1. Answer B is correct. The brother and sister held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an inter vivos conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. Similarly, where one joint tenant executes a mortgage, a severance may also occur. In this case, although there was no conveyance or mortgage, it appears that the sister may still have lost her rights in Greenacre. She agreed to allow her brother to do as he wished with the northern half of the property, declared that she would do the same on the southern half, and proceeded to voluntarily relinquish possession of the lower half to a conservation society. If the brother's son prevails, it will be because the sister's actions estop her from asserting title

2. Answer A is correct. The brother and sister held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. One of the rights associated with a joint tenancy is the right of survivorship. Where two parties hold a property in joint tenancy and one dies, the decedent's interest in the property terminates and the survivor's interest is increased to 100%. Where one joint tenant makes an inter vivos conveyance of their interest in the property, however, a severance occurs and the joint tenancy is destroyed. Although the brother's son will argue that the sister made such a conveyance to the Audubon society and severed the joint tenancy, there is no sale contract, deed or other written evidence of a conveyance sufficient to overcome the requirements of the Statute of Frauds.

3. Answer D is correct. The holder of an easement has the right to enter the land to make repairs to the easement. Where those repairs somehow alter or damage the land, the easement holder must reasonably restore the land to the condition that it was in before the repairs were made. In this case, the purchaser has unreasonably obstructed the easement with his garden. Because the Water District has acted within its rights by coming onto the land to make repairs, and reasonable restoration of the land does not include restoring the purchaser's garden, answer D is correct.

4. Answer B is correct. The facts indicate that the church holds a life estate (measured by the life of the grantor's son) and the grandchildren hold remainders. As a life tenant, the church has a duty not to commit voluntary or permissive waste relevant to the property during its life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Voluntary waste, on the other hand, is an affirmative act that serves to somehow damage the land. This "damage," however, is not necessarily an act that reduces the value of the land. For example, a life tenant's affirmative act of changing the basic use of the land during his tenancy would be characterized as "damage" to the land that constitutes voluntary waste. The life tenant is held liable to the remaindermen for any waste during his or her life tenancy. In this case, the facts indicate that the church has committed voluntary waste by allowing the neighbor to remove resources from the land, and also (possibly) by changing the basic use of the land to a purpose other than "for church purposes." The church is liable to the remaindermen (the grandchildren), so an injunction is warranted.

5. D is the correct answer. The key here is "25 years," which identifies this as a Rule Against Perpetuities ("RAP") issue. The general rule is that "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest." It is important to break down the woman's devise clause by clause. Courts look to preserve, as much as possible, the interests of the grantor. The devise of a tract of land to the woman's son, for life, is valid and will grant a life estate to her son. The son is the life in being at the creation of the interest, which occurred (by will) at the woman's death, and so the creation of a remainder in the son's children is vested because all the son's children will have been born within 21 years of his death. The RAP violation is contained in the second clause, which attempts to keep the grandchildren from selling the land before they are 25 years old. Since the son could have a child who would not reach the age of 25 within 21 years of the son's death, this clause ONLY would either be removed or be subjected to the "wait and see" doctrine (or other provisions), depending on the jurisdiction. The harsh rule of completely striking an entire bequest is not generally followed in American jurisdictions. D properly applies the rule to the fact pattern; and because the woman created identical devises for specific tracts of land for each of her five children, the result would be the same in each. Thus, C is incorrect, as the provisions for the woman's grandchildren will only be partially upheld.

6. D is correct. This question requires you to be able to identify a tenancy by the entirety. Similar to a joint tenancy, a tenancy by the entirety requires the presence of several unities (time, title, interest, possession and person). But unlike a joint tenancy, this type of tenancy requires that the tenants be married. The other distinguishing feature of a tenancy by the entirety is the limit on the ways that it can be severed. A tenancy by the entirety may only be severed: 1) by divorce, 2) by the death of one spouse, 3) by a creditor of both spouses, or 4) by a mutual agreement between the husband and wife. In this case, the man and woman are not husband and wife, and are thereby prevented from entering into a marital estate. As such, answers A and C may be eliminated. Answer B is incorrect because the couple's mistaken assertion in the deed that they had created a tenancy by the entirety did not serve to negate the woman's interest in the property. As it is not a tenancy by the entirety and the woman has an interest in the property, she has a right to seek partition and answer D is correct.

7. Answer B is correct. The estate granted to the grantor's daughter is a fee simple determinable. A fee simple determinable has the potential to run indefinitely (just like a fee simple), but is also "end-able," meaning it can be terminated by the happening of some later event. Further, where the estate given by a grantor is a fee simple determinable, that grantor always retains a possibility-of-reverter. In this case, although the daughter's interest has the potential to run indefinitely, it can be terminated by a later event; specifically, by her allowing the use of the land for anything other than residential and farm purposes. Because the daughter's interest is a fee simple determinable, and because the Rule Against Perpetuities prevents the grant to her son from being valid, the grantor’s interest must be a possibility-of-reverter, making choice B the correct answer.

8. Answer B is correct. This question requires that you be able to distinguish a tenancy by the entirety from a joint tenancy. Similar to a joint tenancy, a tenancy by the entirety requires the presence of several unities (time, title, interest, possession, and person). But unlike a joint tenancy, this type of tenancy requires that the tenants be married. The other distinguishing feature of a tenancy by the entirety is the limit on the ways that it can be severed. A tenancy by the entirety may only be severed: 1) by divorce, 2) by the death of one spouse, 3) by a creditor of both spouses, or 4) by a mutual agreement between the husband and wife. A joint tenancy, on the other hand, can be severed by one of the tenants making an inter vivos (during their lifetime) conveyance. Where a joint tenant makes an inter vivos conveyance of her interest in the property, a severance occurs and the interest transferred is that of a tenant in common.

9. A is correct. The man’s best argument is that the friend has not obtained an easement by implication. An easement by implication can arise either through: 1) necessity, or 2) previous use by a common owner. An easement by necessity will be implied where a property is "landlocked," meaning there is no way to access the land without crossing another party's land. But if any means of access does exist, even an inconvenient one, then there is no necessity and no easement will be implied. An implied easement through previous use arises where: 1) the plots of land in question were previously owned by the same party, and 2) that party crossed one plot to get to the other by using an: a) apparent, b) continuous, and c) reasonably necessary route. In this case, the parcel of land is not landlocked because it can be accessed by way of the "old, poorly developed road." Although that road is inconvenient, it still constitutes access, so an easement by necessity will not be implied for the friend. Likewise, the friend cannot obtain an easement based on previous use by a common owner, as the facts do not indicate that these plots ever had a common owner. Therefore, answer A provides the man’s best argument.

10. D is correct. With regard to real estate purchases, the time period between contracting and closing is governed by the doctrine of equitable conversion. Once the contract is signed, the risk of loss for any damage to the property that: 1) occurs before the closing, and 2) is not the seller's fault, will fall on the buyer. This is true regardless of whether the seller still physically possesses the land. That is because through the doctrine of equitable conversion, title to the property has been "converted" to the buyer through the operation of equitable principles. Because the buyer bears the risk after contracting, and the facts do not indicate the seller was responsible for the fire damage that occurred, the most likely reason for the seller to prevail will be the application of the doctrine of equitable conversion, so answer D is correct.

11. Answer D is correct. Where the government exercises its condemnation powers, the taking will affect not only the owner of the land, but also any tenants who are leasing that land. The extent of the effect on the tenant's rights depends upon whether there was a complete or partial taking. Where there has been a complete taking (meaning the government has taken all of the property that the tenant was leasing), the lease is automatically terminated, and the tenant has no further obligation to make payments. If, however, there was only a partial taking (meaning some but not all of the land being leased was taken), the tenant is still responsible for making payments, but only in an amount proportionate to the land that was not taken. Note that in the case of a partial taking, the tenant will share in the monies paid by the government to the landlord for the taking to the extent of the tenant's rent liability in the portion of land that was taken. In this case, the facts indicate that part but not all of the land the tenant was leasing was taken by the government. Because there was only a partial taking, the tenant's lease is still in effect.

12. Answer A is the correct answer. An easement holder (the dominant estate) is required to make any repairs to that easement that become necessary over time. The dominant estate has the right to enter land owned by the party that the easement crosses (the servient estate) to make repairs to that easement. Where the repairs somehow alter or damage the land, the easement holder must reasonably restore the land to the condition that it was in before the repairs were made. Furthermore, the servient estate has no obligation to maintain or make repairs to the easement - the dominant estate is solely responsible for those tasks. In this case, the electric company, the dominant estate, took no steps whatsoever to keep the easement in repair. That failure led to extensive damage to the landowner's property. Because the electric company was solely responsible for making the necessary repairs, the decision should be for the landowner

13. D is the correct answer. Always check the call of the question first. This fact pattern seems to focus on zoning, but the call of the question requires analysis based on a claim for private nuisance. While the zoning code is important, it will not control a determination of the appropriateness of an activity. Therefore, answer B is incorrect. Likewise, answer A is incorrect because priority of occupation is not controlling. Instead, the character of the locality; the nature, extent and frequency of the harm; and, the utility and social value of the activity involved are all of significant importance in determining whether the defendant's use of neighboring land is substantially and unreasonably interfering with the use and enjoyment of the plaintiff's property. Thus C is incorrect. Answer D appropriately addresses the weight of the homeowners' prior occupation in the determination of whether relief under a private nuisance cause of action may be granted. A, B and C are incorrect.

14. Answer A is correct. This question is best answered by charting each party's interest, starting with the first conveyance. 1 - Oleg conveyed to Bob and Bill as joint tenants with the right of survivorship. 2 - Bob died. Because he and Bill held the property as joint tenants, when Bob died his entire interest automatically went to Bill. The conveyances in Bob's will had no effect, because immediately upon his death his interest went to Bill. 3 - Bill died. Because he owned the property outright, he was free to devise his entire interest to Frank. 4 - Frank, the sole owner of the property, conveyed it to Paul. Because Paul is now the sole owner of the property, he may transfer his interest without having to join any other parties in the conveyance, so answer A is correct.

15. Homer's conveyance created a life estate in Wanda and a vested remainder in Dixie. As a life tenant, Wanda has a duty not to commit voluntary or permissive waste relevant to the property during her life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Although Wanda's duty not to commit permissive waste requires her to pay interest on the mortgage, she has no obligation to pay the principal. Therefore, answer C is correct. Answer A is incorrect because Wanda has no obligation to pay the portion of the payment that consists of principal. Answer B is incorrect because the comparative value of the estates is irrelevant to the life tenant's duties - they will remain unchanged regardless of the value. Answer D is incorrect because Dixie is only liable for the principal portion of the payments, not the interest portion that Wanda is obligated to pay.

16. Answer B is the correct answer. The easiest means to insure that priorities of title in relation to the recording process are determined as definitely as possible is to limit the recording requirements to time-based considerations. In general, recording statutes are either race (time-based), notice (based on knowledge of previous purchasers) or race-notice (a combination of the two). Establishing the presence or absence of notice, however, requires consideration of factual evidence beyond simply what is contained in the record. If priority of title is instead fixed solely by the time of recording, no extrinsic evidence need be considered. Priority is determined by a race to the recording office, with the name of the winner being recorded. Answer B is the best choice because the question asks for the best method to fix priorities as definitely as possible. Answers A, C and D all suggest more complicated means of fixing priority and are therefore incorrect.

