

### Question 1

Federal narcotics officers suspected the defendant of growing marijuana in his greenhouse, which was connected to his house. The narcotics officers learned from an anonymous informant that the semi-opaque panes of glass on the greenhouse were being replaced during the night with a newer type of glass that let in more light without an increase in visibility. Without a warrant, the officers flew over the defendant's greenhouse in a helicopter that night. One of the officers focused on the greenhouse with a pair of "night vision" thermal imaging binoculars supplied by the Department of Defense and not available to the general public. He determined that marijuana was being grown. The officers then went to a magistrate, swore out a warrant, and arrested the defendant.

If the defendant moves to suppress any evidence gathered by virtue of the flyover, how should the court rule on the motion?

- (A) Deny it, because the police may conduct flyovers to gather evidence.
- (B) Deny it, because the defendant did not live in the greenhouse.
- (C) Grant it, because the "night-vision" binoculars were not available to the general public.
- (D) Grant it, because the flyover was prompted by a tip from an anonymous informant.

**Correct : (C) Grant it, because the "night-vision" binoculars were not available to the general public.**

### Questions2

One of the provisions of federal anti-smoking legislation imposes restrictions on federal economic development grants, which were awarded to states to promote and assist small businesses in urban areas.

The legislation mandates that grants will be reduced by 10% for any state that fails to require businesses engaged in the sale of cigarettes to take steps to avoid sales to minors, including checking drivers' licences or photo ID cards. A tobacco-growing state that receives several million dollars under the federal grant program challenged the constitutionality of the provision in federal district court. The state established that the federal provision affects businesses that do not operate in interstate commerce.

Should the court uphold the federal provision?

- (A) No, because the federal provision affects state regulation of businesses that do not operate in interstate commerce.
- (B) No, because state distribution of economic development funds is an integral government function.
- ( C ) Yes, because Congress may condition grants of money under its spending power.
- ( D ) Yes, because the provision is substantially related to the important government interest of restricting minors' access to cigarettes.

**Correct : Yes, because Congress may condition grants of money under its spending power.**

### Question 3

A large insurance company instituted a supplemental benefit plan for its own employees. Under the plan, any employee who had worked for the company for at least 25 years would be permitted to designate a charity to receive, on the employee's retirement, a donation in the employee's name of six months' worth of the employee's salary. The plan gave participating employees an unqualified right to change the beneficiary at any time before payment was made. An employee nearing retirement enrolled in the plan and named his favorite church as the beneficiary of the donation. The church received a letter from the company informing it that the employee had named it beneficiary of his plan and indicating the approximate amount that it would receive upon the employee's retirement in 10 months. The letter did not inform the church of the employee's right to change beneficiaries before that time. Church elders, anticipating the gift, authorized restoration work to the church building, making plans to pay for the work with the funds from the employee's benefit program.

Six months later, the employee converted to a different religion and changed the beneficiary of his plan to his new church. When the employee retired, the company paid the benefit to his new church. His old church, which had paid for the restoration work on its completion, demanded payment of the benefit from the company. When payment was refused, the church sued the company.

Which party is likely to prevail?

A) The church, because the interests of justice require it

B) The church, because its rights as third-party beneficiary had vested when it was informed in writing that it was the beneficiary.

(B) The company, because the agreement between the employee and the company allowed the employee to change the beneficiary of the benefit plan.

(C) The company, because it had a duty to pay the employee's new church the named beneficiary of his plan

The likely prevailing party is:

(D) The company, because the agreement between the employee and the company allowed the employee to change the beneficiary of the benefit plan.

**Correct : A) The church, because the interests of justice require it**

### Question 4

Owen, the owner of Greenacre, sold it to Alice for \$100,000. Alice did not record the deed, and left the country on an extended trip. Owen, seeing an opportunity to make a quick profit, partitioned Greenacre and sold the front half, Frontacre, to Bert in exchange for \$50,000. Bert, who knew nothing about Alice's interest in the property, promptly recorded his interest. Two months later, Bert sold Frontacre to Carl in exchange for \$55,000. Carl was aware of Alice's interest in Frontacre but recorded his deed to Frontacre anyway. Meanwhile, Owen executed a mortgage on the back half of the property, Backacre, to Bank in the

amount of \$40,000. Bank knew nothing of Owen's transaction with Alice but neglected to record its mortgage interest.

Six months later, Alice returned home and recorded her deed to Greenacre.

A statute in the jurisdiction provides: "Any conveyance of an estate in land, other than a lease for less than one year, shall not be valid against any subsequent purchaser for value, without notice, unless the conveyance is recorded."

If Alice brings an action to quiet title in Greenacre, how is a court likely to classify her claim?

(A ) As superior to Owen's rights in Back-acre and Carl's rights in Frontacre, and not subject to Bank's mortgage on Backacre.

(B) As superior to Owen's rights in Backacre, inferior to Carl's rights in Frontacre, and subject to Bank's mortgage on Backacre.

(C) As superior to Owen's rights in Backacre, inferior to Carl's rights in Frontacre, and not subject to Bank's mortgage on Backacre.

(D) As superior to Owen's rights in Backacre and Carl's rights in Frontacre, but subject to Bank's mortgage on Backacre.

**Correct : (B) As superior to Owen's rights in Backacre, inferior to Carl's rights in Frontacre, and subject to Bank's mortgage on Backacre.**

### Question 5

A defendant was charged with murdering his boss. After obtaining a valid search warrant and executing a valid search of the defendant's office, an officer found a love letter from the defendant's wife to his boss describing their sexual relations. The letter stated, "I can no longer hide my love for you from my husband. I intend to tell him about us and leave him for you." At trial, the officer seeks to testify about the contents of the letter as proof of the defendant's motive for killing his boss.

The defense counsel should object on which of the following grounds?

(A)The letter was not authenticated as O being from the defendant's wife.

(B)The testimony violates the best evidence rule.

(C)The testimony is hearsay not within any exception.

(D)The probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

**Correct : (B)The testimony violates the best evidence rule.**

### Question 6

A police officer went to the defendant's house and placed him under arrest for operating an auto theft ring. As the defendant was being arrested, he told his wife,

"You had better call our lawyer: I don't want to sign anything unless she's with me." The defendant was given Miranda warnings on the way to the police station.

Meanwhile, the defendant's lawyer called the station and told the desk sergeant that she was on her way and to have the defendant call her as soon as he arrived.

The sergeant assured her that the defendant would be held without questioning for several hours until the district attorney arrived. When the defendant arrived at the station, the arresting officer and another officer immediately put the defendant in an interrogation room and questioned him about a bank robbery that had taken place two days ago. They did not inform him of the call from his lawyer, but he agreed to talk as long as he did not have to put anything in writing or sign anything without her okay. He made incriminating statements about the robbery, and he was eventually indicted for that crime as well.

Prior to trial on the robbery charge, the defendant's lawyer moved to suppress the arresting officer's testimony about the defendant's statements.

How should the court rule?

(A) Deny the motion, because the questioning was about a different crime from the one for which the defendant was in custody.

(B) Deny the motion, because the defendant's statements were made voluntarily after receiving Miranda warnings.

(C) Grant the motion, because the defendant was trying to see him, and his lawyer was misinformed that he would not be questioned right away.

(D) Grant the motion, because the defendant's refusal to write or sign anything indicates that he did not knowingly and intelligently waive his right to the assistance of counsel.

**Correct : (B) Deny the motion, because the defendant's statements were made voluntarily after receiving Miranda warnings.**

### Question 7

A landowner who had owned and operated a small airport notified the electric company that he was discontinuing operations and that it should shut down the electrical current that had supplied his communications equipment. The equipment had been surrounded by a fence and signs warning of high voltage. Because the electric company had maintained a transformer next to the landowner's communications equipment that contained many valuable and reusable parts, it decided to leave the power on to prevent theft until it could schedule removal of the transformer.

Three days later, a trespasser who knew that the airport had closed went onto the property looking for something to steal.

He could find nothing of value except the transformer. He noticed the signs warning of the high voltage but believed that the power had since been turned off. He scaled the fence with

the intent to dismantle the transformer. As soon as he touched the transformer, he was seriously injured by the electric current.

If the trespasser asserts a claim against the electric company to recover damages for his injuries, will he prevail?

(A) Yes, because the electric company was not the owner of the land on which the trespasser trespassed.

(B) Yes, because the electric company used unreasonable force to protect its property.

(C) No, because the trespasser was a trespasser on the landowner's land.

(D) No, because the trespasser intended to steal the electric company's transformer. The trespasser will likely not prevail on his claim against the electric company's transformer.

**Correct : (B) Yes, because the electric company used unreasonable force to protect its property.**

### **Question 8**

To encourage minority business and foster pride in minority heritage, a state adopted legislation exempting magazines and other periodicals from the state's receipts tax if 20% of the magazine is devoted to articles concerning minorities (a commission was set up to sample magazines to determine on a yearly basis whether they should be exempt). A publisher produced a sports magazine in the state that occasionally contained articles about minority athletes, but the commission determined that the publisher's magazine was not eligible for the receipts tax exemption. After paying the tax assessed on her magazine, the publisher sued for a refund.

How will the court most likely rule?

(A) Against the publisher, because taxpayers do not have standing to challenge tax exemptions.

(B) Against the publisher, because the state has a compelling interest in encouraging minority business.

(C) In favor of the publisher, because the tax violates the Equal Protection Clause.

(D) In favor of the publisher, because the tax violates the First Amendment freedoms of speech and press.

**Correct : (D) In favor of the publisher, because the tax violates the First Amendment freedoms of speech and press.**

### Question 9

A homeowner who regularly borrowed garden tools from his neighbor went to the neighbor's house to borrow the neighbor's leaf blower. The neighbor was not at home, but the leaf blower was in his unlocked garage with his other garden tools, and so the homeowner took it. Unbeknownst to the homeowner, the neighbor had drained the oil from the leaf blower's motor. The homeowner ran the leaf blower for an hour; the motor was totally destroyed because it had no oil.

The value of the leaf blower at the time that the homeowner took it was \$300. An identical new leaf blower costs \$500. The cost of repairing the motor is \$150. A new motor will cost \$250.

If the neighbor sues the homeowner on a theory of conversion and is successful, what damages can he recover?

- (A) \$300, but the homeowner will keep the leaf blower.
- (B) \$500, but the homeowner will keep the leaf blower.
- (C) \$150.
- (D) \$250.

**Correct : (A) \$300, but the homeowner will keep the leaf blower.**

### Question 10

A state statute prohibited the state and any county, municipality, or other governmental unit within the boundaries of the state from hiring as a civil engineer any person who is not a citizen. A well-qualified engineer who is not a United States citizen read that the state's department of transportation needed a new drafting engineer. The foreign engineer applied for the position and had the required qualifications. However, the hiring official turned down the engineer's application, explaining that he could not hire her because of the state statute. The engineer filed suit in federal court, claiming that the statute violates her right to equal protection under the Fourteenth Amendment.

If the engineer prevails, what will be the most likely reason?

- (A) The engineer proved that the statutory provision is not necessary to achieve a compelling government interest.
- (B) The engineer proved that the statutory provision is not rationally related to a legitimate government interest.
- (C) The state has failed to prove that the law is necessary to achieve a compelling government interest.
- (D) The state has failed to prove that the law is substantially related to an important government interest.

**Correct : (C) The state has failed to prove that the law is necessary to achieve a compelling government interest.**

### Question 11

A three-car accident occurred in which the drivers were a citizen of State A, a citizen of State B, and a citizen of State

C. The State A citizen filed a negligence action against the other two in federal district court and lost his case.

After judgment, may the State C citizen assert and maintain a negligence action against the State B citizen seeking damages for the injuries the State C citizen sustained in the same accident?

(A) Yes, because, while the State C citizen could have asserted the claim as a cross-claim in the prior action, he may wait and assert it as an independent action.

(B) Yes, because the State C citizen could not have asserted the claim in the prior action and thus may assert it independently.

(C) No, because the State C citizen's claim was a compulsory cross-claim in the prior action and, since it was not asserted as a cross-claim in that action, it is now barred.

(D) No, because the State C citizen's claim is barred by claim preclusion.

**Correct : (A) Yes, because, while the State C citizen could have asserted the claim as a cross-claim in the prior action, he may wait and assert it as an independent action.**

### Question 12

A motorist was driving to a luncheon in a car that he knew did not have operating headlights. On the way there he was rear-ended by another driver who had been driving 20 m.p.h. over the speed limit posted on that stretch of road. He suffered personal injuries and his car was extensively damaged. The jurisdiction makes it a misdemeanor to drive a vehicle that does not have operating headlights.

If the motorist brings an action against the other driver and the above facts are established, will he prevail?

(A) Yes, because the other driver violated the speeding statute, but the motorist's damages will be reduced because of his violation of the headlight statute.

(B) Yes, because the other driver violated the speeding statute, and the motorist's damages will not be reduced despite his violation of the headlight statute.

(C) No, because the motorist's violation of the headlight statute constitutes negligence per se.

(D) No, because the motorist has not established that driving 20 m.p.h. over the speed limit created an unreasonable risk of injury to others.

**Correct : (B) Yes, because the other driver violated the speeding statute, and the motorist's damages will not be reduced despite his violation of the headlight statute.**

**\*Question 13**

An owner purchased a parcel of property adjoining a five-foot-wide strip, which was a private right-of-way. Unsure where the exact boundaries of her property were located, the owner planted a garden on the five-foot right-of-way strip and enclosed it with a wire fence two weeks after taking up occupancy. The owner maintained the fence and garden for 20 years, at which time she removed the fence and smoothed out the ground where the garden had been located. Five years later, the owner entered into a written contract to sell the property to a buyer. The description in the contract included the five-foot strip. After research in the county recorder's office, the buyer discovered that the strip was a private right-of-way when the owner purchased the property.

After properly notifying the owner of the problem prior to closing, the buyer refused to tender the purchase money to the owner when the closing day arrived. The owner sued the buyer for specific performance of the real estate sales contract. The jurisdiction's statutory adverse possession period is 15 years.

Who will prevail?

- ( A ) The buyer, because the owner failed to provide a marketable title.
- ( B ) The buyer, because the owner surrendered her adverse possession rights when she removed the fence, as her possession was no longer open, notorious, and continuous.
- ( C ) The buyer, because one may not adversely possess a right-of-way.
- ( D ) The owner, because she held the right-of-way for a longer time than the minimum required by the state.

Correct : ( A ) The buyer, because the owner failed to provide a marketable title.

**Question 14**

A jogger found a stray dog in the park. She took the dog home with her and placed an ad in the paper to try to find the dog's owner. Soon thereafter, the owner of dog contacted the jogger. He came to jogger's home and identified the dog as his. He offered to pay the jogger a \$200 reward at the end of the week. The jogger thanked the dog owner but turned down the reward.

At the end of the week, however, the jogger changed her mind, so she called the dog owner and told him that she would like the reward after all. He refused to pay her and she sues him for breach of contract.

What will the jogger recover?

- (A) Nothing, because she rejected the dog owner's offer.
- (B) Nothing, because there was no consideration to support a contract.



- (C) \$200, because the technical defense of the Statute of Frauds will be overcome by the dog owner's moral obligation to pay.
- ( D ) \$200, because the dog owner could not have revoked his offer until the end of the week, and he failed to do so before the jogger accepted.

**Correct : (B) Nothing, because there was no consideration to support a contract.**

### **Question 15**

Two brothers who were certified public accountants worked together at a large accounting firm practicing their chosen profession. The older brother was concerned about his younger brother's apparent inability to show up at his job by 9 a.m. each morning, sober and clear-eyed. One day, after the younger brother showed up late for work yet again, the older brother told him that if he would show up at the office sober and ready to work by 9 a.m. each morning for the next 10 months, he would pay him \$15,000 at the end of that time. The younger brother accepted the offer and complied with its terms from that day forward. Nine months later, the older brother died unexpectedly.

One month after that, the younger brother filed a claim with his brother's estate for the \$15,000.

Will the younger brother prevail in his claim?

- (A) No, because he will be unable to prove the terms of the oral contract between him and his brother, because his brother is dead.
- ( B ) No, because his brother's offer to pay was terminated on his death.
- (C) Yes, because he has performed under a valid contract, and thus his brother's estate must now perform.
- D) Yes, because he changed his position for the worse in reliance on his brother's promise, and thus his brother's executor is estopped from denying that the contract existed.

**Correct : (C) Yes, because he has performed under a valid contract, and thus his brother's estate must now perform.**

### **Question 16**

A wholesaler who sold hair-care products to beauty salons and spas contracted to purchase 20 hand-held ionic hair dryers to be delivered no later than May 1. She paid for the hair dryers at the time she placed her order. When the hair dryers were delivered on May 1, the wholesaler noticed that they were hot-air, and not ionic, hair dryers. She immediately contacted the manufacturer, which refused to grant the wholesaler any remedy.

If the wholesaler decides to keep the hair dryers and brings a claim for breach of contract against the manufacturer, which of the following awards is most likely?

( A ) Nothing, because the wholesaler waived her rights when she paid for the hair dryers in advance.

(B)Nothing, because the wholesaler decided to keep the nonconforming hair dryers.

(C)The difference between the value of the ionic hair dryers and the value of the hot-air hair dryers.

(D) The difference between the contract price and the cost of buying conforming goods.

**Correct : (C)The difference between the value of the ionic hair dryers and the value of the hot-air hair dryers.**

### **Question 17**

A bicyclist was riding his bicycle in the street when a negligently driven car struck the bike, knocking the bicyclist off the bike and breaking his right ankle. The driver of the car immediately stopped and went to his assistance. She got him to his feet and was slowly moving him toward the curb when a negligently driven taxicab struck him in the left leg. The bicyclist required surgery on both his right ankle and his left leg.

If the bicyclist sues the driver and the cabbie, which of the following best states his right to recover?

(A) He can recover from either the driver or the cabbie for all of his injuries because the driver and the cabbie are jointly and severally liable.

(B)He can recover from the driver only for the injury to his right ankle and recover from the cabbie only for the injury to his left leg.

(C)He can recover from either the driver or the cabbie for the injury to his left leg and recover from the driver only for the injury to his right ankle.

D) He cannot recover against the driver for the injury to his left leg unless the jury determines that the driver acted negligently when she came to his aid.

**Correct : (C)He can recover from either the driver or the cabbie for the injury to his left leg and recover from the driver only for the injury to his right ankle.**

### **Question 18**

A truck collided with a car in State A, injuring the driver of the car. The driver of the car filed a civil action in federal district court in State A against the trucking company to recover damages for the driver's injuries. The trucking company filed a motion to dismiss the action against it on the grounds that the court in State A did not have personal jurisdiction over it.

Although the driver of the truck was the company's employee, the trucking company argued that the driver did not have authorization to drive the truck to State A. Following a hearing, however, the court ruled that the trucking company was subject to the court's personal jurisdiction.

Another two months passed, and the trucking company did not file an answer. The driver of the car then filed a motion asking that the clerk of court make an entry of default, and the clerk did so.

What procedure must the driver follow to obtain a default judgement against the trucking company?

(A) File a motion to have the clerk of court enter the default judgement, which the clerk may do without the trucking company receiving any further notice of the motion.

(B) File a motion to have the clerk of court enter the default judgement, which the clerk may do as long as the trucking company receives additional notice of the motion for default judgement.

(C) File a motion to have the judge enter the default judgement, which the judge may do without the trucking company receiving any further notice of the motion for default judgement.

(D) File a motion to have the judge enter the default judgement, which the judge may do as long as the trucking company receives additional notice of the motion for default judgement.

**Correct : (D) File a motion to have the judge enter the default judgement, which the judge may do as long as the trucking company receives additional notice of the motion for default judgement.**

### **Question 19**

On the last play of a playoff football game, a game-winning touchdown was nullified by a questionable penalty called by the referee. To register her displeasure but without intending to hit anyone, a fan sitting in the stands threw a bottle onto the field that just missed the head of the referee, who was looking in the other direction and did not see the bottle being thrown. The fan was charged with assault.

Should the fan be convicted?

(A) Yes, because throwing the bottle was a substantial step towards commission of a battery.

(B) No, because the referee did not see the bottle.

(C) No, because the fan did not intend to hit anyone.

(D) No, because the referee did not see the bottle, nor did the fan intend to hit anyone.

**Correct :** (D) No, because the referee did not see the bottle, nor did the fan intend to hit anyone.

### Question 20

It was common practice in a particular state for a security interest in land to be structured as a deed absolute, which gave a lender absolute title to the borrower's property as security for the loan. The lender would reconvey only on complete payment of the loan by the debtor party, and could dispose of the land immediately without a foreclosure sale on default. A new governor of the state whose campaign platform was built around abolishing the deed absolute mortgage encouraged the legislature to enact a bill that immediately outlawed use of the deed absolute, declaring that all such deeds would be considered mere liens against the secured property. The law applied not only to loans made in the future, but also to the thousands of such loans in existence at the time the legislation was passed. As soon as the governor signed the legislation, lending institutions and individuals who had loaned money secured through deeds absolute challenged the constitutionality of the new law.

What is the strongest argument that the challengers can make?

(A) As applied to loans outstanding at the time the bill was enacted, the law is an ex post facto law, and such laws are banned by the federal Constitution.

(B) Lenders using the deed absolute have been singled out by the governor and his followers in the legislature as political scapegoats, and such discrimination against the lenders violates the Equal Protection Clause.

(C) Lenders had property rights in the secured property and such rights were summarily abrogated by the new law, constituting an unconstitutional taking of property without due process of law.

(D) As applied to loans outstanding at the time the bill was enacted, the law impairs the contract rights of the lenders and such rights are guaranteed by the Contracts Clause of the federal Constitution.

**Correct :** (A) As applied to loans outstanding at the time the bill was enacted, the law is an ex post facto law, and such laws are banned by the federal Constitution.

### Question 21

A philanthropist told his friend, who was a state governor, that he planned to build a museum. The governor thought that the museum would bolster the state's tourism industry and offered to arrange to have the state purchase land and grant it to the museum to enable the philanthropist to build a bigger museum with his money than originally planned. The philanthropist agreed, and the museum was built.

The philanthropist undertook the hiring of the museum's senior staff. He was of German descent and was ashamed of Germany's actions during World War II. To assuage his own conscience, he refused to hire anyone whom he believed to be of German descent. A restoration expert applied for a job as chief curator of the museum, but the philanthropist refused to hire him because of his German background. The restoration expert discovered the philanthropist's rationale and brings suit against the museum, claiming that the hiring practice violates his constitutional rights.

How is the court most likely to rule?

(A) The policy is constitutional, because the museum is a private entity and so may constitutionally hire and fire as it desires.

(B) The policy is constitutional, to the extent necessary to remedy past discrimination.

(C) The policy is unconstitutional under the Equal Protection Clause, because the grant of the land is sufficient state involvement to render the museum's actions state action.

(D) The policy is unconstitutional under the Equal Protection Clause, because the state will benefit from the museum and this creates a sufficient nexus to find state action.

**Correct : (A) The policy is constitutional, because the museum is a private entity and so may constitutionally hire and fire as it desires.**

## **Question 22**

A retailer of personal watercraft agreed to sell to a buyer a speedboat for \$10,000.

The written contract specified delivery within 30 days and a down payment of \$2,000, but did not contain a liquidated damages clause. Two weeks after making the down payment, the buyer told the retailer that he could not afford to go through with the purchase, and asked for his down payment back. The retailer, which could get as many of that model of speedboat as it required from the manufacturer for a wholesale price of \$7,000, put the boat back in its inventory. The retailer then sold it to someone else for \$10,500.

The buyer sues the retailer to get back his deposit; the retailer counterclaims for damages.

Excluding incidental costs, which of the following amounts represents the most likely recovery?

(A) The buyer will recover \$2,000.

(B) The retailer will recover \$500.

(C) The retailer will recover \$1,000.

(D) The retailer will recover \$2,500.

**Correct : (C) The retailer will recover \$1,000.**

### Question 23

A fleeing bank robber ran into a nearby grocery store and took the store manager hostage at gunpoint. The police, who had received a detailed description of the clothing the robber was wearing, surrounded the grocery store and demanded that the robber come out with his hands up. When it began to get dark, the robber ordered the store manager to undress, and the robber switched clothing with him. The robber tied the store manager's hands to his side and pushed the store manager out the door first. Seeing that the first person out of the door did not emerge with hands up and that the person was wearing clothing the robber was described as wearing, a police sharpshooter shot and killed the store manager. The robber was captured and put on trial for the murder of the store manager. Should the jury find the robber guilty?

- (A) Yes, because the police were justified in using deadly force under the circumstances.
- (B) Yes, because changing clothes with the store manager was an act taken with extreme indifference to an unjustifiably high risk to human life.
- (C) No, because it was not foreseeable under the circumstances that the police would use deadly force.
- (D) No, because the robber was not responsible for the police shooting the store manager.

**Correct : (B) Yes, because changing clothes with the store manager was an act taken with extreme indifference to an unjustifiably high risk to human life.**

### Question 24

A nephew asked his uncle, who like him was a farmer, to guarantee a loan to buy a new tractor. The local bank had already refused to extend credit to the nephew alone to buy the tractor. The uncle was inclined to refuse, but then decided that he could benefit from his own use of the tractor, so he told his nephew that he would guarantee the loan if he could use the new tractor without cost for 10 days during his harvest season. The nephew agreed to his uncle's proposal. The uncle went to the bank and told the loan officer that he was willing to guarantee the proposed loan to his nephew. This prompted the loan officer to agree to extend the requested credit to the nephew. Although the loan officer did not make the uncle sign any papers, the uncle provided consideration and the bank issued the nephew a loan commitment statement. That evening, the uncle had a change of heart. The next day, he telephoned the loan officer and told him to forget about his guaranteeing any loan to his nephew. Despite the uncle's phone call, the loan officer did not stop the check from being issued, and the nephew received the money to purchase the tractor. He drove the tractor over to the uncle's farm and delivered it for the uncle's 10-day use, as promised. The uncle told his nephew that he did not want to use the tractor and that he was not guaranteeing his loan.

