for the friend.

- (B) The court should deny both motions.
- (C) The court should rule that the friend's action fails as a matter of law because he implicitly assumed the risk of the manager's carelessness.
- (D) The court should rule that the friend's action fails as a matter of law because no reasonable jury would find him less at fault than the manager.

Question 70

A woman brought a federal diversity action against a doctor and a hospital for medical malpractice. After both defendants answered, the doctor filed a motion for summary judgment, attaching numerous exhibits that contradicted the facts alleged in the complaint.

The woman has decided that she is not ready to proceed with the action. She would like to dismiss the action, with the intent to refile at a later date.

Which option best achieves the woman's goal?

- (A) File a motion for voluntary dismissal without prejudice.
- (B) File a notice of dismissal without prejudice.
- (C) Obtain a stipulation of dismissal without prejudice from the doctor.
- (D) Submit an affidavit that she cannot yet present facts essential to her claim.

Question 71

For many years, a city owned and operated a reservoir that supplied the city's residents with water. Based on a finding that private entities were more efficient operators of such facilities than public entities, the city sold the reservoir to a privately owned company. The city council granted the company a non-exclusive franchise to supply water to residents of the city.

After it had operated the water system for a year, the company determined that a city resident had fallen three months behind in the payment of his water bill. The company terminated the resident's water service on the basis of a company policy that provides for the summary termination of service to customers who fall more than two months behind in the payment of their bills. The policy does not provide customers an opportunity for a hearing before the termination of service.

The resident sued the company in an appropriate court, asking for injunctive relief and damages. The resident claimed only that he had been deprived of property without due process of law in violation of the Fourteenth Amendment.

How should the court rule?

- (A) Dismiss the action, because the company is not a state actor for purposes of the Fourteenth Amendment.
- (B) Dismiss the action, because the resident has not proffered payment of any of his arrearage to the company and therefore has no right to continued water service.
- (C) Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private entities performing public functions.
- (D) Order the company to give the resident an opportunity for a hearing, because the Fourteenth Amendment applies to private franchises granted by public entities.

Question 72

A man needed a loan to purchase a business. The man submitted to a lender a loan application that included a then-accurate statement of his financial condition. The lender reviewed the application and concluded that the man was creditworthy without verifying any of his information. A week after the man submitted his application, however, his financial condition changed significantly for the worse. The man did not report this change to the lender. Two days later, the lender approved the loan, and the man and the lender signed a loan agreement. Before disbursing the loan funds, the lender learned of the change in the man's financial condition.

Is the lender entitled to cancel disbursement of the funds and rescind the loan agreement?

- (A) No, because the lender failed to independently assess the man's financial condition before signing the loan agreement.
- (B) No, because the man did not affirmatively misrepresent his financial condition at any time.

(C) Yes, because the man concealed the change in his financial condition.

(D) Yes, because after his financial situation changed, the man was obligated to disclose facts necessary to prevent his previous statement of his financial condition from being a misrepresentation.

Question 73

A lawyer was called to testify before a grand jury that was investigating a hit-and-run accident. A security guard at the lawyer's office had testified earlier that on the date of the accident he had seen a person leave the lawyer's office at around 7 p.m., get into a car, and strike a pedestrian while driving out of the parking lot without stopping afterward. The lawyer was asked to disclose the identity of the person who left his office around 7 p.m. on the date of the accident. The lawyer stated that the person was a client but refused to disclose the client's identity, citing the attorney-client privilege.

Can the lawyer be compelled to disclose the client's identity to the grand jury?

(A) No, because the identity of a lawyer's client is protected by the attorney-client privilege.

(B) No, because the lawyer's testimony would undermine the client's privilege against self-incrimination.

(C) Yes, because the identity of a lawyer's client is not privileged when disclosure would not reveal a confidential attorney-client communication.

(D) Yes, because the rules of evidence do not apply at a grand jury proceeding.

Question 74

A man and his friend decided to commit a robbery. They agreed that the friend would hide in the bushes along a dark street and jump in front of the intended victim, and the man would block the victim from behind. Unbeknownst to the man, his friend had a gun.