17. Choice C is correct. With regard to real estate purchases, the time period between contracting and closing is governed by the doctrine of equitable conversion. Once the contract is signed, the risk of loss for any damage to the property that: 1) occurs before the closing, and 2) is not the seller's fault, will fall on the buyer. This is true regardless of whether the seller still physically possesses the land. That is because through the doctrine of equitable conversion, title to the property has been "converted" to the buyer through the operation of equitable principles. As such, where a seller dies before closing, her estate has no interest in the real property itself (which has been equitably converted to the buyer), but does have an interest in the proceeds of the upcoming sale (just as the seller did before her death). In this case, when the seller died, he left his real property (which no longer includes the property that was contracted on) to the sister and his personal property (which includes his right to payment for that property) to the friend. Therefore, the friend is entitled to the sale proceeds at closing, and answer C is correct.

18. A is the correct answer and can be reached through the process of elimination. C can be eliminated immediately. A mortgage is a financial agreement and will not run with the land once the mortgage is satisfied. Likewise, D can be removed. The question asks for the best chance of implementation, which would not be the case in a situation where each land purchaser was able to individually negotiate his or her contractual obligation. In addition, the obligation would only bind the initial parties and would not transfer along with the property, should it be sold. B is not the best answer because, while an easement can run with the land and bind future owners of that land, easements cannot generally be used to require the burdened party to perform affirmative acts. In addition, an easement allows access to the land of the owner, by the holder of the easement, and the creation/operation of a golf course would not necessarily touch and concern the land.

19. Answer C is correct. The best choice from the answers presented to insure that the neighbors can both maintain their use of the commonly held driveway is to partition that driveway and grant cross easements to each other. Answer A is incorrect because a tenant always maintains an inherent right to seek partition. Answer B is incorrect because an easement must be in a specifically identified area of land, rather than in a specifically identified interest in land. Answer D is incorrect because such a trust constitutes a permanent restraint on each party's right to alienation.

20. A is correct. The description of land found in a deed only needs to be specific enough to allow a party to identify and locate the property. The description does not need to be made in "metes and bounds," but if it is, that metes and bounds description will be given effect, even if contradicted by other descriptive language or characterizations in the deed. Furthermore, while the description need not be exact (and may even contain minor discrepancies), if it is not sufficient to allow location the property, it will be considered inadequate and any attempted transfer of rights using that deed will be void for vagueness. In this case, the description quoted in the facts is sufficient, so answer A is correct. Answer B is incorrect because metes and bounds are not required. Answers C and D are incorrect because, as stated above, minor discrepancies are permissible.

21. Answer D is correct. The man does not have the power to interfere with the woman's use of the easement. The easement described in the facts is an express easement. It was not created by implication through a necessity, or through previous use by a common owner; it was created by an express provision in the duly recorded deeds. Although the man now argues that removal of the "necessity" that motivated them to create the easement means that the easement will terminate, he is incorrect. An easement by necessity is terminated by the removal of the necessity that created it, but an express easement is created by a writing, not a necessity. Although the man or woman may have personally felt it was necessary to create the easement when they did so, it is not an easement by necessity in the eyes of the law, and is thereby unaffected by the construction of the new public street. Therefore, answer D is correct.

22. A is the correct answer and can be reached by the process of elimination. C and D can be eliminated immediately; the abstract company had the duty to exercise competence in its creation of the abstract. The abstract company will not be able to use lack of knowledge or lack of fraud in a defense against a claim of professional negligence. B is also incorrect. The abstract itself was not the guarantee. The new owner's warranty against encumbrances was the guarantee. The new owner relied upon the abstract company's work, however, in making that guarantee. Likewise, the developer relied upon the information in the abstract when he accepted the property and paid full price.

23. B is the correct answer. The new owner made two guarantees to the developer when he conveyed Newacre: (1) a present title covenant against encumbrances warranting that there were no easements or other interests in third parties that would diminish the developer's ownership rights, and (2) a future title covenant of warranty which guaranteed that the new owner's title to Newacre was good, and that the new owner would assist in defending that title against claims by third parties. Consequently, C and D can be eliminated immediately; the new owner made the guarantees and will be held liable for his warranties, despite the fact that he hired the abstract company to research title and was not personally aware of the information regarding the power company's right of way. That leaves A and B. A is incorrect because this is not an issue of misrepresentation. The new owner did not make a false statement of material fact; he relied upon the same abstract information that the developer did in purchasing Newacre. B appropriately addresses the issue of the breach of covenants and is the best answer under the facts. A, C and D are incorrect.

24. D is the correct answer. This is a tricky question. The issue of surviving 30 years would appear to trigger a rule against perpetuities (RAP) violation. This is not the case, however. The beneficiaries of the man's will are his own children, after the termination of his second wife's life estate. Their remainder interests vest at their father's death because the class of children will then be closed. Thus, C is incorrect. The creation of his children's interest occurred at the man's death, not at the time the will was written; the RAP was not violated by the man naming his spouse recipient of a life estate, irrespective of which spouse it would be. "The unborn widow" problem only arises if the testator devises consecutive life estates, first to the child and then to that child's spouse for life. Thus A and B are incorrect. Vested interests interests do not violate the RAP. The man's will merely states that the vested interest will only become possessory after his wife's death for those of his children who reached the age of 30. No requirement of survival is actually necessary for the gift to vest. Because the interests are vested, the man's substitutionary gift to any grandchildren of the deceased offspring under 30 will also be valid. A, B and C are incorrect.

25. D is correct. Because the facts do not provide the recording act in effect in this jurisdiction, students should first eliminate all the answer choices that would require them to know what type of act is in effect.

26. A is correct. The widower's conveyance gave her son a life estate, nothing to the grandchild, and a contingent remainder to the grandchild's children. There are two broad categories of remainders - vested and contingent. A vested remainder is one that is guaranteed to become possessory. That is, there is no condition that must be met or future event that must happen before it becomes possessory. In contrast, a contingent remainder is dependent upon the happening of a later event or the satisfaction of some condition before it will become a possessory interest. In this case, the facts state that the grandchild does not have any children. As such, the grant to the grandchild's children is contingent upon those children being born.

27. D is correct. The warranty of marketable title is implied in all land sale contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. In establishing whether an encumbrance exists with regard to local codes and ordinances, it is important to distinguish between building codes and zoning laws. A property being in violation of the building code is not considered an encumbrance, and title to that building is marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance and the title is unmarketable. A buyer will not be expected to perform on the contract where doing so will require her to immediately enter a dispute over whether she holds good title. In this case, the facts indicate that the seller's house is not in compliance with the zoning regulations. As such, the title is not marketable because it may expose the buyer to litigation related to the violation. Therefore, answer D is correct.

28. B is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The rule against perpetuities dictates that where any of these interests would vest outside of a life-in-being plus 21 years, it is void. In this case, the owner is a life in being. The grantee's right of first refusal in relation to the property must be exercised within sixty days after the owner decides to sell, or within sixty days after her death, whichever comes first. Therefore, the longest amount of time that will pass before the grantee's right is extinguished is the owner's life plus sixty days. Because the owner's life plus sixty days is within the life-in-being plus 21 years requirement, the RAP is satisfied and the grantee's instrument is valid. Answer B is therefore correct. Answer A is incorrect because recording does not negate the requirement of compliance with the RAP. Answers C and D are incorrect because an owner is free to make such a contractual agreement.

29. D is correct. The warranty of marketable title is implied in all land sales contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. In this case, it is unclear whether or not the subdivision restrictions apply to the unnumbered parcel, but if they do apply, they constitute encumbrances on the title. Therefore, answer D is correct.

30. C is correct. Based on the man's will, the following outcomes are possible after his death: 1) the daughter dies survived by a husband and children - husband will get a life estate, children get a vested remainder, 2) the daughter dies survived by husband and no children - the nephew gets the land in fee simple, 3) the daughter dies unmarried - land is devised according to the provisions of the daughter's estate. The facts indicate that the second possibility occurred - the daughter died survived by a husband but no children, so according to the man's will, the land goes to the nephew in fee simple. The nephew, however, has quitclaimed his interest in the land to the husband. Therefore, the nephew's quitclaimed interest to the land in fee simple went to the husband, and answer C is correct.

31. B is the correct answer. The son has a present possessory interest in the land by virtue of his defeasible fee simple. One of the rights associated with a defeasible fee simple is the right to remove minerals and other resources from the land. That right is not subject to any requirement to provide notice to or obtain permission from any other parties who hold an interest in the land. Therefore, answer B is correct

32. Choice D is correct. The Statute of Frauds mandates that any contract with regard to sale or conveyance of land must be in writing and signed by the party to be charged. In this case, the unmarried couple owned their condominium as tenants in common. Although they made a verbal agreement that if one member of the couple died the surviving member would acquire the decedent's interest in the condominium, that agreement is void as violative of the Statute of Frauds. Therefore, each member of the couple held a one-half interest in the property at the time of their death, and had only that interest to convey to their respective heirs. As such, the brother and the mother each inherited a one-half interest in the property, and answer D is correct.

33. B is correct. Some of the most basic sticks in the bundle of property rights are those relating to use of one's land. A property owner, whether an individual or a commercial entity, is entitled to make reasonable use of its property. An owner is likewise entitled to use and enjoy her land without invasions of that use and enjoyment by the activities of other owners. In this case, the facts indicate that the cement company's commercial activities result in a large cloud of concrete dust that fills the air on the plaintiff's residential land. Determining the parties' respective rights requires a balancing between the cement company's right to use its property as it wishes on the one hand, and the plaintiff's right to quiet enjoyment of her property on the other. For the plaintiff to prevail, she must establish that the cement company's use of its land constituted an unreasonable interference with the plaintiff's use of her own. Therefore, answer B is correct.

34. D is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller or transferor). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the grantee. The grantee's acceptance of the deed will be presumed, unless the grantee explicitly rejects it. In this case, the facts indicate that the landowner signed the deed and clearly intended for it to be delivered to her nephew, as evidenced by its recording and the instructions to the attorney. The fact that the nephew did not physically possess the deed before his death is irrelevant in determining whether the transfer was valid. The nephew did not reject the transfer, so acceptance is presumed, and answer D is correct

35. C is correct. The facts indicate that that the second floor of Building 2 is only accessible by using the stairway in Building 1. As such, the owner of Building 2 has an implied easement by necessity. The holder of an easement has the right to enter the land to make repairs to that easement. For both these reasons, answer C is correct.

36. The correct answer is A. This question requires you to understand not only types of easements, but also the ways to create an easement. The driveway between Lots 1 and 2 is an easement appurtenant - one that benefits a specific piece of land. But the creation of an easement appurtenant requires two pieces of property: a dominant estate and a servient one.

37. A is correct. The man and the woman held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an inter vivos conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. As soon as the man transferred his interest to his wife, the joint tenancy was severed and the property was held by his wife and the woman as tenants in common. When the wife immediately transferred her interest back to the man, the joint tenancy was not recreated because the four unities were no longer present. The man and the woman then held the property as tenants in common, so A is correct. B is incorrect because the man's inter vivos conveyance, not his will, severed the tenancy. D is incorrect because the man had no fiduciary duty to the woman.

38. B is the correct answer.

39. D is the correct answer. Answer A is incorrect because no merger ever occurred; the son was the owner of Blackacre (as a result of the businessman's conveyance to him fifteen years ago), but he was only a life tenant in Whiteacre. If the businessman had conveyed ownership of Blackacre AND Whiteacre to the son, then the unity of ownership in the two parcels would have constituted a merger and terminated the easement, but that is not what happened here.