Within six months, it became clear that the nephew could not make good on the loan.

If the bank sues the uncle for the unpaid portion of the loan, who will likely win?

(A) The bank, because the suretyship agreement was supported by consideration between the bank and the uncle,

(B) The bank, because the uncle's main purpose in making the agreement with the bank was to benefit himself, not his nephew.

(c) The uncle, because the suretyship, agreement was not in writing.

( D )The uncle, because he withdrew his promise before the nephew received the money or the tractor.

**Correct : (B) The bank, because the uncle's main purpose in making the agreement with the bank was to benefit himself, not his nephew.**

### **Question 25**

A plaintiff sued a trucking company for negligence in federal court, alleging that its employee, a driver for the company, was acting within the scope of his employment when driving the truck that hit her. The company's first response to the complaint was to file a motion for summary judgment, together with an affidavit, alleging that the driver was not acting within the scope of his employment when the driver hit her, because the accident happened in State A and the driver was only authorized to be in State B at the time. Under applicable law, the company would not be liable if the driver was not acting within the scope of his employment.

The plaintiff responded with a competing affidavit from an eyewitness who saw the driver texting immediately before the crash.

How should the court rule on the company's motion?

(A) Deny the motion, because summary judgment is premature at this point.

(B) Deny the motion, because, although the motion is timely, there is a dispute of material fact such that summary judgment is inappropriate.

(C) Deny the motion, because the company is a self-interested party, such that its affidavit is not credible.

(D) Grant the motion, because there is no dispute as to a material fact.

**Correct : (D) Grant the motion, because there is no dispute as to a material fact.**

### **Question 26**

A homeowner borrowed \$50,000 from a bank, secured by a mortgage on his home. Shortly thereafter, the homeowner sold his home to a buyer for \$70,000 by a deed containing a recital signed by both parties that title passed "subject to" the bank's mortgage, "which obligation grantee expressly assumes." The buyer paid the homeowner \$20,000, took possession of the house, and began making monthly payments of principal and interest to

the bank. A few years later, a chemical manufacturing firm built a huge sulfur processing plant just down the road from the home, which caused the house to immediately decline in value to \$35,000.

Subsequently, the buyer stopped making the monthly payments to the bank. The bank exercised its contractual right of nonjudicial foreclosure and sold the house at a public auction for \$34,000. The bank then brought suit against the homeowner and the buyer for \$14,000, the difference between the proceeds of the foreclosure sale and the \$48,000 principal remaining due on the original loan to the homeowner.

The jurisdiction does not bar deficiency judgments.

Against whom should the bank be granted a judgment for \$14,000?

- (A).Both the homeowner and the buyer.
- (B) Only the homeowner.
- (C) Only the buyer.
- D) No one.

**Correct : (A).Both the homeowner and the buyer.**

#### **Question 27**

A patient sought psychiatric treatment from a psychiatrist. During the treatment, which consisted of hour-long analysis sessions twice a week, the psychiatrist, unbeknownst to the patient, videotaped her. No sound recording was made of the sessions, but the psychiatrist was conducting a study on "body language" and planned to use the videotapes in those experiments. The patient learned that the psychiatrist had been videotaping their analysis sessions and brought an action against him on a theory of invasion of privacy.

Which of the following arguments best supports the patient's claims in this action?

- (A)The psychiatrist has placed the patient in a false light.
- (B) The psychiatrist has publicly displayed private facts of the patient's life.
- (C) The psychiatrist has misappropriated the patient's likeness.
- ( D)The psychiatrist has intruded upon the patient's physical seclusion.

**Correct : ( D)The psychiatrist has intruded upon the patient's physical seclusion.**

#### **Question 28**

A tourist from State A was severely injured in a bar fight in State B. The tourist filed a battery action against one of the bar's patrons, seeking 5100,000 for his injuries. The defendant patron claims that the tourist is mistaken about who hit him. The patron says that he did not touch the tourist. The patron claims that it was the bar's bouncer—who looks like the patron—who hit the tourist and then continued to pummel him. The bouncer claims that he never touched or harmed the tourist.



Can the patron assert a third-party claim against the bouncer to bring him into the action?

(A) No, because the patron has no legal basis to assert a claim against the bouncer and is not seeking to recover from the bouncer any portion of the patron's liability to the tourist.

(B) No, because the plaintiff is the master of his legal action, and defendants may not bring in new parties against claim.whom the plaintiff has not asserted a

( C ) Yes, because the patron is claiming that the bouncer is liable for the injuries for which the plaintiff is suing the patron.

( D ) Yes, because the patron's claims arise from the same transaction or claims.

**Correct : (A) No, because the patron has no legal basis to assert a claim against the bouncer and is not seeking to recover from the bouncer any portion of the patron's liability to the tourist.**

### **Question 29**

A quilter who had restored a rare Civil War-era quilt spoke with an old friend whose business was selling new and vintage quilts. When the friend learned of the quilter's latest restoration, she told her that for 15% of the gross, she could find her a buyer who would pay at least \$5,000 for it. The quilter said nothing in reply. The next morning, the friend telephoned the quilter and told her that she had a prospective buyer who was willing to pay \$5,200 for the quilt, sight unseen. The quilter asked for the buyer's phone number, which the friend gave to her, and then called the buyer and arranged a sale. The quilter refused to pay her friend the 15% commis-sion, disclosing to her that another party had expressed interest in the quilt and she instead could have sold it to that party for at least \$5,200. The friend sues the quilter for breach of contract, seeking her 15% sales commission.

What will be the probable outcome?

( A )The quilter will win, because 15% is unconscionably large as a finder's fee in such a transaction.

(B)The quilter will win, because there was no consideration for any promise to pay that might have been implied from her conduct .

( C ) The quilter will win, because she could have sold the quilt to another party who would pay at least \$5,200 for it.

( D ) The friend will win, because she obtained a buyer for the quilt and a purchase price over 5,000 was paid.

**Correct : ( D ) The friend will win, because she obtained a buyer for the quilt and a purchase price over 5,000 was paid.**

### Question 30

In January, an owner executed and delivered a mortgage on her property to a bank to secure a \$50,000 loan. Due to a clerical error, the mortgage was not recorded at that time. On February 15, the owner entered into a contract to sell the property to a buyer for \$150,000.

On February 16, the owner took out a \$30,000 mortgage on the property with a finance company. The finance company promptly and properly recorded its mortgage. Knowing nothing about either of the mortgages, the buyer closed on the property on April 1, tendering \$150,000

to the owner. The owner gave the buyer a warranty deed to the property. On April 3, the bank discovered its error and properly recorded its mortgage that same day. The buyer recorded his deed to the property on April 6.

The jurisdiction in which the property is located permits mortgages on property under contract, and has a statute that provides: "No conveyance or mortgage of real property shall be valid against a subsequent purchaser for value and without notice whose conveyance is first recorded." The bank brings an appropriate action to determine the status of its mortgage on the

Hov property.

What should be the court's determina-tion?

- (A) The buyer holds the property subject to both mortgages, and the bank's mortgage is subordinate to the finance company's mortgage.
- (B)The buyer holds the property subject to both mortgages, and the bank's mortgage is superior to the finance company's mortgage.
- (C) The buyer holds the property subject only to the finance company's mortgage.

**Correct : A The buyer holds the property subject to both mortgages, and the bank's mortgage is subordinate to the finance company's mortgage.**

### Question 31

After a widely publicized accident in which an elderly motorist drove onto the sidewalk and struck and killed several pedestrians, the state legislature revised its motor vehicle statutes. The new legislation required motorists over the age of 70 to undergo more frequent and more thorough testing to maintain their driver's licenses.

A 75-year-old former race car driver who was required by the new legislation to be tested every year to maintain his driver's license brought suit in the federal district court in the state, alleging that the legislation results in unconstitutional age discrimination.

Which of the following statements best reflects the burden of persuasion that the court will apply in the driver's suit?

- (A) The state must show that the law is substantially related to an important government purpose.
- (B) The state must show that the law is rationally related to a legitimate government interest.
- (C) The driver must show that the law is not rationally related to a legitimate government interest.
- D) The driver must show that the law is not substantially related to an important government purpose.

**Correct : (C) The driver must show that the law is not rationally related to a legitimate government interest.**

### **Question 32**

A plaintiff is suing her former physician for slander, based on statements allegedly made by the physician to the plaintiff's co-worker that the plaintiff had difficulty conceiving children as a result of her history with venereal disease. The physician denies making any statements about the plaintiff. During the trial, the plaintiff calls as a witness her neighbor to testify that during her last visit to the physician's office, the physician told the neighbor that she was angry with the plaintiff for posting a negative review of her medical practice on a popular website, and that she made sure to "even the score" by sharing with others some opinions about the plaintiff.

The physician objected to the testimony.

How should the court rule on admissibility of the statement?

- (A) Admissible, as an exception to the hearsay rule for a declaration against interest.
- (B) Admissible nonhearsay.
- ( C ) Inadmissible because of the physician-patient privilege.
- (D) Inadmissible hearsay not within any exception.

**Correct : (B) Admissible nonhearsay.**

### **Question 33**

In a wrongful death action for the death of his wife in an automobile accident, the plaintiff alleged that the accident was caused by a mudflap assembly that fell off the defendant's truck. The plaintiff wishes to introduce the testimony of a witness, another truck driver who was on the same highway at the time, who heard someone tell the defendant over CB radio that he had noticed at the truck stop that the defendant's mudflap assembly on his truck was loose. The witness does not know the identity of the person who gave the warning.

Should the court admit the testimony?

( A ) Yes, to prove that the defendant was WhiCe notified that the mudflap assembly was loose.

( B ) Yes, both to prove that the defendant was notified that the mudflap assembly was loose and as substan- A tive evidence that it was loose.

(C) No, because the witness cannot identify who made the statement.

(D) No, because it is hearsay not within any recognized exception.

Correct : ( A ) Yes, to prove that the defendant was WhiCe notified that the mudflap assembly was loose.

### Question 34

A developer contracted with a general contractor to build an office building, and completion of the building was two years late. The developer filed a breach of contract action in federal district court against the general contractor, seeking damages caused by the delay. The general contractor filed a third-party claim against a major subcontractor, claiming that the subcontractor caused any delay and should be liable to the general contractor for anything the general contractor has to pay the developer. The subcontractor believes that the developer interfered with the subcontract and that the developer's interference caused not only the delay but also substantial cost overruns for the subcontractor.

May the subcontractor assert a claim in the pending action against the developer seeking payment for the cost overruns?

( A ) No, because the subcontractor is a third-party defendant and may not assert claims against the original plaintiff.

( B ) No, because the subcontractor's claim does not seek indemnity for its liability to the general contractor, so the subcontractor may not assert this claim against the developer as an impleader claim.

(C) Yes, because the subcontractor and the developer are already parties to the action, and the subcontractor's claim arises from the same transaction or occurrence as the developer's original claim, so the subcontractor Will be barred from asserting the claim in an independent action.

( D ) Yes, because the subcontractor's claim against the developer arises from the same transaction or occurrence as the developer's original claim, but the subcontractor may assert the claim in an independent action if it prefers.

Correct : ( D ) Yes, because the subcontractor's claim against the developer arises from the same transaction or occurrence as the developer's original claim, but the subcontractor may assert the claim in an independent action if it prefers.

### Question 35

A retail store owner e-mailed an electronics supplier an offer to buy 300 flash drives imprinted with the retailer's trademark at \$2 per flash drive. The supplier immediately e-mailed back his acceptance. A week later, the retailer telephoned the supplier and truthfully explained that she had made an error in her order—it should have been for 200 flash drives. She asked if she could reduce her order to 200. The supplier thought the imprinting process was not yet completed and so agreed to reduce the order to 200. After the phone call, the supplier discovered that all 300 flash drives had already been imprinted. He delivered the 300, but the buyer accepted only 200.

Can the supplier recover damages with respect to the 100 flash drives that were not accepted?

- (A) Yes, because the buyer will be barred from introducing evidence of the modification.
- (B) Yes, because the buyer gave no consideration for the modification.
- (C) No, because the supplier is a merchant with respect to flash drives.
- (D) No, because the supplier agreed to the modification and his mistake was unilateral.

**Correct : (D) No, because the supplier agreed to the modification and his mistake was unilateral.**

### Question 36

A state statute prohibited the sale or possession of any food product containing more than one part per billion of a dangerous pesticide. An out-of-state driver taking her recreational vehicle through a corner of the state was stopped at a state inspection station. When the state trooper learned that the pantry of her RV was stocked with food, he asked to test a few samples of her baked goods. The samples contained about 600 parts per billion of the prohibited pesticide, and all of the other baked goods in her possession were tested and found to have the same level of pesticide. All of her baked goods, worth about \$150, were confiscated and destroyed.

The state in which the driver lived has no laws governing the pesticide level of baked goods. A federal law designed to protect agricultural workers requires that any food product containing more than 500 parts per billion of the toxic pesticide must be labeled as such and be in special containers. The driver brings an action in federal court asserting that the state statute is invalid because it is preempted by the federal law.

How should the court rule as to this claim?

- (A) For the state, because the purposes of the federal law are different from those of the challenged statute.
- (B) For the state, because regulation of food quality is a power reserved to the states by the Tenth Amendment.
- (C) For the driver, because the federal law does not expressly permit states to enact more stringent pesticide level controls.
- (D) For the driver, because the federal law and the state statute regulate the same subject matter.

**Correct : (A) For the state, because the purposes of the federal law are different from those of the challenged statute.**

### Question 37

A developer owned several acres zoned for mixed use development. The developer prepared a subdivision of his various parcels, filed a subdivision map showing residential lots, obtained all the necessary approvals, and began selling the lots. Each of the deeds conveying lots sold by the developer contained the following:

It is hereby covenanted by the seller that the property conveyed shall be used for residential purposes only, that no industrial, commercial, or manufacturing operations shall be maintained thereon, and that this covenant shall bind the buyer, his heirs and assigns, and their successors.

Two years later, after all but two of the lots had been developed as residences, the developer sold his remaining two lots to a real estate speculation firm. The deed to the firm did not contain any language restricting the use of the property. The firm then sold the property to a supermarket chain, which intended to construct a supermarket thereon. A homeowner who had purchased a lot from the developer located next to the proposed supermarket brings suit against the supermarket chain seeking to enjoin construction. Her attorney argues that the lots sold by the developer to the firm and then to the supermarket chain are bound by the same restrictions on use that are contained in the deed by which the homeowner took her property.

Is the homeowner likely to win?

(A) Yes, because the developer established a common development scheme for his entire subdivision and the subdivision appeared to conform to the scheme.

(B) No, because the firm and the supermarket were not aware of the restrictions when they purchased the property.

(C) No, because the restrictions in the homeowner's deed bind only the purchaser of the land.

(D) No, because the deed by which the firm took the property from the developer did not contain any restrictions on use.

**Correct : (A) Yes, because the developer established a common development scheme for his entire subdivision and the subdivision appeared to conform to the scheme.**

### Question 38

The defendant became very intoxicated one night. As he was staggering home, he came upon a construction site in which several large pieces of heavy equipment were parked. Having had heavy equipment training in the military, the defendant decided it would be fun to rearrange all the machines so that the operators would be very surprised when they returned to work the next day. He started up the largest piece of heavy equipment and drove it toward the edge of the site, but because he was so intoxicated, he lost control of it, and it rumbled out into the street, weaved along for about a quarter mile, and then crashed into a house, flattening it. In this jurisdiction, it is a misdemeanor to tamper with heavy equipment on a construction site. The defendant is prosecuted on the tampering charge, as well as for reckless damage of the house.

Should he be convicted of the reckless damage charge?

(A) Yes, because he was tampering with heavy equipment on a construction site, in violation of law, when he damaged the house.

(B) Yes, because he was intoxicated while driving a huge piece of earthmoving equipment.

(C) No, because at most he could be found guilty of criminal negligence.

(D) No, because he must have been aware that his conduct would cause damage to the house in order to be found guilty of reckless damage.

**Correct : (B) Yes, because he was intoxicated while driving a huge piece of earthmoving equipment.**

### **Question 39**

A computer programmer sent a computer virus anonymously via e-mail to a business. The programmer believed that the virus would just disable the business's e-mail program for a short time without causing any additional damage, although he was aware that it very infrequently caused widespread damage to the infected computer. However, because of a hidden bug in the business's e-mail program, the virus infected the computer's entire hard drive, eventually rendering it unusable.

Not only did the business lose important data, it also had to replace the computer, at a cost of over \$1,000. The jurisdiction in which this occurred has a modern criminal code patterned after the Model Penal Code. One of its statutes makes it a criminal offense to "knowingly cause over \$200 in damage to another's property."

May the programmer be found guilty of violating the statute?

(A) No, because the programmer did not know that the virus would cause damage to the computer's hard drive.

(B) No, because the programmer did not intend to cause the damage to the computer's hard drive.

(C) Yes, because the programmer knew that he was sending a virus to the business's e-mail program.

(D) Yes, because the programmer was aware that in a very small percentage of cases the virus could cause widespread damage to a computer.

**Correct : (A) No, because the programmer did not know that the virus would cause damage to the computer's hard drive.**

#### Question 40

During the defendant's prosecution for robbery, the prosecutor asks the court to take judicial notice of the fact that at that latitude, the sun is still up at 5:30 p.m. on June 21. The court so finds.

What is the effect of the court's action?

- (A) The burden of persuasion is now on the defendant to prove otherwise as to the fact judicially noticed.
- (B) The fact judicially noticed is established beyond a reasonable doubt.
- (C) The prosecutor's burden of producing evidence on the fact judicially noticed is satisfied.
- (D) The fact judicially noticed is conclusively established.

**Correct :** (C) The prosecutor's burden of producing evidence on the fact judicially noticed is satisfied.

#### Question 41

A homeowner offered to pay a roofer \$500 to replace the bad shingles on his roof, provided the roofer could finish the job by October 1. The roofer told the homeowner he would get back to him after he had checked out prices at a local supply store. The next day, the roofer phoned the homeowner, who was not at home, and left a message on his answering machine that he could not do the work for less than \$650. The roofer did not hear from the homeowner for several days. Because October 1 was still two weeks away, the roofer phoned the homeowner again and left another message on his answering machine stating that he would do the job for \$500 and that he would do the work the next weekend unless that would be inconvenient for the homeowner. The homeowner replayed the second message just as he was leaving town on a business

trip and did not contact the roofer. That weekend, unbeknownst to the homeowner, the roofer went to the homeowner's house and repaired the roof. When the homeowner returned home, the roofer presented him with a bill for \$500, which represented the actual value of the work done. The homeowner refused to pay the bill.

If the roofer sues solely for breach of contract, who will likely prevail?

- (A) The roofer, because he accepted the homeowner's offer before the latter materially changed his position in reliance on the first telephone message.
- (B) The roofer, because the work he did was actually worth \$500.
- (C) The homeowner, because there was no writing signed by the homeowner.
- (D) The homeowner, because he did not accept the roofer's offer to do the roof repair for \$500.



Correct : D) The homeowner, because he did not accept the roofer's offer to do the roof repair for \$500.

#### Question 42

A seller entered into an enforceable written agreement to sell her house to a buyer for \$425,000. The agreement provided that closing would take place on September 18, and on that date the seller would provide marketable title, free and clear of all encumbrances. The agreement was silent as to risk of loss if the house was damaged prior to closing and as to any duty to carry insurance. On August 31, the seller cancelled her homeowners' insurance when she moved out of the house. Consequently, when the house was destroyed by wildfires on September 15, it was uninsured. The buyer refused to close on September 18 and the seller immediately brought an action against him for specific performance. The buyer countersued for the cancellation of the contract and return of his earnest money.

Both parties stipulate that the value of the property without the house is \$225,000.

In this jurisdiction, which has no applicable statute, is the seller likely to prevail?

- (A) Yes, but the price will be abated to \$225,000.
- (B) Yes, for the full contract price.
- (C) No, because the seller had a duty to carry insurance until the closing date.
- (D) No, because the seller could not convey marketable title.

Correct : (B) Yes, for the full contract price.

#### Question 43

The plaintiff was driving her daughter to school when their car was struck broadside by a car driven by the defendant at an intersection controlled in all directions by stop signs. The plaintiff and her daughter were taken by ambulance to the hospital.

In a personal injury action brought by the plaintiff and her daughter against the defendant, pretrial discovery revealed that both cars were in perfect mechanical condition just before the accident, and the defendant was on his way home from work at the time of the accident, but had stopped off at a bar before he reached the intersection at which he struck the plaintiff's car.

There is no witness available to testify as to how much the defendant had to drink at the bar that day.

At trial, the plaintiff calls a co-worker of the defendant, who testifies over objection that the defendant has a reputation as a hard drinker who tolerates alcohol well but who always drinks a great deal at any one drinking occasion, as witnessed by the co-worker at numerous company events.

Was it an error for the trial court to admit his testimony?

(A) Yes, because in a civil matter, evidence of a party's character may not be introduced until he has put his character at issue.

( B) Yes, because the plaintiff may not attempt to prove that the defendant acted in a particular way on one occasion in conformity with his reputation as to that behavior.

C) No, because the co-worker had personal knowledge of the defendant's drinking habits from having observed him while drinking.

(D) No, because there exists no unbiased eyewitness who can testify as to how much the defendant actually drank at the bar before he had the accident with the plaintiff.

**Correct : ( B) Yes, because the plaintiff may not attempt to prove that the defendant acted in a particular way on one occasion in conformity with his reputation as to that behavior.**

#### **Question 44**

An employee who was fired plans to sue her former employer, claiming that the employer is liable for both wrongful termination under state law as well as violation of federal employment discrimination statutes, claiming total damages in the amount of \$50,000. The employer and employee are citizens of the same state.

May the employee assert these claims together in federal district court?

(A) No, because the amount in controversy does not exceed \$75,000.

(B) No, because the federal court lacks subject matter jurisdiction over a state law claim between two citizens of the same state.

(C) Yes, because the federal court has federal question jurisdiction over the federal statutory claim and supplemental jurisdiction over the state law claim.

(D) Yes, because federal courts have subject matter jurisdiction over all claims joined with federal statutory claims.

**Correct : (C) Yes, because the federal court has federal question jurisdiction over the federal statutory claim and supplemental jurisdiction over the state law claim.**

#### **Question 45**

Based on a tip from a reliable informant that an attorney was illegally selling automatic weapons and ammunition from his storefront office, the police obtained a warrant to search for weapons at the office.

When they arrived at the building, they saw a client exiting the attorney's office and placing what appeared to be a weapon inside his jacket. The police stopped the client on the street and an officer patted down his outer clothing. The officer felt no weapon but did feel a bag with several

small tube-shaped objects in it. She immediately placed the client under arrest.

The contents of the bag were later determined to be marijuana cigarettes.

Prior to trial on the narcotics charge, the client sought to suppress

introduction of

the marijuana as evidence. The arresting officer testified at the suppression hearing that, based on her long experience as a narcotics officer, she concluded immediately that the bag contained marijuana cigarettes when she first touched it.

If the officer's testimony is believed, how should the court rule on the motion to suppress the marijuana evidence?

(A) Deny it, because the search was incident to a lawful arrest.

(B) Deny it, because the police had a reasonable suspicion that the client might be armed and dangerous.

(C) Grant it, because the scope of an officer's patdown during an investigatory detention is limited to a search for weapons.

(D) Grant it, because the search warrant did not authorize the police to search the client despite the fact that he was just present at the place to be searched.

**Correct : (B) Deny it, because the police had a reasonable suspicion that the client might be armed and dangerous.**

#### **Question 46**

An owner of three acres of lakefront property subdivided it and sold two acres to a buyer, retaining the one acre actually fronting on the lake. The deed for the two acres expressly included an easement over the westernmost 30 feet of the one-acre parcel retained by the owner for access to the lake. The buyer recorded his deed in the county recorder's office, which maintained an alphabetical grantor-grantee index only. Fifteen years later, the owner died, leaving the one-acre parcel to his wife. She sold it to a developer that planned to build condominiums. A month later, the buyer died, and his two acres passed by will to his nephew. Three weeks after taking title to the property, the nephew visited the property and discovered that the developer had erected a chain link fence all along the boundary between the nephew's land and the acre of lakefront land. The nephew brings an action to enjoin the developer from obstructing his easement across the acre of lakefront property.

Which of the following best describes why the nephew should prevail in this litigation?

(A) Because the developer and the nephew can trace their predecessors in interest to a common grantor whose covenants run with the land, the developer is estopped from interfering with the nephew's use of the easement.

(B)The nephew's easement is a legal interest that the developer has record notice of, even though there is no tract index.

(C)Because there is no tract index, the developer was under an obligation to determine the riparian rights of any adjacent landowners before erecting the chain link fence.

(D) The nephew's easement is a legal interest that attaches not just to a legal estate but to the land itself and, running with the land, it binds successive owners of the servient estate whether or not they have notice of it.

