

CLEP

Business Law

Time—60 Minutes
100 Questions

For each question below, choose the best answer from the choices given.

1. Which of the following is NOT true about the doctrine of *stare decisis*?
 - (A) *Stare decisis* is a Latin phrase meaning “to abide by, or adhere to, decided cases.”
 - (B) *Stare decisis* is a policy of courts to stand by precedent and not to disturb a settled point.
 - (C) *Stare decisis* requires that, once a precedent has been established, it must always be followed and not changed.
 - (D) *Stare decisis* brings stability and predictability to the law.
 - (E) *Stare decisis* does not require one state to follow the precedent of another state where that legal issue has been decided.
2. Law in the United States can be created in all of the following ways EXCEPT through
 - (A) the creation of constitutions and interpretation of those constitutions.
 - (B) enactment of statutes and treaties by legislatures.
 - (C) act of the President of the United States as he wishes, which extends beyond executive orders.
 - (D) the courts as common law.
 - (E) the promulgation of rules and regulations by administrative agencies.
3. Which of the following is regarded as the highest form of law?
 - (A) Statutory law
 - (B) Common law
 - (C) Administrative law
 - (D) Constitutional law
 - (E) U.S. treaties
4. Which of the following is NOT a characteristic of statutory law?
 - (A) It is created by the legislature.
 - (B) It can be federal, state, or local law.
 - (C) By statute contrary to a rule of common law, the legislature can effectively overrule a judge-made law.
 - (D) It can be created by an administrative agency.
 - (E) If a statute is unclear or ambiguous, it must be interpreted by a court.

5. The United States, Canada, Great Britain, and Australia use which of the following types of legal systems?
- I. Civil law system
 - II. Islamic (or Sharia) law system
 - III. Common law system
- (A) I only
(B) II only
(C) III only
(D) I and III only
(E) I, II, and III
6. State enacts a new statute requiring Mail Order Company to collect sales and use taxes from its shipments of goods sold and shipped to residents of State. Mail Order Company has no nexus with State because it has neither employees, agents, nor property ownership in State. It ships goods into the state using the mail, State's infrastructure and phone system, law enforcement to protect its goods, and the courts to enforce collection on accounts. Which of the following most accurately describes why State's taxing statute would be unconstitutional under the U.S. Constitution?
- (A) The statute would violate the Commerce Clause because State would place an unreasonable burden on interstate commerce.
(B) The statute would violate the Due Process Clause because State's statute would be unfair to Mail Order Company even though it purposefully availed itself of the privilege to do business within State.
(C) The statute would violate the Equal Protection Clause.
(D) The statute would violate the Takings Clause.
(E) The statute would violate both the Commerce Clause and the Due Process Clause.
7. Which of the following situations would require a court to apply the highest level of strict scrutiny to determine whether a statute of the state government was constitutional?
- (A) The statute restricted political speech.
(B) The statute restricted a company's ability to advertise its products.
(C) The statute regulated a profession.
(D) The statute treated men and women differently.
(E) The statute restricted the number of business permits that could be granted.

8. Which of the following types of searches by a government of business property requires the government to have probable cause to obtain a search warrant under the Fourth Amendment of the U.S. Constitution?
- (A) The search is for criminal evidence.
 - (B) The search is for administrative purposes.
 - (C) The search is done through aerial photography.
 - (D) The search is conducted by a federal administrative agency of a company that operates in a highly-regulated industry, such as food and drugs.
 - (E) The search is pursuant to a request for production of documents.
9. The Commerce Clause of the U.S. Constitution authorizes the federal government to regulate business, trade, or professional activity of a private citizen who does not do business out of his home state under which of the following situations?
- (A) The private activity, when taken as a single act of the citizen or the cumulative effect of all similar acts by everyone else, substantially affects interstate commerce.
 - (B) Congress can regulate the activity only if the citizen's private activity alone has a substantial effect on interstate commerce.
 - (C) Congress can regulate the activity only if the citizen's private activity involves conducting a business.
 - (D) The Commerce Clause does not allow the government to regulate any private activity whatsoever.
 - (E) The Commerce Clause allows the government to regulate any business or private activity Congress desires to regulate.
10. Under the Import-Export Clause of the United States Constitution, which of the following is a state allowed to do?
- (A) Collect tariffs on goods manufactured in the state and sold to buyers from foreign nations.
 - (B) Collect tariffs on goods sold by companies in the state to buyers from other states.
 - (C) Collect tariffs on goods imported into the state from foreign nations.
 - (D) Collect property taxes on property its citizens own but are situated in other states.
 - (E) Collect property taxes on property imported into the state once the property comes to rest in the state.

11. Which of the following is a correct statement about arbitration as a means of resolving legal disputes?

- (A) An arbitrator, like a mediator, has no authority to issue a binding resolution to the legal dispute.
- (B) An arbitrator's decision is always binding on the parties.
- (C) An arbitrator's decision may be overturned on appeal if the arbitrator acts arbitrarily or capriciously.
- (D) Arbitration, unlike court judgments, is not given the full faith and credit of the states.
- (E) One party may unilaterally demand to arbitrate a legal dispute.

12. Which of the following persons can bind parties in a legal dispute?

- I. Arbitrator
- II. Mediator
- III. Judge

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

13. Which of the following is the number of justices on the U.S. Supreme Court?

- (A) 12
- (B) 9
- (C) 7
- (D) 5
- (E) 3

14. The justices on the U.S. Supreme Court decide to take an appeal by permission. Which of the following is NOT correct regarding the appeals process to the high court?

- (A) The Supreme Court must issue a writ of certiorari.
- (B) The Supreme Court must receive an appeal from the appellant.
- (C) There must be agreement by at least five of the nine justices of the Supreme Court to hear the appeal.
- (D) The parties must file legal briefs with the court making their respective arguments and points of law.
- (E) The Supreme Court will hear oral arguments before deciding the case.

- 15.** Which of the following types of jurisdiction is required before a court can maintain jurisdiction to hear a legal dispute?
- I. Personal jurisdiction
 - II. In rem jurisdiction
 - III. Subject matter jurisdiction
- (A) I only
 - (B) II only
 - (C) III only
 - (D) I and III only
 - (E) I, II, and III
- 16.** Defendant wishes to gather information directly from Plaintiff to determine what Plaintiff knows about the case, the extent of her injury, and the damages she alleges. What form of discovery would Defendant most likely use to achieve this?
- (A) Interrogatories
 - (B) Oral deposition
 - (C) Written deposition
 - (D) Production of documents
 - (E) Mental examination
- 17.** Which of the following court pleadings initiates a lawsuit for damages?
- (A) Petition
 - (B) Complaint
 - (C) Response
 - (D) Answer
 - (E) Motion
- 18.** Trial Judge decides a case without having a trial because he believes there is no genuine issue of material fact to be decided by the jury. The facts are clear. Trial Judge applies the correct rule of law to the facts and rules on the lawsuit. Which of the following would the court issue?
- (A) Jury verdict
 - (B) Judgment notwithstanding the verdict (judgment .N.O.V.)
 - (C) Directed verdict
 - (D) Summary judgment
 - (E) Remittitur

- 19.** Which of the following is the MOST accurate order for the steps in a civil lawsuit?
- (A) Opening arguments, closing arguments, plaintiff's case, defendant's case, jury instructions, verdict
 - (B) Opening arguments, plaintiff's case, defendant's case, closing arguments, jury instructions, verdict
 - (C) Opening arguments, jury instructions, plaintiff's case, defendant's case, closing arguments, verdict
 - (D) Jury instructions, plaintiff's case, defendant's case, motion for directed verdict, closing arguments, verdict
 - (E) Voir dire, opening arguments, plaintiff's case, defendant's case, closing arguments, jury instructions, verdict
- 20.** Pat offers a \$200 reward to anyone who finds and returns his dog. Clay finds the dog and returns it to Pat. In this situation what type of contract has been created?
- (A) Implied contract
 - (B) Quasi contract
 - (C) Bilateral contract
 - (D) Unilateral contract
 - (E) Implied in law
- 21.** Acme Company is in the third year of a five-year contract with its labor union. Which of the following is the correct classification for this labor contract?
- (A) Executory contract
 - (B) Executed contract
 - (C) Voidable contract
 - (D) Implied in law contract
 - (E) Unilateral contract
- 22.** Which of the following is true regarding interpretation of contracts?
- (A) When the written contract contains ambiguous or unclear terms, a court will interpret the language to give effect to the parties' intent as expressed in their contract.
 - (B) The party drafting the contract gets to choose how words or phrases are used in the contract and the meaning applied to those words or phrases.
 - (C) A word in a contract will be given its ordinary, commonly accepted meaning even if the word is a technical word.
 - (D) Pre-printed terms prevail over handwritten or typewritten terms.
 - (E) Parole evidence is always admissible in court to explain the intent of the parties.

23. Which of the following is the party who makes an offer to contract?

- (A) Assignor
- (B) Promisee
- (C) Offeror
- (D) Offeree
- (E) Assignee

24. Which of the following is a correct statement about sale by auction?

- (A) Placing an item of property on auction is making a valid offer to sell.
- (B) If an item of property is to be sold at auction, then bids must be taken and the item sold to the highest bidder.
- (C) An offer is made by one bidding on the item of property and acceptance occurs upon the “fall of the hammer” by the auctioneer.
- (D) Auctions are assumed to be without reserve.
- (E) At an auction the offer is made to sell at the fall of the auctioneer’s hammer.

25. Which of the following can revoke an offer?

- I. Offeror’s withdrawal before acceptance
- II. Death of offeror
- III. Destruction of subject matter

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

26. Landscaper offers to completely landscape Karla’s new home for \$5,000. Karla responds by saying she will only pay \$4,500 even though she knows that \$5,000 is a reasonable price. Landscaper refuses to do the work for \$4,500. Which of the following best describes this legal situation?

- (A) Karla can now accept Landscaper’s offer for \$5,000 because it is revived by Landscaper’s rejection of the counteroffer.
- (B) Since the parties are negotiating a price, Karla is relying on the original offer to be held open.
- (C) Karla has made a counteroffer, and the original offer is deemed rejected.
- (D) Karla can accept the original offer of \$5,000 because Landscaper never expressly withdrew its offer.
- (E) Landscaper’s offer qualifies as an irrevocable offer under the firm offer rule.

- 27.** Which of the following is a correct statement regarding acceptance of a contract offer?
- (A) Silence can never constitute acceptance.
 - (B) An acceptance containing new conditions or different terms operate as a counteroffer.
 - (C) For any offer, acceptance may be made by any reasonable means.
 - (D) Acceptance by mail becomes effective when received by the offeror.
 - (E) A unilateral offer requires the offeree to notify the offeror of his intent to perform the required obligation.
- 28.** Which of the following is NOT an element of promissory estoppel?
- (A) There must be a clear and definite promise.
 - (B) The promise must induce an action or forbearance of a substantial and definite character.
 - (C) The promise must have justifiably relied on that promise.
 - (D) Injustice cannot be avoided except by enforcing that promise.
 - (E) The person seeking to enforce the promisor's promise must have first given some legal consideration.
- 29.** Which of the following persons entering into a contract would cause the contract to be void rather than voidable?
- (A) A minor executing a contract for non-necessaries
 - (B) A minor executing a contract for necessities
 - (C) A legally insane (adjudged insane) person
 - (D) A person insane in fact
 - (E) A person who has been mistaken about the contract
- 30.** Which of the following is a correct statement about a minor's right to disaffirm a contract?
- (A) A minor can disaffirm a contract even if the contract has been ratified by him.
 - (B) A minor can disaffirm a contract at any time and for so long as he wishes.
 - (C) A minor can disaffirm a contract until he reaches the age of majority and a reasonable time thereafter.
 - (D) A minor can disaffirm part of the contract and ratify the remainder.
 - (E) A minor can only disaffirm a contract if he can fully compensate the other party for damage or loss of value.