40. Answer B is correct. To obtain land through adverse possession, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the buyer has not acquired Whiteacre because he has failed to exclude others from the property (i.e. the hunters), and has not maintained possession continuously or openly (visiting the land less often than annually). The buyer has, however, obtained possession of the ten-foot strip of Greenacre by erecting a fence (exclusive) and planting trees (open and notorious), without permission (hostile), and maintaining his actual possession continuously for the fifteen year statutory period. Therefore, answer B is correct.

41. B is correct. The leasehold agreement created a contractual obligation that required the leasing company and the restaurant to meet certain conditions. Since the investor did not assume the leasing company's obligations under the lease when he purchased the one-acre parcel, those obligations remained with the leasing company. The restaurant's obligations were likewise unaffected by the sale to the investor, so answer B is correct.

42. D is correct. One of the rights associated with a joint tenancy is the right of survivorship. Where two parties hold a property in joint tenancy and one dies, the decedent's interest in the property terminates and the survivor's interest is increased to 100%. Because the brother's interest in Blackacre terminated upon his death, thereby making the sister the sole owner, the interest to which tenant's lien attached no longer existed. Therefore, answer D is correct and A, B, and C are incorrect.

43. Answer D is correct. Life tenants have a duty not to commit voluntary or permissive waste with regard to the property during their life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. The facts indicate that the widow has a life estate, and that the three children all hold a remainder in fee simple. Although the widow's duty not to commit permissive waste requires her to pay interest on the mortgage, she has no obligation to pay the principal. Betty cannot be held liable for the widow's failure to pay the interest, or for the failure of the holders of the future interest to make the principal payments. Betty does, however, risk losing her share of the remainder in Blueacre if the holder of the mortgage forecloses on the property. Therefore answer D is correct, and answers A, B, and C are incorrect.

44. Answer B is correct. The mortgage company sold the man's note and mortgage to the bank, delivered to the bank a written assignment of the same, and the bank promptly and properly recorded that assignment. When the woman purchased that same note and mortgage from the mortgage company at a later date, the bank had already recorded its interest in both. The bank's prompt and proper recording of the assignment secured its ownership of that assignment, and put the woman on notice that it had already been sold, so answer B is correct, and A, C, and D are incorrect.

45. D is correct. Where there are multiple mortgages given on a property, and none were purchase money mortgages, priority is determined according to which mortgages came first in time. When presented with a complicated fact pattern such as this one, you will find it helpful to quickly diagram the various parties and their interests. In this case, the man's mortgage came first, followed by the woman's and the businessman's. The elderly widow, however, came along and paid off the first (senior) mortgage, obtaining that first mortgage herself. Although the woman came before the elderly widow in the timeline of events listed in the facts, recall as stated above that priority is determined by which mortgage came first in time, not which party came first. As such, the man's mortgage (now held by the elderly widow) is senior to the woman's, and the elderly widow is entitled to hold the man's position as senior mortgagee. Because the facts do not indicate some other equitable considerations that would support a decision in favor of the woman, the elderly widow's mortgage is entitled to priority and answer D is correct. A, B, and C are incorrect.

46. Answer A is correct. Delivery of a deed can be proven by establishing that there was an intent to pass title, even if the title document was never physically given to the transferee. In this question, the problem is not that the deed was not effectively delivered, but that it does not adequately identify the grantees. A grant to "the leaders of all the Protestant Churches in York County" is simply too broad and vague to adequately identify the intended grantees, so answer A is correct. Answers B and D are incorrect because establishing the delivery of a deed that does not adequately identify a grantee to whom it was delivered will not suffice to establish legal title. Further, a deed is not automatically considered valid on its face until rebutted, so answer C is also incorrect.

47. Choice A is correct. This question deals with a restrictive covenant. There are four elements that must be met for a restrictive covenant to run with the land, including: 1) intent for it to run with the land, 2) notice, 3) "touch and concern" of the covenant to the land, and 4) privity of estate. Importantly, a covenant not to compete is considered a covenant that "touches and concerns" the land. Because the facts indicate that the man had notice of the covenant to impose restrictions, the covenant will run with the land, and answer A is correct. Answers B, C and D are all inaccurate statements of law.

48. A is correct. The Statute of Frauds mandates that any contract for the sale of land must be in writing and signed by the party to be charged. In this case, the friend's reasons for refusing to close and the landowner's justifications for mandating performance are irrelevant because the sale contract was never memorialized in a writing. A land sale contract may never be oral, so answer A is correct, and B, C, and D are incorrect.

49. D is the correct answer. This is a reading comprehension question and can be answered through the process of elimination. The key issue is that the tenant only has a lease for years, which is not a complete ownership interest, but merely a nonfreehold estate in Whiteacre. The tenant's option to purchase was "during the term of this lease." The tenant does not have a property interest in the option; he only has an alienable interest in the leasehold itself, allowing him to assign his entire interest or to sublet his interest by granting possession of the estate for a term of years that is less than the entire interest. Therefore, A and B can be eliminated immediately because the choices want the reader to erroneously assume a transfer of property has occurred. The tenant had a lease for years that contained an option to purchase, not a contract to buy Whiteacre that contained a lease clause. In addition, marketable title is not at issue because the property was not sold. The issue is whether a leasehold estate can assign its option to purchase while keeping the remaining terms of the lease. C is clearly incorrect because the option to purchase must be exercised within ten years, removing it from any potential rule against perpetuities violation. That leaves D, which correctly states that options to purchase contained in a lease for years cannot be assigned separately from the lease. A, B and C are incorrect.

50. C is correct. Unless the terms of an easement state otherwise, it is assumed that the easement is permanent and that it will be used for the reasonable development of the dominant estate. In this case, the religious group is a religious organization with a large number of members living on Blackacre. Although the nursing home has increased use of the easement on one day of the week, such use (increased traffic to a religious group's facility on a Sunday) is the type that would have been reasonably contemplated by the parties at the time the easement was granted, so answer C is correct. Answers A and B are incorrect for that same reason. Answer D is incorrect because it is legally inaccurate - the use of self-help by a party (where it is legally entitled to do so) will not negate its right to equitable relief.

51. Answer C is correct because the farmer was responsible for disclosing the danger to both the neighbor and the buyer. Answer A is incorrect because even though the buyer assumed all of the farmer's obligations related to the lease, the farmer's concealment of the dangerous condition rendered him, rather than the buyer, liable for the neighbor's damages. Answer D is incorrect because a layperson's inspection would only have revealed an open and obvious hazard or defect, not a hidden structural defect such as this. Answer B is incorrect because privity is irrelevant to determining the farmer's liability for the damages that followed his concealment of the dangerously weakened wall. Answer C is correct and the neighbor should recover.

52. Answer B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded their deed without notice of earlier purchasers. To be a BFP, a party must give value for their interest in the land. In this case, the lender's interest arises from a judgment lien against the owner rather than payment of valuable consideration. Therefore, the lender is not protected by the recording statute. Because the buyer is protected by the statute, the owner no longer holds an interest in Blackacre, and there is no property for the lien to attach to. Answer B is therefore correct.

53. The correct answer is D. This is a tricky question because many of the facts are designed to create concerns that the Greenacre conveyance violates the Rule Against Perpetuities (RAP). The general rule is that "No interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest." It is important to remember, however, that vested interests are not subject to the RAP. Interests are vested if there is no condition attached which must be satisfied; the holder of the vested remainder has a present or certain right to take possession of the property when the prior estates terminate. The grandfather conveyed his entire interest in the tract of land, leaving no reversion or contingent remainder. Consequently, despite the fact that the grandson was only six years old and that his future wife was not yet born at the time the grandfather conveyed the property to him, all interests would clearly vest or fail within the grandson's life. The grandson is the measuring life. Upon the grandson's death, there would be no possibility of an additional wife or children arriving more than 21 years later. Consequently, Zelda's interest in a life estate vested upon her marriage to the grandson. Likewise, the grandson's child's interest vested upon his birth; his future possessory interest did not lapse upon his death but rather was devisable. D is the correct answer because it acknowledges the vested state of the interests. A, B and C are incorrect.

54. A is correct. To obtain land through adverse possession, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the agency had actual physical possession of the land beneath the waste piles, maintained that possession continuously for 12 years, excluded the man and his son from using that area of land, did so without permission, and did so openly (as the piles were large and were not concealed). Although the agency took the waste out of Blackacre for four-weeks each year, the possession is consistent with the type the usual owner of Blackacre would make, since it is an undeveloped tract and would reasonably be used as a waste dump and cleaned once a year. Therefore, answer A is correct.

55. Answer A is correct. In this case, the woman and the best friend both have a life estate, and the second best friend has a vested remainder. The woman's grant was for the term of her natural life only, which means that the land reverts back to the owner upon the woman's death. If the owner were deceased by the time that occurred, the land would go to the owner's estate. The owner, however, devised a life estate to the best friend in his will. Therefore, upon the woman's death, the land will go to the best friend for the rest of her life, and then to the second best friend permanently. The woman's life estate is unaffected by any action the owner took after he conveyed it to her, so answer A is correct. Answers C and D are incorrect because the woman's life estate is measured by her own life, not the owner's. Although answer B correctly states that the owner's will was the final expression of his intent, that fact does not alter the woman's life estate in any way, it simply determines where the land goes after she dies.

56. D is correct. This question deals with a covenant running with the land. There are four elements that must be met for a restrictive covenant to run with the land, including: 1) intent for it to run with the land, 2) notice if the successor is a bona fide purchaser, 3) it must "touch and concern" the land, and 4) privity of estate. The covenant in this case expressly states it is intended to run with the land, the businessman is not a bona fide purchaser because he inherited the land (therefore notice is not required), it touches and concerns the land because it serves to make the land more valuable or useful, and there is privity between the parties. Because the covenant runs with the land, and its terms expressly state that any expenditures related to the retaining wall must be "reasonable" to be reimbursed, the only way judgment would be entered in favor of the businessman is if the man's expenditures were unreasonable, so answer D is correct.Answer B is incorrect because reliance is irrelevant to determining whether a covenant is enforceable.

57. C is correct. A deed to a **dead person cannot convey good title**. Therefore, while the woman obtained an interest in the property for herself when the deed was delivered to her, the interest that she fraudulently attempted to convey to the friend by having her brother forge the friend's name remained the owner's property and was never passed. The friend never held an interest in the property, and thereby had no interest in it to bequeath to the nephew. Because the execution of the contract was only valid with regard to the woman, she and the owner both hold a one-half interest in the property, so answer C is correct, and A, B, and D are incorrect.

58. Answer A is correct. With regard to defects on a property, sellers are required to disclose all known defects that will not be open and obvious to a buyer, and are prohibited from concealing such defects in any way. The fact that sewage seeps into the basement of the Blackacre house would not be obvious to a buyer unless it was occurring during the time he was viewing or inspecting the house. The owner had an obligation to make the investor aware of this hidden or "latent" defect, so answer A is correct.