**Correct : (B)The nephew's easement is a legal interest that the developer has record notice of, even though there is no tract index.**

#### **Question 47**

An employee filed an employment discrimination action against her employer in federal district court. The employee alleges that she has not been promoted because of her gender. She intends to call a co-worker as a witness at trial. The co-worker will testify that a senior manager of the employer told the co-worker that the employee would not be promoted because the employer deemed women to be poor managers.

Is the identity of the co-worker subject to discovery by the employer?

(A) Yes, the employee must disclose the identity of the co-worker, but only if the employer asks for the information in appropriate discovery requests.

(B)Yes, the employee must disclose the identity of the co-worker, but only as a pretrial disclosure 30 days before trial.

(C)Yes, the employee must disclose the identity of the co-worker even without any request from the employer.

(D) No, the co-worker's identity and her testimony consist of trial preparation materials and are subject to qualified immunity from discovery.

**Correct : (C)Yes, the employee must disclose the identity of the co-worker even without any request from the employer.**

#### **Question 48**

A father told his adult daughter that if she gave up smoking for the next 12 months, at the end of that time he would give her \$10,000. She agreed to stop smoking, but later that day had doubts about whether her father would actually pay up if she complied. She contacted her stepmother, who told her to go ahead and quit smoking, and she would make good on the father's promise to pay her if he refused to do so. That very day, the daughter quit smoking and never smoked again. Eleven months after his conversation with his daughter, the father died.

One month later, the daughter sought payment of the \$10,000 from her father's estate, which refused to pay. The daughter then asked her stepmother for the \$10,000 but the stepmother also refused to pay.

The daughter filed a claim against her stepmother for \$10,000. She proves at trial that she has submitted a claim for \$10,000 to the executor of her father's estate and has been refused payment.

What is the best argument for the court's rejecting this claim against her stepmother?

- (A) The contract between the daughter and her stepmother was illusory.
- (B) The daughter has not been damaged by any breach because the only effect—that she quit smoking—was salutary.
- (C) The contract between the daughter and her stepmother was oral.
- (D) No consideration flowed to the stepmother under the contract.

**Correct : (C) The contract between the daughter and her stepmother was oral.**

#### **Question 49**

The accused was driving his beat-up old car along a narrow road when he was passed by the victim in her new car.

The victim's daughter was lying down in the back seat and could not be seen.

The accused sped up, drew even with the victim, and repeatedly rammed his car into the side of the victim's car. After several collisions, the victim was forced off the road, rolling down a cliff for several yards. Due to the rolling, both the victim and her daughter were severely injured.

The accused was charged with attempted murder of both of them. At his trial, he testifies that he was angry because of the cavalier way the victim passed him in her new car, and that his only intent in smashing into her car was to scratch and dent it so that she would not be so haughty in the future.

Assuming that the jury believes this testimony, of whom may the accused be convicted of attempted murder?

- (A) The victim.
- (B) The victim's daughter.
- (C) Both the victim and her daughter.
- (D) Neither the victim nor her daughter.

**Correct : (D) Neither the victim nor her daughter.**

### Question 50

At the trial of the plaintiff's breach of contract action against the defendant, the plaintiff called her accountant as a witness to testify about the difference in gross sales, gross income, and net profit caused by the defendant's failure to supply the promised quantity of ice cream to the plaintiff's ice cream shop. When the plaintiff's attorney asked the accountant to state the gross income figures for the year prior to formation of the contract between the plaintiff and the defendant, the accountant replied that he could not remember the exact amounts. The plaintiff's counsel then handed the accountant a copy of the federal tax return submitted by the plaintiff for that year, and asked him to read it.

Counsel then asked, "Now that you have read the tax return, can you remember what the gross income of the plaintiff's ice cream shop was for the relevant period?" The defendant's counsel objects.

How should the court rule?

(A) Sustained, because the plaintiff's counsel is seeking to elicit testimony based on inadmissible hearsay.

(B) Sustained, because the accountant's testimony is not the best evidence.

(C) Overruled, because the accountant's hearsay testimony is admissible as a past recollection recorded.

(D) Overruled, because the accountant's testimony is admissible evidence relating to the plaintiff's damages.

### Question 51.

A photographer borrowed \$100,000

from a bank, secured by a mortgage on his home, to build a studio and darkroom in the home. The bank properly recorded the mortgage. After completing this project, the photographer decided to remodel his kitchen and borrowed \$25,000 from a lending company, also securing the loan with a mortgage on his home. The lending company did not record its mortgage.

After the remodeling was complete, the photographer borrowed \$15,000 from an investor, secured by a mortgage on his home, to redo his in-ground pool. Learning of this transaction, the lending company raced to the recording office and recorded its mortgage. The next day, the investor recorded its mortgage.

A few months later, the photographer defaulted on all three mortgages, having not made any principal payments. The lending company brought a foreclosure action, joining the investor in the proceeding. The foreclosure sale resulted in \$150,000 in proceeds after all expenses

and fees were paid. A statute of the jurisdiction in which the photographer's home is located provides: "Any conveyance of an interest in land shall not be valid against any subsequent purchaser for value, without notice thereof, unless the conveyance is recorded."

Which of the following statements is true?

(A) The bank is entitled to \$100,000 of the foreclosure proceeds, the lending company is entitled to \$25,000 of the proceeds, the investor is entitled to \$15,000 of the proceeds, and the buyer at the foreclosure sale is entitled to the remaining \$10,000 in proceeds.

(B) The buyer at the foreclosure sale will take the home subject to the bank's mortgage, the lending company is entitled to \$25,000 of the proceeds, the investor is entitled to \$15,000 of the proceeds, and the photographer is entitled to the remaining \$110,000 in proceeds.

(C) The buyer at the foreclosure sale will take the home subject to the bank's and the investor's mortgages, the lending company is entitled to \$25,000 of the proceeds, and the photographer is entitled to the remaining \$125,000 in proceeds.

(D) The buyer at the foreclosure sale will take the home subject to the bank's and the investor's mortgages, the lending company is entitled to \$25,000 of the proceeds, and the buyer at the foreclosure sale is entitled to the remaining \$125,000 in proceeds.

**Correct : (D) The buyer at the foreclosure sale will take the home subject to the bank's and the investor's mortgages, the lending company is entitled to \$25,000 of the proceeds, and the buyer at the foreclosure sale is entitled to the remaining \$125,000 in proceeds.**

## **Question 52**

After leaving ceremonies at which the chief justice of a state supreme court had been named distinguished jurist of the year, an associate justice was interviewed by the press. The associate justice told a reporter that the chief justice "is a senile imbecile who lets his clerks write all his opinions. He hasn't had a lucid thought in decades, and he became a judge by being on the payroll of the mob." Enraged, the chief justice brought an action for defamation against the associate justice.

Which of the following, if established by the chief justice in his defamation action, would permit recovery against the associate justice?

(A) The associate justice negligently made the statements, which were false, and caused the chief justice actual injury.

(B) The associate justice made the statements knowing they were false.

(C) The associate justice made the statements because he hated the chief justice and wished to destroy his reputation in the legal community.

(D) The associate justice made the statements in order to ensure that the chief justice's political career was nipped in the bud.

Correct : (B) The associate justice made the statements knowing they were false.

### Question 53

A man lost some money while playing poker with several people at his friend's house. When the man accused his friend of cheating, his friend asked him to leave. The man became abusive and refused to leave, so his friend and a couple of other players forced him to go. Angry and determined to get his money back, the man went to his home and picked up his gun. He headed back to his friend's house, intending to shoot his friend if he did not give back the money. However, at the altercation at the house, his friend had called the police. Just as the man about to step onto his friend's property, police pulled up and stopped him. They frisked him, found the gun in his pocket and arrested him. A state statute prohibits entry onto the property of another with intent to commit violence thereon.

If charged with attempt under this statute, will the man be found guilty?

- (A) No, because this is an "attempt" and there cannot be an attempt.
- (B) No, because it would be an attempt to convict a person for a guilty crime.
- (C) Yes, because the man was trying to enter the property and he had necessary state of mind.
- (D) Yes, because the statute was to protect the public from violence and the man is dangerous.

Correct : (C)

### Question 54

A state statute allows for criminal trials by a jury composed of six jurors. Five of the six jurors must concur for a guilty verdict. The defendant is charged with petty larceny, which carries a maximum sentence of one year's imprisonment, plus a fine of \$2,500. Before voir dire begins, the defendant objects to both the six-member jury and the fact that only five of six jurors are needed for a conviction.

Should the trial judge overrule the objection?

- (A) No, because the use of a six-person jury is unconstitutional for this offense.
- (B) No, because the number of jurors needed for a conviction is unconstitutional for this offense.
- (C) Yes, because the right to a trial by jury does not constitutionally require a jury of 12.
- (D) Yes, because a state is permitted to set its own jury trial requirements for petty offenses.



Correct : (C) Yes, because the right to a trial by jury does not constitutionally require a jury of 12.

#### Question 55

A county initiated a tax foreclosure action against a landowner for delinquent taxes. The landowner executed and delivered land to the county a quitclaim deed to his land. The county recorded its deed. Due to a clerical error, the land was not removed from the foreclosure action. The following month, the land was sold at the foreclosure sale and a sheriff's deed was delivered to the buyer. The buyer then sold the land to a friend and delivered to her a general warranty deed. The county initiated a quiet title action and obtained a judgment in its favor, and then began ejectment proceedings against the friend.

If the friend brings an appropriate action for damages against the buyer, for whom should the court rule?

- (A) The friend, because the buyer's title was unmarketable.
- (B) The friend, because the covenants of quiet enjoyment and warranty were breached.
- (C) The buyer, because he had title to the land at the time he conveyed it to the friend.
- (D) The buyer, because a sheriff's deed has priority over a quitclaim deed.

Correct : (B) The friend, because the covenants of quiet enjoyment and warranty were breached.

#### Question 56

A driver borrowed \$75,000 from a bank to purchase a tract of land on which to operate his trucking company, securing the debt with a mortgage on the land. The bank promptly and properly recorded its mortgage. A few years later, the driver financed the installation of a truck wash on the land with a \$50,000 loan from a finance company, secured by a mortgage on the land. The finance company promptly and properly recorded its mortgage. The driver subsequently defaulted on the bank's mortgage, leaving an outstanding balance on the bank's loan of \$60,000. However, the driver continued to make payments to the finance company. The bank brought a foreclosure action, joining the finance company in the proceeding. The jurisdiction provides a statutory right of redemption for lienholders.

Does the finance company have any recourse prior to the foreclosure sale to protect its interest?

- (A) Yes, the finance company may pay off the bank's mortgage to preserve its own interest on the land.
- (B) Yes, it can exercise its statutory right of redemption.
- (C) No, because the driver has not defaulted on the finance company's mortgage.
- (D) No, because only the mortgagor holds the right to redeem the property.

Correct : (A)Yes, the finance company may pay off the bank's mortgage to preserve its own interest on the land.

### Question 57

After filing a complaint in a federal district court, a plaintiff retained an appropriate private process server to serve the summons and complaint on the defendant, an individual who resides in a mansion in the state in which the court is located.

In his first attempt to serve process, the process server knocked on the mansion's main door, and the door was answered by the mansion's caretaker, who resides in the mansion. The process server learned that the defendant resides in the house September through May of each year, but lives in another home during the other months. Given that it was October at the time, the defendant was currently residing there, but not present at that particular time. The process server left the summons and complaint with the caretaker, and he mailed copies of the summons and complaint to the defendant's mansion address and to the defendant's other home.

The defendant's attorney filed a motion to dismiss the action for improper service of process.

Should the court grant the motion to dismiss?

(A) No, because the process server mailed copies of the summons and complaint to the defendant's homes.

(B)No, because the caretaker resides at the mansion.

C) Yes, because service was not made on a member of the defendant's family.

(D)Yes, because the mansion is not the defendant's year-round permanent home.

Correct : (B)No, because the caretaker resides at the mansion.

### Question 58

The defendant is charged with having been one of two men who robbed a tavern and its patrons at gunpoint at 5:30 p.m. on

December 16.

The defendant calls a witness to testify that he was at the defendant's house at about 9:30 a.m. on December 16, and that as he was leaving, the defendant said to him, "I'm going to my mother-in-law's house this afternoon for a birthday party."

Is the witness's testimony admissible?

(A) No, it is hearsay not within any ex-ception.

(B) No, it is irrelevant.

(C) Yes, it is not being offered to prove the truth of the matter stated, so it is not hearsay.

(D) Yes, it is hearsay within an exception, and thus admissible.

Correct : (D) Yes, it is hearsay within an exception, and thus admissible.

### Question 59

While driving in State A on vacation, a man collided with a car driven by a woman. The woman, whose domicile is in State B, was also on vacation in State A at the time of the accident. The woman filed a negligence action against the man, who was domiciled in State C, in a federal court in State C, alleging negligence and seeking damages for the injuries she sustained in the State A accident.

Does the State C federal court have personal jurisdiction over the man for purposes of this action?

(A) Yes, because courts in State C have general personal jurisdiction over the man for any claim that may be asserted against him.

(B) Yes, because the court is a federal court in State C rather than a state court.

(C) No, because the claims arise from conduct and injuries that occurred in State A.

(D) No, because the court is a federal court in State C rather than a state

Correct : (A) Yes, because courts in State C have general personal jurisdiction over the man for any claim that may be asserted against him.

### Question 60

A brother and a sister were arrested on the federal charge of tax evasion in connection with the family business. Prior to trial, the prosecutor told the sister that he believed he could get her sentence reduced to probation if she pleaded guilty to a lesser charge and agreed to testify against her brother; the sister reluctantly agreed. During the jury trial, the sister is called by the prosecution. On cross-examination, the defense attorney brings out the fact that the sister was arrested on the same charge. The attorney then asks her whether it is true that after her arrest, the prosecutor told her that if she testifies against her brother her sentence can be reduced to probation. The prosecutor objects.

How should the court rule on the objection?

- A) Sustained, because it is against public policy to reveal information about plea bargains to a jury.
- B) Sustained, because it calls for hearsay.
- (C) Overruled, because the question goes to bias or interest.
- (D) Overruled, because the sister waived the attorney-client privilege by testifying.

Correct : (C) Overruled, because the question goes to bias or interest.

### Question 61

A debtor owed a creditor \$1,200 on a promissory note that was due on August

1. After the debtor told the creditor that might not be able to pay the note on its date, the creditor agreed to extinguish debt if the debtor, who was the manager of a discount electronics store, bought an entertainment system that sold for \$1,200 and had it delivered to the creditor's home by August 15. Because the debtor would have to pay only \$600 for the system with his manager's discount, he agreed and the parties signed a written contract on

July 26.

Is the new agreement between the debtor and the creditor legally enforceable?

- (A) No, because the debtor incurred additional detriment that would not be considered as consideration for the new agreement.
- (B) Yes, because it would have cost the creditor \$1,200 to purchase the entertainment system himself.

(C) Yes, because the debtor incurred different obligation than he originally had.

(D) Yes, because the new agreement between the debtor and the creditor is enforceable with or without consideration as long as it was made in faith.

**Correct : (C) Yes, because the debtor incurred different obligation than he originally had.**

### **Question 62**

A buyer of a new car owed the car dealership where she purchased the vehicle \$1,000 on a promissory note that was due on December 30. The buyer determined that she would be unable to pay the note on its due date, and she informed the owner of the dealership of that fact. The owner told her that she would not have to pay the debt if she bought him four tickets to a popular concert on January 15 that had been sold out for weeks, because she worked as a publicist for the concert venue. She agreed to do so, and the parties memorialized their agreement in a signed writing on December 18. On January 2, the dealership filed suit against the car buyer for failure to pay the \$1,000 promissory note, before the car buyer had secured the concert tickets for the owner.

May the car buyer have this action enjoined by introducing evidence of the December 18 agreement?

(A) Yes, because the December 18 agreement between the parties suspended the car buyer's obligation on the promissory note.

(B) Yes, because the December 18 agreement between the parties discharged the car buyer's obligation on the promissory note.

(C) No, because the car buyer has not yet bought the concert tickets in reliance on the owner's promise to extinguish the debt.

(D) No, because the car buyer's only remedy is to sue for damages for breach of the December 18 agreement.

**Correct : (A) Yes, because the December 18 agreement between the parties suspended the car buyer's obligation on the promissory note.**

### Question 63

A petty thief and a felon decided to meet at the mall, armed with a gun or knife, to look for elderly women wearing expensive jewelry, intending to follow them home and rob them. The felon pocketed a gun and headed to the mall.

The thief headed to the mall also, but began to have second thoughts when he considered that the felon had already done time for armed robbery and assault with a deadly weapon, and that he had vowed that he would never "do time" again because

"somebody finked to the cops." The thief told the felon when they met at the mall that he had changed his mind and wanted no part of the action, and went home. That evening, the felon robbed and beat an elderly woman returning home from the mall. Because of her ill health and age, the woman died as a result of the beating.

Of what crime is the thief guilty?

- (A) No crime.
- (B) Conspiracy.
- (C) Murder.
- D) Murder and conspiracy.

Correct : (B) Conspiracy.

### Question 64

A plaintiff filed a negligence action against two defendants in federal district court, invoking the court's diversity of citizenship jurisdiction. Prior to serving their answers, the defendants filed a motion to dismiss for lack of subject matter jurisdiction. The court denied the motion, concluding that subject matter jurisdiction was proper. The defendants then filed their answers responding to the merits of the complaint and denying negligence. The defendants' answers also contained motions to dismiss the action for lack of personal jurisdiction. Five weeks later, the defendants filed a motion to dismiss the action for improper venue.

If the court determines that venue in fact is improper, how should the court rule on the defendants' venue motion?

(A) The court should dismiss the action for improper venue,

(B) The court should deny the venue motion, because objections to venue are waived if a defendant objects to personal jurisdiction without at the same time objecting to venue, since personal jurisdiction and venue are closely related.

(C) The court should deny the venue motion, because the defendants waived any objection to venue when they did not raise the objection in their pre-answer motion objecting to subject matter jurisdiction.

(D) The court should deny the venue motion, because the defendants waived any objection to venue when they did not raise the objection in their answers,

**Correct : (C) The court should deny the venue motion, because the defendants waived any objection to venue when they did not raise the objection in their pre-answer motion objecting to subject matter jurisdiction.**

### **Question 65**

A security officer employed by a mall was patrolling the mall parking lot which had suffered numerous thefts from cars when she heard a car alarm go off. She then saw a teenager stand up from behind the car. She immediately stopped the teenager and asked him what he was doing behind the car, and he said he was tying his shoe. Reasonably suspecting that he may have been trying to break into the car, she asked him to wait in the back seat of her car. The teenager complied, and waited in the back of the car while the security officer ate her lunch in the front seat and made a variety of personal calls. The teenager was humiliated because several of his friends and their parents, as well as some neighbours, saw him sitting in the security officer's car. Finally, after about an hour, the officer let the teenager go and advised him not to loiter in the parking lot anymore.

If the teenager brings a false imprisonment action against the mall, will he be able to recover for the humiliation that he felt sitting in the security officer's car in view of his friends and neighbours?

(A) No, humiliation is not actionable.

(B) No, because the security officer reasonably suspected that he was trying to break into a car.

(C)Yes, if the jury determines that the security officer's conduct was extreme and outrageous.

(D)Yes, because he was falsely imprisoned,

Correct : (D)Yes, because he was falsely imprisoned,

#### Question 66

A landowner owned two heavily wooded adjoining parcels of land containing a number of lakes. She conveyed the eastern parcel, which contained a hunting resort, consisting of a number of rental cabins, to a neighbor. The deed transferring the parcel also granted to the "the neighbor, his heirs and assigns, and to invited guests of the resort all hunting rights and use of the woods on the western parcel for the benefit of the resort." Subsequently, the neighbor assigned his hunting rights to a hunter.

When the landowner discovered the hunter hunting on her land, she brought an appropriate action to declare his rights void.

If the court rules for the landowner, it will be because the neighbor's right to hunt on the western parcel is:

(A) A profit appurtenant.

(B) A profit in gross.

(C) An easement in gross..

(D) A license.

Correct : (C) An easement in gross..

#### Question 67



A state statute prohibited, under criminal penalties, the sale or furnishing of any alcoholic beverage to a minor. A 16-year-old minor went to his neighborhood liquor store and asked a patron who was about to enter if the latter would purchase some beer for him. The patron agreed, took the minor's money, and returned with a six-pack of beer. At the moment that the beer changed hands, an official of the State Bureau of Alcohol Control leapt from behind a nearby car and announced that both the patron and the minor were under arrest. The patron ran to his car and escaped. The minor is now being prosecuted under the statute as having aided and abetted the patron in its violation.

Which of the following is his best argument in defense?

(A) He cannot be convicted as an aider and abettor unless the principal is first convicted.

(B) He cannot be convicted as an aider and abettor of violating a statute designed to protect the class of which he is a member-minors.

(C) He cannot be convicted of aiding and abetting any crime because he is a minor.

(D) He cannot be convicted alone of committing a crime that requires at least two parties to commit a violation.

**Correct : (B) He cannot be convicted as an aider and abettor of violating a statute designed to protect the class of which he is a member-minors.**

### **Question 68**

In a civil action tried to a jury, the defendant objected to the introduction by the plaintiff of certain evidence without the judge's first making a preliminary ruling on the admissibility of the evidence.

For which evidence is the defendant's objection not appropriate?

(A) Opinion testimony regarding the structural integrity of a building by an engineer called by the plaintiff, without a preliminary determination by the judge that the engineer is an expert.

(B) Hospital records pertaining to the plaintiff offered by the plaintiff, without a preliminary determination by the judge that they were made as a regular activity of the hospital staff.

(C) Contract negotiations between the plaintiff and a third party, without a preliminary determination by the judge that the third party was the defendant's agent.

(D) A paramedic's testimony that the plaintiff's wife, before she died, said that the defendant's car went through a red light before hitting her, without a preliminary determination by the judge that she made the statement under a sense of impending death.

Correct : (C) Contract negotiations between the plaintiff and a third party, without a preliminary determination by the judge that the third party was the defendant's agent.

### Question 69

A state statute has adopted the common law definition of larceny. Another statute provided as follows:

It shall be an affirmative defense to a crime if the defendant establishes by clear and convincing evidence that, due to a mental disease or defect, he was unable to appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

A homeowner was leaving town for two weeks and he asked his neighbor to stop by the house each day and water the plants.

While at the homeowner's home, the neighbor found the keys to the homeowner's new car. The neighbor took the car and drove it into town to show his friends.

The neighbor told all of his friends that he had purchased the car. The homeowner returned home three days early, saw that the car was missing, and called the police.

Later that day, the neighbor was arrested and charged with larceny.

At the neighbor's trial, the neighbor testified that he intended to return the car.

Additionally, two psychiatrists testified that, due to a mental defect, the neighbor suffered from an extreme inferiority complex and delusions of grandeur. The doctors further testified that his mental condition caused him to take the car and to tell other people that he owned it. At the conclusion of the evidence, the court's instructions to the jury included the following:

1. If you find by a preponderance of the evidence that the defendant intended to return the car, you should find the defendant not guilty.
2. If you find by a preponderance of the evidence that, due to a mental disease or defect, the defendant was unable to appreciate the criminality of his conduct or conform his conduct to the requirements of the law, you should find the defendant not guilty.

The neighbor was found guilty and he appealed, claiming that the jury instructions violated his constitutional rights.

How should the appellate court rule?

- (A) Both instructions were constitutional.
- (B) Both instructions were unconstitutional.
- (C) Instruction 1 was unconstitutional;  
Instruction 2 was constitutional.
- (D) Instruction 1 was constitutional;  
Instruction 2 was unconstitutional.

Correct : (C) Instruction 1 was unconstitutional;  
Instruction 2 was constitutional.

#### Question 70

A state legislature enacted a program by which students in the public schools could request instruction as to specific religions and religious beliefs, and thus participate in public school programs in which leaders of the religions involved gave religious instruction and performed religious practices on school grounds. The parent of a student who objected to religion being taught as part of the public school curriculum brought suit in federal court, seeking to have the program halted on First Amendment grounds.

Assuming the parent is a proper party to bring the suit, is the court likely to find the program violates the First Amendment?

- (A) No, because participation in the program is by request.
- (B) No, because religious leaders are providing the instruction, there is no excessive entanglement.
- (C) Yes, because the program is not neutral toward religion and there is no long history of such religious instruction in public schools.
- (D) Yes, because the primary effect of the program is to advance religion.

Correct : (C) Yes, because the program is not neutral toward religion and there is no long history of such religious instruction in public schools.

### Question 71

A motorist purchased a new sport utility vehicle from his local dealer. Standard equipment on the vehicle included a set of top-of-the-line tires from a premium tire company. However, the motorist was able to save \$400 on the purchase price by allowing the dealer to substitute a lower priced tire manufactured by a discount tire manufacturer. Unbeknownst to the motorist and the dealer, the tire manufacturer had negligently designed the tires, with the result that a tire would occasionally blow out when the car was traveling at a high rate of speed in hot weather. On an exceptionally hot day, the motorist was traveling 80 m.p.h. in a 55 m.p.h. zone. A tire exploded, resulting in damage to the vehicle and injury to the motorist.

If the motorist sues the dealer on a theory of strict liability, is he likely to prevail?

(A) Yes, because the tire was in a dangerously defective condition when the motorist purchased the car.

(B) Yes, because the dealer is responsible for the negligence of the tire manufacturer, because the dealer used its tires.

(C) No, because the motorist assumed the risk when he substituted the discount tires in exchange for \$400.

(D) No, because the motorist was misusing the tire when he was traveling at 80 m.p.h.

**Correct : (A Yes, because the tire was in a dangerously defective condition when the motorist purchased the car.**

### Question 72

A farmer kept a pet bear at his farm.