A short time later, a woman walked down the street and the friend jumped in front of her. Before the man could approach the woman, the friend lifted his shirt and showed a gun in his waistband. The woman ran away.

What conspiracy offense, if any, can the man properly be convicted of having committed?

(A) Conspiracy to commit armed robbery.

(B) Conspiracy to commit robbery.

(C) Either conspiracy offense.

(D) Neither conspiracy offense.

Question 75

A man owned an oceanfront cottage. A woman owned land across the street that did not have direct ocean access. For \$10,000, the man executed a deed titled "Grant of Pedestrian Right-of-Way" to the woman and "her heirs and assigns" over a designated strip of his land between the street and the ocean. The deed was never recorded.

Several years later, the woman sold her land. The woman made no mention of the easement, and the buyer had no actual notice of it. After the buyer took possession of the land, neighbors informed her about the pedestrian easement over the man's land, but when the buyer attempted to use the easement, the man informed her that it was no longer available and constructed a chain-link fence to block the way. The buyer promptly sued the man to establish her right to use the easement.

Who will likely prevail?

(A) The buyer, because the easement was appurtenant to her land.

(B) The buyer, because the man received \$10,000.

(C) The man, because the buyer purchased the land without notice.

(D) The man, because the easement was an easement in gross personal to the woman who previously owned the land.

Question 76

An intoxicated man who was standing on a fifth-floor apartment balcony threatened to jump off the building. A bystander pulled the man back into the building, pushed him into a bedroom, and locked the bedroom door from the outside.

When the man became sober, the bystander released him from the bedroom.

Does the man have a claim against the bystander?

- (A) Yes, for battery, because the bystander pushed the man into the bedroom.
- (B) Yes, for false imprisonment, because the bystander locked the man in the bedroom.
- (C) Yes, for both battery and false imprisonment.
- (D) No, because the bystander was privileged to act as he did.

Question 77

A homeowner brought a federal diversity action against a manufacturer of gas grills, asserting products liability claims and seeking damages for injuries she had suffered when her grill exploded as she was lighting it. The manufacturer timely demanded a jury trial, and the court informed the parties that it would seat a seven-person jury. The parties agreed to a non-unanimous jury verdict.

The jury returned a verdict for the homeowner. The manufacturer asked the court to poll the jury, and the poll revealed a 4 to 3 vote in favor of the homeowner. The manufacturer objected to the verdict and has moved for a new trial.

How should the court proceed?

- (A) Deny a new trial, because the manufacturer agreed to a non-unanimous verdict.
- (B) Direct the jury to deliberate further until it can return a verdict supported by at least six jurors.
- (C) Grant a new trial, because fewer than six jurors voted in favor of the homeowner.
- (D) Grant a new trial, because the verdict was not unanimous.

Question 78

A defendant is charged with murder after allegedly shooting a victim during an argument in a crowded nightclub. At trial, the defendant claims self-defense, testifying that he shot the victim only after the victim lunged at him with a knife. In rebuttal, the prosecutor calls an eyewitness to testify that she observed the argument from a short distance away and that she heard a gunshot before the victim lunged at the defendant.

Thereafter, the defendant seeks to call the bartender from the nightclub to testify that the eyewitness had consumed a large amount of alcohol before the shooting and that the music in the nightclub at the time of the shooting was extremely loud. The prosecutor objects that the bartender's testimony would be improper impeachment.

How should the judge rule on the prosecutor's objection?

- (A) Allow the bartender's testimony about both the eyewitness's alcohol consumption and the music.
- (B) Allow the bartender's testimony about the music but not about the eyewitness's alcohol consumption, because alcohol consumption is an improper basis for impeachment.
- (C) Exclude the bartender's testimony about the music, because it does not impeach the eyewitness, but allow the testimony about the eyewitness's alcohol consumption.
- (D) Exclude the bartender's testimony in its entirety, because extrinsic evidence is not admissible to impeach.

Question 79

In order to ensure the high quality of tutors in state public schools, a state law requires public schools to hire only tutors licensed by the state. To obtain a license, a tutor is required to achieve a passing score on a state-administered exam in the tutor's area of specialty. On several occasions, an organization representing tutors licensed in the state has successfully lobbied against proposed legislation that would have eased the licensing requirement.