59. B is correct. This question highlights the need to carefully identify which facts relate to the principle of law being tested and which are superfluous. A cursory analysis of the question may lead some students to incorrectly choose answer D because the facts state that the brother gave up possession, and answer D suggests that the sister wins because she was in sole possession. It is, however, ownership, not possession, that is relevant to answering the question presented. The brother and sister's legal rights as tenants in common are unaffected by the degree to which they each physically possess the land. Although any one co-tenant has the right to possess the entire property, that possession in no way alters their ownership rights or those of the other co-tenants. Because the sister's possession of Greenacre in no way serves to give her the right to enter agreements individually that would affect the rights of her co-tenant, answer B is correct, and answers A, C, and D are incorrect

60. D is correct. The lender does not own Blackacre outright; he holds an equitable mortgage. An equitable mortgage is created by the conveyance of an absolute deed as security for a loan, along with a promise by the grantee to reconvey the deed to the grantor once the loan is paid off. Because the lender's interest is a mortgage on the property rather than outright ownership of it, his only remedy following the owner's default is foreclosure of the property pursuant to the equitable mortgage, so answer D is correct. Answer A is incorrect because the agreement to reconvey is not a land sale contract and is therefore not subject to the Statute of Frauds. Answer B is incorrect because a court must determine the rights of a mortgagor and mortgagee in relation to a default on the mortgage, and the vehicle for that determination is a foreclosure proceeding, not an eviction proceeding. C is incorrect because the arrangement is an equitable mortgage, not a nullity.

61. B is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a **bona fide purchaser ("BFP") who: 1) was the first to record their deed (won the race), and 2) acquired the land without notice of earlier** purchasers. To be a BFP, a party must give value for their interest in the land. The facts indicate that the neighbor recorded first, followed by the woman and then the son. The woman, however, gave no value for the conveyance; she received the conveyance as a gift. Therefore, she is not a BFP and is not protected by the recording statute. Further, by the time she recorded the deed, the neighbor had already recorded (The woman lost the race), and the neighbor's title was already better. The neighbor was the first BFP to record a purchase of the land, and as such she is protected by the recording act and her purchase cut off any rights that the woman may have had. Thus, when she gave the land to her son, she had already cut off the woman's rights, and the son has the better title. B is the correct answer, and A, C, and D are incorrect.

62. B is correct. The facts indicate that the **nephew is a life tenant on the property, with the godson holding a vested remainder. A life tenant has a duty not to commit voluntary or permissive waste with respect to the property during their life tenancy. A failure to keep the property in repair, to pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste**. Voluntary waste, on the other hand, is an affirmative act that serves to somehow damage the land. This "damage," however, is not necessarily an act that reduces the value of the land. For example, a life tenant's affirmative act of changing the basic use of the land during his tenancy would be characterized as "damage" to the land that constitutes voluntary waste even if the land value increased as a result. The life tenant is held liable to the remainderman for any waste during his or her life tenancy. In this case, the best argument available to the godson (of the choices given) is that building a 30 story building constitutes a change in use sufficient to establish voluntary waste, so answer B is the best choice.

63. D is correct. If the facts of this question had simply stated that the farmer's will created a remainder in "my children," then the deceased sibling's estate would have been entitled to a share of Purpleacre, and the friend would have inherited that interest by virtue of the deceased sibling's will. However, the remainder only exists in the children who were living at the time of the wife's death. Therefore, only the two remaining siblings held a remainder in Purpleacre. The deceased sibling's estate did not include a remainder in Purpleacre because he predeceased the farmer's wife, so the deceased sibling had no interest to bequeath to his friend. Therefore, answer D is correct, and answers A, B, and C are incorrect.

64. C is the correct answer. The son will need to bring an action against the brother, not the friend. The brother accepted legal title in Goldacre as trust property, with equitable title in the son as beneficiary. A trust need not be written or recorded and the transaction of land and trust do not need to be contemporaneous to make the trust valid. Thus D is incorrect. The brother sold Goldacre to the friend, but the sale was not a transfer of his duties as trustee, only a sale of trust res. The brother is still the son's trustee. Thus A is incorrect. The friend purchased Goldacre for value, without notice of any encumbrances, and did not agree to assume the duties of trustee when she purchased. The son has no claim against a bona fide purchaser and must prosecute a claim for breach of fiduciary duty against the brother, thus C is the best answer.

65. D is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. For the bank to be protected under the recording statute and prevail over the doctor, it must be able to establish that it recorded its interest without notice of her easement. Although the bank did not have record notice of the easement, since it had not yet been recorded when the mortgage was issued, the bank arguably had inquiry notice by virtue of the doctor's open and obvious use (and development) of the easement. Therefore, if the doctor prevails, it will be as a result of the bank's notice of the easement, and answer D is correct.

66. Answer B is correct because a ticket is a mere license rather than a property interest. It gives the ticket holder a contractual right to use some portion of the issuer's property for a fixed period of time, but does not afford that ticket holder any interest in the property. While the license may be revoked by the issuer, that issuer will be liable for damages if it does so wrongfully. Further, because the ticket is a contractual right, a ticket holder's remedy for wrongful revocation of a ticket will be in contract, rather than property law. In this case, the hockey fan's ticket was a mere license issued by the privately owned entity.

67. D is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. To be a BFP, a party must give value for his or her interest in the land. The facts state that the buyer, a BFP, received the deed from the corporation before the judgment was filed, which indicates she could not have had notice of it. She then recorded her deed, still having no notice of any judgments against the corporation. Her lack of notice means that she is protected against the man's subsequent claim to an interest in the property. Further, her protection under the recording act means that she will be able to provide good title to the developer at closing; she may therefore compel the developer to make the purchase, and answer D is correct.

68. C is the correct answer. The fact pattern states that the wife was given a general power of testamentary "appointment" over the net trust estate of Blackacre. The use of that terminology created a specific power that could only be utilized in the wife's will. The issue is whether the wife appropriately exercised that power. Most jurisdictions require the language of the will to specifically refer to the exercise of the power, which the wife's does not do. Therefore, for the daughter to prevail, the court must find that the wife's general reference to her "entire estate" was a use of her power of appointment.

69. Answer C is correct. Although a contract for the sale of land normally requires a writing signed by the party to be charged, the doctrine of part performance creates an exception to that rule. The elements of the doctrine are 1) a definite and unambiguous oral contract, and 2) a performance by the putative buyer that clearly indicates that a contract existed. Performances that suffice to take the contract for the sale of real property out of the statute of frauds include a) making improvements to the property, b) paying the purchase price in full, and c) taking possession of the property. Any one of these performances, along with a clear and definite oral contract, will establish a contract through part performance. In this case, the terms and conditions of the oral contract are clear - the landlord does not deny those conditions; he simply refuses to comply with them. The tenant's possession of and improvements to the property are performances that indicate a contract existed - it is assumed a party would not make such performances in the absence of an agreement. Therefore, answer C is correct.

70. A is correct. This question requires you to distinguish between an assignment and a sublease. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. In this case, the facts indicate that the tenant transferred the unit to the friend for a limited time, specifically, months 13 through 24 of the tenant's lease from the owner. This means that the friend was merely a sublessee rather than an assignee. A sublessee has no liability in relation to the original landlord, because there is neither privity of contract nor privity of estate between those parties. Therefore, only the tenant is liable to the owner for the 24 months of rent that have not been paid. Therefore, answer A is correct, and answers B, C, and D are incorrect.

71. A is correct. A landowner has the right to lateral (side) support of its land from all neighboring parcels of land. This right, however, extends only to the land itself, not the structures built upon it. This means that if a landowner excavates its own land, and collapse of the neighboring land and a structure built on that land occurs, the excavating landowner is liable only if the neighboring land would have collapsed even without the weight of the structure. In other words, the excavator must leave just enough support in place that the neighboring land without any structures on it would not collapse. If judgment is entered for the landowner, it will be because he established that the subsidence on Lot 1 would have occurred even without the weight of the landowner's building, so answer A is correct.

72. C is correct. The interest that the original owner conveyed to the landlord was a life estate. As such, any right the landlord (or her assigns) had in the property ended upon her death. The son, having no legal right to the owner's property after the landlord's death, **collected rent on that property from the tenant for eleven years. The son's actions have earned him an ownership interest in the property through adverse possession**. To obtain land through adverse possesion, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the son held the property without permission, did so exclusively, openly and notoriously (by allowing his tenant but no other parties to physically possess that land and pay him rent), and did so without interruption for the length of the statutory period (which in this jurisdiction is ten years).

73. B is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the transferee. In this case, the landowner signed the deed, and clearly intended for it to be delivered to the purchaser, as evidenced by the landowner's physical delivery of it. As such, the purchaser will prevail, and answer B is correct.

74. A is correct. A seller is entitled to keep a buyer's deposit as liquidated damages following the buyer's breach of the contract, as long as that amount appears to be reasonable in light of the seller's anticipated and actual damages. Many courts will uphold the retention of a deposit of 10% of the sale price or less without inquiry to its reasonableness. The facts indicate that the sale price of Goldacre was set at the "reasonable market value," which was $100,000 at the time of contracting and had increased to $110,000 by the time set for closing. Therefore, the banker did not have actual damages, because she can sell it for $10,000 more, and the most the banker can legally retain is $11,000. Thus, she will not be able to enforce a liquidated damages clause in any higher amount. The administratrix has not sought specific performance of the contract, so the only issue being considered by the court is liquidated damages, so answer A is correct. Answer D is incorrect because the banker is not seeking to prevent termination of the contract (through specific performance); she is merely seeking damages.

75. B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded her deed without notice of earlier purchasers. To be a BFP, a party must give value for her interest in the land. Although the facts indicate that the creditor filed her judgment without actual notice or record notice of the conveyance (it had not been recorded yet), the recording act in this jurisdiction protects purchasers for value, meaning BFP's. Therefore, if the buyer wins, it is most likely because the creditor was not a BFP, making answer B the correct choice.

76. D is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a bona fide purchaser ("BFP") who 1) was the first to record the deed (won the race), and 2) acquired the land without notice of earlier purchasers. Recording, however, is performed for the purpose of providing notice. It has no effect on the validity or invalidity of a deed. In this case, an invalid (forged) deed was recorded by the woman. The purchaser's lack of notice of the forgery and of any earlier purchasers is irrelevant to the validity of the deed. The invalid deed containing the forged release is ineffective, so answer D is correct.

77. A is correct. The easement described in the facts is an easement appurtenant - one that benefits a specific piece of land. The creation of an easement appurtenant requires two pieces of property: a dominant estate and a servient one. This easement will automatically run with the land, and after being recorded for the first time does not need to be re-identified in any deeds accompanying later conveyances. The owner of the servient estate (the estate that the easement crosses) has the right to select the location of the easement. The only limit on such selection is that the location chosen must be a reasonable.In this case, the parties do not dispute whether the original owner of the servient estate reasonably chose its location. Instead, the son attempts to argue that moving the easement to a new location is permissible as long as the new location is selected reasonably. The easement, however, has already been reasonably located, and the servient estate does not possess any inherent right to relocate it. Therefore, answer A is correct.

78. A is correct. The quoted provision violates the Rule Against Perpetuities (RAP). The RAP applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The Rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after everyone alive at the time of the conveyance has died. If it could, the interest is void.In this case, the facts indicate that if the property ever ceases to be used from nonresidential purposes, the landowner and/or his heirs have a right to repurchase, thus a contingent remainder. However, it could be decades before the land is used for nonresidential purposes, meaning it could be decades before the landowner and his heirs' interests can become possessory. Because it may be longer than a life in being plus 21 years before that occurs, the language of the grant violates the RAP, and answer A is correct. Answer B, C and D are all incorrect as the RAP provides a more sound basis to rule against the landowner than any of the concepts or doctrines these answers reference.