The bear was very old and had no teeth, no claws, and very little energy, but people liked to see the bear when they visited the farmer because no one else in the region had a pet bear. When the farmer first obtained the bear many years ago, he had a large steel cage constructed to house the animal. The cage had an electronic lock that only opened with a security code.

Even though the bear was now old and harmless, it was always kept locked in the cage. One night during a severe storm while the farmer was out of town, a bolt of lightning hit the cage and the door opened.

The bear left the cage and wandered off.

The next morning, a 10-year-old girl was waiting on a rural road for her school bus.

The bear emerged from a wooded area about 100 feet from where the girl was standing and headed towards her. She screamed and turned to run, tripping on the road and breaking her arm when she

If the girl sues the farmer on a theory of strict liability for her bodily harm, will she prevail?

- (A) No, because the bear was in fact a nondangerous animal.
- (B) No, because the damage she suffered was not the type of damage that a bear would normally cause.
- (C) Yes, because the bear is a wild animal.
- (D) Yes, because pet bears were not commonly kept in the community.

Correct : (C) Yes, because the bear is a wild animal.

### Question 73

Concerned about the rising death toll on the state's highways, a state legislature enacted a statute providing for a summary one-year suspension of the driver's license of any person convicted of three speeding violations within a 12-month period. The statute provided that an administrative hearing is immediately available upon request. However, that hearing is limited to a determination of whether the licensee is the same person who was convicted of the speeding violations.

A driver received three speeding citations in a three-week period and was convicted of all three charges. Her license was promptly suspended under the authority of the state statute. Without first seeking an administrative hearing, the driver files a suit in federal district court challenging the constitutionality of the statute.

Should the court uphold the constitutionality of the state law?

- (A) Yes, because driving an automobile on the state's highways is a privilege and not a right.
- (B) Yes, because the state's interest in promptly removing unsafe drivers from its roads outweighs the driver's right to a prior hearing under these circumstances.
- (C) No, because the law creates an irrebuttable presumption that all drivers falling within the ambit of the statute are unsafe.
- (D) No, as a denial of due process without a prior hearing

Correct : (B) Yes, because the state's interest in promptly removing unsafe drivers from its roads outweighs the driver's right to a prior hearing under these circumstances.

#### Question 74

Auto workers went on strike in a town heavily reliant on the auto industry.

While negotiations between the union and management were ongoing, a person intercepted and recorded a phone call between the union's president and management's chief negotiator. A state statute makes it illegal to record a phone call without the consent of the parties being recorded.

The statute also makes it illegal to play an illegally recorded conversation on television or radio.

The person who recorded the call anonymously sent the recording to a local

TV station. The TV station news anchor played the recording on air.

Can the anchor who played the recording be prosecuted under the statute?

(A) No, because the anchor did not record the conversation, and the information is truthful and about a matter of public significance.

(B) No, because once media organizations obtain information, the First Amendment gives them a right to publish it.

(C) Yes, because allowing publication of such recordings would encourage further violations of an otherwise valid law.

(D) Yes, because the television station should have brought an action to test the validity of the law before playing the recording on air.

**Correct : (A) No, because the anchor did not record the conversation, and the information is truthful and about a matter of public significance.**

#### Question 75

A seller entered a written contract to sell certain equipment to a buyer in another state for \$110,000. The seller purposely breached the contract because someone else offered more money for the equipment. The buyer was able to buy similar equipment from another source, but the price was \$170,000. The buyer filed a breach of contract action against the seller in federal district court. The complaint seeks \$60,000 in compensatory damages and an additional \$60,000 in punitive damages on grounds that the breach was purposeful. Applicable state law is well established that punitive damages may not be awarded for breach of contract.

Does the federal court have subject matter jurisdiction over the action?

A) No, because punitive damage daim Gobe

are not counted in evaluating the amount in controversy requirement.

B) No, because it is clear to a legal certainty that the amount recoverable does not exceed \$75,000.

(C) Yes, because the amounts of all the seller's claims are aggregated for purposes of the amount in controversy requirement, so his claims exceed \$75,000.

(D) Yes, because the transaction is between citizens of different states and involves interstate commerce

**Correct : (C) Yes, because the amounts of all the seller's claims are aggregated for purposes of the amount in controversy requirement, so his claims exceed \$75,000.**

### **Question 76**

A plaintiff brought suit against a manufacturing company, seeking to recover for damages he suffered when his car's engine burst into flames following the use of an engine additive made by the company. The plaintiff contends that the manufacturing company was negligent and in breach of warranty.

An automobile engineer sat in court while the plaintiff testified to the events concerning the engine fire. The plaintiff's testimony was not challenged or rebutted.

The plaintiff calls the engineer to the stand and asks him whether, based on the plaintiff's prior testimony, it was possible for a car engine to burst into flames as it did.

Would the engineer's testimony be admissible?

(A) No, because the engineer's opinion was not elicited by means of a hypothetical question.

(B) No, because the engineer was in the court while the plaintiff testified concerning the engine fire.

(C) Yes, because the engineer was in the court while the plaintiff testified concerning the engine fire.

(D) Yes, as long as the engineer's opinion is based only on admissible evidence.

**Correct : (C) Yes, because the engineer was in the court while the plaintiff testified concerning the engine fire.**

### Question 77

A state's law requires driver's licenses to display a photograph of the person whose name is on the license. The law was adopted to prevent fraudulent use of state drivers' licenses as proof of identification. As such, the law does not provide for any exemptions from this requirement.

Members of a religious sect within the state believe that allowing oneself to be photographed is sinful. A member of the sect who was refused a driver's license because he would not allow himself to be photographed challenged the state regulation in federal court.

Is the court likely to uphold the application of the regulation to the religious group?

(A) Yes, because exempting members of the religious sect from the regulation would violate the Establishment Clause.

(B) Yes, because it appears the law is religiously neutral, generally applicable, and not motivated by a desire to interfere with religion.

(C) No, unless the state shows that the regulation is necessary to promote a compelling governmental interest.

(D) No, because the opposition to the regulation arises from a sincerely held religious belief.

**Correct : (C) No, unless the state shows that the regulation is necessary to promote a compelling governmental interest.**

### Question 78

A lawyer rented an office building for his law practice and subleased most of the building to three other tenants. The lawyer paid \$2,000 per month to the owner and charged his subtenants \$600 per month each. After having been in the building for three years, the lawyer and the owner orally agreed that the lawyer would purchase it for a price of \$120,000, to be paid in monthly installments of \$2,000 over a five-year period. It was further agreed that title would remain in the owner's name until \$48,000 had been paid on the total price, whereupon the owner would deliver a deed to the lawyer.

Shortly thereafter, the lawyer spent \$4,000 redecorating his suite. During the course of the next two years, the lawyer hired an associate and placed her in one of the offices formerly occupied by one of the subtenants, and raised the monthly rental he charged the other two subtenants to \$700. Two years after the agreement with the owner, the lawyer demanded that the owner convey the building by delivery of a deed. The owner refused, denying that any oral agreement for sale had ever existed.

The lawyer brings an action for specific performance against the owner, who pleads the Statute of Frauds as a defense.



If the owner wins, what is the likely reason?

- (A) The lawyer did not obtain the owner's approval before making the improvements to his offices.
- (B) The original violation of the Statute of Frauds was incurable.
- (C) The lawyer's actions in paying \$2,000 per month and making improvements were as consistent with being a tenant as with the oral contract.
- (D) The owner received no unconscionable benefit entitling the lawyer to equitable relief.

If the owner wins, the most likely reason would be:

**Correct : (C) The lawyer's actions in paying \$2,000 per month and making improvements were as consistent with being a tenant as with the oral contract.**

### Question 79

An owner devised his property by will to a friend "so long as one or more dogs are kept on the property; if dogs are no longer kept on the property, then to the American Society for the Prevention of Cruelty to Animals (ASPCA)." The will also provided that the residuary estate would go to the owner's niece.

In a jurisdiction that has not modified the common law Rule Against Perpetuities, what are the respective interests in the property on the owner's death?

- (A) The friend has a fee simple subject to a condition subsequent and the niece has a right of entry.
- (B) The friend has a fee simple determinable and the niece has a possibility of reverter.
- (C) The friend has a fee simple determinable and the ASPCA has a remainder
- (D) The friend has a fee simple determinable subject to an executory interest and the ASPCA has a shifting executory interest.

**Correct : (B) The friend has a fee simple determinable and the niece has a possibility of reverter.**

### Question 80

At a popular barbecue restaurant, the barbecue was prepared in a large, outdoor pit in the back of the restaurant. Cooking meat outdoors in a commercial establishment violated a city health code regulation, designed to assure that the food was not exposed to flies and other insects. On windy days, smoke from the barbecue pit sometimes blew into a neighbor's backyard. Although most people would not be bothered by the smoke, the neighbor had

extremely sensitive eyes. They watered and stung every time that he was exposed to any form of smoke. When the barbecue smoke drifted onto his property, the neighbor could not use his backyard.

If the neighbor sues the restaurant because he often cannot use his backyard, will the neighbor likely prevail?

(A) Yes, because the restaurant's action interfered with the neighbor's use and enjoyment of his yard.

(B) Yes, because the restaurant was violating a health code regulation.

(C) No, because the smoke would not disturb a person of ordinary sensibilities in the community.

(D) No, because the health code regulation was not designed to protect against the type of harm suffered by the neighbor.

**Correct : (C) No, because the smoke would not disturb a person of ordinary sensibilities in the community.**

### **Question 81**

A man beat his girlfriend and fled. The girlfriend called the police and told them about the beating. She also told them that the man likely fled to his best friend's house. The police obtained a valid arrest warrant for the man and went to the friend's house. They knocked and the friend answered the door. The friend told the police that the man was not there. The police pushed past the friend and began searching for the man. The police did not find the man, but they did find a package of cocaine on a small end table in plain view. The police arrested the friend for possession of cocaine. Prior to trial, the friend moves to suppress the cocaine, claiming that it was unconstitutionally seized.

Should the court grant the motion?

(A) Yes, because the man could not have been hiding on the table.

(B) Yes, because the police did not have a search warrant.

(C) No, because the cocaine was in plain View.

(D) No, because the police found the cocaine while executing a valid arrest warrant.

**Correct : (B) Yes, because the police did not have a search warrant.**

### Question 82

A sales representative working for a manufacturing company had an employment contract under which the representative agreed to work exclusively for the company for three years. The representative resides in State A. The manufacturing company is incorporated in State B and has its principal place of business in State C. Six months before expiration of the contract, the representative left the manufacturing company and went to work for a competitor of the company. The competitor is incorporated in State C and has its principal place of business in State

A. The manufacturing company files an action in federal district court against the representative and the competitor, alleging breach of contract and tortious interference with contractual relations.

Does complete diversity exist among the parties?

(A) Yes, because the representative is a citizen of State A, the manufacturing company is a citizen of State B, and the competitor is a citizen of State C.

(B) Yes, because the representative is a citizen of State A, the manufacturing company is a citizen of State C, and the competitor is a citizen of State A.

(C) No, because the manufacturing company and the competitor are both citizens of State C.

(D) No, because the representative and the competitor are both citizens

**Correct : (C) No, because the manufacturing company and the competitor are both citizens of State C.**

### Question 83

A plumbing contractor sued a homeowner, alleging that the homeowner refused to pay for extensive pipe repairs performed on her home by an employee of the contractor. The contractor called the employee to the stand as a witness. The employee, under oath, testified that he did not perform any work at the homeowner's home. The employee also denied writing a letter to a friend telling the friend that he was going to do plumbing work on the homeowner's house. Without releasing the employee as a witness, the contractor offers in evidence the letter written by the employee to his friend.

Which of the following is NOT a proper basis for admitting the employee's letter?

(A) Testimony by the employee's wife that she recognizes the employee's handwriting.

(B) The friend's testimony that the statements in the letter are responsive to a prior letter from the friend to the employee.

(C) Comparison by the jury of the letter with another letter that the employee has admitted writing.

(D) In-court comparison by the friend, a nonexpert, of the letter with another letter that the employee has admitted writing.

**Correct : (D) In-court comparison by the friend, a nonexpert, of the letter with another letter that the employee has admitted writing.**

#### **Question 84**

A backpacker came upon another hiker who had been bitten by a rattlesnake. The backpacker carried the bitten hiker back to his vehicle and drove him toward the nearest hospital. On the way there, while exceeding the posted speed limit, the backpacker lost control of his vehicle and crashed into a tree by the side of the road.

He was uninjured, but the snakebitten hiker's leg was broken. An ambulance soon arrived and took the hiker to the hospital. The emergency room physician committed malpractice that resulted in the loss of the hiker's leg. The hiker is now suing the backpacker.

Which of the following is the most likely reason why the backpacker will be held liable for the hiker's injuries?

(A) Having undertaken to rescue the hiker, the backpacker is strictly liable for injuries resulting from the rescue.

(B) The emergency room physician's malpractice is a foreseeable intervening cause that does not relieve the backpacker of liability.

(C) The backpacker did not conduct himself as a reasonably prudent person in carrying out the rescue of the hiker.

(D) The backpacker committed negligence by exceeding the posted speed limit.

**Correct : (D) The backpacker committed negligence by exceeding the posted speed limit.**

#### **Question 85**

Congress enacted a statute that provide for direct money grants to the various states to be distributed by them to police agencies within their jurisdictions for the purpose of purchasing gas-efficient patrol vehicles. One of the objectives of the statute was to help reduce the dependency of the United States on imported oil.

Which of the following would provide the best constitutional justification for the statute?

- (A) The Commerce Clause.
- (B) The power to tax and spend for the general welfare.
- (C) The Necessary and Proper Clause.
- (D) The power to conduct the foreign relations of the United States.

Correct : (D) The power to conduct the foreign relations of the United States.

#### Question 86

A passenger on a commuter train left his seat to go to the lavatory at the front of the car. While he was in the aisle, the car moved across intersecting tracks, causing the car to rock. He stumbled and bumped his knee against the lavatory door, aggravating a preexisting circulation problem in his leg that had been controlled by medication. As a result, he had to have several surgeries to correct the circulation problem.

The passenger brought suit to recover damages against the agency that operated the train system. At the jury trial, the following evidence was presented: The passenger testified as to how he was injured and introduced evidence of his medical expenses. His physician testified that the bump aggravated the circulation problem. The engineer of the train testified that the train had not been exceeding the speed limit for that stretch of track, and the agency introduced a report indicating that a subsequent inspection disclosed no problems with the track. The agency also presented uncontroverted evidence that a person in normal health would not have been injured by the bump. At the close of the evidence, the agency moved for a directed verdict.

How should the court rule on the motion?

- (A) Grant the motion, because there is no evidence that the agency or its employees operated the train negligently.
- (B) Grant the motion, because the agency established that a person in normal health would not have been injured by the bump.
- (C) Deny the motion, because the jury could find that the agency, as a common carrier, breached its high duty of care to its passenger.

(D) Deny the motion, because the fact that the severity of the passenger's injuries was not foreseeable does not cut off the agency's liability.

**Correct : (A) Grant the motion, because there is no evidence that the agency or its employees operated the train negligently.**

### **Question 87**

On August 5, the owner of a hot dog plant and the proprietor of a local ballpark concession stand entered into a written agreement providing, among other things, that if the local team wins the state championship, the plant owner will deliver to the proprietor 500 hot dogs on each of the following days: September 5, 7, and 9. The price was set at 25 cents per hot dog, with payment to be made on September 10 by the proprietor to a creditor of the plant owner. On August 15, the plant owner decided that he wanted to avoid his obligation to deliver the hot dogs. The creditor has not become aware of the agreement between the plant owner and the proprietor.

Which of the following is the most accurate statement?

(A) The plant owner cannot rescind the contract without the permission of both the proprietor and the creditor.

(B) The plant owner cannot rescind the contract without the permission of the proprietor.

(C) The plant owner can repudiate the agreement because the promise to perform by the proprietor is illusory.

(D) The plant owner can revoke the offer to sell hot dogs if the team does not win the state championship.

**Correct : (B) The plant owner cannot rescind the contract without the permission of the proprietor.**

### **Question 88**

A large-scale bakery in the South entered into a written contract with a commercial apple orchard in the upper Midwest to purchase 200 bushels of apples at a cost of \$8 per bushel. The contract provided that the apple orchard would deliver the apples "F.O.B. Louisville Railroad Depot," where the apples would be loaded onto a train headed south. The orchard assigned all of its rights under the contract to a large produce distributor which, in turn, hired a trucking company to deliver the apples to Louisville. En route to Louisville, the truck skidded off the road due to inclement weather and overturned, and the apples were destroyed. The bakery brought suit against the apple orchard for breach of contract.

What will be the probable outcome of the litigation?

- (A) The bakery will lose.
- (B) The bakery will recover the amount necessary to replace the destroyed apples, over the contract price.
- (C) The bakery will recover the full contract price.
- (D) The bakery will be able to compel specific performance of the contract.

Correct : (B) The bakery will recover the amount necessary to replace the destroyed apples, over the contract price.

### Question 89

As permitted by state law, a large city in the state adopted an ordinance legalizing slot machines in shopping malls within the city. Several prominent city residents were upset by the new ordinance because gambling violates one of the main tenets of their religion. Seeking relief, the citizens contacted their representative in Congress and asked the representative to sponsor a bill making it illegal to place gambling machines in shopping malls throughout the country. The representative sponsored such a bill. Congress made a factual finding that the activity regulated has a substantial economic effect on interstate commerce and passed the statute.

If the statute banning gambling machines in shopping malls is challenged on constitutional grounds by a proper plaintiff in federal court, would the court likely uphold the statute?

- (A) No, because it was based on the citizens' religious tenets and so violates the First Amendment Establishment Clause.
- (B) No, because the statute does not regulate the channels or instrumentalities of interstate commerce.
- (C) Yes, because Congress has made a factual finding that the activity regulated has a substantial economic effect on interstate commerce.
- (D) Yes, because there is a conceivable rational basis for concluding that the activity regulated, in aggregate, substantially affects interstate

Correct : (D) Yes, because there is a conceivable rational basis for concluding that the activity regulated, in aggregate, substantially affects interstate

### Question 90

During a nationwide trucker's strike, striking drivers committed repeated acts of violence against independent truckers and railroad shipments that had replaced truck transportation. This prompted Congress to enact an emergency measure directing the President to dispatch United States Army troops to specified cities and rail and highway locations to preserve order and ensure the continued flow of commerce.

Is this enactment constitutional?

(A) No, because it infringes on the President's authority to faithfully execute the laws of the United States.

(B) No, because it infringes on the President's authority as Commander in Chief of the armed forces.

(C) Yes, under Congress's power to regulate commerce.

(D) Yes, under Congress's power to raise and support the armed forces.

**Correct : (B) No, because it infringes on the President's authority as Commander in Chief of the armed forces.**

### Question 91

The defendant is on trial for shoplifting. As part of his defense, the defendant calls to the stand a restaurant cashier, who will testify that the defendant is a regular customer and has corrected an under charge on her bill several times.

Is the testimony of the cashier admissible?

(A) Yes, because a defendant may offer evidence of her good character in a criminal case.

(B) Yes, because the evidence and its probative value outweigh the danger of unfair prejudice or confusion of the issues.

(C) No, because the cashier's testimony is hearsay.

(D) No, because the evidence is not a proper means for proving good character.

**Correct : (D) No, because the evidence is not a proper means for proving good character.**



### Question 92

A patient was scheduled to undergo nonemergency surgery for the removal of her appendix by her family doctor. The day of the surgery, the doctor was called out of town because of a family illness. Even though the surgery could be postponed, the doctor asked the surgeon on call, who was an expert in appendectomies, to take his place. The patient was not informed of the switch in doctors.

If the patient sues the surgeon on a battery theory, who will prevail?

- (A) The patient, as long as she establishes damages at trial.
- (B) The patient, regardless of whether she establishes damages at trial.
- (C) The surgeon, because he was at least as qualified as the doctor.
- (D) The surgeon, because the doctor requested that the surgeon take his place.

**Correct : (B) The patient, regardless of whether she establishes damages at trial.**

### Question 93

An employee worked as a third-shift supervisor at a manufacturing plant.

One of his duties was to ensure that all timekeeping records accurately reflected the time his crew actually worked.

Workers, including the employee, were then paid for whatever hours the timecard reflected. The employee was also required to assist in submitting budgets for payroll.

Needing to leave work early for a second job that he obtained, the employee had one of his trusted co-workers punch his card out at the regular time every day of the week. At the end of the week, he signed the timecard with those hours included, and was paid accordingly. He continued to do this for several weeks before being discovered.

What crime has the employee committed?

- (A) Forgery.
- (B) Embezzlement.
- (C) Larceny by trick.
- (D) False pretenses.

Correct : (D) False pretenses.

#### Question 94

One provision of a federal law provided that state governments may enact legislation regulating any form of pinball machine or video game, including location and hours of operation. In response, a Western state enacted legislation providing, among other things, that any video game sold or operated within the state use a particular LCD screen designed to minimize eyestrain.

A corporation that designs and manufactures video games for sale throughout the United States and in Europe is based in the Midwest. Approximately 10% of its gross sales are made in the Western state that has regulated the LCD screens. The corporation's machines are not manufactured using the special eye-protecting LCD screens; to install such screens in all machines manufactured would cause the price of the machines to increase by 20%, and to use the screens in machines sold only in the Western state would increase the cost of those machines by 50%. The corporation files suit in federal court to enjoin enforcement of the state video game statute.

How should the court rule?

- (A) For the state, because the challenged legislation is within the powers specifically reserved to the states by the Tenth Amendment.
- (B) For the state, because Congress has acted within its power to authorize video game regulation by the states.
- (C) For the corporation, because the challenged statute violates the Commerce Clause.
- (D) For the corporation, because the challenged statute is overbroad and exceeds the permissible bounds of regulation as authorized by Congress.

Correct : (B) For the state, because Congress has acted within its power to authorize video game regulation by the states.

### Question 95

An off-duty mall security guard was at a bar with his girlfriend when he got into an argument with another patron. The argument escalated and the guard drew out the gun he had been given at work and shot the patron in the chest, killing him. The survivors of the dead patron brought a wrongful death action against the security agency that hired the guard. At trial, they established that the guard had been required to fill out an application listing references and indicating whether he had any prior convictions for offenses involving violence or use of a weapon, which would disqualify him by law from a position as a security officer. The guard had listed as references some aunts and uncles who had not seen him in some time, and he stated that he had no prior convictions. In fact, the guard had several times been convicted of violent assaults using firearms, and records of these convictions were available in a public database. The agency, however, had not investigated the statements on his application.

Will the survivors of the patron likely prevail in the wrongful death action?

- (A) Yes, because a reasonable employer would have discovered the guard's prior convictions.
- (B) Yes, because the agency employed the guard and gave him the gun he used to kill the patron.
- (C) No, because the agency owed no duty to the patron which was violated.
- (D) No, because the guard's actions occurred while he was acting outside the scope of his employment.

**Correct : (A) Yes, because a reasonable employer would have discovered the guard's prior convictions.**

### Question 96

The plaintiff was injured when the bus in which she was riding braked too abruptly and threw her into a support stanchion, breaking her hip. She has brought an action against the bus company for damages from personal injuries on theories of respondeat superior and negligent hiring.

During the bus company's case in chief, its counsel calls the company's personnel director as a witness and asks him if the driver of the bus had been required to provide proof that he had had no convictions for crimes relating to vehicle use before being hired. The witness answers,

"It's been several years since he was hired, but my best recollection is that we did not ask for such proof." Counsel then prepares to question the witness about his statement, made at a

deposition taken 18 months before trial, that he had personally requested and received a statement from the driver before he was hired that he (the driver) had no such convictions.

May counsel for the bus company pursue this matter in this fashion?

(A) Yes, but the jury must be instructed that the evidence may be considered only for impeachment of the witness.

(B), Yes, the evidence may be admitted for both impeachment and substantive purposes.

(C) No, because it is hearsay not within any exception.

(D) No, counsel may not impeach its own witness.

**Correct : (B), Yes, the evidence may be admitted for both impeachment and substantive purposes.**

### **Question 97**

A landowner and his neighbor owned adjoining tracts of land. The boundary line between the two properties was never properly determined or clearly known. Twenty-five years ago, the landowner installed a gas-powered generator on land he thought he owned, but which was in fact owned by the neighbor. The generator was housed in a small shed and surrounded by a fence. Ten years later, the neighbor was found to be mentally incompetent. She died last year, and her executor filed suit to eject the landowner and quiet title. The statute of limitations in ejectment is 20 years.

With respect to the land on which the generator was installed, how should the court rule?

(A) The landowner cannot claim title by adverse possession because the statute of limitations was tolled by the neighbor's incompetency.

(B) The landowner cannot claim title by adverse possession because his occupation was not under claim of right.

(C) The landowner has acquired title by adverse possession.

(D) The landowner has acquired a prescriptive easement.

Correct : (C)The landowner has acquired title by adverse possession.

### Question 98

A plaintiff filed an action against a defendant in federal district court in State

A, and properly served process on the defendant at his residence in State B. The defendant timely filed an answer denying the material allegations and also moving to dismiss the complaint on the ground that the court lacked personal jurisdiction over him.

Is the defendant's objection to personal jurisdiction timely and proper?

(A) No, because the defendant filed an answer denying the material allegations.

(B) No, because any defendant that resides in and is served with process in the United States is subject to personal jurisdiction in federal district court.

(C)Yes, because the defendant objected to personal jurisdiction in his first response.