- 31.** Which of the following is NOT a true statement about ratification of a contract of a minor?
- (A) Ratification is the expression by words or act of a minor's intention to become bound by a contract made as a minor.
 - (B) Ratification must occur, if at all, after the minor reaches the age of majority.
 - (C) Express ratification takes the form of an oral or written statement of the minor's intention to be bound by a contract made as a minor.
 - (D) Continued use of the consideration and the making of payments on the consideration received by a minor after the minor has reached the age of majority may be a form of ratification.
 - (E) Ratification of a minor's contract may be made by either party to the contract.
- 32.** Which of the following contract defenses for lack of genuineness of assent can result in a remedy of either rescission or money damages?
- (A) Mutual mistake
 - (B) Undue influence
 - (C) Duress
 - (D) Intentional misrepresentation
 - (E) Negligent misrepresentation
- 33.** Carole enters into a contract with Cody to purchase for \$800 Cody's registered male dog which she intends to use for breeding purposes. Cody understands her intent. A month after Carole takes possession of the dog, she learns that the dog is sterile and has no value as a breeding animal. Cody had no knowledge of the dog's sterility. In this case which of the following best describes Carole's legal rights?
- (A) Since this is a unilateral mistake, Carole has no right to avoid the contract.
 - (B) Since both parties were mutually mistaken about the dog's sterility, Carole can rescind the contract and recover her purchase price.
 - (C) Since the dog's sterility is not material fact, Carole cannot rescind the contract.
 - (D) Carole must sue for money damages based on Cody's negligent misrepresentation.
 - (E) Carole can rescind the contract based on her unilateral mistake and recover her purchase price.
- 34.** Which of the following types of statements would be considered fraudulent if not true?
- (A) A statement of opinion.
 - (B) Sales puffery by a seller to entice a buyer to purchase.
 - (C) Prediction of a future value.
 - (D) A misrepresentation made negligently that the seller's house is termite free.
 - (E) When asked if anything was wrong with the seller's house, seller was silent even though he knew his house was infested with termites.

- 35.** Granddaughter is the primary caregiver for her feeble and elderly grandmother. Granddaughter advises Grandmother to execute a quitclaim deed to her house and farm land to give ownership to Granddaughter. Grandmother usually does whatever Granddaughter asks of her. Grandmother's son, who had expected to inherit her property, objects to the transfer to Granddaughter. These facts probably constitute which of the following for the purpose of rescinding this transfer?
- (A) Undue influence
 - (B) Intentional misrepresentation
 - (C) Innocent misrepresentation
 - (D) Duress
 - (E) Mistake
- 36.** Which of the following would NOT be an illegal contract?
- (A) A loan contract bearing interest that is usurious
 - (B) A gambling loan in a state where gambling is legal
 - (C) A contract in restraint of trade
 - (D) A contract of solicitation to commit a crime
 - (E) A contract contrary to public policy
- 37.** Which of the following is a correct statement regarding the legality of contracts?
- (A) Illegal contracts are treated as valid contracts.
 - (B) Illegal contracts are enforceable.
 - (C) A contract is illegal only if a statute prohibits it.
 - (D) If a contract contains subject matter that is both legal and illegal, a court may enforce the legal portion and not enforce the illegal portion.
 - (E) A court will never enforce an illegal contract that an innocent party has fully performed without prior knowledge of its illegality.
- 38.** Which of the following is the state law that requires certain contracts to be in writing and signed by the party against whom enforcement is sought?
- (A) Statute of Limitations
 - (B) Statute of Frauds
 - (C) Statute of Repose
 - (D) Long-Arm Statute
 - (E) Rules of Civil Procedure

39. Which of the following types of contracts must be in writing pursuant to the Statute of Frauds?

- I. Contract for the sale of goods for \$400
- II. Contract more than one year in length but possible to perform within one year
- III. Contract to guaranty the debt of another

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

40. In which of the following situations would a court NOT enforce an oral contract as an exception to the Statute of Frauds?

- (A) The seller has begun the manufacture of specially manufactured goods for the buyer pursuant to an oral contract.
- (B) A purchaser of real estate under an oral contract has taken possession of the real estate without payment on the purchase price, and he has made substantial improvements on it.
- (C) Buyer of goods under an oral contract for \$5,000 has taken delivery of the goods.
- (D) A party claims a contract is unenforceable under the Statute of Frauds but he admits in an answer to the other party's complaint that a verbal contract exists.
- (E) The seller of goods accepts payment for the goods under an oral contract having a purchase price of \$5,000.

41. Cobb has completely performed the landscaping work on his contract with Jackson. Cobb has not been paid for the work. Cobb desires to transfer his right to receive payment from Jackson to one of Cobb's suppliers. Which of the following best describes this arrangement?

- (A) Assignment
- (B) Delegation
- (C) Transfer
- (D) Alienation
- (E) Conveyance

42. Abigail purchases a paid-up life insurance policy on her life with Insurer. Abigail makes a gift of the insurance policy to her daughter, Becky. Abigail dies and Insurer refuses to pay Becky the policy proceeds. Specifically what type of third-party beneficiary is Becky?

- (A) Creditor beneficiary
- (B) Incidental beneficiary
- (C) Donee beneficiary
- (D) Intended beneficiary
- (E) Donor beneficiary

- 43.** Which of the following types of contractual conditions must be met before a party becomes obligated to perform under a contract?
- (A) Condition subsequent
 - (B) Condition precedent
 - (C) Implied condition
 - (D) Condition concurrent
 - (E) Mutual condition
- 44.** Which type of performance contains no material or minor breach of contract and requires the other party to pay the full contract price?
- (A) Complete (or full) performance
 - (B) Performance to the satisfaction of a third party
 - (C) Substantial performance
 - (D) Mutual performance
 - (E) Personal satisfaction performance
- 45.** Which of the following would discharge a party's contractual obligation by operation of law?
- I. Bankruptcy of a party
 - II. Novation
 - III. Impossibility
- (A) I only
 - (B) II only
 - (C) III only
 - (D) I and III only
 - (E) I, II, and III
- 46.** Which of the following forms of discharge of a party's contractual obligations occurs (1) when a contract is assigned to a third party; (2) the original parties agree that a new contract is formed; and (3) the obligor-assignor is released from further legal responsibility?
- (A) Alternation of the contract
 - (B) Novation
 - (C) Accord and satisfaction
 - (D) Rescission
 - (E) Commercial impracticability

- 47.** Acme Corp. has a contract to supply School District with student desks before the new school year starts in August. In July Acme notifies School District that it does not intend to deliver the desks by the agreed-upon time and that delivery will be a month late. Which of the following is a legal right of School District in this situation?
- (A) School District can treat this as an anticipatory repudiation, purchase the student desks from another vendor, and sue Acme Corp. for the cost difference.
 - (B) School District can treat this as an anticipatory repudiation and wait on Acme Corp. to perform even though damages will be higher the longer School District waits to purchase the desks elsewhere.
 - (C) School District can treat this as an anticipatory repudiation, but it's only option is to sue Acme Corp. immediately for breach of contract.
 - (D) As the time of performance has not passed, School District can do nothing other than wait on the agreed-upon time of performance before it purchases the desks elsewhere or sues Acme Corp. for breach of contract.
 - (E) School District has no legal recourse because Acme Corp.'s contractual obligation is discharged due to impossibility.
- 48.** A contractual defense of impossibility of performance will usually NOT exist in which of the following situations?
- (A) A party to perform a personal services contract dies prior to performance.
 - (B) A party to perform a personal services contract becomes incapacitated prior to performance.
 - (C) A party cannot perform except with a much higher cost due to an event that it could have reasonably foreseen to occur.
 - (D) A party cannot perform because a change in the law makes performance an illegal act.
 - (E) A party cannot perform because the subject matter of the contract is destroyed.
- 49.** Which type of contract remedy allows a court to rewrite the parties' contract to state what the parties had intended but had failed to properly express in the contract document due to error?
- (A) Reformation
 - (B) Specific performance
 - (C) Quantum meruit under quasi contract
 - (D) Restitution
 - (E) Rescission

- 50.** Carla contracts with Debbie to sell an acre of land for \$30,000. Debbie intends to construct a house on the land. Similar land sold for residential construction purposes usually sells for \$38,000. Carla then refuses to convey the land to Debbie. In this case what are Debbie's remedies for breach of contract?
- I. Specific performance
 - II. Compensatory damages of \$8,000
 - III. Restitution
- (A) I only
 - (B) II only
 - (C) III only
 - (D) Either I or II, but not both
 - (E) I, II, and III
- 51.** Carla is hearing impaired. She applies for a job as a customer representative with Large Employer. The job of customer representative requires the employee to talk over a telephone. Carla has experience as a customer representative and is otherwise qualified for the job if she can be given a reasonable accommodation of her disability by having her employer acquire a special telephone for the hearing impaired. Large Employer refuses to hire Carla because it does not want to go through the inconvenience of providing her a reasonable accommodation for her hearing impairment. Under which federal statute will Large Employer probably be liable?
- (A) Civil Rights Act of 1964, Title VII
 - (B) Fair Labor Standards Act
 - (C) Americans with Disabilities Act
 - (D) Age Discrimination in Employment Act
 - (E) National Labor Relations
- 52.** Which of the following federal administrative agencies have jurisdiction over employment discrimination?
- (A) National Labor Relations Board (NLRB)
 - (B) Equal Employment Opportunity Commission (EEOC)
 - (C) Federal Trade Commission (FTC)
 - (D) Department of Health and Human Services (DHHS)
 - (E) Federal Labor Board (FLB) under the Secretary of Labor

- 53.** Department Store refuses to hire a male job applicant to work as a sales clerk in its ladies' apparel department. Since a sales clerk in that department must assist female customers in the dressing areas and monitor surveillance cameras in the dressing areas, Department Store will only employ women to work in the department because it believes customers' privacy is of utmost importance. If the rejected male job applicant files a claim for sex discrimination against Department Store, which of the following will be the outcome?
- (A) Department Store will win because Title VII of the Civil Rights Act of 1964 does not prohibit discrimination because of sex (gender).
 - (B) Department Store will win because being a female in the ladies' apparel department is a bona fide occupational qualification.
 - (C) Department Store will lose because a male sales clerk can be knowledgeable about ladies clothing and foundation wear.
 - (D) Department Store will lose because Title VII of the Civil Rights Act of 1964 prohibits all discrimination because of sex (gender).
 - (E) Department Store will lose because the Equal Pay Act protects against sexual discrimination in employment.
- 54.** Which of the following federal statutes requires employers to complete an I-9 form to prove the citizenship or legal immigration status of all new employees?
- (A) Civil Rights Act of 1964, Title VII
 - (B) Immigration Reform and Control Act
 - (C) National Immigration Service Act
 - (D) Equal Pay Act
 - (E) Employee Retirement Income Security Act (ERISA)
- 55.** Which of the following best describes why the actions of a federal administrative agency do NOT violate the separation of powers doctrine?
- (A) There are checks and balances by both the judiciary through judicial review and the Congress through oversight, budget, and its authority to enact a statute overriding an agency's rule.
 - (B) The Congress alone has the power to control a federal administrative agency because it has the authority to create and destroy an agency and the power of the purse.
 - (C) The judiciary alone has the power of judicial review of agency decisions and the power to determine whether an agency's rules meet substantive due process requirements.
 - (D) The President has ultimate responsibility over the agency and can determine which direction and how much power the agency can use.
 - (E) Federal administrative agencies are a fourth branch of government on equal standing with the executive, legislative, and judicial branches under the U.S. Constitution.