79. B is correct. The owner conveyed Blackacre to the widower in fee simple. The language of the conveyance indicating that it was made to "[the widower] and his heirs" does not create an interest in the child. Because the widower holds the land in fee simple, his ownership will not be terminated by the happening of any subsequent condition, and he is free to transfer the land to whomever he wishes (there are no restraints on alienation). Because there are no restrictions on the widower's right to re-convey the land, his conveyance to the buyer in fee simple will be upheld, and the child has no rights in the property. Answers C and D may therefore be eliminated. Note that the widower could have given the child an interest if he wished to. For example, he could have conveyed the property "to [the buyer]for life, then to the child and her heirs." Alternatively, if the widower had not conveyed to the buyer, the child would have simply inherited the property upon his death. The widower, however, held Blackacre in fee simple and was free to convey it as he wished, so answer B is correct. Answer A is incorrect because there is nothing in the facts indicating that the buyer had a life estate.

80. Answer A is correct. The warranty deed conveyed a fee simple determinable title to the church and the grantor retained the future interest which is the possibility of reverter. The future interest becomes possessory immediately upon the occurrence of the limitation. A title is unmarketable when a reasonable person would not purchase it. The buyer plans to use the land as a site for business purposes, which would cause the limitation to occur and the title to be forfeited automatically to the grantor.

81. A is correct. A grantee who does not assume the mortgage, but rather takes subject to the mortgage, is not personally liable for the debt. In this case, there was no express assumption. In fact, the parties agreed that the neighbor was not assuming the mortgage debt. The investor is the only party liable for the mortgage to the partner.

82. Answer A is correct. The foreclosure sale of the bank's mortgage on the hotel was insufficient to pay the businessman's debt to the bank. The bank had received a judgment against the businessman for the entire amount of the defaulted loan. This lien was properly recorded and applied to all property owned by the businessman during the ten-year time period, including the parking garage. (The bank may have decided on this course of action because it deemed the businessman's equity in the garage was significant and the timing was bad for a hotel foreclosure.) After the financing company was paid in full from the funds generated by the foreclosure sale of its mortgage on the parking garage, the additional funds generated by that sale would be paid to the bank not as a deficiency judgment, but because of the unsatisfied amount of the prior money judgment.

83. Answer A is correct. To be binding, a restrictive covenant must be placed on property at the time it is conveyed. Here, neither the deed to the first buyer nor the deed to the doctor contains the restrictive covenant. The burden cannot be attached to Lot 1 at a later time by someone who has no interest in Lot 1. Therefore, the doctor may proceed with her plan to use part of the property as a medical office.

84. Answer C is correct. Although a marketable title will be implied in a contract for the sale of land, the doctrine of merger provides that one can no longer sue on title matters contained in the contract of sale after the deed is delivered and accepted. The investor's remedy, if there is one, would be based on the deed he received and not on the contract of sale.

85. Answer A is correct. A gift may be made of real estate. A deed is required as are the elements for a gift. The homeowner had the requisite donative intent as shown by his words. Delivery occurred when the homeowner physically handed the deed to the nephew's friend as the agent of the nephew. Acceptance is presumed if the gift is beneficial. At this point, the homeowner could not recall the gift.

86. Answer B is correct. A license is permission to use the land of another. It is revocable, and is not subject to the statute of frauds. In this case, because the neighbor had the landowner's permission to use the road and did not expend any money, property, or labor pursuant to the agreement, the neighbor had a license that was effectively revoked by the grantee.

87. Answer D is correct. If the man recovers title to the property, it would be because the jurisdiction provides a statutory right of redemption. A jurisdiction may, by statute, provide a statutory right of redemption, which sets out an additional time period after the foreclosure sale during which the prior mortgagor and perhaps others have the option to pay a certain sum of money and redeem the title to the property. The right arises only by statute and only after there has been a foreclosure of the mortgage. If the jurisdiction provides a statutory right of redemption, it does not matter whether the property being redeemed is residential, commercial, or another type of property, unless the statute so notes. Thus, Answer D is correct and Answer A is incorrect.

88. Answer C is correct. If a contract of sale is silent as to quality of title, the court will imply a marketable title, and an easement does affect the marketability of title. But while the seller has a duty to deliver a marketable title, the requirement of marketable title is for the benefit of the buyer. The buyer may waive the right to have a marketable title, which is what the buyer did in this fact situation. Thus, Answer C is correct.

89. Answer B is correct. A tenant in common may bring an action to partition the property. Partition in kind, in which there is a physical division of the common property, is preferred; however, a partition by sale is allowed when a fair and equitable physical division of the property is impossible. The applicable zoning ordinance requires a frontage of 100 feet on a public street in order to build. Although the subject property can be physically divided, it would not be fair or equitable to convey only 50 feet of frontage to the brother, who then could not build on his lot. Thus, Answer B is correct and Answer C is incorrect.

90. Answer B is correct. The restrictive covenant created 25 years ago placed a burden on the 40-acre tract of land and gave the right to enforce the promise to the man who retained the ownership of the benefitted five-acre tract of land. The man may enforce the promise because he owns the benefitted tract of land. It may be that the owners in the subdivision also may enforce the promise; however, the man, as owner of the original benefitted five-acre tract of land, also may enforce it. Thus, Answer B is correct and Answer A is incorrect. Answer D is incorrect. The zoning ordinance does allow the doctor's proposed use. The zoning ordinance does not, however, preempt the valid restrictive covenant. The restrictive covenant, as the more restrictive of the two in terms of its limitations, prevails.

91. Answer D is correct. The friend does not have an enforceable lien. The friend did have a lien on the lot when the investor granted the friend a mortgage. The friend, however, did not record the mortgage. The investor then sold the lot to the buyer. The buyer had no actual notice of the mortgage to the friend. The buyer had no notice based on possession because the lot was vacant. The buyer had no constructive notice of the mortgage because the mortgage to the friend had not been recorded when the buyer received title. The lot is located in a notice jurisdiction. The fact that the buyer was an innocent purchaser for value at the time the buyer received title qualifies the buyer for protection in a notice jurisdiction. The buyer took the lot free of any prior unrecorded documents; specifically, the friend's mortgage. The fact that the friend later recorded the mortgage is irrelevant in a notice jurisdiction--the notice given to the buyer was given too late. The bank's mortgage is an enforceable lien. Thus, Answer D is correct, and Answers A, B, and C are incorrect.

92. Answer A is correct. Fifteen years ago each of the parties granted a reciprocal right of first refusal (or a preemptive right) to the other. A right of first refusal is a conditional option. It provides that if the owner ever decides to sell the property, the one holding the right of first refusal has the right to purchase it. In this case, the price for the purchase was to be set by three qualified expert independent real estate appraisers and was thus fair. The right, however, violates the common law Rule Against Perpetuities. The right to purchase is triggered by the decision of one to sell his or her land. In this case, that decision might occur more than 21 years after a life in being at the time the right was granted. Thus, under the common law, the right of first refusal is struck ab initio. The question notes that the common law Rule Against Perpetuities is unmodified in this jurisdiction. Thus, there are no applicable statutory reforms to the rule, and because the question is written with the daughter winning, any statute which may exempt a commercial transaction is inapplicable. Thus, Answer A is correct.

93. Answer A is correct. A joint tenancy with right of survivorship can be created by devise or by conveyance provided the intent to create a right of survivorship is expressly stated, and in this case the mother's devise included express words of survivorship. Thus, Answer C is incorrect.

94. Answer B is correct. The businesswoman and the grantee created a valid equitable servitude. The promise was in a writing--the deed--that satisfied the statute of frauds. The promise restricting the use of the vacant land touched and concerned the land, placing a burden on the vacant tract and giving a benefit to the improved tract. The writing showed an intent that the promise would be binding on the grantee's heirs and assigns. The grantee recorded the deed. The cousin had constructive notice of the equitable servitude and is bound by it because nothing has occurred that would terminate the equitable servitude. Thus, Answer B is correct. Answer A is incorrect because, although it correctly concludes that the businessman will prevail, it misstates the rationale. It is not relevant whether the commercial building was constructed before or after the other building.

95. Answer A is correct. The statute of frauds requires a writing evidencing an agreement to sell real property to identify the land to be sold. Although courts are sometimes lenient with this requirement, the writing must contain some evidence of the specific real property to be sold. The writing in this case noted that the parties were yet to agree on what land was to be conveyed. Equity cannot provide relief for this omission, and the statute of frauds makes the contract unenforceable. Answer A is correct and Answers C and D are incorrect.

96. Answer A is correct. A variance permits a waiver from a zoning requirement. A variance will be granted when an owner convinces a zoning appeals board that without the variance the owner would suffer a hardship regarding the use of the land. In this case, the board approved the woman's application to operate a court-reporting service in her house, and thus this jurisdiction allows use variances that permit nonresidential uses in areas that are otherwise zoned residential. Thus, Answer A is correct.

97. Answer D is correct. In the absence of a contrary direction in the document creating the life estate--in this case, the will--it is the duty of the life tenant to pay all general property taxes that accrue during the continuance of the life estate. The only limitation on this duty is that the life tenant has no duty to expend more than the income that can be generated from the land. Because the fair rental value of the farmland was substantial, this limitation does not apply. If the remainderman does pay any property taxes due during the life tenancy, he or she is entitled to a judgment against the life tenant for reimbursement. Thus, Answer D is correct and Answer A is incorrect. Answer B is incorrect because it is not relevant to whom the county assessor sent the tax bills. Answer C is incorrect because the silence in her will as to the responsibility to pay the property taxes triggers the default rule--it is the duty of the life tenant to pay all general property taxes that accrue during the continuance of the life estate.

98. Answer B is correct. Both mortgagees have mortgages on the entire four-acre lot. The bank has no obligation to foreclose on a smaller parcel. Further, a pro rata foreclosure might well prejudice the rights of the bank, since the two mortgages do not cover different tracts of land. Priority of mortgages in the foreclosure process is based on the order in which the mortgages were recorded. The bank's mortgage was recorded first and thus has priority. Thus, Answer B is correct, and Answer C is incorrect.

99. Answer C is correct. Many events may occur during the executory time period, which is the time between the contract signing and the closing. If the seller dies during this time period leaving a will that devises the real estate to one person and the personalty to another, and if the contract contained no contingencies or all contingencies had been satisfied at the time of the death, the doctrine of equitable conversion applies. The determination of who will receive the proceeds thus depends on who had equitable title. In this case, the son had only a legal interest in the land at the time of the seller's death, and the daughter had the equitable interest in the proceeds and should receive them. Thus, Answer C is correct.

100. Answer C is correct. The neighbor had the man's express permission to use the road, so that use was never adverse. The neighbor incorrectly argues that he has acquired an easement by prescription. To establish an easement by prescription, a party must show: 1) adverse, 2) continuous, 3) visible, and 4) unpermitted use of the area for the length of the statutory time period. Although the neighbor's use was continuous, visible, and lasted for the length of the statutory time period, that use was not adverse or unpermitted. Answers A and D are incorrect because the neighbor's use was not adverse. Answer B is incorrect because the man's original grant of permission was enough; it does not ever need to be renewed.

101. The correct answer is B. The buyer's best legal argument is that the seller is a mere licensee who does not hold any property rights with regard to Blackacre. A license is a contractual right to use land that is owned by another party. Because it is a contractual right rather than a property right, the owner of the property is free to terminate or revoke that license at any time. While the licensee may have contractual remedies available to her where a wrongful revocation occurs, these do not affect the property rights of the owner. Therefore, answer B represents the buyer's best argument.

102. Answer B is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions, and may file suit to enforce those restrictions against other owners.