(D) Yes, because defendants in federal court may object to a court's personal jurisdiction at any time.

Correct : (C)Yes, because the defendant objected to personal jurisdiction in his first response.

### Question 99

A company manufactured parachutes that it sold exclusively to the United States Army. To meet the standards required by the Army, each parachute was subjected to a 15-point inspection by the company before it could be approved for sale. When a parachute did not pass inspection, it was stored in another section of the company's plant. At a later time, a further inspection of the defective parachute would be made to determine whether the defects could be corrected or whether the parachute should be destroyed.

One night, the plant was burglarized through no fault of the company and a large number of parachutes, including the defective ones, were stolen. The defective parachutes eventually were sold on the black market to a member of a skydiving club who made purchases for the club.

One week later, the member was using one of the parachutes when it failed to open, causing his death.

If the member's estate brings a wrongful death action against the company on a theory of strict liability, which of the following is the company's best defense?

- (A) The company acted reasonably in storing the defective parachutes.
- (B) The company did not sell or place into the stream of commerce the defective parachute.
- (C) The member did not purchase the parachute from the company.
- (D) The member was negligent when he purchased the parachute on the black market.

**Correct : (B) The company did not sell or place into the stream of commerce the defective parachute.**

### **Question 100**

A homeowner discovered that the siding on his house was defective and had allowed water to enter the structure, causing damage to the wood framing.

The homeowner tried for some time to negotiate a settlement with the corporation that the homeowner believed had manufactured the defective siding. When no settlement was forthcoming, the homeowner filed an action in federal district court against the corporation one week before the statute of limitations expired. Service of process was effected on the corporation several months later. After inspecting the home, the corporation filed and served its answer in which it denied manufacturing the siding used on the homeowner's house. Upon examining the corporation's evidence, the homeowner conceded that the siding was manufactured by another company. With leave of the court, the homeowner then filed an amended complaint substituting the actual manufacturer of the siding for the original incorrect defendant. The amended complaint was served on the manufacturer approximately seven months after the original complaint was filed and after the statute of limitations had expired. The manufacturer was unaware of the action until it was served with the amended complaint.

The manufacturer filed a motion for summary judgment on the grounds that the homeowner's claim against it is barred by the statute of limitations.

How should the court rule on the motion?

- (A) Deny the motion, because the homeowner is entitled to recover from the actual manufacturer the damages caused by the defective siding.
- (B) Deny the motion, because the amended complaint relates back to the time the original complaint was filed, which was before the statute of limitations expired.
- (C) Grant the motion, because the amended complaint was filed after the statute of limitations expired and the actual manufacturer did not receive timely notice of the action.
- (D) Grant the motion, because amendments to pleadings may not be used to substitute an entirely new defendant unrelated to the one originally named.

Correct : (C) Grant the motion, because the amended complaint was filed after the statute of limitations expired and the actual manufacturer did not receive timely notice of the action.

### Question 101

A group of employees brought a class action lawsuit in federal court against their employer, alleging employment discrimination and the violation of several labor laws. The court granted certification of the class action. Wanting to force each employee to litigate individually, the employer immediately files an appeal.

Can the court of appeals hear this appeal?

- (A) Yes, because all trial court orders are reviewable on appeal.
- (B) Yes, because an order granting certification of a class action is immediately appealable,
- (C) No, because only final orders are reviewable on appeal.
- (D) No, because the employees' legal claims are still outstanding.

Correct : (B) Yes, because an order granting certification of a class action is immediately appealable,

### Question 102

On February 3, a property owner mailed an offer to a married couple who had expressed an interest in buying his property at 337 Green Street. The offer asked for \$200,000, \*terms \$60,000

cash, with the balance secured by a first mortgage." The offer reached the couple on February 5. On February 8, the couple replied by e-mail that the offer had been received and was being considered, and added, "We would much prefer a straight cash deal. Would you consider an immediate purchase for \$180,000 cash?" On February 10, the property owner responded with a one-word e-mail:

"No." After reading the property owner's response, on February 11 the couple e-mailed: "E-mail received. We accept your offer of February 3. Tender the deed c/o our agent, The First National Bank and Trust."

The property owner now refuses to sell the property.

If the couple sues for specific performance, are they likely to succeed?

- (A) Yes, because the couple's February 8 e-mail was an inquiry.
- (B) Yes, because the couple's response of February 8 operated as an acceptance.
- (C ) No, because the couple's response of February 8 operated to terminate the property owner's offer.

(D) No, because the communications fail to establish the terms of the proposed agreement with sufficient definite-ness to be enforced through specific performance.

Correct : (A) Yes, because the couple's February 8 e-mail was an inquiry.

### Question 103

The defendant was charged with embezzling \$1 million from his employer, a bank, by transferring the funds to a secret offshore account in the bank's name. Only the defendant and the bank's vice president were authorized to draw funds from the account. The defendant testified that he had wired \$1 million to the account but had done so at the direction of the bank's vice president. The defendant stated under oath that he had no intent to embezzle bank funds. The government's cross-examination of the defendant concentrated exclusively on his relationship and conversations with the vice president, who has committed suicide.

The defense now seeks to call a second witness, who is prepared to testify that he had worked with the defendant for 10 years and that the defendant had a reputation in both the business and general communities as being a very honest person.

Is the witness's testimony admissible?

(A) Yes, because a defendant has a constitutional right to call witnesses on his own behalf.

(B) Yes, to help show that the defendant did not embezzle funds.

(C) No, because it is inadmissible character evidence.

(D) No, because you cannot bolster the credibility of your own witness unless the credibility of the witness has been attacked.

Correct : (B) Yes, to help show that the defendant did not embezzle funds.

### Question 104

An engineer licensed by the state was the principal design engineer for a wastewater treatment plant's aeration system.

Detailed recommendations for designing aeration systems for this type of plant had been published by a panel of engineers after lengthy study. The engineer fully complied with the recommendations in his design. Nevertheless, the treatment plant's aeration system suffered



a major failure, causing the release of bacteria-laden water into a river that damaged a fish hatchery run by the plaintiff.

If the plaintiff sues the engineer and prevails, what is the likely explanation?

(A) The engineer knew of a better design that he could have used that would have prevented the failure.

B) The engineer had neglected to renew his license in a timely manner, so he did some of the design work while his license was expired, in violation of a state statute.

(C) The engineer was involved in an abnormally dangerous activity.

D) The engineer was a member of the panel that developed the design standards.

**Correct : (A) The engineer knew of a better design that he could have used that would have prevented the failure.**

### **Question 105**

On January 1, a singer entered into a written contract with the owner of a nightclub to sing nightly at the nightclub for a period of two years at \$54,000 per year, commencing February 1. On January 25, the singer phoned the nightclub owner and told him that he had not finished relocating from out of state and might not be ready to start singing until February 10. Furious, the nightclub owner located a substitute act for the month of February.

Can the nightclub owner bring an immediate suit against the singer?

(A) Yes, because the singer's telephone call was a repudiation.

(B) Yes, because he changed his position in reliance on the singer's telephone call.

(C) No, because the singer's telephone call did not constitute a repudiation.

D) No, because a repudiation must be in writing to be given effect.

**Correct : (C) No, because the singer's telephone call did not constitute a repudiation.**

### **Question 106**

At the defendant's trial for grand theft auto and other offenses, the prosecution offers to introduce the testimony of a police officer. The officer will testify that he showed a photographic lineup containing the defendant's picture to a witness who had seen the defendant fleeing from the stolen vehicle at the conclusion of a high-speed chase, and the witness selected the defendant's picture. The witness has left the state and she refuses to return.

Should the court admit the evidence?

- (A) Yes, because the witness is unavailable to testify.
- (B) Yes, because it is a prior identification.
- (C) No, because it is inadmissible hearsay.
- (D) No, because the picture has not been properly authenticated

**Correct : (C) No, because it is inadmissible hearsay.**

#### **Question 107**

In anticipation of pending domestic agriculture regulations that would make growing corn less profitable, a candy company entered into a contract with a corn farmer who grew a particularly good variety of corn, whereby the candy company was given the right to purchase all high fructose corn syrup refined by the corn farmer for the next five years at a price set at 95% of the domestic market price at the time of delivery. The candy company agreed to purchase no less than 1,000 liters of corn syrup a week and to use its own trucks to transport the corn syrup to its storage facilities. At the time this contract was signed, the candy company gave written notice to the corn farmer that it intended to buy all high fructose corn syrup produced by the corn farmer until further notice. Thereafter, the candy company continued to purchase all of the corn farmer's total corn syrup production until the following year. At that time, the corn farmer, by letter, notified the candy company that it could no longer deliver corn syrup to it in accordance with their agreement because the new domestic agriculture regulations had rendered growing corn unprofitable for him.

If the candy company sues the corn farmer for breach of contract, is the farmer likely to prevail?

- (A) Yes, because corn is widely available.
- (B) Yes, because its performance was excused due to impracticability.
- (C) Yes, because the candy company was aware of the possibility of new government regulations when it entered into the agreement.
- (D) No.

**Correct : (D) No.**

### Question 108

A debtor owed a creditor \$5,000, but the debt was barred by the applicable statute of limitations. The debtor agreed to assign to the creditor a \$4,000 debt that was owed to him by a third party and was coming due in a week. The debtor called the third party to inform him of the assignment. When the debt became due, the third party refused to pay the creditor. The creditor brings an action to collect the debt against the third party.

Will the creditor likely prevail?

(A) Yes, because the creditor's agreement to accept a lesser amount than the original debt constituted consideration for the assignment.

(B) Yes, because an assignment need not be in writing to be enforceable.

(C) No, because the third party may raise the debtor's statute of limitations defense on the original debt.

(D) No, because a new promise to pay a legal obligation barred by law must be in writing

**Correct : (C) No, because the third party may raise the debtor's statute of limitations defense on the original debt.**

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### Question 109

A homeowner decided to destroy his home by fire to collect the insurance money. To work up his courage, he had several drinks at a local bar. When he returned to his block that night, he was so intoxicated that he mistakenly believed that his neighbor's house, which was 20 feet to the right of his house and looked very similar, was his own house. He started a fire under the back porch and went off a short distance to watch it burn.

Suddenly he realized that he had the wrong house. He ran back and grabbed a garden hose and was able to put out the fire with just some slight charring of the porch.

If the homeowner is charged with arson in a jurisdiction retaining the common law rules, what is the likely verdict?

- (A) Not guilty, because he did not have the requisite intent to burn the dwelling of another.
- (B) Not guilty, because he realized his mistake before any burning of the dwelling occurred.
- (C) Guilty, because he acted with malice.
- (D) Guilty, because his intent to commit arson of his own house is transferred to his neighbor's house.

**Correct : (C) Guilty, because he acted with malice.**

#### **Question 110**

Recently enacted legislation required farmers in certain counties of a western state to use drip irrigation systems instead of traditional methods in order to conserve water for agricultural and other uses. A farmer who refused to use the drip system was charged pursuant to the enforcement provisions of the legislation. A state court enjoined him from using other irrigation methods and fined him.

The farmer appealed to the state supreme court, renewing his trial court claims that the irrigation legislation violated a state constitutional provision prohibiting certain governmental intrusions into private commercial activities and that it was preempted by federal water management statutes. The state supreme court held that the state constitution prohibited the challenged legislation, and construed the relevant statutes as being within the parameters of the federal statutes, and thus preempted.

If the state petitions for certiorari to the United States Supreme Court, how should the Court rule on the petition?

- (A) Grant the petition, to determine whether the state court's interpretation of the scope of the federal statutes was incorrect.
- (B) Grant the petition, because, under principles of federalism, a state court cannot be the final arbiter of the validity of its own legislation when it is alleged to be in conflict with federal law.
- (C) Deny the petition, because there is no substantial federal question that is dispositive of the case.
- (D) Deny the petition, because a state government may not seek review of decisions of its own courts in the United States Supreme Court.

**Correct : (C) Deny the petition, because there is no substantial federal question that is dispositive of the case.**

### **Question 111**

A testator executed a will, devising his land "to my son and my daughter, share and share alike." Shortly thereafter, the daughter died intestate, leaving a child as her only heir. The next year, the testator and his son were involved in a car accident. The testator died immediately. The son died six days later, leaving a will that bequeathed his entire estate to his wife. The jurisdiction has the following statute: "If a devisee, including a devisee of a class gift, who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will or fails to survive the testator, the issue of such deceased devisee shall take the deceased's share under the will."

Who owns the land?

- (A) The daughter's child owns all of the land in fee simple.
- (B) The son's wife owns all of the land in fee simple.
- (C) The daughter's child and the son's wife each own an undivided one-half interest in the land.
- (D) The daughter's child and the son's wife each own one-half of the land.

**Correct : (C) The daughter's child and the son's wife each own an undivided one-half interest in the land.**

### **Question 112**

An aunt executed and delivered a valid warranty deed conveying her home to her niece as a gift. The niece did not record the deed. Two years later, the aunt was involved in an auto accident. She had allowed her auto insurance to lapse and the other driver's insurance company obtained a judgment against her for \$100,000, which it recorded.

A statute in the jurisdiction provides: "Any judgment from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

When the aunt died five years later, her will left all of her property to the niece.

The insurance company filed a claim in probate against the estate for \$100,000.

The niece, as executrix, seeks a determination from the probate court that the home is not part of the aunt's estate, having already been conveyed to the niece.

How should the court rule?

- (A) The home is part of the estate and must be utilized to satisfy the \$100,000 claim.
- (B) The home is part of the estate, but is not subject to the \$100,000 claim.
- (C) The home is not part of the estate and thus is not subject to the claim.
- D) The home is not part of the estate, but is nevertheless subject to a \$100,000 lien in favor of the insurance company.

Correct : (C) The home is not part of the estate and thus is not subject to the claim.

### Question 113

At the trial of the plaintiff's personal injury action against the defendant, a pedestrian, who was near the accident scene but did not see what happened, testifies that an eyewitness to the accident shouted, "Good Lord! The green car just ran through a red light and hit the red car" Previous evidence had established that the defendant drove a green car and the plaintiff a red one. The defendant offers to call to the stand the brother of the eyewitness, who will testify that he spoke with the eyewitness the day after the accident, and he said that the light was green when the green car drove through the intersection. The eyewitness had moved to a foreign country prior to trial.

Should this evidence be admitted over the plaintiff's objection?

- (A) No, because the eyewitness is not available to explain or deny the contradiction.
- (B) No, because it is hearsay not within any exception.
- (C) Yes, for the purpose of impeachment and as substantive evidence.
- (D) Yes, for the purpose of impeachment only.

Correct : (D) Yes, for the purpose of impeachment only.

### Question 114

An owner purchased a home in a new subdivision, paying 20% of the purchase price as a down payment and financing the rest of her purchase through a mortgage with a lender. The owner lived in her home for three years and always made her mortgage payments promptly. She then decided to put her house on the market. While the house was being marketed, the owner continued to make all mortgage payments promptly. She sold the house, who

purchased the property subject to the mortgage. After the buyer took possession, the lender received no further mortgage payments from either the owner or the buyer.

In most states, which of the following best describes the remedy or remedies available to the lender?

- (A) The lender may foreclose on the land, but may not sue either the owner or the buyer on the underlying debt.
- (B) The lender may foreclose on the land or it may sue the owner on the underlying debt.
- (C) The lender may foreclose on the land or it may sue the buyer on the underlying debt.
- (D) The lender may foreclose on the land or it may elect to sue either the owner or the buyer on the underlying debt.

**Correct : (B) The lender may foreclose on the land or it may sue the owner on the underlying debt.**

### **Question 115**

A resort maintained an outside bar adjacent to its pool. When the bar was closed, it was secured by a metal gate that reached up towards the roof of the bar, but which left about a three-foot gap between the top of the gate and the roof. The resort had installed motion detectors inside the bar linked to an alarm system because of several previous thefts of liquor by persons climbing over the gate. Late one night, an intoxicated guest of the resort who wanted to keep partying after hours began to climb over the gate to get into the bar through the gap at the top, intending to take some bottles of wine. The brackets attaching the gate to the walls, which had been gradually deteriorating and pulling away from the walls for some time, suddenly gave way as he reached the top. The gate collapsed, causing him to fall back onto the concrete patio. He sustained a severe concussion and other serious injuries. The resort is located in a jurisdiction that applies the traditional liability rules for landowners and possessors of land.

If the guest sues the resort for his injuries, is he likely to prevail?

- (A) No, because the guest did not have invitee status when he was climbing over the gate.
- (B) No, because the guest intended to steal alcohol belonging to the resort.
- (C) Yes, because the resort operators were aware that persons had climbed over the gate in the past.
- (D) Yes, because the brackets attaching the gate to the walls were in a weakened condition that could have been detected by a routine inspection.

Correct : (A) No, because the guest did not have invitee status when he was climbing over the gate.

### Question 116

A state prohibited the sale of heated grips for motorcycles within its borders to discourage motorcyclists from riding in the dangerously cold condition. The owner of the cycle shop that sells heated grips within the state that are purchased from an out-of-state manufacturer seeks an injunction in state court prohibiting the state from enforcing its statute. The owner claims that the statute unreasonably interferes with interstate commerce.

If the state court rules that the relevant statute is valid and denies injunctive relief, which of the following is the proper next step for the owner to take to obtain review of the state court decision?

- (A) Appeal to the state appellate courts.
- (B) Petition for removal to the federal district court within the state.
- (C) Appeal to the federal circuit court of appeals with jurisdiction over cases from the state.
- (D) Petition for certiorari to the Supreme Court of the United States.

Correct : (A) Appeal to the state appellate courts.

### Question 117

The owner of a chain of natural food stores located within a particular state contracted with landowners and construction firms in a neighboring state in preparation for the opening of several new stores in the neighboring state. The chain's products are stored and sold in bulk within the stores. Consumers remove the amount of product they want from bins within the stores, place the product in plastic bags, and then present their bags at a checkout counter. Statutes in the neighboring state in which the chain owner would like to open its new stores prohibit the sale of food in bulk due to the health hazards associated with bulk storage and contamination from consumer access to food sold from bins.

The state has prosecuted other grocers' violations of the statute in the past.

The chain store owner seeks an injunction against state officials in the federal district court with jurisdiction over the matter. The state officials move to dismiss the suit on the ground that the corporation lacked standing to sue.

What would be the probable outcome?

- (A) The suit would be dismissed, because the owner has suffered no injury.



B The suit would be dismissed, because the challenged state legislation has no effect on civil liberties.

C) The federal court would hear the suit, because a federal question-interstate commerce—is involved.

(D) The federal court would hear the suit, because the owner has undertaken substantial steps to open outlets in the state.

**Correct : (D) The federal court would hear the suit, because the owner has undertaken substantial steps to open outlets in the state.**

#### Question 118

A masked gunman held up a convenience store. Due to the poor quality of the surveillance recording, it was very difficult to identify the masked gunman.

Nonetheless, the defendant was arrested and charged with the robbery. At the preliminary hearing, the magistrate, on seeing the poor quality of the tape, determined that there was not probable cause to prosecute the defendant. After that, the county prosecutor presented the case to a grand jury, but the grand jury refused to indict the defendant. After waiting a couple of months, the prosecutor presented the case to a different grand jury. The grand jury indicted the defendant and the case went to trial. At trial, the jury was unable to reach a verdict. After this trial, the county prosecutor again tried the case before a jury; in this instance, the jury acquitted the defendant of all charges. At a third trial, the county prosecutor was finally successful in having the defendant convicted. The defendant appeals on double jeopardy grounds.

Which of the following is the strongest reason for overturning the conviction on appeal?

(A) The magistrate determined that there was insufficient evidence to prosecute.

B) The first grand jury refused to indict the defendant.

(C) The first trial had ended in a hung jury.

(D) The second trial had ended in an acquittal.

**Correct : (D) The second trial had ended in an acquittal.**

### Question 119

A factory foreman was suspected of having murdered, for pay, the rival of a local union leader. After the police arrested the foreman at his home and he was taken to the police station, the officers who remained at the house asked the foreman's aunt, who was visiting him for the week, if she knew where any firearms could be found in the house. She went into the bedroom and returned with a pistol. Ballistics experts established that the pistol had been used to murder the victim, and the foreman's fingerprints were all over the pistol. At a subsequent grand jury proceeding, the district attorney introduced the pistol and the related ballistics and fingerprint evidence, and the grand jury indicted the foreman.

If the foreman seeks to quash the indictment, will he prevail?

- (A) No, because the evidence was offered before a grand jury, not a court.
- (B) No, because the pistol was obtained by a private citizen, not the police.
- (C) Yes, because the police did not have probable cause to seize the pistol.
- (D) Yes, because the foreman's aunt was acting as an agent of the police when she obtained the pistol.

Correct : (A) No, because the evidence was offered before a grand jury, not a court.

### Question 120

The defendant is charged with arson for hire in the burning down of an old office building. The prosecution offers to introduce the testimony of a neighbor of the defendant, who will state that the day after the fire, she went to the defendant's apartment. The defendant had burnt a roast in her oven, and the apartment was full of smoke. The neighbor, coughing and choking, said, "What did you do, burn down that old office building again?" The defendant made no reply.

Should this evidence be admitted over the defendant's objection?

- (A) No, because it is hearsay not within any exception.
- (B) No, if the court determines that a reasonable person would not deny such a statement under the circumstances.
- (C) Yes, a party-opponent's silence is admissible.
- (D) Yes, because it is a declaration against penal interest.

Correct : (B) No, if the court determines that a reasonable person would not deny such a statement under the circumstances.

### Question 121

The defendant, a competitive athlete, was charged with the murder of another athlete against whom she was scheduled to compete in two weeks. Autopsy results revealed that the victim was poisoned with a lethal mixture containing a variety of substances. During the prosecution's case in chief, evidence was introduced establishing that a bottle of a particular drug, which was among the substances listed in the autopsy report, was discovered in the defendant's medicine cabinet when she was arrested. On direct examination by her own attorney, the defendant states that when she was arrested and the bottle of the drug was found, she told the officers, "My doctor prescribed that for me to cope with the excruciating back pain from which I suffer."

If the prosecution moves to strike this testimony, how should the court rule?

- (A) For the defendant, because it is a prior consistent statement.
- (B) For the defendant, because it tends to explain prosecution evidence.
- (C) For the prosecution, because it is hearsay not within an exception.
- (D) For the prosecution, because it is a self-serving statement.

**Correct : (C) For the prosecution, because it is hearsay not within an exception.**

### Question 122

An applesauce bottler wishing to redesign his factory entered into a written contract with a contractor. The contract provided that the contractor would design and install a new glass bottle system, replacing the plastic bottle system, by March 10, and the bottler would pay the contractor a total of \$100,000. The contract provided for a first payment of \$50,000 on completion of the design plans and a second payment of the balance after installation and successful testing of the system. The contractor presented the bottler with the finished design plan in January, and the bottler paid him \$50,000. The contractor ran into difficulty procuring the parts called for by his design, and this delayed the installation. The installation and testing were completed on March 25.

Disappointed by the delay, the bottler now refuses to pay the contractor anything further. If the contractor sues the bottler, which party is likely to prevail?

A)The bottler, because installation by March 10 was an express condition of the agreement.

(B)The bottler, because the doctrine of substantial performance does not apply to commereial contracts.

(C)The contractor, because the contract did not provide that time was of the essence.

( D ) The contractor, because the agreement did not contain a liquidated damage clause for delay in comple-tion.

**Correct : (C)The contractor, because the contract did not provide that time was of the essence.**

### Question 123

While walking down a city street, the plaintiff was seriously injured when a rotten limb fell off of a tree and hit him on the head. The tree was located on a vacant lot next to the defendant's house. The lot appeared to be a part of the defendant's property. The plaintiff sued the defendant to recover damages for his injuries, alleging that the defendant was negligent with respect to the care of the tree. The defendant's defense was that he did not own the lot or the tree, and that both the lot and the tree were the property of the city. At trial, the plaintiff calls a witness to testify that shortly after the plaintiff was taken to the hospital, he observed the defendant cutting down the rotten limbs on a number of trees on the vacant lot.

Should the witness's testimony be admitted?

(A)Yes, to help prove that the defendant was negligent in not removing the rotten limbs sooner

B)Yes, to help prove that the defendant owned the lot.

(C) No, because subsequent repairs are encouraged for reasons of public safety.

( D ) No, because the evidence does not prove that the defendant owned the lot.

**Correct : B)Yes, to help prove that the defendant owned the lot.**

### Question 124

A daughter owed her father \$1,250. The father's best friend was having financial difficulties and the father wanted to help him, so the father told his daughter to pay the \$1,250 to his friend when the debt came due in three days. Immediately after directing his daughter to pay his friend, the father called his friend and told him he should expect to get \$1,250 from his daughter in three days. When the debt came due, the daughter tendered the \$1,250 to her

father instead of to his friend, and the father accepted the money. The friend sues the daughter for \$1,250.

Which of the following is the most likely result?

(A) The friend will recover, because the father effectively assigned his right to collect the \$1,250 to his friend.

(B) The friend will not recover, because the father's acceptance of \$1,250 from his daughter revoked his gift to his friend.

(C) The friend will not recover, because the daughter was never indebted to him and cannot be forced to pay him.

(D) The friend will not recover, because the daughter's tender of \$1,250 to her father, and her father's acceptance of the money, constituted a novation.