- 56.** Under what legal authority does the Congress get its power to regulate business?
- (A) Article 3 of the U.S. Constitution which grants the Congress power to enact all laws necessary to carry out its enumerated powers
 - (B) Article 1 of the U.S. Constitution, the Delegation of Powers Clause, and the Interstate Commerce Clause
 - (C) The Bill of Rights to the United States Constitution
 - (D) The Administrative Procedure Act
 - (E) The Sherman Act
- 57.** Which of the following federal laws requires a federal administrative agency to provide information about its activities upon proper request of a citizen and subject to limitations, such as personnel records, national security, and proprietary trade secrets of contractors?
- (A) Government-in-the-Sunshine Act
 - (B) Sunset laws
 - (C) Freedom of Information Act
 - (D) Enabling Act
 - (E) Regulatory Flexibility Act
- 58.** Which of the following federal environmental laws requires federal agencies to prepare an environmental impact statement when new legislation or major federal action is proposed that might significantly affect the quality of the human environment?
- (A) Clean Water Act
 - (B) Toxic Substances Control Act
 - (C) Solid Waste Act
 - (D) National Environmental Policy Act
 - (E) Clean Air Act

- 59.** Landowner has unknowingly purchased some land that has been used as a dump for hazardous waste, in particular many drums of old machine oil. Landowner's seller was not aware he violated the environmental law. Which of the following most accurately describes Landowner's legal liability to clean up the land before it can be sold?
- (A) Landowner has no potential liability under any federal environmental laws because he did not cause the pollution.
 - (B) Landowner has no potential liability under CERCLA because he did not know that the land was contaminated when he purchased it.
 - (C) Landowner is jointly and severally liable with the polluter for the costs to clean up the toxic waste under CERCLA. If the polluter cannot pay, then Landowner is ultimately liable.
 - (D) Landowner, as the present owner, is solely liable for the costs to clean up the land and has no right of contribution from any previous owners.
 - (E) Landowner is liable for the costs to clean up the land unless the EPA cleans up the land under the Superfund.
- 60.** Which of the following securities laws regulates the trading of securities in the secondary markets, i.e., the subsequent buying and selling of securities following their initial issuance?
- (A) Sarbanes-Oxley Act of 2002
 - (B) Securities Act of 1933
 - (C) Securities Exchange Act of 1934
 - (D) vate Securities Litigation Reform Act of 1995
 - (E) estment Company Act of 1940
- 61.** Which of the following federal statutes makes it unlawful for a company in interstate commerce to commit unfair trade practices, such as false advertising, bait-and-switch tactics, and disparaging a competitor's product?
- (A) The Sherman Act of 1890, Section 1
 - (B) The Sherman Act of 1890, Section 2
 - (C) The Clayton Act of 1914, Section 3
 - (D) The Clayton Act of 1914, Section 7 (as amended by the Cellar-Kefauver Act)
 - (E) The Federal Trade Commission Act of 1914

- 62.** Assume that Microsoft Corporation wanted to purchase all of the stock in Apple Corporation. This would then give Microsoft virtually all of the control over the personal computer operating system market. What would be the regulatory result of such a corporate acquisition?
- (A) This would be a horizontal merger and would be denied under the Clayton Act.
 - (B) This would be a vertical merger and would be denied under the Clayton Act.
 - (C) This would be a conglomerate merger and would be denied under the Clayton Act.
 - (D) This merger would be approved by the Federal Trade Commission and the U.S. Department of Justice because Microsoft's operating system monopoly exists because its Windows operating system is so appealing to users.
 - (E) This merger would be approved because it would not violate Section 2 of the Sherman Act if the corporate acquisition takes place.
- 63.** Which of the following federal antitrust statutes prohibits contracts, combinations, or conspiracies in restraint of trade in interstate commerce?
- (A) The Sherman Act of 1890, Section 1
 - (B) The Sherman Act of 1890, Section 2
 - (C) The Clayton Act of 1914, Section 3
 - (D) The Clayton Act of 1914, Section 7 (as amended by the Celler-Kefauver Act)
 - (E) The Federal Trade Commission Act of 1914
- 64.** Eight relatively small pharmacies in a three-county area agree to set prices for about 100 prescription drugs. Their reasoning is to stabilize the prices for the eight of them so they all could remain in business for their customers. Which of the following best describes the legal effect of this arrangement?
- (A) This act would violate Section 2 of the Sherman Act because it creates an oligopoly.
 - (B) The act would violate Section 1 of the Sherman Act as a per se violation for horizontal price fixing.
 - (C) This act would violate the Federal Trade Commission Act as a per se violation for horizontal price fixing.
 - (D) This act would not be an illegal horizontal price-fixing arrangement because the market is so small there would not be an unreasonable restraint of trade.
 - (E) This act would not be illegal because the intent of the small pharmacies is to stabilize prices so they have no intent to do harm to their customers in the long run.

65. Which of the following is a right that a consumer has under the Fair Credit Reporting Act?

- I. Right to request a copy of his or her own credit report
- II. Right to notification of why he or she is denied credit due to something on the credit report
- III. Right to request the source of information included on his or her credit report

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

66. Which of the following acts would probably NOT be unlawful under federal consumer protection laws?

- (A) Untruthful advertising
- (B) Fraud in making telephone solicitations
- (C) Denial of a consumer's right to rescind a purchase within three days in a door-to-door solicitation
- (D) Understating the total deferred costs and annual percentage rate in a consumer installment loan contract
- (E) A creditor's repeated phone calls to a consumer debtor's home and place of employment and phone calls to family members in an attempt to collect its debt

67. Under which of the following bankruptcy provisions is a debtor business allowed to serve as its own bankruptcy trustee following the filing of a voluntary bankruptcy petition?

- (A) Chapter 7
- (B) Chapter 9
- (C) Chapter 11
- (D) Chapter 12
- (E) Chapter 13

68. Which of the following persons have the lowest priority in a bankruptcy?

- (A) State and local governments for income and property taxes
- (B) Employees for certain unpaid wages up to a statutory amount
- (C) Secured creditors to the extent of the value of the collateral
- (D) General unsecured creditors, such as suppliers of inventory
- (E) Unpaid alimony and child support

- 69.** Surety entered into an agreement to guaranty Debtor's loan for equipment. The equipment was destroyed by a faulty electrical circuit installed by Electrical Contractor. Debtor could not pay off the loan and Lender required payment from Surety. Which of the following MOST accurately describes Surety's legal rights in this case?
- (A) Surety has no legal right against anyone except Debtor.
 - (B) Surety has a legal right of subrogation to sue Electrical Contractor to recover, if it can, and the right of indemnification against Debtor.
 - (C) Surety has a legal right of indemnification against Electrical Contractor.
 - (D) Surety has a legal right of contribution against Electrical Contractor.
 - (E) Surety has the legal right to obtain a writ of execution immediately upon Debtor's assets.
- 70.** Which of the following is NOT an essential element for strict product liability?
- (A) The plaintiff must only be the intended user of the product.
 - (B) The defect must have caused the plaintiff's injury.
 - (C) The product must have had a defect.
 - (D) A defect in the product must have rendered the product unreasonably dangerous.
 - (E) The defect must have existed when it left the seller's hands.
- 71.** Which of the following tests may be used by a plaintiff to determine if a product has a defect in design?
- I. Consumer expectation test
 - II. Prudent manufacturer test
 - III. Risk-utility test
- (A) I only
 - (B) II only
 - (C) III only
 - (D) Either I or II
 - (E) Both I and II
- 72.** Corporation desires to establish a manufacturing facility in a foreign country that requires any new foreign investment to be controlled by a citizen of that foreign country. In this case which of the following investment vehicles would be most appropriate for Corporation?
- (A) Joint venture
 - (B) Wholly-owned foreign subsidiary
 - (C) Foreign distributor
 - (D) Licensing technology and intellectual property to a foreign company
 - (E) Franchisor-franchisee relationship

73. Within the WTO framework, what tribunal will hear a dispute concerning a violation of a WTO agreement?

- (A) U.S. Court of International Trade
- (B) World Intellectual Property Organization (WIPO)
- (C) Dispute Settlement Panel
- (D) Appellate Board
- (E) Court of International Justice

74. Which of the following may be a source of business ethics?

- I. Religious tenets
- II. Cultural traditions
- III. The law

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

75. Which of the following theories of corporate social responsibility requires the company to consider the effects of an action on all of the stakeholder groups rather than just in favor of the shareholders?

- (A) Shareholder theory of Milton Friedman
- (B) Stakeholder theory of Edward Freeman
- (C) Stakeholder analysis theory of Kenneth Goodpasture
- (D) Distributive justice theory of John Rawls
- (E) Emanuel Kant's theory of categorical imperative

76. What federal statute now requires covered publicly traded companies to maintain a code of ethics for their employees making high financial decisions for their companies and establish policies to encourage and protect employee whistleblowing?

- (A) Corporate Social Responsibility Act
- (B) Sarbanes-Oxley Act
- (C) Investment Companies Act
- (D) Revised Model Business Corporation Act
- (E) Securities Exchange Commission Act

77. A U.S. wholly-owned foreign subsidiary does business in a developing country (a poor country). The foreign subsidiary's employment policies and practices treat foreign workers with much less dignity than it treats its American expatriates (i.e., Americans working abroad for the company). Still, compared to what the foreign workers are accustomed to and the higher pay they are receiving, the foreign workers do not complain about how they are treated. Which of the following ethical principles would most likely require a conclusion that the company is acting ethically?
- (A) Cultural relativism
 - (B) Moral relativism
 - (C) Kantian ethics
 - (D) Distributive justice
 - (E) Rights theory
78. Which of the following is a reason a business should be ethical?
- I. Ethics builds trust and capitalism succeeds because of trust.
 - II. Practicing ethics can lead to a good business reputation.
 - III. Practicing ethics usually reduces legal costs.
- (A) I only
 - (B) II only
 - (C) III only
 - (D) I and II only
 - (E) I, II, and III
79. Employer hires Employee to operate a bucket truck (i.e., a "cherry picker") to trim trees and to work around electrical lines. Employer did not investigate Employee's background, skills, or qualifications. Employee caused an innocent independent contractor (not an employee of Employer) to be injured when Employee negligently operated the bucket truck causing the person to be thrown into a live power line. Had Employer performed an adequate inquiry of Employee's qualifications, Employer would have known that Employee could not safely operate a bucket truck. Which of the following best describes the legal consequences to Employer?
- (A) Employer will be directly liable to the injured person based on its negligent hiring of Employee and vicarious liability for Employee's negligence.
 - (B) Employer will be liable only based on vicarious liability.
 - (C) Employer will be strictly liable to the injured person.
 - (D) Employer will not be liable since it did not negligently operate the bucket truck, the proximate cause of the injury.
 - (E) Employer will not be directly liable because common law does not recognize the tort of negligent hiring or negligent and supervision.