103. Answer A is correct. The realty company has attempted to impose an equitable servitude on the residents of the subdivision. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantees had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts clearly indicate that there was an intent for the restriction to be enforceable, and that the language of the deeds put subsequent grantees on notice. The restriction, however, does not touch and concern the land; it does not serve to make the land more useful or valuable in any way. Therefore, the restriction will not bind the woman, and answer A is correct.

104. Choice A is correct. To obtain land through adverse possession, a party must for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the farmer physically occupied the land for twelve years, did so without interruption, excluded others from possession, and did so without the businessman's permission. Furthermore, his construction of the dam clearly renders his use open and notorious. As such, the farmer has acquired title through adverse possession, and the conveyance by the businessman will have no effect. Answer A is therefore correct. C is incorrect because the farmer's son was merely a lessee who never acquired an interest. Answer D is incorrect because the businessman had no title to convey to his friend.

105. D is correct. The husband and wife held title to one-half of the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. The daughter held title to the other half of the property in fee simple. If either the husband or wife had survived the accident, the deceased spouse's interest would have gone to the survivor automatically, by virtue of the right of survivorship. Because both spouses died, however, the survivorship right is irrelevant, and their respective interests in one-half of Greenacre (one-fourth each) will go to their heirs. The daughter's interest is unaffected by her parents' interests, as she is not one of their joint tenants. Therefore, the daughter's heirs are entitled to her entire one-half interest in Greenacre, and answer D is correct. Answers A, B and C are all incorrect as they are inconsistent with the ownership interests created by the joint tenancy and the conveyance to the daughter.

106. D is correct. The Statute of Frauds requires that a contract for the sale of land consist of a writing signed by the party to be charged. In this case, such a writing exists, having been signed by the man. However, the contract merely states that the man agrees to sell the land for $20,000. It does not indicate whether there are any additional provisions to the agreement (such as the time for performance, which was only verbally addressed by the parties). Further, despite the fact that the man has received a better offer, it appears that his best friend is now ready to perform. As such, it is likely that during the course of a trial: 1) it will be necessary to consider the parol evidence rule with regard to whether the written agreement represents the entire agreement between the parties, 2) the time for performance issue must be addressed, in addition to whether the best friend has a month to raise $20,000, and 3) the best friend's ability to perform must be considered, because he must raise $20,000 to meet his own obligation. Therefore, answer D is correct, as it is the only choice which includes all these issues.

107. The correct answer is D. All four concepts are relevant in determining the seller's legal position. Whether "time is of the essence" is relevant because where a sale contract indicates that time is of the essence, failure to perform on the scheduled closing date negates the failing party's right to enforce the contract at a later date. The Statute of Frauds is always relevant to land sale contracts, as it requires that all such contracts must be in writing. Specific performance is relevant as it is one of the two remedies (the other being damages) available to the purchaser if the seller attempts to get out of the contract. Finally, it may be relevant for the seller to introduce parol evidence relating to the purchaser’s mortgage application in order to show that the seller’s duty of performance is excused by the failure of a condition precedent (this, however, depends upon whether or not the contract stated that "time is of the essence").

108. Answer B is correct. The restriction in the deeds to Lots 2 and 4 constitutes an equitable servitude. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent that the restriction be enforceable by subsequent grantees 2) that the subsequent grantee had notice of the servitude, and 3)that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds ("the recent college graduate and the businessman, and all their respective heirs and assigns") indicates that the restriction is intended to bind subsequent grantees. The college graduate's recorded deed (that showed up in the title search) provided the law student with record notice of the restriction. And a restriction on what can be built on the land clearly touches and concerns that land, so the equitable servitude is enforceable. The restriction, however, may only be enforced against the law student by the college graduate.

109. B is the correct answer. The lender was the mortgagee of Orchardacres. A mortgage conveys an interest in land as security for an obligation that the owner of that land owes to the creditor (the lender). The lender has certain rights prior to an action for default against the owner for non-payment of his mortgage. The lender was aware that the owner had abandoned Orchardacres. As the mortgagee, the lender had the right to enter Orchardacres to correct a situation that would have created waste of the property via the loss of income from the abandoned crops. When she utilized her interest in Orchardacres by entering the property and running it, the lender took possession of the property subject to her interest in it as mortgagee. As such, she was in the position of an owner, not an agent, so the business invitee will prevail in his action.

110. The Statute of Frauds mandates that any contract for the sale of land must be in writing and signed by the party to be charged. The purpose of the statute is to prevent a party from fraudulently obtaining land by asserting that an oral contract existed where it in fact did not. The writing requirement serves this function by verifying the intent of the parties to enter into a contract for the sale of land. In this case, the tenant's only evidence of an oral contract to sell Blackacre is a history of regular monthly payments and the fact that he made minor improvements to the property. If the owner prevails, it will be because the tenant's actions are just as consistent with him being a tenant as they are with him being party to an oral contract. Therefore, answer B is correct.

111. B is correct. The recording statute described in the facts requires good faith and value, but has no timing provisions. Without timing provisions it cannot be a race or race-notice act, so it must be a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded their deed without notice of earlier purchasers. To be a BFP, a party must give value for their interest in the land. In this case, the facts indicate that the creditor recorded without notice of the deed to the purchaser. The purchaser, however, would have record notice of the creditor's recording. But the creditor will not be protected by the statute if she is not considered to be a BFP. Therefore, the jurisdiction's view regarding the meaning of "paid value" will be determinative in the purchaser's claim, and answer B is correct.

112. D is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates that the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions and may file suit to enforce those restrictions against other owners.

113. Answer A is correct. The facts indicate that Perez has a life estate and Rowan has a vested remainder. Perez, as a life tenant, has a duty not to commit voluntary or permissive waste relevant to the property during his life tenancy. A failure to keep the property in repair, pay taxes on the property, or pay interest on any mortgage on the property all constitute permissive waste. Although Perez's duty not to commit permissive waste requires him to pay interest on the mortgage, he has no obligation to pay the principal. Instead, the holder of the remainder, Rowan, is responsible for the principal payments. Therefore, answers B, C and D may be eliminated, leaving answer A as the correct choice.

114. Answer C is correct. It is important to pay close attention to the specific language of any conveyance or restriction you are presented with by the examiners. In this case, the conveyance was made "subject to the understanding that within one year" the grantee would build and operate a public health center. Rather than creating an executory interest or reversion, this condition merely represents a contractual obligation. As such, the grantor is merely entitled to contractual damages, not a determination that failing to meet the contractual provision somehow negates the grantee's property rights. Answer C is therefore correct.

115. C is correct. The man and the woman held the property in joint tenancy. A joint tenancy cannot be created without the "four unities" (time, title, possession and interest), and can be terminated in one of two ways: by partition or by severance. Where one joint tenant makes an inter vivos conveyance of their interest in the property, a severance occurs and the interest transferred is that of a tenant in common. Similarly, where one joint tenant executes a mortgage, a severance may also occur. Whether a mortgage causes a severance depends upon whether the jurisdiction is a title theory state (severance occurs) or a lien theory state (no severance occurs). Therefore, because the facts indicate that this is a title theory state, as soon as the man executed the mortgage to the lender, the joint tenancy was severed to the extent of the mortgage, and the property was held by the man and the woman as tenants in common, with the man's interest being subject to the mortgage (by executing a mortgage, the man still kept his title). When the man died, his interest in one-half of the property was bequeathed to his son, who takes it subject to the mortgage. As such, answer C is correct. Note that if the man had not executed the mortgage, his entire interest would have gone to the woman upon his death, and his son would have received nothing.

116. Choice D is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the transferee. The grantee's acceptance of the deed will be presumed, unless the grantee explicitly rejects it. In this case, the facts indicate that the son explicitly rejected the deed, so it was never accepted, and answer D is correct.

117. B is the correct response. Even if the plaintiff's land would not have subsided in its natural state, the plaintiff can always assert a claim for negligence against the defendant. This can include, among other things, the arguments that the defendant did not properly investigate the probable impact of her excavation; that she failed to shore up the plaintiff's building when the defendant was made aware of the reasonably foreseeable subsidence; and that the defendant did not follow sound engineering practices. Thus D is incorrect. B is therefore the best comment concerning the plaintiff's potential recovery from the defendant.

118. B is the correct answer. The key to this question is identifying the appropriate dispute issue. The business woman placed a right of first refusal into the deed she sold to the buyer. There is no dispute regarding an agreement outside the writing, so the parol evidence rule (I) will not apply. The buyer's oral discussion with his daughter regarding purchase of Lot 2 is irrelevant because he refused to sell and instead deeded the lot to her as a gift; there is no Statute of Frauds (II) issue regarding the sale of land (thus triggering the right of first refusal) because no oral sales agreement was reached. Finally, the man does not have the protection of a bona fide purchaser because he had constructive notice of the deed's restrictions, which were properly recorded and cannot be circumvented through the alienation of land by gift; only a purchaser for value can provide the shelter of superior title. The jurisdiction's type of recording statute (III) is thus irrelevant to the resolution of this dispute. The right of first refusal was clearly violated by the buyer and his daughter. The issue the business woman must overcome in order to prevail is a determination of whether the vague conditional wording of the right of first refusal violated the rule against perpetuities (IV). While the RAP generally does not apply to interests retained by the grantor, it does apply to options and rights of first refusal if they are mere contract or covenant rights. Thus, B is the correct response. A, C and D are incorrect.

119. D is correct. While landowners possesses a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. As such, the plaintiff has no legal basis for a cause of action against the defendant, so answer D is correct and answers A, B, and C are incorrect.

120. Answer C is correct. In general, a seller is required to provide marketable title on the closing date. Where the sale contract does not indicate that "time is of the essence," however, the seller's performance need only occur within a reasonable time after the scheduled closing date. As such, a buyer under that contract will not be able to rescind or seek damages until that reasonable time (sometimes as much as several months) has passed without the seller providing marketable title. In contrast, where the contract does indicate that time is of the essence, whichever party fails to perform by the scheduled closing date loses their right to enforce the contract. In this case, the contract indicated that time is of the essence, and the owner failed to perform by the scheduled closing date, so answer C is correct and the cousin will prevail. Answers A and B are incorrect as a result of the time is of the essence clause. Answer D is incorrect because the amount of earnest money paid is irrelevant here.

121. C is correct. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. In establishing whether an encumbrance exists with regard to local codes and ordinances, it is important to distinguish between building codes and zoning laws. A property's being in violation of the building code is not considered an encumbrance, and title to that building is marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance, and the title is unmarketable. Because the banker's conversion violates the zoning laws and puts a buyer at risk of being sued for the violations, the employee will prevail, and answer C is correct. Answers B and D are incorrect because the non-compliance with the zoning laws, not knowledge of the violation or responsibility for performing the illegal work, is determinative in rendering title unmarketable. Answer A is incorrect because the banker was not able to convey marketable title.

122. C is correct. The facts state that the property was held by the friend and neighbor in joint tenancy. Where one joint tenant makes an inter vivos conveyance of their interest in a property, a severance of the joint tenancy occurs and the interest transferred is that of a tenant in common. As soon as the friend made an inter vivos conveyance to her boyfriend, the joint tenancy was severed, and he and the neighbor became tenants in common. As such, the neighbor's conveyance to his girlfriend was likewise a transfer of an interest as a tenant in common. Therefore, the girlfriend and boyfriend hold title as tenants in common, and answer C is correct, and A, B, and D are incorrect.