**Correct : (B) The friend will not recover, because the father's acceptance of \$1,250 from his daughter revoked his gift to his friend.**

### Question 125

A homeowner wanted to have her driveway resurfaced. She called seven resurfacing companies and received one bid for \$3,000 and six other bids ranging from \$5,200 to \$6,000. The homeowner entered into a contract with the low bidder to have the driveway resurfaced. Shortly before the low bidder was scheduled to begin work, he called the homeowner and told her that his secretary made a mistake in adding figures and he could not possibly do the work for less than \$5,400.

Can the homeowner enforce the contract for \$3,000?

(A) No, because the homeowner had reason to know of the mistake.

(B) No, because the homeowner has not relied on the bid to her detriment.

(C) Yes, because there is no relief for an error in judgment.

(D) Yes, because the low bidder assumed the risk of bid computation errors.

**Correct : (A) No, because the homeowner had reason to know of the mistake.**

### Question 126

The defendant bought a new bow and arrow set at a local sporting goods store and went to a public park to try it out, even though he knew that practicing his marksmanship at the park was a violation of park regulations and constituted a misdemeanor. Right at the moment that the defendant fired his first arrow, a park ranger yelled at him from a distance to

"stop shooting, stupid." Perturbed that he was caught so early, the defendant decided to fire an arrow a couple of feet above the ranger's head. Unfortunately, the defendant's aim was slightly off, and the arrow struck the ranger right between the eyes, killing him instantly.

The defendant is charged with homicide for the park ranger's death. At trial, the jury was given instructions on common law murder and manslaughter.

The crimes below are listed in descending order of seriousness.

If the jury believes the defendant's testimony that he did not intend to hit the park ranger with the arrow, what is the most serious charge for which the jury may find him guilty?

- (A) Murder.
- (B) Voluntary manslaughter.
- (C) Involuntary manslaughter based on recklessness.
- (D) Misdemeanor manslaughter.

Correct : (A) Murder.

### Question 127

A car owner sued a crane operator for negligence in a federal court because the crane operator backed over and crushed her car. During jury selection, the car owner's lawyer wished to exercise one of her peremptory challenges to excuse some potential jurors.

Which of the following reasons would provide the best grounds for the crane operator's lawyer to object to the peremptory challenge?

- (A) Excusing the only potential male juror because he is a crane operator, just like the defendant.
- (B) Excusing a second African-American juror.
- ( C ) Excusing the juror with multiple tattoos.
- D) Excusing the juror who has been unemployed for two years.

Correct : (B) Excusing a second African-American juror.

### Question 128

During the investigation of a large gambling operation, the police obtained a warrant to search a bookie's home based on the affidavit of an informant. The informant was a rival bookie who had never acted as an informant before, and much of the substance of the rival's information came from third-party sources. During the search, the police seized a variety of gambling evidence, including betting slips and a check from the defendant. The bookie and the defendant were arrested for violating the state's gambling laws, and separate trials were ordered. At a suppression hearing for the bookie, the court held that the search warrant for the bookie's home was not supported by probable cause and suppressed introduction of the evidence seized. The defendant moved to suppress introduction of the betting slips and the check on the same basis.

If the court agrees that the search warrant of the bookie's home was not supported by probable cause, should the defendant's motion be granted?

- (A) Yes, because the rival bookie was not a reliable informant.
- (B) YES, because the evidence is the fruit of an unlawful search.
- (C) No, because the defendant's reasonable expectation of privacy was not constitutionally violated.
- ( D) No, because the police acted reasonably in relying on the issuance of the warrant.

**Correct : (C) No, because the defendant's reasonable expectation of privacy was not constitutionally violated.**

### Question 129

A tenant entered into a written five-year lease to rent an office from a landlord for \$6,000 per year beginning October 1. The lease required that rent in the amount of \$500 be paid on or before the first of each month. Two months before the five-year term was up, the tenant received a new lease identical to the one he had already signed, except that the lease term began on the upcoming October 1 and the stated amount of rent per month was \$600. The tenant returned the lease to the landlord unsigned, with a letter stating that he did not intend to renew the lease and would be moving out on September 30. The tenant did not move out on September 30. On October 1, the landlord received a check for \$500 from the tenant. The notation on the check indicated that it was for the October rent. The landlord deposited the check in her account. She then sent a letter to the tenant stating that he was \$100 in arrears

in his rent. The tenant did not move out of the office during October, and the landlord did nothing to remove him.

Most courts would hold that the tenant has what type of tenancy?

- (A) A month-to-month tenancy at a rent of \$500.
- (B) A month-to-month tenancy at a rent of \$600.
- (C) A year-to-year tenancy at \$500 per month.
- (D) A year-to-year tenancy at \$600 per month.

Correct : (D) A year-to-year tenancy at \$600 per month.

### Question 130

Federal legislation provided that the marketing and sale of oranges was subject to the control of a local marketing authority. The marketing authority determined what quantity of oranges could be sold by each grower, the price, and the location of sale. These decisions were made by a council of local growers whose members were selected by the federal Department of Agriculture. The applicable federal legislation provided, in part, that when any grower subject to a marketing order challenged the propriety of that order, the council of the marketing authority must submit the controversy to the United States district court with geographical jurisdiction for a recommendation as to whether the order should be confirmed, modified, or rescinded. After the hearing in district court, the council must revote on the challenged marketing order.

A citrus grower brings suit in United States district court, seeking on constitutional grounds to enjoin enforcement of the federal legislation providing for the marketing order that the council issued with regard to his orange crop.

If the court rules on the constitutional issue, is the grower likely to prevail?

- (A) No, because the federal government may properly regulate items in interstate commerce.
- (B) No, because the marketing order system is a necessary and proper means of effectuating the commerce power.



(C) Yes, because the federal legislation permits the federal district court to give an advisory opinion.

(D) Yes, because the federal legislation deprives the grower of his property without due process of law.

Correct : (C) Yes, because the federal legislation permits the federal district court to give an advisory opinion.

### Question 131

A merchant owned a skate rental business that she operated out of a specially equipped van. She would drive to various parks and public beaches within her home state and rent roller skates, related safety equipment and lightweight stereo/earphone sets to passersby on an hourly basis. She also sold skates and Skating equipment. About 50% of the merchant's time is spent in a single city, and she earns about 70% of her gross rental and sale income at that city's beach areas. After receiving numerous complaints from beachgoers about the sidewalks congested with roller skaters, the city council passed an ordinance prohibiting roller skating on public property between the hours of 7 a.m. and 9 p.m.

If the merchant seeks to enjoin enforcement of the ordinance in federal district court on the basis that it is unconstitutional, what should the court do?

(A) Reach the merits of the merchant's challenge to the ordinance, because it interferes with her right to free association.

(B) Reach the merits of the merchant's challenge, because enforcement of the ordinance will harm her business and the rights of the public are linked to her rights.

(C) Decline to hear the case, because the ordinance does not prohibit the rental of skating equipment.

D) Decline to hear the case, because skating is not prohibited on private property, nor on public property from 9 p.m. to 7 a.m.

**Correct : (B) Reach the merits of the merchant's challenge, because enforcement of the ordinance will harm her business and the rights of the public are linked to her rights.**

### **Question 132**

A landowner leased a store to a grocer for a term of five years at \$10,000 per year, payable in monthly installments. The lease permitted assignments and subleases.

After occupying the premises for two years and paying the rent, the grocer transferred the remaining three years of the term to a florist. The agreement between the parties did not have a specific provision regarding payment of rent, instead just referring to the original lease provisions.

The florist occupied the premises for two years but paid rent only for the first year.

With one year left on the original lease, the florist transferred her leasehold interest to a barber. The barber occupied the premises for one year but did not pay any rent. The landowner brought an appropriate action against the grocer, the florist, and the barber to recover the rent.

Against whom may the landowner recover?

A) The grocer and the florist jointly and severally for \$10,000, and the grocer individually for \$10,000.

(B) The grocer and the florist jointly and severally for \$10,000, and the grocer and the barber jointly and severally for \$10,000.

(C) The grocer and the florist jointly and severally for \$10,000, and the grocer, the florist, and the barber jointly and severally for \$10,000.

(D) The grocer and the florist jointly and severally for \$20,000.

**Correct : (B) The grocer and the florist jointly and severally for \$10,000, and the grocer and the barber jointly and severally for \$10,000.**

### **Question 133**

A 12-year-old boy took his radio-controlled model airplane to the park to show his friends the stunts he could do with it. The weather that day was rainy, and the instruction manual for the plane warned against flying it in the rain, but the boy was able to get the plane off of the ground. However, because of the rain, he had trouble controlling it with the trans-mitter. He

tried to have the plane make a loop, but it veered off course and crashed through the fabric roof of a convertible, which was parked nearby on the street.

The car owner sued the boy for damages through his guardian and the jury found in favor of the car owner.

What is the likely explanation for the jury's decision?

(A) A child of the boy's age, education, intelligence, and experience would not have flown the airplane that day.

(B) A reasonable person would not have flown the airplane that day.

(C) The airplane instruction manual warned against flying in the rain.

(D) The boy committed a trespass to chattel with his airplane.

**Correct : (A) A child of the boy's age, education, intelligence, and experience would not have flown the airplane that day.**

#### **Question 134**

A kidnapper and his cohort hatched a scheme to kidnap the son of a wealthy man and hold him for ransom. After conducting a surveillance of the wealthy man's home, they decided that they would have to have inside help to disable the alarm at the home. They agreed that the kidnapper would contact the man's butler, who they learned was heavily in debt and frequented a local racetrack during his time off. The butler would be offered money to disconnect the alarm on the night of the planned kidnapping. Shortly before the kidnapper was to go to the track to make contact with the butler, the cohort had a change of heart about the scheme and contacted the butler. He warned the butler not to have anything to do with the kidnapper. The butler met with the kidnapper anyway and pretended to go along with his proposal, accepting the down payment that the kidnapper offered. After meeting with him, the butler contacted the authorities.

The kidnapper and cohort are charged with conspiracy in a jurisdiction that follows the common law rule for conspiracy.

What is the most likely result?

(A) Both the kidnapper and cohort are guilty of conspiracy because the cohort agreed with the kidnapper to commit the offense.

(B) The cohort is not guilty of conspiracy because he withdrew from the conspiracy by contacting the butler.

(C) The cohort is not guilty of conspiracy because he withdrew from the conspiracy by contacting the butler, and the kidnapper is not guilty of conspiracy with the butler because one cannot be a conspirator by oneself.

(D) The kidnapper is guilty of conspiracy with the butler.

**Correct : (A) Both the kidnapper and cohort are guilty of conspiracy because the cohort agreed with the kidnapper to commit the offense.**

### **Question 135**

A mob enforcer shot a pawnshop owner in the kneecap, intending to put him in the hospital because he was not paying his protection fees to the mob. However, the pawnshop owner hit his head on the edge of the counter when he fell. He suffered a blood clot and died as a result.

A statute in the jurisdiction provides that a criminal homicide constitutes murder in the first degree when it is committed by an intentional and premeditated killing, murder in the second degree when it is committed while the defendant is engaged in the commission of a dangerous felony, and murder in the third degree for all other types of murder at common law. Another statute provides that manslaughter is a killing in the heat of passion on adequate legal provocation or a killing caused by criminal negligence.

The crimes below are listed in descending order of seriousness.

If the enforcer is charged with the pawnshop owner's killing, what is the most serious crime for which he can be convicted?

(A) - Murder in the first degree, because the killing was the result of intentional and premeditated conduct.

(B) Murder in the second degree, because the killing occurred during the commission of the felony of assault with a deadly weapon.

(C) Murder in the third degree, because the enforcer had the intent to commit serious bodily harm.

(D) Manslaughter, because the enforcer acted with criminal negligence.

**Correct : (C) Murder in the third degree, because the enforcer had the intent to commit serious bodily harm.**

### Question 136

A homeowner wanted to have his house repainted. He called a number of house painters and received bids ranging from \$8,500 to \$9,000. A local painter submitted a bid to do the work for \$8,000, and the homeowner entered into a contract with him to have the house repainted. Shortly before the painter was scheduled to begin work, he discovered that he could not make a profit if he were paid less than \$8,600. He called the homeowner with this information. The homeowner agreed to pay him the extra \$600. After the painter finished the job, the homeowner handed him \$8,000 in cash and told him that was all he was going to pay him because he had no right to raise the price.

If the painter sues the homeowner for the additional \$600, who will prevail?

(A) The homeowner, because the promise to pay the additional money was not in writing.

(B) The homeowner, because the painter was already under a preexisting duty to paint the house for \$8,000.

(C) The painter, because he relied to his detriment on the homeowner's promise to pay the additional money.

(D) The painter, because the promise to pay the additional money was the settlement of a good faith dispute.

**Correct : (B) The homeowner, because the painter was already under a preexisting duty to paint the house for \$8,000.**

### Question 137

A balloonist sued the manufacturer of deflation panels for hot air balloons after one of the panels failed while his balloon was descending, causing the balloon to crash and the balloonist to suffer severe injuries. At trial, the balloonist calls as a witness a structural engineer, who testifies that, common to industry practice, her opinion is based on several reports done by an independent laboratory on the burst strength and material composition of

the deflation panel closures. The balloonist's attorney then asks the engineer whether, in her opinion, the closures caused the deflation panel to give way. The manufacturer objects.

Should the court admit this testimony?

- (A) No, because the engineer did not perform the laboratory tests herself.
- (B) No, because the laboratory reports are hearsay not within an exception.
- (C) Yes, but the balloonist must offer into evidence the reports to which the engineer referred, so that the manufacturer may cross-examine as to them.
- (D) Yes, because structural engineers reasonably rely on such reports in the course of their profession.

**Correct : (D) Yes, because structural engineers reasonably rely on such reports in the course of their profession.**

### **Question 138**

The plaintiff sued the defendant, the owner of an art gallery, alleging that the defendant charged him a price higher than what was originally quoted to him for the purchase of a rare sculpture. During the plaintiff's testimony, he stated that he purchased the sculpture from the gallery on a particular date and then realized two days later that his credit card was charged in an amount over that which he was originally quoted by the defendant. During its defense, the defendant presented the testimony of the art gallery's clerk, who testifies that she remembers the plaintiff coming into the gallery and purchasing the sculpture a week before the date testified to by him, because he signed the purchase order with such an unusual signature.

If the plaintiff objects to this testimony, should the trial court admit it?

- (A) No, because the content of the purchase order is hearsay not within any exception.
- (B) No, because the date of purchase is a collateral matter.
- (C) Yes, because the purchase order is a past recollection recorded.

**Correct : (B) No, because the date of purchase is a collateral matter.**

### Question 139

A landowner conveyed her 20-acre tract of land to a developer and his heirs,

"provided that no multi-family dwellings may be built on the property for a period of 25 years. If such construction is undertaken, the grantor may terminate the conveyance and retake the land." Two years later the landowner died, leaving her nephew as the sole beneficiary under her will. Shortly thereafter, the nephew discovered that the developer was constructing multi-family dwellings on the land. He promptly brought an ejectment action against the developer. The jurisdiction in which the land is located has a statute providing that all future interests are freely devisable and alienable inter vivos. The common law Rule Against Perpetuities is unmodified by statute.

To whom should the court rule that ownership of the land belongs?

(A) The nephew, because the developer began constructing multi-family dwellings on the land.

(B) The nephew, because the developer began constructing multi-family dwellings on the land and the nephew brought an action for ejectment.

(C) The developer, because the Rule Against Perpetuities applies.

(D) The developer, because the restriction in the conveyance is an invalid restraint on alienation.

**Correct :** (B) The nephew, because the developer began constructing multi-family dwellings on the land and the nephew brought an action for ejectment.

### Question 140

At the defendant's trial for assault with a deadly weapon, the defendant's counsel calls a witness to the stand and asks him,

"What is the defendant's reputation for honesty and veracity in your community?" The prosecutor objects before the witness can answer.

Should the court admit the testimony?

(A) Yes, because reputation evidence is admissible under these circumstances to establish a character trait.

(B) Yes, because the prosecution put the defendant's character at issue when they filed charges against him.

(C) No, because the evidence offered is irrelevant to any material issue in the case.

(D) No, because the evidence offered is inadmissible hearsay.

**Correct : (C) No, because the evidence offered is irrelevant to any material issue in the case.**

#### **Question 141**

At a federal trial for breach of contract, the plaintiff presented evidence of both contractual and consequential damages amounting to \$115,000. The jury, however, awarded the plaintiff \$250,000 in damages.

The defendant filed a motion for a new trial, arguing that the damage award was clearly excessive.

If the court agrees that the award is excessive, the court may:

(A) Deny the motion for a new trial but lower the damage award and require the plaintiff to accept the remittitur.

(B) Deny the motion for a new trial contingent on the plaintiff accepting a remittitur.

(C) Grant the motion for a new trial only because the jury award may not be changed.

(D) Grant the motion for a new trial only because remittitur is not allowed in federal court.

**Correct : (B) Deny the motion for a new trial contingent on the plaintiff accepting a remittitur.**

#### **Question 142**

On March 1, the purchasing agent for a suburban school district sent a "quotation request form" to a supplier of school furniture requesting an offer for the sale of 20 student chairs. The form was on school district letterhead and signed by the purchasing agent. It specified that the offer must be held open for four months and that the price term must be no higher



than \$30 per chair. The supplier telephoned the purchasing agent and told him that he would sell the school district 20 chairs at \$20 per chair. He also agreed to hold the offer open for four months. The purchasing agent thanked the supplier for the offer and indicated that he would get back to him within that time period. On May 1, before the purchasing agent had responded to the supplier's offer or taken any action in reliance on it, the supplier e-mailed the purchasing agent stating that demand for student chairs had been higher than expected and that the offer was terminated.

On May 2, the purchasing agent called the supplier, told him that the school district was treating his offer as still being open, and accepted it on its terms.

Did the purchasing agent's call on May 2 create a legally enforceable contract with the supplier?

(A) Yes, because the contract is for the sale of goods valued at less than \$500.

(B) Yes, because the school district accepted the offer within three months.

(C) No, because the supplier did not sign the form specifying the length of time that the offer would be held open.

(D) No, because a firm offer under the UCC is not effective if its term is more than three months.

**Correct : (C) No, because the supplier did not sign the form specifying the length of time that the offer would be held open.**

### **Question 143**

An undercover agent for a federal drug enforcement agency informed a state law enforcement agency that a large amount of cocaine was being mailed to a resident of that state. The cocaine would be mailed in a large box and wrapped distinctively. The agent further informed the agency that the resident was not the purchaser of the cocaine, but was only acting as an inter-mediary. The cocaine would be picked up within a few days by the buyer, who was from a neighboring state. The agency immediately placed the resident's house under surveillance. In a few days, a large box wrapped as the undercover agent described was delivered by the post office. The agency did not make an arrest, but kept the house under surveillance. Two days later, a man driving a car with plates from the

neighboring state arrived at the house. He entered the house and came back out shortly thereafter carrying what appeared to be the same box. The suspect placed the box in the trunk of his car and drove off. Two blocks later, the car was stopped, the suspect arrested, and officers for the agency searched the entire vehicle, acting without a warrant. The box in the trunk was opened and cocaine was found. The suspect was charged with possession of cocaine. At a pretrial hearing, he moved to suppress the cocaine.

How should the court rule on the motion?

(A) Deny it, because the officers had probable cause to search the trunk.

(B) Deny it, because the search was incident to a valid arrest.

(C) Grant it, because the officers should have obtained a warrant before opening the package.

(D) Grant it, because the officers had no way of knowing that it was the same package that was delivered to the home.

**Correct : (A) Deny it, because the officers had probable cause to search the trunk.**

#### **Question 144**

A police officer witnessed a bar patron exit a bar with an open bottle in his hand, get into a car, and turn the wrong way from the bar's parking lot onto a one-way street. The officer immediately turned on his siren and pursued the car for a couple of miles. During that pursuit, the car repeatedly weaved in and out of its lane of traffic. Eventually, the car pulled over, and the officer placed the driver under arrest for drunk driving. After handcuffing the driver and placing him in the back seat of his squad car, the officer looked under a blanket lying on the floor of the car's passenger compartment. Under the blanket, he found an open bottle of beer. Before his trial on charges of drunk driving and driving with an open container of alcohol in the car, the defendant moves to suppress from evidence the open bottle of beer.

Should the motion be granted?

(A) No, because incident to the arrest of the driver of an automobile, the police may search the passenger compartment of the automobile.

(B) No, because the officer had reason to believe that the car contained evidence of the crime for which the defendant was arrested.

(C) Yes, because the officer did not have probable cause to look under the blanket.

(D) Yes, because, after arresting the driver and placing him in the squad car, the car should have been impounded and a warrant obtained before the search.

**Correct : (B) No, because the officer had reason to believe that the car contained evidence of the crime for which the defendant was arrested.**

### **Question 145**

A seller, who owned a home with a very leaky roof, was told that she would need to replace the roof before she could sell the home. Instead, the seller painted the shingles that could be seen from the street to make them appear new, and covered the watermarks on the interior. A buyer entered into a written contract with the seller that included a clause making the buyer's obligation to tender the purchase price at the closing date "subject to approval by an inspector of the buyer's choosing." Prior to closing, the buyer inspected the property with his friend, a local tradesman with a good reputation. Neither the buyer nor the friend climbed onto the roof, but the friend mentioned that the roof looked fairly new. The friend also looked for signs of water damage to the ceilings and walls on the interior, but found none. At closing, the seller conveyed the property to the buyer by warranty deed. Three months after the buyer moved into the home, a major rainstorm occurred. The roof leaked like a sieve and much of the buyer's personal property was damaged. The buyer replaced the roof at a cost of \$8,000. The buyer's homeowner's insurance covered the cost of the water damage to his floors and personal property, but would not reimburse his expenses incurred in installing the new roof, which the insurance carrier deemed

"normal maintenance and repair."

If the buyer sues the seller for the \$8,000 cost of installing a new roof, who is likely to prevail?

(A) The buyer, because the seller breached an implied warranty that the house was constructed in a reasonably workmanlike manner.

(B) The buyer, because the seller concealed the defects in the roof from the buyer.

(C) The seller, because the buyer had an ample opportunity to inspect the property before tendering the purchase price, and the seller had no duty to disclose defects to him.

(D) The seller, because the property conveyed to the buyer was not a new house constructed by the seller.

Correct : (B)The buyer, because the seller concealed the defects in the roof from the buyer.

#### Question 146

A city ordinance that gave churches veto power over the grant of liquor licenses for businesses within a quarter mile of the church was struck down by the state's supreme court. In its decision, the court noted that even if the ordinance were not a violation of the federal Establishment Clause, it clearly violated a provision in the state constitution requiring the separation of church and state because it delegated governmental authority to the churches.

The supreme court opinion also harshly criticized the city council for passing an ordinance that was clearly a violation of state law.

To comply with the court's decision and avoid future criticism, the city council adopted an ordinance prohibiting any cleric from sitting on any public board within the city. A cleric who is currently on a school board within the city brings a suit in federal district court to have the ordinance declared unconstitutional.

How should the court rule?

(A) Uphold the ordinance, because it has a secular purpose, its primary effect neither advances nor inhibits religion, and it does not promote excessive entanglement between government and religion.

(B) Uphold the ordinance, because the previous court decision was based on adequate and independent state grounds.

( C ) Hold the ordinance unconstitutional, because its passage violated the cleric's right to procedural due process.

( D ) Hold the ordinance unconstitutional, because it violates the Free Exercise Clause.

Correct : ( D ) Hold the ordinance unconstitutional, because it violates the Free Exercise Clause.

#### Question 147

On March 1, a builder entered into a contract with a buyer to build a home on land the builder owned and then transfer it to the buyer for \$350,000. The builder and the buyer agreed that construction would be completed on August 1, and that escrow would close on the transaction on August

15. The contract also contained a time-is-of-the-essence clause at the insistence of the buyer, whose lease on his current home was set to expire on September 1.

State law required that a home builder have an architect's certificate of completion before any residence could be conveyed to a purchaser. The builder employed his own architect to design and oversee construction of his custom homes. Construction of the buyer's house was not completed until August 5. On August 8, the builder discovered that his architect had left the country without preparing the certificate of completion for the home. The builder was not able to obtain the certificate until August 20. When the builder attempted to place the deed and certificate of completion into escrow, he learned that the buyer had canceled escrow on August 16 and refused to proceed with the purchase.

The builder sold the home nine months later for its then-reasonable market value of \$330,000. He brings an action for damages against the buyer, seeking \$20,000, the difference between the contract price and the amount he ultimately received for sale of the house.

Will the builder recover?

(A) No, because the duty to certify completion of the home cannot be delegated to an architect unfamiliar with the construction.

(B) No, because he was late in delivering the deed and certificate of completion into escrow.

(C) Yes, because the short time the builder was late in delivering the deed was not a material breach of the contract.

(D) Yes, because the buyer suffered no damages as a result of the delay.

**Correct : (B) No, because he was late in delivering the deed and certificate of completion into escrow.**

### **Question 148**

A builder contracted with a landowner to construct a house on the landowner's property for a contract price of \$100,000.

Before the builder completed his performance, the landowner informed the builder that he (the landowner) no longer wanted the house, and that he had no intention of paying the builder. At that time, the builder had already incurred costs of part performance of \$30,000 and would have to spend an additional \$60,000 to finish the job.

If the builder sues the landowner for breach of contract, what is the builder's most likely recovery?

( A ) \$10,000.

(B ) \$30,000.

( C) \$40,000.

(D) \$60,000.

Correct : ( C) \$40,000.

#### Question 149

A father conveyed his property to his son and daughter "as joint tenants with right of survivorship, but if they ever attempt to sell the property during their lifetimes, a right of first refusal based on the sale price is hereby granted to my sister." The deed was promptly and properly recorded. Unbeknownst to the son or the sister, the daughter quitclaimed her interest in the property to a purchaser.