An out-of-state tutoring company would like to conduct business in the state, but very few of its tutors are licensed by the state. The company has sued to challenge the law.

Is the company likely to prevail?

- (A) No, because the law is rationally related to a legitimate state interest.
- (B) No, because the law is substantially related to an important state interest.
- (C) Yes, because the law serves the special interests of licensed tutors rather than a legitimate government interest.
- (D) Yes, because the law violates the privileges and immunities clause of Article IV.

Question 80

One evening, a woman was driving above the speed limit on a country road. As she rounded a sharp curve, she lost control of the car and crossed over to the shoulder on the other side of the road. Her car hit a truck that was parked on the shoulder with its hood up while its driver waited for a tow truck. The force of the collision threw the driver out of the truck and down an embankment. The driver died from his injuries.

Driving above the speed limit and causing an accident can be charged as reckless driving, a misdemeanor in the jurisdiction.

What is the most serious homicide offense, if any, of which the woman can properly be convicted?

- (A) Murder, based on malice aforethought.
- (B) Voluntary manslaughter, based on reckless operation of a vehicle.
- (C) Involuntary manslaughter, based on the misdemeanor of reckless driving.
- (D) No homicide offense.

Question 81

On March 1, an owner entered into a written contract to sell her car to a buyer for \$15,000, with delivery and payment to occur on March 6. The buyer had previously declined to enter into an option contract to hold the owner's offer open until March 6. On March 3, the buyer emailed the owner to say that he might not have the \$15,000 by March 6. The owner did not respond. On March 4, the owner sold the car to her neighbor for \$13,000 and told the buyer that she planned to sue him for breach of contract to recover the difference in the purchase price.

Is the owner likely to succeed in a breach of contract action?

- (A) No, because the owner acted in bad faith by failing to respond to the buyer's email.
- (B) No, because the owner anticipatorily repudiated her contract with the buyer.
- (C) Yes, because the buyer anticipatorily repudiated his contract with the owner.
- (D) Yes, because the buyer failed to protect himself when he did not accept the owner's offer to enter into an option contract.

Question 82

A man rented a beach house for a weeklong vacation. On the day he arrived, just after sunset, he took his bag upstairs to a second-floor bedroom and unpacked. As he was about to head back downstairs, he realized that the stairwell had become too dark to navigate without a light. The man spent about 30 seconds feeling the walls at the top of the stairwell but could not find a light switch. In fact, the switch was located in an awkward position not reachable without descending to the second step.

Although he recognized the danger of descending an unfamiliar staircase in darkness, the man started down the stairs. He lost his footing halfway down, fell, and was seriously injured.

The man has sued the owner of the beach house for negligence. The jurisdiction recognizes the traditional common law defense of assumption of risk.

If the action proceeds to trial, which of the following would be an appropriate (paraphrased) instruction for the court to give to the jury?

- (A) "If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must assign a percentage of responsibility to the man."
- (B) "If you conclude that the owner failed to provide reasonably safe premises, but that the man knowingly and voluntarily chose to encounter the risk of falling on the darkened stairs, then you must find for the owner."
- (C) "If you conclude that the owner failed to provide reasonably safe premises, but that the man was a mere licensee, then you must find for the owner."
- (D) "If you conclude that the owner failed to provide reasonably safe premises, then you may in your discretion award the man both compensatory and punitive damages."

Question 83

A nephew and a niece inherited vacant land. The nephew soon discovered that the land was subject to a mortgage held by a local bank, which required monthly payments for the next 10 years. Without telling the niece or seeking her

permission, the nephew paid the monthly mortgage payments for one year. The nephew then demanded immediate payment from the niece for half of the mortgage payments he had made. The niece refused.

If the nephew sues the niece for contribution, who will likely prevail?

- (A) The nephew, because of the doctrine of exoneration.
- (B) The nephew, because without his payments, the bank could have foreclosed the mortgage and they could have lost the land.
- (C) The niece, because any such payment is not due until a partition proceeding is held.
- (D) The niece, because the nephew did not seek or obtain her consent before he made the payments.