- 80.** Which of the following torts occurs when a defendant makes an untruthful statement about the plaintiff and damages the reputation of the plaintiff?
- (A) Intentional infliction of emotional distress
 - (B) Intentional interference with contractual relations
 - (C) Intentional interference with business conduct (or business advantage)
 - (D) Defamation
 - (E) Invasion of privacy
- 81.** Employer searches Joan's purse without her consent or knowledge. Employer believed that Joan was stealing its trade secrets. Assuming Employer does not have an employment policy making all persons and their property on Employer's premises subject to search by Employer, has Employer committed the tort of invasion of privacy?
- (A) No, because an employer always has the right to search any personal items on the employer's premises.
 - (B) Yes, because Joan has a reasonable expectation of privacy and Employer unreasonably intruded upon her seclusion.
 - (C) Yes, because an employer has to have a search warrant to search the private property of its employee.
 - (D) No, because there was no public statement made about Joan's private affairs.
 - (E) Yes, because by accepting employment with Employer she implicitly gave her consent to the search so she could not have a reasonable expectation of privacy.
- 82.** Which of the following intentional torts occurs when one steals the personal property of another with intent to deprive the owner of possession and use of the property?
- (A) Trespass to chattel
 - (B) Conversion
 - (C) Fraud
 - (D) Defamation
 - (E) Trespass to personal property

- 83.** Spectator attends a professional baseball game. During the game Spectator was seriously injured when a hard foul ball struck him in the head. Spectator's attention was diverted to watching a relief pitcher warming up in the bullpen area. Which of the following best describes the legal outcome if a negligence lawsuit is filed by Spectator?
- (A) Spectator will win because the team or operator of the stadium is under a legal duty to protect Spectator from injury during the game.
 - (B) Spectator will win because the team or operator of the stadium is strictly liable for batted or thrown balls that injure a spectator.
 - (C) Spectator will lose because no duty is owed to a spectator who attends a ball game.
 - (D) Spectator will lose because he assumed the risk of injury from a foul ball as a risk inherent in attending a baseball game.
 - (E) Spectator will lose because he assumed each and every risk in attending a baseball game.
- 84.** Sam hits Kevin in the face with his fist breaking Kevin's nose. Sam's act was intentional and out of unprovoked anger. What class of tort would this be?
- (A) Recklessness
 - (B) Negligence
 - (C) Intentional tort
 - (D) Strict liability tort
 - (E) Gross negligence
- 85.** Which of the following classifications of torts occurs when the plaintiff is injured as a result of the ultrahazardous (or abnormally dangerous) activity of the defendant and the defendant used all normal precautions and due care to prevent injury to anyone?
- (A) Strict liability
 - (B) Negligence
 - (C) Gross negligence
 - (D) Intentional
 - (E) Recklessness
- 86.** Which of the following business torts results when the defendant through an improper motive or illegal means damages another's business?
- (A) Misappropriation of trade secrets
 - (B) Trade disparagement
 - (C) Intentional interference with business relationship (or prospective advantage)
 - (D) Intentional interference with contractual relations
 - (E) Civil RICO action

- 87.** Which of the following is the legal duty that a professional owes to her client in performing the task she was hired to do?
- (A) The professional must possess and use the knowledge, skill, training, and ability that a member of the profession in good standing has.
 - (B) The professional must possess and use the knowledge, skill, training, and ability that the most qualified members of the profession has.
 - (C) The professional must possess the training but not necessarily the ability that a member of the profession in good standing has.
 - (D) The professional must possess a license for the profession and do good work.
 - (E) The professional need only be as good as other members of the profession in the community, and a specialist need be no better than a general practitioner.
- 88.** Which of the following persons is one who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking?
- (A) Agent
 - (B) Independent contractor
 - (C) Employee
 - (D) Fiduciary
 - (E) Employer
- 89.** Which of the following fiduciary duties that an agent owes to her principal creates an obligation to advise the principal about all monies received and disbursed by the agent?
- (A) Duty of loyalty
 - (B) Duty of obedience
 - (C) Duty to compensate
 - (D) Duty to account
 - (E) Duty to keep principal informed
- 90.** Agent is hired by Principal to locate and contract for real estate that is undervalued due to Seller's ignorance of value or financial distress. Agent receives a commission for each property found and acquired. Agent finds a parcel of real estate and purchases the real estate for himself rather than Principal. Agent sells the property to another buyer for a substantial profit. In this case, which of the following fiduciary duties did Agent violate?
- (A) Duty to account
 - (B) Duty of loyalty
 - (C) Duty to keep principal informed
 - (D) Duty of obedience
 - (E) Duty to reimburse and indemnify

- 91.** Seller hires Agent to sell its product. Agent is authorized to enter into contracts for a price up to \$10,000 and to collect and remit the purchase price to Seller. Contracts above \$10,000 must be approved by Seller and payments for those contracts are to be paid directly to Seller. On a number of occasions, however, Seller has allowed Agent to make sales on his own above \$10,000 and to collect the purchase price from the customers. Seller shipped the goods sold by Agent to these customers. If a dispute later arises concerning these sales contracts, which of the following statements would be correct?
- (A) Agent had actual authority to enter into those contracts; therefore, Seller is liable on those contracts.
 - (B) Agent had no express or implied authority to enter into those contracts; however, Seller is liable on those contracts because it ratified them by performing them.
 - (C) Agent had implied authority to enter into those contracts because it is customary for salespersons to legally bind their employers for all sales they make.
 - (D) Agent was given apparent authority to make sales for unlimited amounts and to collect the purchase price when he was hired.
 - (E) Seller was not bound and did not have to perform under any of the contracts entered into by Agent because Agent had no authority.
- 92.** Which of the following is a correct statement regarding vicarious liability of an employer for the tort committed by its employee?
- (A) Only an agent is liable for his torts.
 - (B) Vicarious liability is based on the doctrine of respondeat superior.
 - (C) An employer is always liable for a tort committed by its employee.
 - (D) An employer is never liable for an intentional tort committed by its employee.
 - (E) When the doctrine of respondeat superior makes the employer vicariously liable for a tort committed by an employee, the employee cannot also be liable for the tort.
- 93.** Which of the following entities bears unlimited liability for all of its owners?
- (A) A corporation
 - (B) A limited liability company
 - (C) A partnership (general)
 - (D) A limited partnership
 - (E) A limited liability partnership
- 94.** Which of the following types of corporations receives favorable tax treatment similar to a partnership but has limits on the number of shareholders and who can own shares?
- (A) Professional corporation
 - (B) S (or Subchapter S) corporation
 - (C) Not-for-profit corporation
 - (D) C (or regular) corporation
 - (E) Closely-held (or close) corporation

- 95.** Which group of persons is legally charged with the function of managing a corporation?
- (A) Directors
 - (B) Officers, principally the president
 - (C) Shareholders
 - (D) Members
 - (E) Trustees
- 96.** Director voted to authorize Corporation to acquire a major product line of one of its competitors. Director studied the consequences of the acquisition and acted in good faith in the best interests of Corporation. Corporation's board of directors approved the acquisition with Director casting the decisive vote in favor. The acquisition was a disaster and Corporation's stock fell substantially. If Director is sued by Corporation's shareholders for negligence in approving the acquisition, what will be the result to Director?
- (A) Director will be liable for negligence for failing to use due diligence.
 - (B) Director will be strictly liable as a fiduciary of the corporation.
 - (C) Director will not be liable because her decision comports with the business judgment rule defense.
 - (D) Director will not be liable because directors of a corporation cannot be held liable for any decisions they make regarding the corporation.
 - (E) Director will be liable for breach of her duty to exercise reasonable supervision.
- 97.** The term "goods" means which of the following for sales under the UCC?
- (A) Anything of value, whether real or personal property, that is sold
 - (B) Any tangible or intangible property that is sold
 - (C) Moveable, tangible, personal property
 - (D) Any item or service that is sold which is subject to sales tax under that state's law
 - (E) Moveable, intangible, personal property
- 98.** Vendor enters into a contract with Customer to provide and install an industrial boiler system for Customer's pulp and paper mill. The cost of the boiler is valued at \$20 million and the cost of the installation is \$5 million. In this case what law will be used should any contract dispute arise between Vendor and Customer?
- (A) Common law of contracts
 - (B) Uniform Commercial Code, Article 2
 - (C) Uniform Commercial Code, Article 2A
 - (D) Convention on the International Sale of Goods (CISG)
 - (E) Law Merchant

99. Which of the following product warranties requires the product to be fit for sale and ordinary use and be of average quality?

- (A) Implied warranty of fitness for a particular purpose
- (B) Implied warranty of merchantability
- (C) Implied guaranty
- (D) Express warranty
- (E) Implied warranty by sample

100. Which of the following acts of the issuer of securities would be prohibited under the Securities Act of 1934 during the period following the filing of the issuer's registration statement and before the SEC gives its approval, i.e., the preapproval stage?

- I. Place tombstone advertisements in the financial newspapers
- II. Negotiate a contract with an underwriter to sell the securities
- III. Enter into firm offers to sell the securities to the public

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

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1. **The correct answer is C.** The doctrine of *stare decisis* is what makes the common law work so well with stability and predictability. Even though the doctrine requires courts to follow precedent, it does not mean that precedent can never change. An appellate court, but not a trial court, can refuse to follow a precedent if the court feels the old precedent is no longer reasonable and should be changed.
2. **The correct answer is C.** The President of the United States can establish law through the issuance of executive orders published in the Federal Register. However, the president's executive order must be based on an underlying statute of Congress giving the president authority to act. Courts have the power of judicial review to determine if the president's executive orders pass the separation of powers doctrine and are constitutional under substantive due process. This is the system of checks and balances. Other than executive orders, the president has no authority to make law. Law can be made by the courts, the legislature, administrative agencies, and the people through constitutions.
3. **The correct answer is D.** Constitutional law is the highest form of law. All laws of the jurisdiction must comply with it. In the United States, the highest form of law is the U.S. Constitution, followed by U.S. treaties, statutes, and administrative rules and regulations. There is no body of federal common law as there is in each of the states. State constitutions may not conflict with the U.S. Constitution.
4. **The correct answer is D.** Administrative agencies have no constitutional authority to enact statutes. Conversely, the legislature enacts the enabling statutes that create administrative agencies and give them their power.
5. **The correct answer is C.** England and the countries that were former colonies of England—the United States, Canada, Australia, and many of the former British colonies around the world—follow the English tradition of the common law system. Most of the world, and especially Europe, South America, and Asia, follow the civil law system. Whereas the common law system allows law to be made by courts, the civil law system does not allow for judge-made law. Islamic law systems that base their civil law codes on sharia, the religious law of Islam, are used predominantly in the Muslim nations in the Middle East and North Africa, but not all Muslim nations base their legal system on sharia law.
6. **The correct answer is A.** The U.S. Supreme Court in *Quill Corporation v. North Dakota* has held that a state's requirement to have an out-of-state company such as this one collect and remit taxes on sales to the state's residents was unconstitutional as it violated the Commerce Clause. The violation of the Commerce Clause is based on the state placing an unreasonable burden on interstate commerce, which states are prohibited from doing when they regulate business. In *Quill Corporation*, the U.S. Supreme Court held that the Due Process Clause was not violated since the seller had sufficient nexus with the state to make collection and remittance of the tax fair.
7. **The correct answer is A.** The highest level of constitutional scrutiny by a court is strict scrutiny. A court is required to use strict scrutiny when a fundamental right (one grounded in tradition) is restricted by the government or when government restriction is based on a suspect class (race and alienage). In this case political speech is one of America's most fundamental rights, so for a state to restrict political speech would require a court to apply the strict scrutiny constitutional test in which the government must have a compelling interest and the means to achieve it must be narrowly tailored and go no further than necessary to meet the compelling interest. Advertising is a form of commercial speech that receives a high level of scrutiny, but not the highest strict scrutiny. To restrict commercial speech the government must have a substantial government

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interest, the restriction must directly advance that substantial interest, the speech must not be unlawful (e.g., untruthful or deceptive), and restriction must be narrowly tailored. When the government treats persons different based on gender or legitimacy, intermediate scrutiny is used. When the government regulates business activity or professions, the lowest level of scrutiny—the rational basis test—is used.