The following month; the daughter was killed in a snowmobile accident. The purchaser of the daughter's interest filed a suit for partition of the property. The son filed an appropriate counterclaim for quiet title, asserting that he was the owner of the entire parcel. The sister also filed a counterclaim, asserting that her right of first refusal was valid and that she was prepared to exercise her right to purchase the property for the contract price.

In a jurisdiction in which the Rule Against Perpetuities is unmodified by statute, how should the court rule?

(A) For the purchaser, because the right of first refusal is invalid as an unreasonable restraint on alienation.

(B) For the son, because he succeeded to the entire ownership when the daughter died.

(C) For the son, because the right of first refusal violates the Rule Against Perpetuities.

(D) For the sister, because she has a valid right of first refusal.

Correct : (D) For the sister, because she has a valid right of first refusal.

#### Question 150

A strawberry farmer held his farm open to the public to pick strawberries for a fee. The farmer knew that many patrons would eat as many strawberries out in the field as they would bring home with them, so he advertised that no chemical pesticides or fertilizers were used on his

strawberries. The owner of the land adjacent to the farm began operating a soap factory, a use allowed by the zoning code. Flakes of an unavoidable chemical byproduct of the soap-making process would drift over onto the farm whenever the wind was blowing in that direction and settle onto the strawberry plants. The flakes caused no harm to the plants themselves but detracted from the appearance of the strawberries as well as their taste if eaten right off the plant; consequently, the farmer's business declined. On several occasions, the farmer complained to the factory owner, but the owner did nothing, in part because a visit to the county recorder of deeds office had convinced him that he was the true owner of a large part of the strawberry farm, although in fact it was just a recording error.

Can the farmer recover damages for the harm caused to his business from the factory owner?

- (A) Yes, because the discharge from the owner's factory entered the farmer's land.
- (B) Yes, because the factory owner intended to conduct the activities that caused the particles to fall on the farmer's land.
- (C) No, because the factory owner had no intent to cause harm to the farmer's property.
- (D) No, because the factory owner's belief that he owned the property, although erroneous, was reasonable.

Correct : B) Yes, because the factory owner intended to conduct the activities that caused the particles to fall on the farmer's land.

### Question 151

A property owner residing in State A owned a beach house in State B. The property owner ran an ad in State B and State C seeking to hire a caretaker for the property. A State C resident responded to the ad. The property owner interviewed- and hired the State C resident at the house in State B and then returned to State A.

The property owner returned to the house a few months later and fired the State C resident. The State C resident plans to file an action against the property owner pursuant to federal employment discrimination statutes, claiming that the property owner fired him on the basis of race and age.

In which federal district courts) is venue proper?

- (A) The District of State B only.
- (B) The District of State A only.
- (C ) The District of State B and the District of State C.
- (D) The District of State B and the District of State A.

Correct : (D) The District of State B and the District of State A.

### Question 152

A consumer properly sued a used car dealership for fraudulent misrepresentation and breach of contract in federal court. The case proceeded through trial, and following closing arguments, the judge presented the jury instructions to the jury, but failed to give one of the jury instructions requested by the consumer. The consumer's attorney, however, did not object. Instead, he decided to wait and see how the jury would decide the case. After deliberating, the jury returned a verdict for the car dealership. The consumer filed a timely appeal based on the judge's failure to give the requested jury instruction, alleging that this failure caused the jury to render its verdict in favor of the car dealer-ship.

How will the appellate court likely rule?

- (A) Hear the consumer's appeal, because the judge's failure to give the requested instruction amounted to plain error under the "plain error doctrine."
- ( B) Deny the appeal, because the judge's failure to give the requested instruction amounted to harmless error.
- (C) Deny the appeal, because the consumer waived her right to appeal when she did not timely object to the judge's failure to give the requested instruction at trial.
- (D) Deny the appeal, because once the jury verdict was rendered, the jury instruction issue was moot.

Correct : (C) Deny the appeal, because the consumer waived her right to appeal when she did not timely object to the judge's failure to give the requested instruction at trial.



### Question 153

An American tourist was visiting another country when he was warned by United States health authorities to go immediately to a hospital because he had a serious and extremely contagious disease that required him to be quarantined. He decided to ignore the warning and instead traveled on an airline flight back to the United States. Despite the tourist's belief that he would not be discovered and his best efforts to keep a low profile, the news media were tipped off to what he had done and publicized it. When a passenger who had been sitting next to the tourist on the plane learned about it, she became extremely upset, fearing that she would contract the disease. The passenger brought a negligence action to recover for the distress she suffered but the jury rejected her claim. Why?

- (A) The tourist's conduct was not extreme and outrageous.
- (B) The passenger did not suffer physical injury from her distress.
- (C) The passenger did not contract the disease from the tourist.
- (D) The tourist could not have reasonably foreseen that the other passengers would find out about what he had done.

**Correct :** (B) The passenger did not suffer physical injury from her distress.

### Question 154

To gain progress on critical treaty negotiations with another country, the President issued an official pardon to the leader of a radical group who was in a state prison after being convicted of a violent crime in the state. The President directed the governor of the state to free the leader but the governor refused. The Justice Department brought an action in federal district court seeking an order compelling his release.

How is the federal court most likely to rule?

- (A) For the state, because a state official acting pursuant to his state's constitution need not obey inconsistent orders from a federal official.
- (B) For the state, because the President's constitutional power to pardon prisoners extends only to those convicted of federal offenses.
- (C) For the state because the President's order and the pardon given to the convicted leader violate his duty to see that the laws of the United States are faithfully executed.
- (D) For the federal government, because the President's actions are authorized by his power to enter into treaties with other nations.

Correct : (B) For the state, because the President's constitutional power to pardon prisoners extends only to those convicted of federal offenses.

### Question 155

A state's pension program provided supplemental state pension benefits to surviving spouses and children of state employees. The program provided that when the spouse remarried, that spouse's benefits would be gradually terminated based on a statutory formula. Because of statistics showing past disparities between the household income levels of male surviving spouses and female surviving spouses, different formulas were used for the termination schedule depending on whether the surviving spouse was male or female.

A widower of a state employee was informed after he remarried that his pension benefits would be terminated in 90 days according to the applicable formula.

Upon learning that a similarly situated widow would have continued to receive benefits for six months after remarrying, the widower decided to file suit in federal court, alleging that the state program is unconstitutional because it is discriminatory and it unfairly burdens his right to marry.

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

- (A) The state must demonstrate that the program is narrowly tailored to achieve a compelling government interest.
- (B) The state must demonstrate that the program is substantially related to an important government interest.
- (C) The widower must demonstrate that the program is not substantially related to an important government interest.
- (D) The widower must demonstrate that the program is not rationally related to a legitimate government interest.

Correct : (B) The state must demonstrate that the program is substantially related to an important government interest.

### Question 156

A plaintiff was injured when the steering mechanism of a snowmobile failed. He brought a negligence action against the snowmobile manufacturer.

The steering mechanism was designed and manufactured by a component manufacturer; the snowmobile manufacturer merely assembled the snowmobile, branded it, and distributed it directly to retailers.

To prevail against the snowmobile manufacturer, what will the plaintiff need to prove?

(A) That the steering mechanism was in a defective condition unreasonably dangerous to users.

(B) That the steering mechanism was in a defective condition unreasonably dangerous to users, and the plaintiff was the purchaser of the snowmobile, a member of the purchaser's family, or a guest of the purchaser.

(C) That the steering mechanism was in a defective condition unreasonably dangerous to users, and the defect could have been discovered and corrected if the component manufacturer had exercised reasonable care in its quality control process.

(D) That the steering mechanism was in a defective condition unreasonably dangerous to users, and the snowmobile manufacturer failed to inspect the mechanism before assembly of the snowmobile.

Correct : (C) That the steering mechanism was in a defective condition unreasonably dangerous to users, and the defect could have been discovered and corrected if the component manufacturer had exercised reasonable care in its quality control process.

### **Question 157**

A testing lab purchased a wind tunnel as a complete unit from a machinery company. The machinery company used an electronics company for the design and installation of the unit's electronic control systems, which regulated air speed and triggered the emergency shut-off devices.

A technician was installing a scale model of a prototype aircraft that was to be tested in the wind tunnel when the electronic control system of the tunnel malfunctioned, causing the huge fans that created the air flow to start up. The powerful air flow pinned the technician against the grating covering the intake ducts, asphyxiating him before he was discovered and the fans could be shut off.

In an action by the technician's survivors against the electronics company, proof that the machinery company failed to inspect the wind tunnel has which of the following legal effects?

(A) If the electronics company is held liable to the plaintiffs, it may bring an action for indemnity against the machinery company based on the failure to inspect.

(B) The failure of the machinery company to inspect the tunnel is a superseding cause that relieves the electronics company of liability to the plaintiffs.

(C) The failure of the machinery company to inspect the tunnel is attributable to the electronics company under the doctrine of respondeat superior.

(D) The failure of the machinery company to inspect the tunnel has no legal effect on the electronics company's liability.

Correct : (D) The failure of the machinery company to inspect the tunnel has no legal effect on the electronics company's liability.

### Question 158

Congress passed a statute designed to make college tuition-free. The statute significantly increased funding to states for this purpose; however, it made all federal funding to states dependent on the state making state universities tuition-free to United States citizens, and several state budgets consist of as much as 50% federal funding. Some states do not wish to participate in the program and want to retain their level of federal funding that existed before the statute was passed.

If these states challenge the constitutionality of the statute in court, will the court likely uphold the statute?

- (A) Yes, because Congress can discriminate based on citizenship so long as it has a rational basis.
- (B) Yes, because Congress can put conditions on funding, and the statute does not require discrimination based on citizenship.
- (C) No, because the Equal Protection Clause prohibits discrimination based on citizenship.
- ( D) No, because the funding condition is unduly coercive.

Correct : ( D) No, because the funding condition is unduly coercive.

### Question 159

A landowner had a contract to sell land to a developer. Before closing on the sale, the developer died. In his will, he left his real property to his son and the residuary estate, including all of his personal property, to his daughter. Just after the developer died, a third party offered to purchase the land from the landowner at a higher price than the contract price. The landowner notified the developer's son that he was canceling the contract, and would not be conveying the land to the developer's son. The jurisdiction retains the common law rules regarding exoneration.

What are the rights of the developer's son?

- (A)He can demand conveyance of the property.
- (B)He can demand conveyance of the property and compel the daughter to pay the purchase price.

( C ) He can recover money damages from the landowner but is not entitled to demand conveyance of the property.

(D) He has no rights against the landowner, because the landowner's personal property interest in receiving the sale proceeds entitled the landowner to find another purchaser upon the developer's death.

Correct : (B)He can demand conveyance of the property and compel the daughter to pay the purchase price.

### Question 160

In January of 2010, the defendant proposed to his girlfriend. During the engagement, the defendant confided in her about various drug deals in which he was participating. The woman swore that she would never reveal any of his confidences. On January 1, 2011, the couple married. The defendant continued to share with his wife information concerning his illegal drug activity. The wife's only rule was that he could not participate in any illegal drug transactions in their home. On one occasion in 2011, the wife came home unexpectedly and saw the defendant completing a drug transaction in the living room. The defendant was not aware that his wife had observed the event. In 2013, the defendant was charged with 57 counts of illegal drug sales that occurred between 2009 and 2012. The prosecutor wishes to call the defendant's wife as a witness for the state.

Assuming that the defendant's attorney makes appropriate objections, which of the following statements is correct regarding testimony by the defendant's wife?

(A) She can testify about the defendant's 2011 statements if she desires.

(B) She must testify to the defendant's 2010 statements.

( C ) The defendant can keep her from testifying about his 2010 statements.

(D) She can testify to the drug sale that she observed in 2011 if she desires.

Correct : (D) She can testify to the drug sale that she observed in 2011 if she desires.

### Question 161

A plaintiff filed a negligence action against a defendant in federal district court, seeking damages for personal injuries suffered in a traffic accident.

The plaintiff timely served on the defendant a request for production of certain documents. The defendant objected to part of the request, claiming that it sought information beyond the scope of discovery.

The defendant honestly believed this to be true, but case law clearly held to the contrary. After conferring with the defendant and not resolving the matter, the plaintiff filed a motion to compel the defendant to produce the documents.

If the court orders the defendant to produce the documents, what sanctions may the court impose on the defendant at that time?

- (A) The court may enter a default judgment against the defendant.
- (B) The court may strike relevant pleadings of the defendant or enter an order precluding the defendant from offering evidence on certain claims or defenses.
- (C) The court may not impose sanctions at this time, but it must require the defendant to pay the reasonable expenses incurred by the plaintiff in making the motion to compel.
- (D) The court at this time may neither impose sanctions nor require the defendant to pay any expenses incurred by the plaintiff.

**Correct : (C)The court may not impose sanctions at this time, but it must require the defendant to pay the reasonable expenses incurred by the plaintiff in making the motion to compel.**

## Question 162

The plaintiff sued the defendant dry cleaner, claiming that it had permanently ruined her \$10,000 mink coat by cleaning it with a solvent that left an extremely offensive odor that smelled like "skunk." Further attempts to have the odor removed by other cleaning services were unsuccessful. The odor was so bad that she could no longer wear the coat. At the trial, the plaintiff testified to the above facts. She then identified a mink coat as her coat that the defendant had ruined. She testified that it still smelled the same as it did after

the defendant had cleaned it. The plaintiff's counsel offered to introduce the coat for the purpose of having the jury smell it. Defense counsel objected.

How should the court rule?

- (A) The coat is admissible based on the plaintiff's testimony.
- (B) (The coat is admissible, but the plaintiff must first present extrinsic evidence sufficient to support a finding that the coat is the coat that she had cleaned by the defendant.
- ( C )The coat is not admissible because the plaintiff's testimony has not been~ impeached.

(D)The coat is not admissible because its limited probative value in resolving the case would be substantially outweighed by the prejudice that would result from the jury smelling the coat.

Correct : (A) The coat is admissible based on the plaintiff's testimony.

### Question 163

The National Park Service recently created a new personnel level for field employees, which became the highest salaried position available to Park Service field employees. The position is restricted to employees over six feet in height. A female ranger who is five feet, three inches tall seeks your advice as to whether she can challenge the validity of the height restriction in federal court.

If you decide to file suit on her behalf, which of the following would be your strongest argument against the validity of the restriction?

(A)Because most women are less than six feet tall, the restriction is unconstitutional as a violation of the Equal Rights Amendment.

(B)Because most women are less than six feet tall, the restriction is an invalid discrimination on the basis of gender in violation of the Due Process Clause of the Fifth Amendment.

(C) Because most women are less than six feet tall, the restriction is an invalid gender-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

(D) The restriction denies the ranger a property right without an opportunity for a hearing before a neutral decisionmaker, in violation of the Due Process Clause of the Fifth Amendment.

Correct : (B)Because most women are less than six feet tall, the restriction is an invalid discrimination on the basis of gender in violation of the Due Process Clause of the Fifth Amendment.

#### Question 164

A driver, domiciled in State B, struck a car driven by a father domiciled in State A and his young daughter, who was living with her mother in State B. The father commenced an action in federal court against the driver in his own right and on behalf of his daughter, seeking \$80,000 for his injuries, which were severe, and \$5,000 for his daughter's injuries, which were minor.

Does the court have subject matter jurisdiction of the claim for the daughter's injuries?

- (A) Yes, because the claims brought by the father in his own right and on behalf of his daughter may be aggregated.
- (B) Yes, because the two claims are so related that they form part of the same case or controversy.
- (C) No, because the daughter seeks damages of only \$5,000.
- (D) No, because the daughter is a citizen of State B.

Correct : (D) No, because the daughter is a citizen of State B.

#### Question 165

A motorist was driving his expensive sports car down a two-lane road at 90 m.p.h. in a heavy rainstorm. Just after cresting a hill, the motorist observed a large tree that had been hit by lightning and was blocking the highway. To avoid hitting the tree, the motorist drove off the road and onto a landowner's property. In so doing, the motorist destroyed the landowner's mailbox and flower bed.

If the landowner sues the motorist for damages to his mailbox and flower bed, will he likely prevail?

- (A) Yes, because the jury will likely find that the motorist was not exercising due care.
- (B) Yes, regardless of whether the motorist was exercising due care.
- (C) No, because the motorist was acting under necessity when he drove onto the landowner's property.



( D ) No, because even though the motorist was exceeding the speed limit, the tree in the road was an act of God, and a superseding intervening cause.

Correct : (B)Yes, regardless of whether the motorist was exercising due care.

#### Question 166

A state statute prohibits leaving a child under the age of five years unattended in an automobile. A mother parked her car at a supermarket parking lot. She left her four-year-old son in the car with his seatbelt fastened while she did her grocery shopping. While the mother was shopping, the son undid his seatbelt, left the car, and started riding on the grocery carts that customers had left in the parking lot. The son crashed one of the carts into another shopper's car, causing damage. The shopper brought a negligence action against the mother to recover for the damage caused by the son. At trial, the shopper presented evidence of the statute and the facts stated above. At the conclusion of the shopper's case, the mother moved for a directed verdict in her favor.

Should the court grant the mother's motion?

(A)No, because the shopper has established negligence per se based on the mother's violation of the statute.

(B)No, because the jury could find that it was foreseeable that the son would cause damage to cars in the parking lot if the mother left him unattended.

(C)Yes, because the shopper has not presented evidence that the statute was designed to prevent children from causing damage to the cars of other customers.

(D)Yes, because a parent is not vicariously liable for the negligence of her child.

Correct : (B)No, because the jury could find that it was foreseeable that the son would cause damage to cars in the parking lot if the mother left him unattended.

#### Question 167

A builder entered into a contract with a landowner to build a warehouse for \$500,000 by August 1, The agreement provided for five progress payments of \$100,000 each at various stages of completion. On June 20, after the builder had spent \$350,000 on performance and received \$300,000 in progress payments, the builder notified the landowner that he was

quitting the project. The landowner hired another contractor to complete the warehouse by August 1 for \$250,000, which was a reasonable price given the short deadline.

Which of the following statements regarding the parties' remedies is correct?

(A) The builder can recover \$50,000, the difference between the amount he expended on performance and the amount he was paid, to prevent the landowner's unjust enrichment.

(B) Neither party can recover anything, because the \$50,000 extra that the landowner had to pay to complete the building is offset by the \$50,000 difference between the builder's expenditures and the payments the landowner made to him.

( C ) The landowner can recover \$50,000, the difference between the contract price and the total amount he paid for completing the building.

(D) The landowner can recover \$100,000, the difference between the contract price and the total amount spent constructing the building.

**Correct : (C) The landowner can recover \$50,000, the difference between the contract price and the total amount he paid for completing the building.**

### **Question 168**

An investor rented his property to a pottery maker, who intended to use the back part of the building for living quarters, and the front part as a pottery studio. The pottery maker installed a kiln, some lights, and some storage units in the front part of the building for her use. Sometime later, the investor mortgaged the property to a bank to secure a loan. The mortgage was recorded, but the investor did not personally tell the pottery maker that he had done so. In fact, she only learned of it when the investor defaulted on the loan and the bank foreclosed on the mortgage and told the pottery maker that she would have to quit the premises. The pottery maker began removing the equipment and fixtures that she had installed in the building. The bank objected and sought an injunction to prevent her from doing so.

Under these circumstances, on what basis should the court deny the bank the injunction?

(A) There was no contrary provision in the agreement between the investor and the pottery maker, so the pottery maker is entitled to remove any personal property which belongs to her.

(B) The bank had no perfected security interest in the pottery maker's equipment, regardless of the equipment's fixture status.

(C) The equipment was installed for the pottery maker's exclusive benefit and she did not intend for it to stay.

(D) The investor had never given the pottery maker notice of the mortgage.

Correct : (C) he equipment was installed for the pottery maker's exclusive benefit and she did not intend for it to stay.

### Question 169

A parcel of property was devised to a husband and a wife "as joint tenants with right of survivorship" through the will of the husband's mother. After title had passed to them, the husband and the wife experienced marital difficulties and legally separated. Unbeknownst to the husband, the wife quitclaimed her interest in the property to a bona fide purchaser for value. Shortly thereafter, the husband and the wife reconciled. The next month, the wife was killed in an auto accident. The purchaser of the wife's interest filed a suit for partition of the property. The husband filed an appropriate counterclaim for quiet title, asserting that he was owner of the entire parcel by right of survivorship.

How should the court rule?

(A) For the purchaser, because he owns an undivided one-half interest in the property.

(B) For the purchaser, because the husband and the wife are presumed to have taken title from the mother as tenants in common under modern law.

(C) For the purchaser, because the husband and the wife were legally separated when he purchased his interest from the wife.

(D) For the husband, because he succeeded to the entire gwnership when the wife died.

Correct : (A) For the purchaser, because he owns an undivided one-half interest in the property.

### Question 170

A state study shows that computer chip manufacturing has decreased 60% in the past five years due to a large supply of foreign chips entering the state. To prevent the complete loss of computer chip manufacturing, the state enacted legislation requiring that at least 50% of the units sold by electronic products retailers within the state incorporate chips manufactured within the state. The owner of a chain of computer stores in the state sells electronic devices manufactured entirely in other states.

If the computer store owner challenges the state legislation on constitutional grounds, will she likely prevail?

No, because the legislation is substantially related to preventing foreign chip makers from overwhelming the state market with cheap computer chips.

(B) No, because she lacks standing to challenge the legislation.

(C) Yes, because the legislation discriminates against out-of-state commercial activity.

(D) Yes, because the law denies citizens of other states the right to pursue essential economic activities.

**Correct : (C) Yes, because the legislation discriminates against out-of-state commercial activity.**

### Question 171

A 17-year-old boy walked into a medical clinic and requested assistance with a deep cut he received when he fell off his bike. The doctor told the boy that if he agreed to work at the clinic for 45 hours a week for four weeks, he would stitch the wound and apply a medicated bandage. The clinic typically charges \$225 for such treatment. Although it seemed like a lot of work for \$225, the boy needed immediate medical attention, so he accepted the offer and promised to report for work the next day, after which the doctor treated the boy's injury. On his way home from the clinic, the medicated bandage fell into a ditch and was lost for good. The boy refused to report for work the next day.

The medical clinic sues the boy to recover the costs of the medical treatment.

If the court rules in favor of the boy, what is the likely reason?

( A ) The boy was a minor.

(B) The medicated bandage was destroyed and thus there was a failure of consideration.

( C ) The contract was unconscionable.

(D) It was impossible for the boy to perform.

Correct : ( C ) The contract was unconscionable.

### Question 172

A merchant who sells raw silk and other natural fibers called a clothing manufacturer and offered to sell the manufacturer 20 bolts of silk at a cost of \$50 per bolt, delivery in five weeks. The manufacturer immediately accepted the offer. After hanging up the phone, the silk merchant prepared a writing reciting the terms of the agreement, signed it, and mailed it to the manufacturer. The next day, the manufacturer received the letter, read it, and put it aside. Two days before the date of delivery, while the silk merchant was getting the silk ready for shipment, the manufacturer called the silk merchant to cancel the order, despite the silk merchant's protestations that they had a contract.

If the silk merchant sues the manufacturer for breach of contract, is the silk merchant likely to win?

- (A) No, because the initial offer and acceptance that formed the basis of the agreement was oral.
- (B) No, because the manufacturer did not sign the writing and he is the party to be charged.
- (C) Yes, because the manufacturer did not object to the memorialization of their agreement.
- (D) Yes, because the silk merchant was getting the goods ready for shipment.

Correct : (C)Yes, because the manufacturer did not object to the memorialization of their agreement.

### Question 173

A defendant was charged with robbery and felony murder based on a death that arose during the robbery. The defendant pleaded not guilty and insisted on a jury trial. Right before the trial began, he fired his attorney and decided to defend himself. The court made a finding that the defendant was competent to represent himself at trial. The defendant then insisted on trying both of his charges separately in two different trials. The trial judge asked the defendant if he was confident that he wanted to have two separate trials. The defendant replied: "I am, your Honor." The felony murder case was tried first, and the jury found the

defendant not guilty. The defendant then moved to dismiss the robbery charge based on double jeopardy.

How should the court rule on the defendant's motion?

(A) Grant the motion, because double jeopardy forbids a second trial relitigating a lesser included offense.

(B) Grant the motion, because the defendant's Sixth Amendment right to counsel was violated.

(C) Deny the motion, because robbery is not a lesser included offense of felony murder.

(D) Deny the motion, because the charges could have been tried together but the defendant consented to the separate trials.

**Correct : (D) Deny the motion, because the charges could have been tried together but the defendant consented to the separate trials.**

#### **Question 174**

A resident of the District of State A properly brought a diversity action in federal court against a resident of the District of State B and a resident of the District of State C for a cause of action that arose from events that occurred in the District of State D

In which judicial districts is venue proper?

(A) Only in the District of State B and in the District of State C.

(B) Only in the District of State D.

( C ) Only in the District of State A.

(D) In the District of State B, the District of State C, and the District of State D.

**Correct : (B) Only in the District of State D.**

#### **Question 175**

A motorist from State A struck and injured a pedestrian in State B. The pedestrian, a State B resident, brought an action in a State B federal court against the State A motorist, seeking \$100,000 in damages.

The summons and complaint were served on a receptionist at the motorist's place of business in State A. State A's rules permit service of process in this manner, while State B's rules do not.

If the motorist moves to dismiss the complaint on the basis of improper service of process, is the court likely to dismiss the action?