Question 84

A real estate brokerage firm, which is incorporated and headquartered in State A, has brought a federal diversity action in State A against one of its former employees for theft of trade secrets. The former employee had worked at the firm's headquarters throughout her employment but is now a citizen of State B. The firm seeks compensatory and punitive damages.

The court has asked the parties to submit proposed jury instructions on punitive damages and the relevant authority to support those instructions. State A's choice-of-law rules select State A law, which limits punitive damages to five times the amount of compensatory damages. Assume that the US Supreme Court has held that the Constitution limits punitive damages to 10 times the amount of compensatory damages.

Which of the following submissions on the instructions is correct?

- (A) Punitive damages are limited to five times the amount of compensatory damages, because State A's choice-of-law rules select State A law.
- (B) Punitive damages are limited to five times the amount of compensatory damages, because in a diversity case, the court applies the damages law of the state in which it sits.
- (C) Punitive damages are limited to 10 times the amount of compensatory damages, because the action is in federal court.
- (D) Punitive damages are limited to 10 times the amount of compensatory damages, because the constitutional limit preempts state-law limits.

Question 85

A defendant was arrested and charged with burglary. Under state law, police are required to obtain DNA samples from all persons arrested for felonies and to store those samples in a state registry.

The police informed the defendant of the state law and said that they would be using a cheek swab to obtain a DNA sample from him. The defendant did not object.

The defendant was later acquitted of burglary. A year later, however, authorities matched the defendant's DNA to an unsolved sexual assault crime. The defendant, now charged with sexual assault, has moved to suppress the DNA sample as having been obtained in violation of the Fourth Amendment.

Should the court suppress the DNA sample?

- (A) No, because the defendant failed to lodge a timely objection to the sample collection.
- (B) No, because the statute requiring collection of DNA samples from felony arrestees does not violate the Fourth Amendment.
- (C) No, because the statute violates the Fourth Amendment, but the police acted in good-faith reliance upon it.
- (D) Yes, because the statute requiring collection of DNA samples from felony arrestees violates the Fourth Amendment.

Question 86

A defendant is on trial as one of the armed robbers of a liquor store. The defendant testifies that he robbed the store involuntarily because his fellow gang members threatened to kill him right then if he backed out, as he wanted to do. Thereafter, the defense seeks to call a witness who would testify that six months after the defendant was arrested in connection with the robbery, the defendant told him that he had been threatened when he wanted to pull out of the robbery. The prosecution objects to the witness's testimony.

Is the witness's testimony admissible?

- (A) No, because it includes the defendant's own hearsay statement that is not within any exception.
- (B) No, because it includes a self-serving statement offered by a criminal accused.
- (C) Yes, because the defendant's hearsay statement fits the state of mind exception.
- (D) Yes, because it includes the prior consistent statement of the defendant, who testified as a witness.

Question 87

A state law requires that anyone convicted for the second time of a sex offense serve a specified minimum prison sentence and be sterilized. Statistics show that 50% of those convicted of sex offenses in the state over the past five years are members of racial minority groups, whereas the members of those groups account for only 15% of the state's general population. A significant majority of convicted sex offenders are male.

Which of the following would be the strongest argument in challenging the constitutionality of the law under the equal protection clause of the Fourteenth Amendment?

- (A) The requirement of sterilization deprives a select group of persons of a fundamental right, and it is not necessary to serve a compelling governmental interest.
- (B) The requirement of sterilization has a disproportionate impact on men, and it is not substantially related to an important governmental interest.
- (C) The requirement of sterilization has a disproportionate impact on racial minorities, and it is not necessary to serve a compelling governmental interest.
- (D) The requirement of sterilization is not rationally related to a legitimate governmental interest.

Question 88

A company agreed to provide regular facilities-maintenance services for a landlord's apartment buildings for \$150 per hour. The parties also orally agreed that if the services required in any given month exceeded 100 hours, the landlord would pay the company a discounted hourly rate of \$125 per hour for those extra services. When the parties put their agreement in writing, however, neither party noticed that the contract did not include the discounted-rate provision.