8. The correct answer is A. Whenever the government is seeking evidence of a crime or is investigating a crime, a search warrant is required based on probable cause to believe the government will find evidence. Probable cause is not required when there is only a routine inspection by an administrative agency. In that case, the owner of the premises may demand the government inspectors to produce a search warrant, but all the regulators would need is reasonable suspicion of a violation of a rule. This would be easy to obtain. Regardless, if an agency's inspector is not looking for criminal evidence or suspects a crime, and if the property owner operates a business that is in a highly regulated industry like food and drugs or chemical, then the regulator must be permitted to examine the premises without any search warrant. A request for production of documents is a method of discovery in a civil lawsuit. Entry onto the premises is by permission, and, if permission is not granted, then by order of the civil court to compel discovery.

9. The correct answer is A. The Commerce Clause provides the federal government its greatest power over citizens' day-to-day lives. The Commerce Clause gives the Congress the power to regulate interstate commerce. Courts have construed this power so broadly as to include the right to regulate private, intrastate activity as long as the cumulative effect of all such actors everywhere would substantially affect interstate commerce. Choice E is incorrect because it is hyperbole as it overstates the Congress's power.

10. The correct answer is E. The Import-Export Clause places restrictions on states' power to levy tariffs on imports and exports. States are prohibited from levying tariffs (customs duties on imports) that are shipped out of or into the state. The Due Process Clause prohibits a state from levying a property tax on property not located within the state. Once property does come into the state, then the state may levy a property tax on it.

11. The correct answer is C. Congress encourages disputing parties to arbitrate and under the Federal Arbitration Act, the federal and state governments must provide arbitration decisions with full faith and credit just as with court decisions. Arbitration is by agreement between the parties. Arbitration may be binding or nonbinding. Nonbinding arbitration still affords the parties the right to sue if one or both do not like the result of the arbitration. An arbitrator is a neutral; she must not be biased or act arbitrarily, capriciously or unreasonably. Due process cannot be achieved if an arbitrator acts this way. Furthermore, courts will overturn arbitrators' decisions based on this kind of unfairness.

12. The correct answer is D. Mediators have no authority to bind the parties in mediation as do arbitrators and judges. A mediator is a third-party neutral whose function is to assist the two parties in reaching a settlement.

13. The correct answer is B. There are nine justices on the U.S. Supreme Court. They all hear a case unless a justice recuses himself from the case or is absent due to illness. Some appellate courts allow their appeals judges to sit as panels as low as three to hear a case, but in major cases all of the appellate judges will hear the case.

14. The correct answer is C. To hear a case by permission, at least four justices must agree to hear the case. When the decision is made to hear the case, the court will issue a writ of certiorari to order the lower court to

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send the record of the case. Attorneys for the appellant and appellee prepare briefs arguing the legal issues and the court usually hears oral arguments from the parties' attorneys.

15. The correct answer is D. Before a court can hear a case, due process requires that the court have both subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction is jurisdiction of the subject matter of the case. Can the court hear that particular type of case? Personal jurisdiction is jurisdiction over the person. In some cases the court is not concerned with the person as it is the property; for example, in probating a will where the property is in another state. In that case in rem jurisdiction can replace personal jurisdiction.

16. The correct answer is B. Oral depositions allow a party or her attorney to ask verbal questions of a deponent who will answer the questions verbally under oath. Depositions many times are taken after requests for interrogatories and requests for production of documents have been made.

17. The correct answer is B. Under the rules of civil procedure, a plaintiff initiates a lawsuit by filing a complaint with the court. A complaint is a general statement of facts of the case and a demand for a remedy. Petitions are the equivalent of complaints, but they are usually filed in equity court or juvenile court where the petitioner is seeking an equitable remedy rather than damages.

18. The correct answer is D. A judge will grant a motion for summary judgment when the judge believes there is no genuine issue of material fact in dispute necessitating a trial. The facts are clear or undisputed. With summary judgment the court does not let the jury hear the case; the judge will rule on the pleadings, motions, and trial briefs. A directed verdict may be granted by the judge if, after hearing testimony, the judge concludes there is only one reasonable conclusion of fact so the jury does not need to hear any more to deliberate. The judge by issuing a directed verdict takes the case away from the jury. The trial judge has two other means of assuring fairness when jury verdicts are unreasonable. First, the trial judge may grant judgment notwithstanding the verdict and rule contrary to a jury's finding. Second, the judge may use remittitur to reduce the jury's damage award or may use additur to add to a jury's damage award.

19. The correct answer is E. A trial begins with the selection of the jury and the voir dire process. After the jury is impaneled, opening statements (arguments) are made by the plaintiff, then the defendant. The plaintiff puts on its case in chief through direct examination followed by cross-examination of witness. The plaintiff rests at which time the defendant may or may not move for a directed verdict. The defendant puts on its case in chief through direct examination followed by cross-examination of the witnesses. The defendant rests. Again, the parties may move for a directed verdict. Closing arguments are made by the plaintiff first and then the defendant. The judge gives the jury instructions (charges the jury); the jury deliberates and returns a verdict.

20. The correct answer is D. A unilateral contract is made through an offer directly to the offeree or a group where the offeror does not want a return promise but wants an act. Acceptance of the offeror's offer is by performing the act. The contract is not a bilateral contract because there is not a promise for a promise. This would be an express contract because it is not formed out of conduct of the parties. Choices B and E are incorrect because a valid contract exists after acceptance by performance of the requested act.

21. The correct answer is A. Contracts may be classified as to their status in terms of performance. This contract has not been fully performed so it is an executory contract. Had the contract been fully performed, it

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would have been an executed contract. A contract may be executory as to one party and executed as to another. Collective bargaining agreements are express contracts and formal. There is no evidence here that there is any defect that would cause the collective bargaining agreement to be voidable by one of the parties.

22. The correct answer is A. If a contract is clear and not ambiguous, a court will look no further than the four corners of the document to interpret the contract. When a contract contains ambiguous provisions, a court will try to interpret the contract to meet the intentions of the parties. In doing so the court will give ordinary words their ordinary plain meaning and technical words their technical meaning. Under rules of contract interpretation courts will construe ambiguous provisions against the party who drafts the contract. Handwritten terms override typewritten terms and typewritten terms override pre-printed terms. Under the parole evidence rule, outside (extrinsic or parole) evidence will not be admissible to explain the parties' intentions or promises before the contract was executed or contemporaneously to it as long as the contract is complete and fully integrated, containing all of the parties' promises and representations.

23. The correct answer is C. An offer is made by the offeror and the offer is made to the offeree. Receiving an offer gives the offeree the power to accept or reject the offer. Assignors and assignees are parties who make and receive an assignment of contract rights, respectively. A promisee is one to whom a promise has been made by a promisor.

24. The correct answer is C. Auctions are special vehicles for selling property. Generally, auctions are with reserve unless explicitly stated otherwise. Auctions with reserve allow the seller to withdraw property from sale at the auction or to refuse an otherwise good bid if the seller does not want to sell. An offer to sell the auction item is not made by the auctioneer, it is made by the person making the bid. Acceptance of a bidder's offer is by the fall of the auctioneer's hammer.

25. The correct answer is E. An offer can be effectively revoked by act of the offeror in revoking the offer before acceptance, provided the offer is not irrevocable due to option contract, firm offer rule, or detrimental reliance, or by operation of law. Revocation by operation of law may result in several ways including destruction of subject matter before acceptance of the offer, death or incapacity of the offeror or offeree, bankruptcy, or subsequent illegality.

26. The correct answer is C. A counteroffer has the effect of rejecting the original offer and making a new offer, which the original offeror can accept or reject. The original offer is not revived by the rejection of the counteroffer. Thus, when the offeree makes a counteroffer to an otherwise acceptable offer, the offeree does so at her own risk and folly. In this case there is no detrimental reliance on the original offer being held open—no injustice is created. The offeree has already acted on the original offer by rejecting via a counteroffer. Landscaper's offer does not come within the meaning of the UCC's firm offer rule in part because Landscaper is not a merchant. Because it is a service provider, the UCC does not cover this transaction, and the offer was not in a writing giving assurances that it would be held open.

27. The correct answer is B. This question requires the application of common law contract rules. Unlike the UCC's provisions on acceptance of an offer, the mirror image rule applies in common law. The acceptance must be to the same terms as the offer. A purported acceptance with new or different terms constitutes a counteroffer. Under the UCC, acceptance may be by any reasonable means provided the offer does not explicitly state the required mode of acceptance. Under limited situations, silence may constitute acceptance. This would require prior express or implied in fact approval of silence as an acceptance mode.

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An example that many or most people have encountered is a book-of-the-month club (in the 1960s and 1970s the record-of-the-month) where as a condition to membership the seller monthly notifies the buyer of the book that will be sent to her unless she notifies the buyer that she does not want the book. Silence of the buyer is an acceptance. In unilateral offers the offeror desires an act not a promise. Therefore, the offeree does not have to notify the offeror that she intends to perform the act.

28. The correct answer is E. Promissory estoppel is an equitable principle of contracts that requires enforcement of a promise even though the promisee has not paid any consideration for the promise. It requires a promise to be made which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, and which does induce such action or forbearance. Then the promise is binding without consideration if injustice can be avoided only by enforcement of the promise. The concept is similar in effect to detrimental reliance.

29. The correct answer is C. A person who has been adjudicated insane (legally insane) does not have legal capacity to make a contract, thus any contracts such a person makes are void. A person who is insane in fact has not been adjudicated insane by a court. This person has periods, and perhaps his condition is permanent, of insanity. Any contract made by the person in a mental state where he does not understand the nature and consequences of his act (contracting) is voidable until a reasonable period after he becomes lucid again.

30. The correct answer is C. Generally, a minor has the right to disaffirm a contract (the process of contract avoidance) by notifying the other party and returning the consideration if he has it. The minor may disaffirm a voidable contract if it is done before he reaches the age of majority (usually age 18) and a reasonable time thereafter.