123. The correct answer is D. A party to a land sale contract may seek either damages or specific performance in the event of a breach by the other party. In this case, the original buyer has breached the sale contract, and the owner kept the original buyer's $5,000 deposit as damages. Although many students will incorrectly choose answer C because the owner only lost $2,000 on the eventual sale, the correct answer is D. A seller is entitled to keep a buyer's deposit as liquidated damages following the buyer's breach of contract, as long as that deposit was 10% of the sale price or less. The facts indicate that original buyer's deposit was $5,000, or 4.5% of the sale price, so the owner is entitled to keep it as liquidated damages. Therefore, choice D is correct, and choices A, B, and C are incorrect.

124. B is correct. The mortgagor of a property is free to transfer title to that property BUT: 1) the mortgagor remains personally liable on the mortgage, and 2) all subsequent grantees take the property subject to the mortgage. Further, subsequent grantees do not become personally liable on the mortgage unless they explicitly assume the mortgage. Therefore, the mortgagor will always be personally liable on the mortgage, all subsequent grantees who assume the mortgage will be personally liable on it, and all subsequent grantees (whether they assume the mortgage or not) can lose the property through foreclosure if the mortgage is not paid. In this case, the woman is the mortgagor and remains personally liable on it regardless of her transfers. The friend explicitly assumed and agreed to pay the mortgage in his transaction with the woman, so the friend is also personally liable. The son, however, took the property subject to the mortgage but did not assume it, therefore he is not personally liable on it, and is only at risk to the extent that he will lose the property if the mortgage is foreclosed upon. Therefore, choice B is correct, and choices A, C, and D are incorrect.

125. A is correct. Pay close attention to the language used in the conveyance to the church. The testator did not state the land was conveyed to the church on the condition that it build a church, or that the church would hold an interest in the land unless it fails to build a church. The testator's charitable gift of the land to the church was a valid conveyance that was made without any conditions. Therefore, the church was free to convey the land to the developer. Further, the conveyance made the land the church's property rather than the testator's, so it was not a part of the estate that was bequeathed to the friend upon his death. The developer holds valid legal title to the land, so answer A is correct, and B, C, and D are incorrect.

126. C is correct. This question requires you to understand the rights and duties of tenants in common. Answers A and B are incorrect because a tenant in common always has the right to partition, even where another tenant is opposed to doing so. Answer D is incorrect because co-tenants have a right to contribution from each other for certain expenditures such as taxes, mortgage payments and necessary repairs, and an accounting is necessary to determine the sister and brother's respective contribution rights. Answer C correctly states that a partition must be granted and the contribution rights determined.

127. B is correct. Although the brother and sister each independently own an undivided one-half interest in Greenacre, they chose to mortgage the property jointly. Therefore, the private lender holds a mortgage to all of Greenacre, for which the brother and the sister are jointly and severally liable. The joint mortgage represents a contractual agreement between the brother and the sister as a single entity on the one hand, and the private lender on the other. The sister's making a payment of half of what is owed on the mortgage has the same legal effect as paying off half of any debt - the rest of the debt is still owed. To protect her one-half interest, the sister should have obtained a mortgage on only her own interest. That would have left her rights unaffected by any actions or inactions of the brother. Because the mortgage was entered jointly, the private lender is not required to release any of the interest she holds in Greenacre. Therefore, answer B is correct, and A, C, and D are incorrect.

128. Answer A is correct. This question is most easily answered by diagramming the amounts each party owes or is owed. After the judicial foreclosure sale of the hotel, the bank was still owed $100,000. After the foreclosure sale of the garage, the private lender was owed nothing, and had a surplus of $200,000. After both foreclosures were completed, the owner owed $100,000 to the bank, and owed nothing to the private lender. Because the private lender is owed nothing, it is not entitled to any of the surplus, and answers B and C can be eliminated. Answer D is incorrect because the bank, as a mortgagee, stands ahead of the owner in the line of priority and must receive all the money it is owed before the owner will be entitled to receive anything. Once the bank has been paid the remaining $100,000 it is owed, any surplus (which in this case is $100,000) will go to the owner. Therefore, answer A is correct, and answers B, C, and D are incorrect.

129. C is the correct answer. This is a reading comprehension question. The instruction is to find an answer that would correspond to a court finding of a contingent remainder. A remainder is contingent if there is a condition precedent that must be satisfied before the interest will vest. Choice C is the only answer that appropriately addresses the issue of a condition that must be satisfied.

130. Answer A is correct. The conveyance to the church created a fee simple determinable. The future interest retained by the grantor is a possibility of reverter. The church's right to possession ended automatically when the church stopped using the land as the site for its principal religious edifice. The heir inherited the possibility of reverter retained by the landowner and is entitled to possession. The Rule Against Perpetuities does not apply to a grantor's interests, such as a possibility of reverter.

131. Answer D is correct. Title does not have to be marketable until the closing date when all payments have been received. The buyer still has 290 payments to make. A mortgage can render title unmarketable but it is most likely that title will be marketable when all payments have been made by the buyer under the agreement. The seller has made all mortgage payments timely. The amount of the mortgage debt is 25 percent of the purchase price the buyer will pay, and the land is four times more valuable than the debt owed, so it is likely that the mortgage debt will be paid off by the time the seller must provide the warranty deed, and thus the buyer is not entitled to damages at this time. Thus, Answer D is correct.

132. Answer C is correct. The man is claiming a right to use the land of the neighbor, which is an easement. An easement by prescription requires that the use be without the neighbor's permission for the requisite period of time. The man has used the path for the past 15 years without the neighbor's permission. His use was open and notorious in that the neighbor could have seen him. His use was continuous and without interruption by the neighbor. His use was actual. An easement acquired by prescription need not be exclusive. With an easement, the owner may make any use of the easement area that does not interfere with the use made by the easement holder unless the easement is expressly noted as exclusive. The use by the neighbor's tenants (the hunters) did not interfere with the man's use, nor did his use interfere with theirs. Thus, Answer C is correct and Answer D is incorrect.

133. Answer D is correct. An individual tenant in common may transfer his or her undivided interest by a lease for a term of years. The tenant obtains only the transferor's concurrent right of possession with the other tenants in common. The man, as a tenant in common, validly transferred his interest in the tenancy in common to the tenant by a lease for a term of years. The tenant must, however, share the right of possession with the other cotenants, the sister and the cousin, for the term of the lease. The man must share the rental income with the sister and the cousin. Thus, Answer D is correct, and Answer A is incorrect.

134. Answer D is correct. An adverse claimant may obtain title to land by adverse possession when the claimant's possession of the land is (i) open and notorious, (ii) actual and exclusive, (iii) hostile (without the owner's permission), and (iv) continuous for the applicable statutory period. Here, the time period necessary to acquire title by adverse possession in this jurisdiction is a minimum of 21 years. The neighbor has not been in continuous adverse possession for an entire 21-year period because the neighbor spent one year in Europe after the first five years of possession. Thus, Answer D is correct. Because the daughter was a minor when the adverse possession began, she would be entitled to the protection of the tolling statute if it would extend the time in which she could bring her ejectment action. The tolling statute would not assist her in this case, however, because her minority ended within one year, when she turned 18, and the extension period of 10 years would allow her only 11 years in which to bring her action, less than the minimum time period of 21 years provided in the first part of the statute. The daughter's subsequent mental disability has no effect on the running of the statute. Thus, Answer A is incorrect.

135. The correct answer is D. The friend’s best argument is that the streets on the plan signify a public dedication. Where there is: 1) an expressed intent to dedicate land for public use, and 2) an acceptance of the dedication, a public dedication of land is established, and title to the land will pass to the public entity. In this case, the plan was recorded containing language that clearly indicates that streets and other "public areas" have been set aside for public use. Further, the plan was fully approved by all necessary government (public) agencies, which arguably establishes that they have accepted the dedication of those streets and areas to the public. Therefore, the friend’s best argument is that the plan constitutes a public dedication of the street areas, and answer D is correct.

136. C is the correct answer.

137. D is correct. The description of land found in a deed only needs to be specific enough to allow a party to identify and locate the property. The description does not need to be made in "metes and bounds," but if it is, that metes and bounds description will be given effect, even if contradicted by other descriptive language or characterizations in the deed. Further, while the description need not be exact (and may even contain minor discrepancies), if it is not sufficient to allow location the property, it will be considered insufficient and any attempted transfer of rights using that deed will be void for vagueness. In this case, the description in the deed relating to the farm is too vague to allow anyone to locate the property. Because the description is insufficient to allow location of the property, it is too vague and answer D is correct. Answers A and C are incorrect because consideration and covenants are irrelevant to evaluations of language in a deed. Answer B is incorrect because a deed can be unambiguous and still be too vague.

138. B is correct. The easement described in the facts is an express easement in gross. Unlike an easement appurtenant, which involves two plots of land, an easement in gross only involves one. The holder of an easement is entitled to reasonable use of that easement, in accordance with whatever scope of use the express grant defined. Where the easement holder makes use of an easement that is excessive and beyond its scope, the landowner may sue for an injunction preventing such use but is not entitled to terminate the original grant. In this case, the facts indicate that the owner created an express easement in gross, allowing the utility company to run a gas pipeline. The utility company's subsequent attempt to install another pipeline in a different location is beyond the scope of the easement that was granted. The owner has rightfully sued to prevent that excessive use, so answer B is correct.

139. The correct answer is C. The following estates are identified by the facts: the brother held a life estate; he conveyed it to the girlfriend, who owns a life estate for the rest of the brother's life; the nephew holds a vested remainder, which is unaffected by the conveyance from the brother to the girlfriend.TAXES - The girlfriend incorrectly argues that the nephew is required to pay real estate taxes on the property. As a life tenant, the girlfriend has a duty not to commit voluntary or permissive waste relevant to the property during her life tenancy. A failure to keep the property in repair, to pay real estate taxes, or to pay interest on any mortgage on the property will all constitute permissive waste. Therefore, it is the girlfriend's responsibility, not the nephew's, to pay the taxes, and answer D is incorrect. OWNERSHIP - the nephew incorrectly argues that the brother's life estate was forfeited by his conveyance to the girlfriend. As a life tenant, the brother has the right to keep the property for life, as well as the right to convey it to any person that he wishes to. Any conveyance he makes, however, is only good for as long as the measuring life, the brother, is alive. As such, the brother's conveyance to the girlfriend was allowed and answer A is incorrect. Answer B is incorrect because the girlfriend owns an estate for the length of the brother's life, not the length of her own life.

140. D is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded their deed without notice of earlier purchasers. To be a BFP, a party must give value for their interest in the land. In this case, the buyer is a BFP who recorded without notice of any earlier purchasers. He did not have record notice, because a record search of the chain of title for the deed he received would not have included the boyfriend's deed. Further, he did not have constructive notice, because the daughter's occupancy of the land would lead him to believe that she was the rightful owner as she purported to be. If a judgment is entered in favor of the buyer, it will be because he recorded without notice of earlier purchasers and is protected by the recording act. Therefore, answer D is correct.

141. A is correct. This question requires you to determine whether various actions by a tenant amounted to: 1) an assignment, 2) a sublease, or 3) neither of these. An assignment of a lease by a tenant occurs where the tenant transfers all its rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. The facts indicate that the tenant allowed one of her neighbors to practice her golf game on part of the land. The tenant has not given up any of her rights to the land or relieved any of her duties related to it through this action; the golf playing neighbor is simply an invited guest. Since the tenant's lease does not prohibit her from having guests on the land, answers B and C may be eliminated.