In a recent month, because of several snowstorms, the services needed by the landlord exceeded 100 hours. The landlord has reminded the company that services in excess of 100 hours are to be paid at the discounted rate, but the company insists that it be paid at the contract rate of \$150 per hour.

Which of the following best describes the legal relationship between the parties at this point?

- (A) The parties' contract is void ab initio because of the indefiniteness of the price term.
- (B) The parties have a valid, enforceable contract that will be reformed to reflect the discounted rate of \$125 per hour for services in excess of 100 hours.
- (C) The parties have a valid, enforceable contract for all services at a rate of \$150 per hour.
- (D) The parties have no contract, because they were mutually mistaken regarding the hourly rate to be paid for the company's extra services.

Question 89

A buyer entered into a valid written contract with a seller to purchase vacant land. Unbeknownst to the seller, the buyer planned to construct a gas station on the land. The contract provided that the buyer could rescind the contract if the seller failed to deliver marketable title.

After a title search, the buyer discovered that a restrictive covenant prohibited using the land for commercial purposes. The buyer had not had actual knowledge of the restrictive covenant before executing the contract. The buyer refused to close on the contract, and the seller has sued for specific performance.

Should the seller prevail?

- (A) No, because the restrictive covenant rendered the title unmarketable.
- (B) No, because the seller was required to deliver perfect title to the buyer.
- (C) Yes, because the restrictive covenant did not render the title unmarketable.
- (D) Yes, because the seller was unaware of the buyer's plans to construct a gas station.

Question 90

A wealthy elderly woman was repeatedly harassed by a debt collector over a period of two months. The debt collector was trying to collect a large debt owed to his client by the woman's impoverished adult son.

Although the debt collector knew that the woman was not legally responsible for the son's debt, he called the woman multiple times each day and threatened to destroy her credit. He also told her that he knew where she lived and that he was going to withdraw the money from her bank account. As a result, the woman suffered great mental anguish, was unable to sleep, and ultimately suffered serious health consequences.

Which of the following conclusions would best support a claim by the woman against the debt collector for intentional infliction of emotional distress?

- (A) The debt collector could reasonably have foreseen that the calls and threats might cause harm to the woman's health.
- (B) The debt collector's conduct caused the woman to fear that he was someday going to physically attack her.
- (C) The debt collector's conduct failed to comply with industry custom.
- (D) The debt collector's conduct was extreme and outrageous.

Question 91

After a fire burned down a house that a tenant was renting, the tenant brought a federal diversity action against the landlord. The complaint alleged that the fire had been caused by the landlord's negligent failure to maintain the house's electrical system in accordance with the applicable housing code. The landlord's own investigation indicated that the fire had been caused by the tenant's leaving a soup pot unattended on a hot stove.

The landlord has moved to dismiss the action on the ground that the tenant failed to comply with a state law that requires plaintiffs suing for negligence to plead that they were not contributorily negligent. In opposition to that motion, the tenant argues that under federal law, contributory negligence is an affirmative defense that a defendant who wishes to assert the defense must plead in an answer or other responsive pleading.

Which law governs how the court should rule on the motion to dismiss?

- (A) Federal law, because the burden of pleading on a motion to dismiss in federal court is substantive, not procedural.
- (B) Federal law, because the Federal Rules of Civil Procedure control pleading in federal court.
- (C) State law, because the application of federal law would be outcome-determinative.
- (D) State law, because the assignment of the burden of pleading is bound up with the definition of the tenant's substantive rights.

Question 92

Assigned counsel for a capital defendant had heard that his client had an unsavory background and a highly dysfunctional childhood. He was reluctant to delve into the details for fear that they might reflect poorly on his client, and he decided not to investigate. After his client was convicted, counsel presented a penalty phase defense that repeated the denials of the liability phase. The jury returned a death sentence. After exhausting state remedies, the defendant filed a post-conviction petition, arguing that his trial counsel rendered ineffective assistance of counsel by failing to investigate and present mitigating evidence of his sordid upbringing.

If the court finds a reasonable probability that the mitigating evidence, if presented, would have affected the jury's sentence, should the court grant the petition?