31. The correct answer is E. Only the person who enters into a contract as a minor can ratify such a contract. The minor enters into a voidable contract while the other party with legal capacity enters into a valid contract. Ratification of a contract entered into as a minor may take place after the minor reaches the age of majority. Ratification terminates the power to disaffirm. Ratification may be manifested expressly in writing or orally, or implicitly by conduct indicating the individual intends to be bound by the contract. The act of ratification of a contract is accepting the whole contract and its legal consequences.

32. The correct answer is D. This is a contract defense question. Tort issues are irrelevant here. Only intentional misrepresentation of a material fact (or fraud) may be a contract defense in which the victim may seek rescission (the unmaking of the contract and a return to the status quo ante) of the contract or money damages for lost bargain. Which of the two remedies the party should seek depends on whether she wants to retain the consideration she received or she wants her consideration back. All of the other defenses limit the party to rescission of the contract. Whereas the five choices are all available contract defenses, two of them may be torts—intentional misrepresentation (or fraud) and negligent misrepresentation. If the victim of fraud or negligent misrepresentation sues in tort, the victim will be able to seek money damages. One should note, however, that egregious acts intended to cause extreme duress may also be tortious and actionable as a tort of outrageous conduct or intentional infliction of emotional distress for which money damages may be awarded.

33. The correct answer is B. If both parties to a contract are mistaken as to the same material fact or law, then either of them may avoid the contract and seek to have the contract rescinded. Since the purpose of the contract was to acquire a dog for breeding purposes, sterility of the dog was a material fact. This was a mutual mistake of fact. Rescission and return of her consideration is the sole remedy for Carole. The facts do

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not support any negligence on Cody's party.

34. The correct answer is E. The elements of fraud or intentional misrepresentation as a contract defense and as an intentional tort are as follows: (1) a misrepresentation or omission of a material fact, (2) made with intent to deceive the other party (i.e., scienter), (3) the other party reasonably relies on the misrepresentation, and (4) the misrepresentation results in injury or damage to the other party. A statement of material fact is one that can be proven or disproved when it is made. An opinion or prediction cannot be proven or disproved at the time it is made. Sales puffery can be reasonably expected and should not be relied upon as fact. Negligence is inconsistent with scienter. An act is either intentional or is negligent but not both. In this case whether or not a house has termites is a material fact that a buyer would want to know and consider in making a decision to purchase or not purchase. Silence is wrongful when a defect is hidden or latent (rather than obvious or patent) and the person knowingly does not disclose the fact.

35. The correct answer is A. Contracts and property law are entwined in this question. Due to Grandmother's physical and mental condition she relies on Granddaughter. When such conditions exist, a person has the power to dominate another's thinking and the dominant person's wishes may control the other person's actions. The dominant person may exert an undue influence over the other party's actions. This is not an unusual situation. Reality of consent (genuineness of assent) requires an intent to contract based on reality and his or her own desire to contract—not someone else's. In this case Granddaughter has probably exerted undue influence over Grandmother in advising her to convey the house and farm to Granddaughter. The son may file a lawsuit to have the conveyance (deed) rescinded. A set of facts that would be based on a bilateral contract rather than a gift, but still have the same result of rescission based on undue influence, would be the bargain sale of the house and farm to Granddaughter for a very low price.

36. The correct answer is B. Gambling contracts may be legal or illegal. Generally, the controlling factor is whether the state where the contract is executed has legalized gambling. That is the case in choice B so the contract for a gambling debt (or marker) would be legal and enforceable. The other answers reflect contracts that are illegal as contrary to public policy by statute.

37. The correct answer is D. Sometimes a contract may contain both provisions that are legal (such as a promissory note to borrow money) and provisions that are illegal (provisions requiring the payment of usurious interest). In such a case a state may enforce those provisions of a contract that are legal and refuse to enforce those provisions of a contract that are illegal. Some courts will find the whole contract void based on illegality and not enforce it at all. The issue is whether the illegal and legal provisions of a contract are divisible and can be construed separately so that injustice will not result. A court may enforce an otherwise illegal contract where the innocent party has fully performed. An injustice would arise if the court refused to do so. The converse does not apply, however. If a guilty party (one who knowingly enters into an illegal contract) has fully performed, a court will not enforce the illegal contract. No injustice would arise.

38. The correct answer is B. The Statute of Frauds was created in England in 1677 to prevent fraud in contracting. It was adopted by the United States as part of the English common law and has remained an important provision of contract law in modified form since then. From time to time states add additional contracts that must be in writing; for example, real estate listing contracts or sports agency contracts.

39. The correct answer is C. Contracts requiring a guarantor to pay the debts or legal obligations of another person are within the Statute of Frauds and must be evidenced in writing. Whereas the UCC requires

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contracts for the sale of goods of \$500 or more to be in writing pursuant to the Statute of Frauds, oral contracts of less than \$500 are enforceable. Contracts extending beyond one year of their making (date of execution) are problematic. The Statute of Frauds provides that contracts that cannot be performed within one year of their making must be in writing. Here one must consider whether or not it is **possible** to perform the contract within one year of the date it is executed.

40. The correct answer is B. There are several exceptions to the Statute of Frauds. In these situations there is evidence to prove that a valid contract exists. One of the more significant exceptions is the partial (part) performance rule for oral contracts for the sale of real estate. If a person contracts to purchase real estate from another under an oral contract, the purchaser takes possession of the real estate, pays part of the purchase price, and makes substantial improvements to the land, then a court will enforce the oral contract. Choice B does not meet this test since there was no payment of part of the purchase price. The other four situations state provisions of the UCC's Statute of Frauds provisions where a writing is not required. One can reasonably conclude that in each of the situations there has been prior agreement because the act would not make sense unless there was indeed a contract.

41. The correct answer is A. An assignment is the transfer of one's contractual right to another person. A contractual right would include the right to receive the other party's consideration, here the payment from the customer. Conveyance, alienation, and transfer all reflect the moving of rights or property (which may include a contractual right) by the owner to another person. "Assignment" is a technical term in contract law. Conveyance, alienation, and transfer are general terms. A delegation is an act in which the obligor delegates (shifts) his duty under a contract to another person. When there is an assignment of a whole contract, then "assignment" includes the assignment of rights and the delegation of duties under the contract.

42. The correct answer is C. Third-party beneficiaries of a contract include incidental beneficiaries and intended beneficiaries. Incidental beneficiaries are those third-party beneficiaries who have no direct stake in the contract and their benefit from the contract is only incidental to the making of the contract. Intended beneficiaries are third-party beneficiaries to a contract that, by the nature of the contract, have legal interests to enforce, a stake in the contract, if you will. These may arise under gift arrangements where one party enters into a contract specifically or ultimately to benefit someone else, thereby creating a donee beneficiary. Becky is a donee beneficiary because she is intended to benefit from the life insurance policy even though she did not give consideration to obtain the right to receive the insurance proceeds. Intended third-party beneficiaries may also arise as a result of a debtor-creditor relationship. In this case the obligor (a debtor) under a contract becomes liable to pay the debt to a third party, who has a claim as a creditor for the payment. This intended third-party beneficiary is a creditor beneficiary. Incidental beneficiaries have no right to sue on a contract but intended beneficiaries may sue to enforce a contract.

43. The correct answer is B. Conditions precedent are those contractual conditions that must be met either before a contract comes into existence or before a contractual obligation exists. In business, a condition precedent might be an agreement between a general contractor and a subcontractor that the two of them will have a contract if the general contractor is awarded the construction contract for the whole project. A condition subsequent is a condition that terminates or curtails a contractual obligation upon the occurrence of the condition. Conditions concurrent require acts to be performed at the same time or nearly the same time.

44. The correct answer is A. With performance the issue is whether there has been a sufficient amount of work done to discharge one's obligation under a contract. A contract completely performed (or fully

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performed) is not breached in any way and the party completing his contractual duties is entitled to payment of the full contract price. If a party does not fully perform but substantially performs, then the party has only committed an immaterial breach. His obligation under the contract has been discharged, and he is entitled to payment of the contract price less the damages sustained by the other party for the immaterial breach.

45. The correct answer is D. Discharge of one's contractual obligation may be by agreement of the parties or by operation of law. In discharge by accord and satisfaction, the parties actually reach an agreement to settle an unliquidated debt for less than the amount the creditor claims. The debtor tenders payment to the creditor intending to pay off the account balance which is accepted by the creditor in satisfaction of the debt. Bankruptcy of a party and impossibility are methods of discharge of contractual obligation by law.

46. The correct answer is B. A novation is discharge by substitution of parties. Alteration of contract is a contract modification by agreement of the parties. Rescission is the undoing of the contract and returning the parties to their status quo ante (the position they had before they entered into the contract). Commercial impracticability is a form of discharge by operation of law and is contained in the UCC for the sale of goods. It allows a party's duty to be discharged or modified when an event beyond a party's control makes performance impracticable (usually at a significant financial loss) and was not reasonably foreseeable or contemplated by the parties.

47. The correct answer is A. An anticipatory repudiation is an act of a party to a contract or situation that indicates to the other party that the other side either will not or cannot perform its contractual obligations. Anticipatory repudiation may be treated like a material breach of contract and give the nonbreaching party certain options including terminating its performance, the right to cover (purchase the goods or services elsewhere), and suing the breaching party for the cost differential (damages). The innocent party may also suspend his performance, notify the other party of his intent to give him an opportunity to perform, and wait until the date for performance for the other party to perform. When this is done, there is no mitigation of damages so the damages against the breaching party cannot exceed what they would have been had the nonbreaching party sued immediately after notice of the anticipatory repudiation. Even after notice of an anticipatory repudiation and informing the breaching party of one's intent to wait on performance, the nonbreaching party may sue for breach of contract; however, the nonbreaching party may not cover or sue as long as the breaching party has begun reasonable efforts to perform as instructed.

48. The correct answer is C. Impossibility requires the event making performance impossible or totally impracticable must not have been reasonably foreseeable or contemplated by the parties. If one should have foreseen the risk, then he will not be relieved of responsibility. Impossibility may result from a change in the law making the act illegal, substantial destruction of the subject matter, or in personal service contracts the death or incapacity prior to performance.

49. The correct answer is A. Reformation is an equitable remedy in a contract case where the parties through error or oversight had not expressed in their contract their exact intentions, such as misstating the scope of the work to be performed. A decree of specific performance may be awarded requiring a breaching party to perform as he agreed. Quantum meruit is the measure of the amount of money a plaintiff is due under quasi contract. It means the amount deserved and usually is the value of the unjust enrichment the defendant has unjustly received. Restitution is the equitable restoration of a person wronged by a breach of contract by another. It puts the innocent person back to the same position as before the contract. Rescission is the equitable remedy where a contract is canceled, putting the parties back into their position before entering into

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the contract. Each party must return the consideration received from the other party. Rescission may be by agreement of the parties, by their conduct, or by order of a court.

50. The correct answer is D. Because each parcel of land is considered by the law to be unique and money damages may not be an appropriate remedy with regard to unique property, Carla may seek a decree of specific performance to force Debbie to sell the land to her. Alternatively, Carla may sue for money damages for her lost bargain of \$8,000 (\$38,000 fair value of land minus the contract price). She cannot have both, however. As the facts of the case do not indicate that Carla had not paid any of the consideration before the breach, restitution is inapplicable to this case.