(A) Yes, because, under choice of law rules, the court will apply the law that a state court in State B would apply.

(B) Yes, because the federal rules do not permit service on an individual defendant by delivering a process to a third party found at the defendant's place of employment.

(C) No, because the federal rules permit service under the rules of the state in which service will be effected.

(D) No, because the federal rules permit service on a person of suitable age and discretion at the defendant's place of employment.

**Correct : (C) No, because the federal rules permit service under the rules of the state in which service will be effected.**

### **Question 176**

A buyer purchased a parcel of property from a seller for \$100,000, financing the purchase with a loan from the seller secured by a mortgage on the property. The seller promptly and properly recorded his mortgage. Shortly thereafter, the buyer obtained a loan from a credit union for remodeling secured by a mortgage on the 510K property. The credit union promptly and properly recorded its mortgage. One year later, the buyer obtained a home equity loan from a bank secured by a mortgage on the property. The bank promptly and properly recorded its mortgage. A few months later, the buyer stopped making payments on the debt owed to the credit union. With proper notice to all parties, the credit union brought an action to foreclose on its mortgage. At that time, the buyer owed \$20,000 on the seller's mortgage, \$25,000 on the credit union's mortgage, and \$30,000 on the bank's mortgage. At the foreclosure sale, the property was sold for \$45,000. The jurisdiction in which the property is located permits deficiency judgments.

After the \$25,000 debt owed to the credit union is satisfied from the proceeds, which of the following statements is most correct?

(A) The seller's mortgage and the bank's mortgage are both reduced by \$10,000 and remain on the property.

(B) The seller's mortgage is satisfied in full and extinguished, while the bank's mortgage remains on the property.

(C) The seller's mortgage remains on the property, while the bank's mortgage is reduced by \$20,000 and extinguished, leaving the buyer personally liable to the bank for the deficiency of \$10,000.

(D) The seller's mortgage is satisfied in full and extinguished, and the bank's mortgage is also extinguished, leaving the buyer personally liable to the bank for the deficiency of \$30,000.

**Correct : (C) The seller's mortgage remains on the property, while the bank's mortgage is reduced by \$20,000 and extinguished, leaving the buyer personally liable to the bank for the deficiency of \$10,000.**

### Question 177

A truck transporting explosives went out of control when a tire suddenly blew. The truck struck a motorist's car as it was waiting at a stoplight, seriously injuring the motorist. The area around the accident was immediately evacuated, but fortunately the explosives were not detonated.

In an action alleging strict liability against the freight carrier that owned the truck, the motorist established the above facts and presented evidence of her injuries. The carrier presented evidence that the blowout was caused by a hidden defect in the tire that could not be detected by routine inspection. The tires were manufactured by the carrier's regular supplier and had not previously caused any problems. The carrier also presented evidence that the local authorities were supposed to restrict access to roads along the truck's route but had failed to do so.

prevail?

In this action, is the motorist likely to

(A) Yes, because the tire was in a defective condition that made it unreasonably dangerous.

(B) Yes, because the freight carrier was engaged in an abnormally dangerous activity.

(C) No, because the injury did not arise from the dangerous aspect of the activity.



(D) No, because the negligence of the local authorities in failing to restrict access to roads along the truck's route was a superseding cause of the motorist's injuries.

Correct : (C) No, because the injury did not arise from the dangerous aspect of the activity.

### Question 178

A valet parking attendant at a restaurant negligently left the keys of a car in the ignition when she parked it on a side street some distance from the restaurant, which was located in a high crime area. While dining, the car's owner received a text message from the security company that operated his car's anti-theft system that his key was in his ignition for over 30 minutes without the car running. The owner started to get up to check with the valet service but then his meal arrived and he promptly forgot about the car. About 20 minutes later, a teen saw the key in the ignition of the unlocked car and drove off with the car. By the time it was discovered that the car had been stolen, the car had been wrecked and the teen had fled. The owner sued the parking company that employed the attendant for the loss of his car.

Is the owner likely to recover?

(A) Yes, because the owner's negligent failure to respond to the security company's alert contributed the least to his loss.

(B) Yes, because the negligence of the parking attendant created the opportunity for the theft.

(C) No, because the teen committed a criminal act that was a superseding cause of the loss.

(D) No, because the owner's negligent failure to respond to the security company's alert was a superseding cause of his loss.

Correct : (B ) Yes, because the negligence of the parking attendant created the opportunity for the theft.

### Question 179

A car driver properly sued a truck driver for negligence in federal court for crashing into the driver's car at an intersection. The truck driver had been issued a speeding ticket at the accident scene, after which he had mailed in the citation admitting he was speeding, paid the fine of \$100, and never went to court.

At trial, the car driver wants to use the speeding citation as an admission of responsibility for speeding, so as to preclude the truck driver from relitigating whether he was speeding at the time of the accident.

Is the court likely to preclude the truck driver from relitigating the issue?

- (A) Yes, because he admitted to speeding when he paid the citation.
- (B) Yes, because he had the opportunity to go to court and litigate the issue and chose not to.
- (C) No, because he did not litigate the issue when he paid the citation.
- (D) No, because it is not relevant to the car driver's case.

Correct : (C) No, because he did not litigate the issue when he paid the citation.

### Question 180

A defendant was arrested and charged with selling narcotics. After he was given Miranda warnings, he said: "I am not talking and I want my lawyer!" He placed a call to his attorney who told him: "Do not talk until I get there!" The defendant was then placed in a cell with an undercover informant who had been instructed to try to get the defendant to talk about a recent murder in the area. While in the jail cell, the informant started talking about the murder, which the defendant had, in fact, committed. After a few hours of listening to the informant's incorrect story about the crime, the defendant got agitated and he hissed: "That's not where the gun is hidden, you moron!" A police officer standing nearby heard the defendant and told the detectives what he had heard.

The defendant was removed from the cell and again given Miranda warnings. The defendant did not respond to the Miranda warnings. During questioning by the police about the murder, the defendant again got agitated and stated: "I'm not talking, and that's not where the gun is hidden!" The defendant's attorney finally arrived after his client was charged with murder. At his trial for murder, the defense moved to suppress the defendant's first statement made to the informant.

How should the court rule?

- (A) Grant the motion, because the defendant's Fifth Amendment right to counsel was violated when the police placed an informant in his cell.
- (B) Grant the motion, because the defendant's Sixth Amendment right to counsel was violated.

(C) Deny the motion, because the defendant's Fifth Amendment rights were not violated.

(D) Deny the motion, because the defendant's statement to the police is admissible, so the admission of the first statement to the informant will not prejudice the defendant.

Correct : (C) Deny the motion, because the defendant's Fifth Amendment rights were not violated.

### Question 181

The plaintiff brought an action against a major national department store alleging that the electric blanket she bought from them overheated, causing a fire that destroyed her home and all that it contained. The defendant contends that its blanket could not have overheated unless it was left on after the plaintiff left for work on the day of the fire. The plaintiff offers in rebuttal the testimony of her husband, who will state that he has been married to the plaintiff for seven years, that he has slept in the same bed with her for most of that period, and that the first thing she does every morning upon awakening is to turn the control on the electric blanket to "off."

Should this testimony be admitted?

( A ) Yes, because prior conduct may be used to show conformity with habit.

(B) Yes, because evidence of habit may be used to show that a person acted in conformity with the habit on a particular occasion.

C) No, because habit may only be established by opinion or reputation evidence, not specific conduct.

(D) No, because there is no corroboration of the husband's testimony by a nonparty witness.

Correct : (B) Yes, because evidence of habit may be used to show that a person acted in conformity with the habit on a particular occasion.

### Question 182

A liquor store owner sued a woman for negligence in federal court after she drove her car through the front of his store. At trial, the store owner did not present any evidence on the issue of causation. No motions were filed during the trial, and the jury returned a general verdict for the plaintiff. Immediately after the verdict was read, the defendant filed a motion for judgment as a matter of law and a motion for a new trial.

The court may:

- (A) Deny the motion for a new trial, but grant the motion for judgment as a matter of law;
- (B) Deny both the motion for a new trial and the motion for judgment as a matter of law.
- (C) Grant either the motion for judgment as a matter of law or the motion for a new trial, but not both.
- (D) Grant the motion for a new trial, but not the motion for judgment as a matter of law.

Correct : (D) Grant the motion for a new trial, but not the motion for judgment as a matter of law.

### Question 183

A homeowner and her neighbor purchased adjoining parcels of property 20 years ago. During the summer months, the homeowner ran electrical wires from her home to a guest house across land she knew belonged to the neighbor. The neighbor orally consented to the wiring's crossing his land. Two years ago, the neighbor sold his property to a purchaser.

The following summer, the homeowner tried to run the wires across the purchaser's land, but the purchaser objected. The statute of limitations in ejectment is 15 years.

If the homeowner files suit, how is the court likely to rule with respect to the land over which the electrical wires were laid?

- (A) The homeowner has acquired title by adverse possession.
- (B) The homeowner has acquired a prescriptive easement,

(C) The homeowner cannot claim any right on title because her use of the land in question was not continuous.

( D ) The homeowner cannot claim any right on title because the neighbor consented to her use of the land for the wires.

**Correct : ( D ) The homeowner cannot claim any right on title because the neighbor consented to her use of the land for the wires.**

#### **Question 184**

A jetliner crashed in Turkey, injuring numerous Turkish passengers. The owner of the jetliner and many of the injured passengers contend that the crash was caused by the negligent operation of a hot air balloon that strayed from its course into the flight path of the jetliner. The owner of the hot air balloon is a State A corporation based in the District of State A. The jetliner's owner (a Turkish corporation) and a number of the injured Turkish passengers filed a civil action against the corporation in the United States District Court for the District of State A. Each plaintiff's claim exceeds \$75,000.

If the court dismisses the action, what is the most likely basis for its decision?

( A ) Lack of personal jurisdiction over the Turkish plaintiffs.

(B) The doctrine of forum non conveniens.

(C) Lack of subject matter jurisdiction.

( D ) Lack of personal jurisdiction over the owner of the hot air balloon

**Correct : (B) The doctrine of forum non conveniens.**

#### **Question 185**

A seller owned a large parcel of land. The western half was undeveloped, and the eastern half contained a grove of apple trees. The seller gave a buyer a deed conveying "the western half of the parcel from the western boundary to the grove of apple trees, comprising 220 acres." It was subsequently determined by survey that the land conveyed to the buyer was in fact 229 acres.

In a dispute between the seller and the buyer as to the mistake, which of the following is most accurate?

(A) The deed is invalid because of the mutual mistake of the parties.

(B) The deed is invalid unless the court admits parol evidence as to the amount of acreage conveyed.

(C ) The deed is valid, and the buyer is the owner of 220 acres.

(D) The deed is valid, and the buyer is the owner of 229 acres.

**Correct : (D) The deed is valid, and the buyer is the owner of 229 acres.**

### **Question 186**

A gun collector ordered a rifle from a gun catalog. The rifle had a barrel 16 inches long and a pistol-type grip instead of the more usual rifle stock, so that the entire weapon was only 22 inches long. The collector was aware of a state penal statute that prohibited the possession of "any sawed-off shotgun or rifle." He was also aware that another statute defined sawed-off shotgun or rifle so as to include any such weapon whose barrel was less than 16 inches in length. He was unaware that the same statute also included in its definition of the prohibited weapons any shotgun or rifle whose overall length was less than 24 inches. When the rifle he had ordered arrived in the mail, he carefully measured it to confirm that its barrel was exactly 16 inches in length.

While driving to the target range one day, the collector was stopped for having a defective taillight, and the traffic officer saw the rifle he had ordered lying on the back seat of his car in plain view. The collector was arrested and subsequently prosecuted for possession of a sawed-off rifle.

What will be the probable outcome of the trial?

(A) He will be acquitted, because he honestly did not know that a weapon with an overall length of less than 24 inches was in violation of the statute.

(B) He will be acquitted, because he conducted a reasonable investigation to ensure that he was in compliance with the statute.

(C) He will be convicted, unless the trier of fact determines that his failure to realize that the overall length of the weapon was in violation of the statute was reasonable.

(D) He will be convicted, because his reasonable investigation does not vitiate violation of the statute arising from a mistake of law.

**Correct : (D) He will be convicted, because his reasonable investigation does not vitiate violation of the statute arising from a mistake of law.**

### Question 187

On an icy day, a vehicle driven by the defendant struck the plaintiff's car in the rear, smashing a taillight and denting the plaintiff's bumper. Before the plaintiff could say anything, the defendant rushed out of his car and told the plaintiff, "Look, if you'll take \$500 for the damage, I'm sure my insurance company will pay for it." The plaintiff refused and sued the defendant for damage to his car and minor personal injuries. The plaintiff wishes to testify as to the defendant's statement at the time of the accident. The defendant objects.

Should the court allow the defendant's statement to be admitted?

- (A) Yes, because it is a statement by an opposing party.
- (B) Yes, because it is hearsay within the statement against interest exception.
- (C) No, because the statement took the form of a settlement negotiation.
- (D) No, because the statement is hearsay not within any exception.

**Correct : (A) Yes, because it is a statement by an opposing party.**

### Question 188

A woman chastised her roommate when she saw that neither the roommate nor her boyfriend wore a helmet when they rode on the boyfriend's motorcycle. The roommate said that helmets were too restricting. The woman's brother had died in a motorcycle accident because he had not worn a helmet, so she decided to do something to make a lasting impression on her roommate. She called her roommate at work one day and left a message that the roommate's boyfriend was in a motorcycle accident and was in the hospital on life support. The roommate was very upset when she got the message and left immediately for the hospital. When she found out later that the message was not true, she became even more upset.

If the roommate brings an action against the woman to recover for her emotional distress, is she likely to prevail?

- (A) Yes, because it was foreseeable that the roommate would suffer severe emotional distress.
- (B) Yes, because the woman knew that there was a high likelihood that the roommate would suffer severe emotional distress.

(C) No, because it does not appear that the roommate suffered physical injury from her distress.

D) No, because the roommate and her boyfriend were not related,

Correct : (B ) Yes, because the woman knew that there was a high likelihood that the roommate would suffer severe emotional distress.

### Question 189

The victim collapsed at her desk while drinking her morning coffee and was rushed to the hospital. Later that night, the victim's brother went to visit the victim in the intensive care unit. Barely conscious, the victim said, "I've thought about this all day and it must have been my assistant. She brought me my coffee this morning before I could make it for myself, and she's never done that before. Don't let her get away with murder." The victim soon lost consciousness and lapsed into a coma, and she remains in this vegetative state. It was determined that she was poisoned. The assistant is arrested and charged with attempted murder.

At the assistant's trial, the prosecution wishes to call the victim's brother to testify to the victim's statement about the assistant.

The court should find the statement:

(A) Admissible, because it is a dying declaration.

(B ) Admissible, because it is an excited utterance.

( C ) Admissible, as a statement of identification.

( D ) Inadmissible, because it is hearsay not within any exception.

Correct : (D ) Inadmissible, because it is hearsay not within any exception.



### Question 190

A dentist filling a child's cavities used a newly developed local anaesthetic that was more effective than Novocain. However, it carried a 1% risk of causing a serious seizure when administered to children, which the dentist did not mention to the child's mother or note in the consent forms, which stated only that a local anaesthetic would be used. The child's dental work was completed without any problem, but the mother looked up the anaesthetic on the Internet and learned about the risk. She complained to the dentist that she would not have consented to use of the anaesthetic had she known of the risk, but the dentist argued that using the new anaesthetic was justified in the child's case because otherwise he would not have been willing to sit still for the dental work.

Does the mother have a cause of action on behalf of the child against the dentist?

- (A) Yes, because a reasonable person would have considered information about the risk important.
- (B) Yes, because the mother would not have consented to the use of the anesthetic if she had known of the risk of seizure.
- (C) No, because the dentist used his best judgment in deciding that the benefits the risk of using the anesthetic outweighed
- (D) No, because the child suffered no harm from use of the anesthetic.

Correct : (D) No, because the child suffered no harm from use of the anesthetic.

### Question 191

A seller sold his house to a buyer.

Termite problems subsequently necessitated \$95,000 worth of repairs to the house. The buyer filed an action based on fraud against the seller in federal district court. The buyer alleges that the seller told him prior to the sale that the house had no termites. The buyer further alleges that the seller knew at the time he made that statement that the house did in fact have a termite problem. The seller denies any knowledge of a termite problem prior to the sale. In a deposition of the seller's real estate agent, the buyer's attorney asks the real estate agent if she (the agent) ever heard the seller mention a termite problem prior to the sale.

Is this question within the scope of discovery?

- (A) No, because it seeks hearsay information that is not admissible at trial.
- (B) No, because it seeks privileged information.

(C) Yes, because it falls within an exception to the hearsay rule.

(D) Yes, because it seeks relevant information.

**Correct : (D) Yes, because it seeks relevant information.**

### Question 192

A pedestrian brought a negligence action against a motorist who struck him with her car in a shopping mall parking lot. The trier of fact determined that the pedestrian suffered \$100,000 in damages and that he was 25% at fault for crossing in front of the motorist's car. The shopping mall was determined to be 30% at fault for allowing bushes to obscure the view of drivers, and the motorist was found to be 45% at fault for striking the pedestrian.

The jurisdiction uses a comparative contribution system.

How much can the pedestrian recover from the motorist?

(A) \$45,000, because the jurisdiction uses a comparative contribution system.

( B ) \$75,000, because the pedestrian's fault was less than the fault of the motorist.

( C ) \$75,000, but the motorist can attempt to recover \$30,000 contribution from the shopping mall.

( D ) \$75,000, and the motorist cannot recover contribution from the shopping mall because the motorist's fault was greater.

**Correct : (C) \$75,000, but the motorist can attempt to recover \$30,000 contribution from the shopping mall.**

### Question 193

Right before the beginning of the defendant's trial for arson, a bailiff approached the defendant and got him to admit that he had burned down the house in question.

When the trial began, the defendant testified that he had nothing to do with the fire in question. In rebuttal, the prosecution seeks to put the bailiff on the stand to testify as to the defendant's statements, but the defendant's attorney objects.

How should the court rule regarding the objection?

- (A) Sustained, because the bailiff did not give the defendant Miranda warn-ings.
- (B) Sustained, because the statements were made in the absence of the defendant's counsel.
- (C) Overruled, because the prosecution is seeking only to impeach the defendant's testimony.
- (D) Overruled, because the defendant knew he was talking to a law enforcement officer.

**Correct : (C) Overruled, because the prosecution is seeking only to impeach the defendant's testimony.**

#### **Question 194**

The legislature of a state was concerned that the numerous and strident television, radio, and newspaper advertisements by auto dealerships annoy and mislead the public. Therefore, it enacted comprehensive legislation regulating the timing and content of such ads, limiting their duration, frequency, and the types of claims and information made and given.

Which of the following statements is most accurate as to the constitutionality of the state's ad regulation?

- (A) It is unconstitutional, because it infringes on the First and Fourteenth Amendment rights of auto dealers to free speech.
- (B) It is constitutional if it does not prohibit the dissemination of truthful information about price and the availability of products, and is narrowly tailored to serve a substantial government interest.
- (C) It is constitutional, because it is within the police power of the state and no federal constitutional rights are infringed.
- (D) It is unconstitutional, because it infringes on the rights of the auto dealers to enter into contracts for advertising

**Correct : (B) It is constitutional if it does not prohibit the dissemination of truthful information about price and the availability of products, and is narrowly tailored to serve a substantial government interest.**

#### **Question 195**

A chef wanted to open his own restaurant and a contractor offered to build the place for \$160,000. Their written contract provided that the chef would pay the contractor \$60,000 in cash when construction commenced, scheduled for April 15 after the spring thaw. On completion of the restaurant on September 30, the contractor would be paid the remaining \$100,000. The region had a late spring, and on April 30 the contractor had not yet commenced construction of the restaurant.

Has the contractor breached the contract?

(A) No, and the chef need not make the initial \$60,000 payment.

(B) No, but the chef must make the initial \$60,000 payment.

(C) Yes, in a nonmaterial particular; thus, the chef need not make the initial \$60,000 payment.

(D) Yes, in a material particular; thus, the chef may treat the contract as at an end and sue for damages.

**Correct : (A) No, and the chef need not make the initial \$60,000 payment.**

### **Question 196**

A customer slipped and fell in a store, suffering a severe injury. Several weeks after the accident, anticipating that the customer would file an action against it, the store's attorney had the store manager interview any employees who were near the accident to determine what they saw or heard. The store manager did so, taking handwritten notes. The notes are now in the store's possession. The customer subsequently filed a civil action against the store in federal district court. The complaint alleged that the store negligently left a spill on the floor of the store, causing the customer's fall. The customer's attorney served on the store a request for production of documents, which included a request for all documents and reports prepared by the store that relate to the customer's fall and injury.

Must the store produce to the customer the notes taken by the store manager when he interviewed the store's employees?

(A) Yes, because the request seeks information that is relevant to the claim or defense of a party, and the manager's notes fall squarely within the scope of the request.

(B) Yes, because the manager's notes were not taken by the store's attorney and thus are not protected by the work product doctrine.

(C) No, because the manager's notes are protected by a qualified immunity from discovery under the work product doctrine.

(D) No, because the manager's notes are completely immune from discovery under the work product doctrine.

**Correct : (C) No, because the manager's notes are protected by a qualified immunity from discovery under the work product doctrine.**

### **Question 197**

An industrial city in the Midwest had approximately 300,000 inhabitants, and about half of them were members of a recognized racial minority. The latest census figures indicated that 33,501 minority residents of the city could be classified as "poor" under federal poverty guidelines. In contrast, only 7,328 of the approximately 150,000 nonminority residents of the city could be classified as "poor." To combat a budget deficit, the city's 10-member city council, including no minority members and no poor members, decided to raise bus fares during rush hour periods from 80 cents to \$1. Because poor people and members of minority groups placed greater reliance on the city's bus lines than did the bulk of the nonpoor and nonminority population (many of whom drove to work), the effect of the transit fare increase was hardest on the poor and minority communities. Several activist groups representing the poor, various minority organizations, and some community action coalitions vowed to fight the fare increase in federal court.

Which of the following statements most accurately describes the constitutional status of the fare increase?

(A) The fare increase is unconstitutional because the city council is composed solely of nonpoor and nonminority members who cannot adequately represent the interests of poor persons, who need low bus fares to survive.

(B) The fare increase is unconstitutional, because the city cannot show that the resulting disparate impact of the fare increase is necessary for a compelling state interest.

(C) The fare increase is constitutional, because there is no evidence that the city council acted irrationally or was motivated by an intent to discriminate on the basis of race.

D) The fare increase is constitutional, because a political question is involved and fares and fees may be increased if the city council deems such increases appropriate to cure deficits.

**Correct : (C) The fare increase is constitutional, because there is no evidence that the city council acted irrationally or was motivated by an intent to discriminate on the basis of race.**

### **Question 198**

On completion of a major expansion project, a city's public library board adopted a usage policy for the new meeting room that was added to the facility. To alleviate the scheduling burden on the staff if the meeting room were open to all groups, the policy provided that the meeting room was to be used only for "library purposes" by the library staff, the library board, or groups affiliated with the library, such as the library's teen advisory group or volunteer

"Friends of the Library" group. A local organization that promoted the political interests of an ethnic minority in and around the city requested use of the meeting room for an informational meeting that would be open to the public. Although no other event was scheduled for the meeting room at the time requested, the library director declined the organization's request, citing the meeting room policy adopted by the library board. The organization filed suit in federal district court, challenging the library's policy and seeking access to the meeting room.

How is the court likely to rule?

(A) The library's policy is valid, because limiting the meeting room's use to library purposes is reasonably related to a legitimate government purpose.

(B) The library's policy is valid, because limiting the meeting room's use to library purposes is narrowly tailored to serve a significant government interest.

(C) The library's policy is not valid, because limiting the meeting room's use to library purposes is restricting speech based on its content.

(D) The library's policy is not valid unless there are alternative facilities in the area available for groups to hold meetings.

**Correct : (A) The library's policy is valid, because limiting the meeting room's use to library purposes is reasonably related to a legitimate government purpose.**

### Question 199

The victim was walking out of a store when she saw someone suddenly fall to the street suffering an apparent heart attack. However, that person was in fact an accomplice of the defendant. With the victim's attention momentarily diverted, the defendant removed the victim's wallet from her purse. Another passerby shouted to the victim, who turned and caught the defendant by his sleeve. The defendant pushed her hand away and started to run, but tripped over a curb and dropped the wallet when he fell, and the victim was able to recover it.

The crimes below are listed in descending order of seriousness.

What is the most serious crime for which the defendant could be convicted?

(A) Robbery.

(B) Attempted robbery:

(C) Larceny by

(D) Attempted larceny.

**Correct : (A) Robbery**

### Question 200

As a result of an automobile accident at an intersection, the plaintiff sued the defendant, claiming that the defendant's car was traveling at a high rate of speed and went through a red light just before the crash. A witness for the plaintiff testified that he observed the accident and that the plaintiff's car was traveling at a low speed with a green light at the time of the accident.

Which of the following will the court find NOT admissible to admit to impeach the credibility of the witness?

- (A) A certified copy of a certificate of conviction for felony assault and battery seven years ago.
- (B) The testimony of the witness's friend that, last month, while having a drink at a bar, the witness told her that the plaintiff's light was red.
- (C ) A record of an arrest one week ago for embezzlement.
- (D) On cross-examination of the witness, the question, "Isn't it a fact that you lied to your employer last year concerning your meal expenses on a business trip?"

**Correct : ( C ) A record of an arrest one week ago for embezzlement.**