- (A) No, because the decision not to probe into the defendant's background was part of the defense counsel's trial strategy.
- (B) No, because defense counsel is required to adhere only to an objective standard of reasonableness in representing a criminal defendant in the penalty phase of a capital murder case.
- (C) Yes, because defense counsel's failure to investigate a defendant's life history for mitigating evidence in the penalty phase of a capital murder trial constitutes ineffective assistance of counsel.
- (D) Yes, because defense counsel is required to present any known mitigating factors in the penalty phase of a capital murder case.

Question 93

A state law imposes a tax on all leases of real estate. The tax is calculated on gross rent and is imposed on the lessee at the beginning of each lease term.

May the state collect this tax on the lease of office space in the state by the United States Social Security Administration?

- (A) No, because such a tax on lessees is not rationally related to a legitimate government interest.
- (B) No, because the state may not directly tax any agency of the federal government.
- (C) Yes, because the Social Security Administration is an independent agency of the federal government.
- (D) Yes, because the tax is imposed on all leases of real estate and does not discriminate against the federal government.

Question 94

A father whose only living relatives were a daughter and a nephew owned land worth \$500,000. In return for his daughter's promise to pay \$300,000 to his nephew at the time of the father's death, the father executed and delivered to his daughter a quitclaim deed to the land. The daughter took possession of the land.

Two years later, in a signed writing, the father directed his daughter to pay to a neighbor, at the father's death, \$50,000 of the \$300,000 that was to go to the nephew. The daughter, who had long disliked the neighbor, told her father that she did not plan to honor his request. The father died, and his daughter has since refused to pay anything to either the nephew or the neighbor. The neighbor has sued the daughter for the \$50,000.

Is the neighbor likely to prevail?

- (A) No, because the daughter did not consent to any modification of the contract she had made with her father.
- (B) No, because the nephew was a third-party beneficiary of the contract between the father and his daughter, and the nephew's interest could not be modified without his express written consent.
- (C) Yes, because the father retained a transferable interest in the future proceeds of his daughter's promise.
- (D) Yes, because the father's signed modification is enforceable without consideration.

Question 95

While attending an amusement park's fireworks display, a spectator was struck and injured by a rocket set off as part of the display. The rocket unexpectedly failed to shoot upward but instead followed a trajectory parallel to the ground and struck the spectator. The spectator has sued the amusement park for damages.

On which of the following theories is the spectator most likely to be able to obtain a summary judgment as to liability?

- (A) Abnormally dangerous activity.
- (B) Battery.
- (C) Nuisance.
- (D) Strict products liability.

Question 96

A plaintiff has sued a defendant in federal court, alleging that the defendant knowingly pursued the plaintiff for payment of debts in violation of an automatic bankruptcy stay. The defendant has moved for summary judgment, arguing that he had no notice of the plaintiff's bankruptcy. In opposing the defendant's motion for summary judgment, the plaintiff offers a copy of the local newspaper that contains a front-page story about the plaintiff's petition for bankruptcy, along with evidence that the defendant is a daily subscriber to the newspaper. The defendant objects to admission of the newspaper story.

Is the newspaper story admissible?

- (A) No, because the plaintiff has not offered proper authentication of the story.
- (B) No, because the story constitutes hearsay not within any exception.
- (C) Yes, because the story satisfies the past recollection recorded exception to the hearsay rule.
- (D) Yes, because the newspaper is self-authenticating and the story is not offered for its truth.

Question 97

A buyer purchased a commercial building and financed the purchase by executing both a negotiable promissory note and a mortgage to the bank to secure repayment of the loan. The mortgage was promptly recorded.

Six months later, the bank assigned only the promissory note to an investor. The assignment made no express reference to the mortgage and was not recorded in the public land records. The bank immediately sent the buyer a notice of the assignment, which provided the address of the investor and explained that the bank was no longer servicing the loan.

The buyer made timely payments to the investor for two years but then defaulted on the loan. After the buyer failed to cure the default, the investor accelerated the debt and commenced a foreclosure action.

The buyer's defense in the foreclosure action is that the investor is not the mortgagee and therefore has no right to foreclose.

Does the investor have the right to foreclose?