51. The correct answer is C. The Americans with Disabilities Act prohibits employers of fifteen or more employees from discriminating against employees and job applicants with disabilities if they are otherwise qualified given reasonable accommodation for their disability. Such would be the case here. By refusing to make a reasonable accommodation of her hearing disability, the employer is liable. As this is a larger employer, the reasonable accommodation of a special telephone for Carla would not be an undue hardship.

52. The correct answer is B. The Equal Employment Opportunity Commission (EEOC) has jurisdiction over employment discrimination matters. The NLRB has jurisdiction over labor-management relations. The FTC has jurisdiction over consumer protection, fair competition, and antitrust matters. DHHS deals with health and human services issues and generally is not responsible for regulating business. The Secretary of Labor is responsible for Fair Labor Standards Act compliance.

53. The correct answer is B. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against persons because of sex (gender). Assuming the male job applicant was a qualified candidate for the position of sales clerk in the ladies' apparel department, there would be discrimination but there would not be liability. Gender in this case is a bona fide occupational qualification (BFOQ). A BFOQ is a business necessity for the job, in this case gender. The employer bears the burden of proving the business necessity for the BFOQ. The importance of maintaining the customers' privacy is sufficient proof that only women should work in that particular job. BFOQs may include religion, age, gender, national origin (for authenticity), height and strength, and others, but race cannot be a BFOQ.

54. The correct answer is B. The Immigration Reform and Control Act was enacted to prevent and discourage illegal immigration. The statute requires employers to complete an I-9 form with proof that the job applicant is a U.S. citizen or is otherwise legally authorized to be and work in the United States. The statute provides for punishment to employers who employ illegal aliens and prohibits discrimination in employment against persons because of their immigration status.

55. The correct answer is A. Checks and balances by the judicial and legislative branches of government explain why federal administrative agencies that have quasi-judicial and quasi-legislative powers do not violate the separation of powers doctrine. The courts have the power of judicial review. They can determine if the actions and rules of an agency comports with substantive and procedural due process. The Congress has the power of the purse, by statute creates the agency and defines the agency's powers, and the Congress can abolish an agency and override an agency regulation by a contrary statute. Even though the agency works under the executive branch, the president nominates the persons who will run the agencies, and indirectly manages the federal agencies. The above checks and balances keep the president from exceeding his authority.

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56. The correct answer is B. Congress's authority comes from Article I, Section 8 of the U.S. Constitution. Through the Delegation of Powers Clause, Congress is given plenary power to carry out its enumerated powers, including regulating "commerce with foreign nations, and among the several states, and with the Indian tribes." Article 3 establishes the judiciary.

57. The correct answer is C. The Freedom of Information Act (FOIA) allows citizens to obtain public documents from federal agencies, but this is not a right to all documents. The law is designed to prevent abuse of discretionary power of federal agencies by requiring them to make public certain information about their workings and work product. An enabling act creates an agency and establishes its powers. Sunset laws are descriptive characteristics of legislative enactments that cease to be effective after a certain period of time. Government-in-the-Sunshine Act of 1976 requires that "every portion of every meeting of an agency" be open to "public observation," but there are exceptions as with FOIA.

58. The correct answer is D. The National Environmental Policy Act's purpose is to limit environmental harm from federal government activities, like road, dam, and levy construction. It requires that for every major federal action that significantly affects the quality of the environment, an environmental impact statement must be prepared. A major federal action is one that involves a substantial commitment of resources (money or otherwise).

59. The correct answer is C. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), known as the "Superfund," is intended to regulate the cleanup of hazardous waste-disposal sites. Liability for site cleanup falls on the polluter and the landowner. If an innocent landowner has to pay, the landowner has a right of contribution (right to sue) the polluter and/or the person who sold the present landowner the property. Such persons are jointly and severally liable for the costs of the cleanup. If the cleanup of the hazardous waste is through Superfund, the federal government may sue to collect the monies expended for the cleanup.

60. The correct answer is C. Trading of securities that have previously been issued by the company is in the secondary securities market and is regulated by the Securities Exchange Act of 1934. The Securities Exchange Act established the SEC and prohibits fraudulent, manipulative, and deceptive practices in the trading of securities, proxy solicitations, and tender offers. The Sarbanes-Oxley Act of 2002 regulates corporate governance and accountants and has established rules to assure greater reliability of financial information of public companies and greater independence and due diligence of the companies' auditors and financial management. The Securities Act of 1933 regulates the primary securities market and requires new stock issuances to be registered with the SEC unless exempt. The Investment Company Act regulates stock brokers. The Private Securities Litigation Reform Act provides greater regulation over securities litigation.

61. The correct answer is E. The Federal Trade Commission Act of 1914 established the FTC and regulates unfair trade practices. Unfair trade practices injure both competitors and consumers. Many of the acts that would be unlawful as unfair trade practices will also be unlawful under state consumer protection laws. The Sherman Act and The Clayton Act protect competition but more indirectly than the FTC Act.

62. The correct answer is A. One can easily tell from the facts (Microsoft and Apple) that there is a potential monopoly problem. Since Microsoft and Apple are competitors within the same industry and on the same level, this would be a horizontal merger. Horizontal mergers are given the greatest scrutiny by the FTC

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and the Department of Justice in the merger approval process because they have the greatest tendency toward harming competition. Under Section 7 of the Clayton Act, as amended by the Celler-Kefauver Act, a merger that may substantially lessen competition or tend to create a monopoly would be illegal. The FTC would have to prohibit the merger because the industry concentration level within the relevant product market would be so high as to damage competition. If the merger took place, which is very remote, there would be a violation of Section 2 of the Sherman Act that prohibits monopolies that restrain trade in interstate commerce.

63. The correct answer is A. Section 1 of the Sherman Act prohibits such activities as horizontal price fixing; horizontal market division; group boycotts (refusals to deal); resale price maintenance agreements; and similar contracts, combinations, or conspiracies that restrain trade in interstate commerce. Section 3 of the Clayton Act prohibits tying arrangements and exclusive dealing contracts that may substantially lessen competition or tend to create a monopoly.

64. The correct answer is B. Even though the competitors may think they have a justifiable purpose that will stabilize prices and their businesses, they have nonetheless committed a per se violation of Section 1 of the Sherman Act. Horizontal price fixing is a per se violation, thus the rule of reason requiring a substantially large quantity of goods or services to be affected is not used.

65. The correct answer is E. The Fair Credit Reporting Act has a goal of assuring that credit reporting agencies issue accurate credit reports, consumers have access to that information, and dissemination of the reports are limited to persons or firms authorized to obtain credit reports. All three rights comport to the goals of the FCRA.

66. The correct answer is E. The Fair Debt Collection Practices Act prohibits debt collection agencies, including debt collecting attorneys, from using heavy-handed tactics to collect debts, including repeated phone calls to a debtor's home and place of employment and phone calls to family members or employers to put pressure on the debtor to pay the debt. Also prohibited are threats and intimidation. Choice E is correct because the FDCPA does not prohibit a creditor from doing these acts to collect its own debt. Choices A, B, and C would be violations of federal and state consumer protection statutes or FTC regulations. Errors in the disclosure of annual percentage rate and total deferred costs of a consumer loan would probably violate Regulation Z of the Truth-in-Lending Act.

67. The correct answer is C. In Chapter 11 bankruptcies, reorganization of debts of a business, the debtor is allowed to serve as the debtor in possession and act as the trustee, provided enough creditors and the bankruptcy court do not object, then a receiver would be appointed. Acting as a debtor in possession allows the company to continue to run itself without excessive interference. Chapter 7 is liquidation; Chapter 9 is bankruptcy of municipalities; Chapter 12 is adjustment of debts by farmers; and Chapter 13 is adjustment of debts of individual with regular income (wage earner).

68. The correct answer is D. In bankruptcy the creditor with the lowest priority is the general unsecured creditor. In business that usually includes persons who sell their goods and services on open account. Some creditors have priority to a limited extent; for example, unpaid employees and customer deposits, and the excess amount of their debt balances go into the general unsecured class. Creditors in the general unsecured class in bankruptcy usually do not receive full payment, if any payment at all.

69. The correct answer is B. This case involves the rights of a surety (or guarantor) under a suretyship

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agreement. When a surety or guarantor has to pay a guaranteed debt, the surety will have the right of indemnification from the debt, assuming the surety can collect anything from a debtor who just defaulted, and a subrogation right against wrongdoers. In this case Surety has subrogation rights to sue Electrical Contractor for negligence or breach of contract. A right of contribution exists when persons are jointly and severally liable. If one of them has to pay the debt since he is jointly and severally liable, he has the right to have the other joint and several persons to pay their shares.

70. The correct answer is A. In strict product liability the plaintiff may be the intended user of the product, a bystander, or a reasonably foreseeable user. The use and the user must be reasonably foreseeable. This is part of the proximate causation requirement. Generally, a plaintiff in a strict product liability case must prove that the product contained a defect that rendered it unreasonably dangerous when it left the seller's hand, the defect caused the plaintiff's injury, and the plaintiff suffered damages.

71. The correct answer is E. There are two tests to determine if a product's design is defective—consumer expectation test and the prudent manufacturer test. Either test may be used by the plaintiff. The consumer expectation test focuses on what safety features or characteristics an ordinary consumer would consider necessary for the product or how safely they could operate the product safely. When a user is too small or infirmed for this test, as a small child would be when considering safety features or warnings of a disposable lighter or a medicine bottle, then the plaintiff may use the prudent manufacturer test. The prudent manufacturer test asks what characteristics or design an ordinary prudent manufacturer would incorporate in the product. In this test there is a risk-utility analysis (cost-benefit) considering a number of relevant factors, like cost, substitutes, importance of the product, etc.

72. The correct answer is A. Joint ventures are created when two or more persons join in a business venture for a limited purpose and possibly a limited time without intent to expand the relationship. Thus, if a U.S. company wanted to manufacture in a foreign country and it had to have a partner having voting control, the U.S. company would not want that foreign partner to expand its control beyond its ownership interest in the joint venture. A wholly-owned subsidiary would not work because of the host country's restriction on ownership and control by a national. Foreign distributors and franchises are used for marketing—not manufacturing. Finally, licensing may be an option but the owner of the intellectual property may end up losing too much control over the intellectual property and products.

73. The correct answer is C. Under the WTO umbrella disputes involving breaches of the WTO agreements, such as GATT, would be settled before a dispute settlement panel, a WTO tribunal. Appeals would be made to the WTO Appellate Board, and finally before the General Council. General Council has a representative from each member to the WTO. The Court of International Justice is a United Nations court as is the World Intellectual Property Organization tribunals.

74. The correct answer is D. Business ethics may be formed from a number of sources, including religious tenants, cultural traditions, and the law. Historically, religious tenants have established moral and ethical standards for different groups. Those religious tenants may be Judeo-Christian, Native American, Islamic, Buddhist, or Confucianism. Cultural traditions develop from different societal cultures, such as the Protestant work ethic, Stoicism, and cultures that place a high importance on cooperation and unity. The law establishes a minimum ethical standard for businesses and managers to follow.