- (A) No, because the mortgage did not automatically accompany the assignment of the note to the investor.
- (B) No, because the mortgage was extinguished when the bank assigned and transferred only the note to the investor.
- (C) Yes, because the investor became the owner of both the note and the mortgage by virtue of the assignment of the note to him.
- (D) Yes, because the public land records continue to show the investor's predecessor in title as the mortgagee.

Question 98

An investor has sued a broker in federal court for violation of federal securities law, claiming that the broker misrepresented the investments he made on the investor's behalf. The investor and the broker are citizens of State A. The broker would like to assert a breach of contract claim as a counterclaim to the investor's action, alleging that the investor failed to pay the broker for the investments he made on her behalf.

Can the broker join the contract claim?

- (A) No, because the contract claim is governed by state law.
- (B) No, because the parties are not diverse.
- (C) Yes, because the contract claim is a compulsory counterclaim.
- (D) Yes, because the contract claim is a permissive counterclaim.

Question 99

The owner of a home in a rural area had for many years enjoyed unspoiled views of the surrounding countryside from her back deck. Several months ago, a neighboring farmer placed unsightly items, including an old, rusted tractor and some machine parts, entirely on his own property, but in a location visible from the homeowner's deck.

The homeowner asked the farmer to move the items to a different area of the farm, out of the homeowner's line of sight. The farmer acknowledged that it was not common for farmers in the area to keep old equipment on their land in locations visible to neighbors, but nonetheless refused to move the items. Concerned that the farmer's placement of the items might adversely affect the resale value of the property, the homeowner paid for an appraisal of her own property. The appraisal determined that the market value of the property had not been diminished by the farmer's actions.

If the homeowner were to sue the farmer for private nuisance, which of the following would be the farmer's best argument against liability?

- (A) The unsightly items have not caused a decrease in the market value of the homeowner's property.
- (B) The unsightly items do not physically encroach on the homeowner's property.
- (C) It is not common for farmers in the area to keep old equipment on their land in places that are visible to neighbors.
- (D) Unsightly conditions ordinarily do not of themselves amount to an unreasonable interference with the use and enjoyment of a neighboring property.

Question 100

A woman who owned an apartment building decided to give the building to a man whose wife she did not care for. The woman signed and promptly recorded a deed properly describing the property and identifying the man by name. The deed specified that under no circumstances was the property “to ever pass to [the man’s wife].”

Unbeknownst to the woman, the man had died before she executed and recorded the deed. Under the man’s duly probated will, he had devised all of his property to his wife. When the woman learned of the man’s death, she said in the presence of several witnesses, “I must take back that deed, because I don’t want [the man’s wife] to own the apartment building.”

Before the woman could do anything about the deed, however, she died. By her duly probated will, she left all of her estate to her niece.

There are no applicable statutes.

In an appropriate action to determine the ownership of the apartment building, who will likely prevail?

- (A) The man’s wife, because the deed to the man was recorded.
- (B) The man’s wife, because the man’s will was probated.
- (C) The niece, because of the woman’s clearly stated intent to take back the gift.
- (D) The niece, because the deed to the man is void.

Answer Key

No.	Ans	No.	Ans	No.	Ans	No.	Ans
1	C	26	B	51	A	76	D
2	A	27	C	52	A	77	A
3	C	28	A	53	A	78	A
4	A	29	B	54	B	79	A
5	C	30	B	55	C	80	C
6	D	31	C	56	A	81	B
7	A	32	A	57	A	82	B
8	B	33	B	58	C	83	B
9	B	34	C	59	C	84	A
10	C	35	A	60	D	85	B
11	A	36	D	61	A	86	A
12	B	37	C	62	C	87	A
13	C	38	C	63	C	88	B
14	C	39	D	64	B	89	A
15	D	40	B	65	C	90	D
16	D	41	D	66	C	91	B
17	B	42	A	67	A	92	C
18	B	43	D	68	D	93	B
19	A	44	A	69	B	94	A
20	B	45	C	70	A	95	A
21	C	46	C	71	A	96	D
22	B	47	C	72	D	97	C

23	B	48	C	73	C	98	C
24	B	49	B	74	B	99	D
25	A	50	C	75	A	100	D