75. The correct answer is B. Edward Freeman's stakeholder theory of corporate social responsibility

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requires the corporation and its managers to consider how an action might affect **all** of the stakeholders, including employees, customers, community, vendors, and shareholders. No one stakeholder group is given controlling favor as in Friedman's shareholder theory. The stakeholder theory is probably regarded as the most favored theory on corporate social responsibility today because it encourages companies to give greater regard to their communities and employees. Kenneth Goodpasture's stakeholder analysis theory would require a corporation to first consider the shareholders, because the corporation should earn them a reasonable profit for their investment, then consider the other stakeholder groups. The result under this theory would fall in the middle in the scale of social responsibility between the shareholder theory and the stakeholder theory.

76. The correct answer is B. The Sarbanes-Oxley Act of 2002 was enacted by Congress as a response to an excessive number of corporate accounting scandals that rocked Wall Street. Regarding ethics, SOX requires publicly traded companies covered under the statute (1) to maintain a code of ethics that apply to the financial executives who run the company, (2) maintain and test a system of internal accounting controls that would be effective to prevent irregularities such as fraud, and (3) establish whistleblower policies to encourage employees to advise appropriate persons or authorities of inappropriate actions and to protect those whistleblowers who do.

77. The correct answer is A. Similar to moral relativism (situational ethics) is cultural relativism. In cultural relativism one does not place one culture above another and considers each culture on its own. What is generally acceptable in that culture would be ethical for a foreigner. Using cultural relativism as an ethical reasoning form, the U.S. wholly-owned subsidiary would not be acting unethical in treating employees who are nationals of the host country worse than the company treats its American expatriates. Cultural relativism, in effect, would allow companies from the major industrialized nations to lower company standards when doing business in developing nations. One might reach the same result using moral relativism by adopting a "when in Rome, do as the Romans do" ethical philosophy. Antagonists of moral relativism argue that such ethical reasoning has no value at all because the individual or company would stand for nothing.

78. The correct answer is D. Companies do get value from practicing good ethics in the long run. These benefits include trust of the stakeholders, creation of a good reputation that builds good will, and reduced lawsuits. Other benefits might be a more satisfied and fulfilled workforce, and good ethical practices can have a trickle-down effect on managers and the rank-and-file employees.

79. The correct answer is A. This question requires one to view the fact pattern in total and ask how can the employer be liable. The facts show that the employer committed negligence in hiring the employee. They hired an incompetent to do a technical job with potentially deadly consequences. If he had been properly supervised as a new hire, the employer may very well have known that he did not have the skill or experience to operate the bucket truck. Thus, the employer's negligence in hiring and supervising the employee creates direct liability to the injured independent contractor. There is also vicarious liability to the employer because the employee committed negligence within the scope of his employment. This vicarious liability is based on respondeat superior (Latin, meaning, "let the master answer.")

80. The correct answer is D. Defamation is an intentional tort that generally requires less intent to injure than the other forms listed. Defamation has several other elements besides an untruthful statement and damage to the plaintiff's reputation. The statement must be a fact (not opinion) that a reasonable person would regard as fact, the statement must be published to a third person, and the defendant must not have a qualified or unqualified privilege.

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81. The correct answer is B. The intrusion upon seclusion type of invasion of privacy occurs when one intentionally intrudes upon someone's private affairs without consent or justification. In employment situations a court will balance the interests of the employer in managing the company and its employees against the reasonable expectation of privacy interests of the employee. The balancing also requires the consideration of the level of intrusiveness. In this case the employer's interest in management would probably not outweigh the privacy interest of the employee. There are several very important facts in this case that distinguish it from e-mail searches and typical employee surveillance situations. First, the employee had a reasonable expectation of privacy in her purse, a very private part of a woman. This expectation was not reduced any since the employer did not have a policy authorizing the search nor did her employer own the purse. Second, the level of intrusiveness was high given the personal nature of a woman's purse. Last, the employer had neither the employee's express nor implied consent.

82. The correct answer is B. This is the intentional tort of conversion, which is very similar to the crime of theft. Many states give an enhanced remedy to the plaintiff of treble damages. Trespass to chattel is the old form of theft and today as a tort it is used when someone interferes with another's business system or database, as spammers had done since the rise of the Internet. Trespass to personal property is similar to trespass to chattel. Here the defendant has interfered with the plaintiff's personal property to prevent the plaintiff's use of the property but hasn't taken the property to permanently deprive the plaintiff of use and possession.

83. The correct answer is D. Ignoring any argument that in buying a ticket to a baseball game one by contract waives any liability for injury while attending the game, because it was not in the facts of the case, the issue here is did Spectator assume the risk of injury. He did, and he cannot recover for his injury. One who attends a baseball game and chooses to sit outside the screened area assumes all the risks inherent in attending a baseball game. One of the risks of attending a baseball game is the risk of being struck by a foul ball.

84. The correct answer is C. Sam's act is battery and is an intentional tort. An intentional tort arises when the defendant knows or should have known with reasonable certainty that his action would result in injury to the plaintiff, as here. Recklessness is not as bad as an intentional tort but it is worse than negligence. With recklessness the defendant does not intend to injure the plaintiff but knows there is a high likelihood of injury and proceeds to act anyway. Injury results.

85. The correct answer is A. Strict liability is liability without regard to bad act or negligence. As long as the defendant's activity is ultrahazardous in nature, such that injury can result to someone even though the defendant has used all due care and proper method, there is liability.

86. The correct answer is C. The intentional tort of intentional interference with business relationship (or business conduct, or prospective business, as the tort is called) occurs when an individual tries to injure another's business, trade, or profession. As long as the injury is intentional, there will be liability if done with either an improper motive, such as spite or revenge, or the defendant uses an illegal means, such as predatory pricing.

87. The correct answer is A. A professional--such as a lawyer, engineer, or CPA--has a standard of care different from the reasonable person standard. A professional is compared to other members of her profession

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in good standing with the governing board of the profession. A professional must possess and use the education, training, knowledge, and skill of a member of her profession in good standing. It is an objective standard. A specialist within the profession is held to a higher standard. A specialist is compared to other specialists in the profession. The professional is not compared to the best in the profession, but not the worst either—just the normal professional.

88. The correct answer is B. An independent contractor is not controlled or controllable to the extent of an employee. Whereas an employer can control the details, manner, and method of how the employee does his work, the employer cannot exercise such control over an independent contractor. The independent contractor may still be an agent of the employer with a more limited authority. The significance of one being classified as an independent contractor rather than an employee may be huge for the employer. Employers have many more statutory responsibilities to employees than to independent contractors and have federal and state tax withholding and accounting duties. Employers incur payroll taxes on employees and bear workers' compensation insurance costs.

89. The correct answer is D. An agent owes her principal the fiduciary duty to account for monies the agent receives and spends for the principal. It is cash basis accounting of money in and money out. Any monies the agent has retained that belong to the principal are deemed to be held in constructive trust by the agent for the benefit of the principal.

90. The correct answer is B. An agent has a fiduciary duty of loyalty to the principal. The duty of loyalty includes the duty not to compete or usurp business opportunities of the principal, as in this case. In this case since Agent has usurped principal's business opportunity in violation of agent's fiduciary duty of loyalty, Principal could sue Agent for whatever profits Agent earned on the investment.

91. The correct answer is B. This question involves assessing Agent's authority to bind Seller. In this case Agent did not have actual authority, express or implied. With regards to the previous sales, the buyers do not have to rely on apparent authority. Repeated sales through Agent above the \$10,000 limit would have resulted in apparent authority being given to Agent by Seller. In this case, however, by shipping the goods to those customers who paid Agent more than \$10,000 per sale, Seller has ratified each of those contracts. Consequently, Seller cannot later claim that it is not liable on those contracts for lack of actual authority.

92. The correct answer is B. Vicarious liability is indirect liability based on the doctrine of respondeat superior when the employee as agent commits a tort while acting within the scope of his employment. The employee who commits the tort will be directly liable for injuring the plaintiff or her property. An employer is not always liable for the tortious acts committed by his employee. Some tortious acts committed by an employee are not within the scope of the employee's employment. For example, torts that do not result in vicarious liability to the employer include employee torts committed while the employee is on a frolic or an intentional tort (such as battery or assault) that is committed (1) on the employee's own initiative, (2) for his own purpose, (3) not in the furtherance of the employer's business, or (4) not to benefit the employer.

93. The correct answer is C. A partnership is owned by its partners. Partners have unlimited liability and are agents of each other and the partnership. A limited partnership's limited partners have limited liability but the general partner(s) have unlimited liability. Members in a limited liability company, shareholders in a corporation, and partners in a limited liability partnership have limited liability.

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94. The correct answer is B. An S corporation (or Subchapter S corporation) is a regular legal corporation formed under the Revised Model Business Corporation Act but is treated for federal income tax purposes similar to a partnership. An S corporation generally only has one level of tax and that is at the shareholder level. An S election has to be filed by all of the shareholders with the IRS giving their consent. All of the shareholders must be qualifying shareholders. S corporations are also closely-held corporations because an S corporation is limited to only 75 shareholders.

95. The correct answer is A. The Revised Model Business Corporation Act provides that directors have the responsibility of managing the corporation. Directors elect the officers and make all major policy decisions for the corporation.

96. The correct answer is C. In a lawsuit for negligence against a director or officer, the best defense is the business judgment rule. If an officer or director makes a decision based on informed judgment, made in good faith without a conflict of interest, and the officer or director is acting in the best interest of the company, the business judgment defense will apply and shield the officer or director from liability for negligence even though the decision was a bad one. In this case the requirements for the business judgment rule are present, so the director will not be liable. A director must use due diligence in making corporate decisions. That means the director must make himself informed on important facts pertinent to the decision.

97. The correct answer is C. UCC Article 2 covers the sale of goods. Therefore, only goods meeting the UCC's definition will be treated as a good and the sales transaction controlled by the UCC. The three characteristics of a "good" are that it is moveable, tangible, and personal property. This removes from the definition property that is fixed in place (as fixtures are); intangible property like patents, copyrights, or promissory notes; and real property.

98. The correct answer is B. This case involves a mixed contract of goods and services. Under the UCC to determine whether the sale is for goods or services and controllable by the UCC as goods or common law for everything else, one must consider which of the two dominate the contract. If the dominant characteristic of the contract is the sale of goods, rather than the service, the UCC will control. In this case the dominant characteristic of the contract is the boiler. The boiler is the reason the contract exists –not the construction services. Without the boiler there would be no need to purchase the construction services. Thus, the UCC will control this sale.

99. The correct answer is B. This definition describes an implied warranty of merchantability under Article 2 of the UCC. There are several implied warranties under Article 2, but only two implied warranties of product quality—implied warranty of merchantability and the implied warranty of fitness for a particular purpose. There are no time periods for the implied warranties as there are for express warranties. The implied warranty of fitness for a particular purpose provides that if the seller has superior knowledge and skill about a product and recommends a product after the buyer informs the seller what his particular purpose is for purchasing the product, then the seller implicitly warrants that the product will be fit for that particular purpose.

100. The correct answer is C. Under the Securities Act of 1933, the issuer must register the securities, unless they are exempt from registration, before it can sell (issue) any securities. After filing a registration statement with the SEC, the issuer of securities is limited as to the actions it can take. During the preapproval stage of the registration process, the issuer may not enter into any firm commitments to sell the securities. It

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may place a tombstone advertisement in financial newspapers to alert potential investors that a chance to purchase the securities will be forthcoming. The issuer may also negotiate and contract with an underwriter to assist the issuer in selling the securities. Once the registration has been approved, the securities may be sold.