142. Answer A is correct. The landowner's wife had a determinable life estate, evidenced by the words "for life" and "until remarriage" in the landowner's will. The daughter had a vested remainder and an executory interest. Both of the daughter's interests could be assigned to the friend. On the remarriage of the landowner's wife, the wife's life estate ended and it automatically went to the holder of the future interest, who was then the daughter's friend. The landowner's wife had no interest in the land to give to her new husband at the time she executed the deed. Answer D is incorrect.

143. Answer A is correct. This water is diffuse surface water. Although there are different views regarding the way an owner may expel such water, an owner such as the farmer may impound such water, especially in the absence of any malice.

144. Answer B is correct. A deceased person cannot take and hold title to property. If a named beneficiary predeceases the testator, the gift to that beneficiary lapses. In this case, the gift to the friend lapsed because the friend predeceased the man. The gift of the residence was a specific gift, and the lapse of this specific gift passes the residence through the residuary clause of the will. The charity is the residuary taker. There is no applicable anti-lapse statute which might have substituted the friend's child as the beneficiary of the bequest if the friend were a protected beneficiary under the statute. Thus, Answer B is correct.

145. Answer A is correct. There are four elements that must be met for a covenant to run with the land at law, which are: 1) intent that it run with the land, 2) notice, 3) "touch and concern" of the covenant to the the land, and 4) privity of estate. The facts indicate that all four elements are present, so answer A is correct. Many students will incorrectly choose answer C as it appears to indicate that the purchaser did not have notice of the restrictive covenant. The facts, however, indicate that the subdivision plan was duly recorded, and that recording suffices to put the purchaser on notice. Answer D is also incorrect; the purchaser being a "remote grantee" is irrelevant to whether or not there is privity of estate. Answer B is incorrrect because, although it may be true, answer A is a better answer than answer B.

146. B is the correct answer. A leasehold agreement between a landlord and tenant creates a contractual obligation for both parties in relation to a specified piece of property. Specifically, a landlord is required to allow the tenant to possess the land once the lease commences, and the tenant is required to pay rent and refrain from committing waste. In this case, the tenant contends that the landlord has violated her rights under the lease by raising her rent above that of other tenants and by attempting to retake possession of the land. While the tenant is incorrect in arguing that all tenants must be charged the same rent, she may be able to prevent the landlord from retaking possession. The facts indicate that the landlord did not raise the rent or seek to end the tenancy until after the tenant organized a tenants association. As such, if the tenant prevails, it will be because the landlord is not allowed to evict her in retaliation for exercising her legal right to associate. Therefore, answer B is correct.

147. Answer D is correct. The only requirements for transferring legal title in land are execution and delivery of the deed. Execution occurs when the seller (the party to be charged) signs the deed. Delivery is effected by proving intent to pass title, even if the transferor never physically gives the title document to the transferee. It is the intent to pass title, not physical possession of the deed, that determines validity of a conveyance. Once title has been conveyed, the grantee can return it by executing and delivering a new deed back to the grantor, not by merely destroying the original deed. Here, the grantor intended to pass title to the daughter, physically delivered a deed to the daughter, and the daughter accepted it. The grantor's execution and delivery of the deed plus the daughter's acceptance of it transferred title to the daughter. Subsequent destruction of the physical deed is irrelevant to the daughter's ownership.

148. Answer C is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open; 2) contingent remainders; and 3) executory interests. The rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after everyone alive at the time of the conveyance has died. If it could, the interest is void.

149. C is the correct answer. This question illustrates the advantage of reading the call of the question before the fact pattern. The issue only concerns Blackacre; Whiteacre is a red-herring that is meant to confuse and distract. The executory interest in Blackacre's deed violates the rule against perpetuities (RAP) because its conditions will not vest within 21 years after some life in being at the creation of the interest. There is no measuring life in Blackacre's condition and no means to ensure the conditions will vest or fail in a specific time frame. Consequently, the second clause granting the land to the Red Cross will be stricken, so answer D is incorrect.

150. C is correct. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. A landlord is free to place limits on alienation within the terms of the lease, thereby preventing its tenant from assigning, subletting, or both. Any such restriction will be strictly construed according to its explicit terms, and the landlord is considered the beneficiary of the clause's benefits. Further, if the landlord prohibited the tenant from assigning/subletting in the terms of the lease, but subsequently gave the tenant permission to do so despite the provision, that permission serves to forever waive the non-assignment/non-sublet clause. In this case, the landlord has waived the non-assignment/non-sublet provisions of the lease by accepting rent payments from the friend. Because the landlord is the beneficiary of that provision, the sister has no right to sue to enforce its terms, and answer C is correct.

151. C is correct. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. This requirement may be waived by the parties, however, if they explicitly state they are doing so within the sale contract. In this case, the purchaser contracted to purchase Meadowacre "subject to easements, covenants, and restrictions of record." That provision, however, will be construed to mean the encumbrances that were recorded at the time of contracting. Because the landowner caused the title to become further encumbered after the contract was entered, the purchaser is not required to perform. Therefore, answer C is correct, and answers A and B must be incorrect. Answer D is incorrect because nuisance is irrelevant to the determination of the parties' contractual rights.

152. Choice A is correct. To obtain land through adverse possession, a party must, for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the farmer physically occupied the land for twelve years, did so without interruption, excluded others from possession, and did so without the busnessman's permission. Further, his construction of the dam clearly renders his use open and notorious. As such, the farmer has acquired title to the land through adverse possession. His title is unaffected by the subsequent leases and conveyances, as he has become the sole owner of the property. Therefore, answer A is correct.

153. C is the correct answer. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. Even after making an assignment, however, an assignor remains liable to the landlord for payments due on the lease. In this case, the facts indicate that Brenda assigned her entire interest to Carolyn. Although Brenda would normally remain liable to Ann for the remainder of the lease despite making the assignment, it appears that she has been released from liability by Ann's novation. A novation is an act that serves to substitute new parties for the original parties to an agreement, or substitutes new obligations between the original contract parties. Ann's acceptance of rent payments caused the non-assignment provision of the lease to be forever waived, and her letter to Brenda appears to constitute a novation substituting Carolyn for Brenda. Therefore, answer C is correct. Answers A, B and D are incorrect as they all state principles of law that are irrelevant to these facts.

154. D is correct. Unless the language of a conveyance indicates a clear intent to create a joint tenancy, the grantees will own the property as tenants in common. In this case, there is no language in the mother's conveyance indicating an intent to create a joint tenancy, so the sister and brother both hold an equal 50% interest in the property as tenants in common. The creditor's lien only entitles him to property owned by the brother, so answers A and C are incorrect. Answer B is incorrect because the creditor's lien was on the brother's interest in Blackacre, and that interest terminated when the property was sold.

155. C is the correct answer. Although the man had no authority to enter the contract at the time it was executed, he acquired good title to the property before the closing date, so answer A is incorrect. The remedies available to the purchaser upon the man's breach of the sale contract include damages and specific performance. Answer C is a better choice than answer D because it is the man's acquisition of good title before the closing that provides a basis for the purchaser's claim against him for breach of contract, not the mere fact that he may be unjustly enriched.

156. D is correct. In this case, the farmer's son's interest in Greenacre is a future interest, contingent upon his earning a college degree by the time he reaches age 30. As such, the present interest in Greenacre is still held by the farmer, who is the college classmate's landlord. Although the farmer's son will become sole owner of the property if he succeeds in earning his degree before age 30, he has yet to meet that contingency. Therefore, the college classmate is still a tenant of the farmer, and answer D is correct.

157. B is correct. The easement described in the facts is an easement appurtenant - one that benefits a specific piece of land. An easement appurtenant will automatically run with the land, and after being recorded for the first time does not need to be re-identified in any deeds accompanying later conveyances. Therefore, answer B is correct and answer D is incorrect. Answer C is incorrect because the buyer did not have an easement in gross. Although answer A is legally correct, answer B is a better answer, because the easement appurtenant would have passed to the buyer even if he did not have an easement by implication.

158. C is the correct answer. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. Where the contract does not state that "time is of the essence," then the seller is required to provide marketable title within a reasonable time after the scheduled closing date. If the seller is able to do so, the buyer has no grounds for refusing to perform and the seller may sue for damages or specific performance. In this case, the owner has made arrangements that will render the title free of all encumbrances (the mortgage) at the closing. Therefore, the owner was entitled to bring an action for specific performance, and will succeed in that action because he can provide marketable title.

159. D is correct. While a landowners possess a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. Furthermore, there are no facts to suggest the creation of a negative easement or restrictive covenant, which would give the plaintiff a right to sunlight. As such, the plaintiff has no legal basis for a cause of action against the defendant. Answer D is correct, and answers A, B, and C are incorrect.

160. A is correct. Because the buyer purchased the property in reliance on a misrepresentation made by the the seller, that misrepresentation will serve as the basis for the buyer's cause of action and answer A is correct. Answer B is incorrect because the seller has not breached the covenant of warranty - that is a covenant relating to the title to the property. The facts do not indicate that the seller gave bad title. Answer C is incorrect because valuable consideration for the transaction was provided by both parties. Answer D is incorrect because the facts indicate that the seller was aware of the impending restriction on trailer use, so there was no mistake on the seller's part.

161. D is correct. The following estates are identified by the facts: the sister held a life estate, and the niece held a vested remainder. A life tenant has a duty not to commit voluntary or permissive waste relevant to the property during the life tenancy. Failures to keep the property in repair, to pay real estate taxes, or to pay interest on any mortgage on the property will all constitute permissive waste. That responsibility, however, is limited; it only extends as far as the amount of income the land generates. Therefore, while it is the sister's responsibility and not the niece's to pay the taxes, the sister is only responsible for paying taxes in an amount equal to the income she receives from the property, which in this case is $0. Because the niece has no recourse against the sister, answers A and B are incorrect and answer D is correct. Note that answer C is incorrect because possession is irrelevant to a life tenant's responsibilities - the sister is charged with those responsibilities whether she physically possesses the land or not.

162. D is correct. This question requires you to understand the rights and duties of tenants in common. Co-tenants have a right to contribution from each other for certain expenditures such as taxes, mortgage payments and necessary repairs. This is logical considering that even though a co-tenant only owns part of the land, each of these expenditures must be paid in full - i.e. you cannot pay half of the taxes or mortgage payment on a property, or fix one-half of an item needing repair. An accounting is generally the means employed to determine each co-tenant's respective contribution rights. In this case, an accounting is unnecessary because the property is generating no income, and there is only one expenditure to divide - the cost of the tax deed. The farmer's sole heir must pay one-half of the cost of that deed if she wishes to retain her one-half interest in the property, so answer D is correct.

163. A is correct. In general, real estate purchases involve a period of several months between the time the contract is signed and the closing date. A seller is not required to provide marketable title until that closing date arrives. Under an installment contract, although the period between contracting and closing may be several years, the same rule regarding title still applies. In this case, the facts indicate that the parties have entered into an installment contract, and that upon the 300th payment, the deed would be delivered. Therefore, the landowner is not required to provide marketable title until the time arrives for the purchaser to make the 300th payment. Since there are still 290 payments to be made, the landowner's time for performance has not yet arrived, so answer A is correct.

164. C is correct. The covenant of warranty is a guarantee by the seller that the title being conveyed is marketable, and that the grantor will defend any valid claims against that title. A breach of the covenant of warranty is established when a third party interferes with possession of the land, not when a third party makes a claim against the grantee. Consequently, the grantor is not required to defend the grantee or his heirs in any action against title; rather, he must only defend against a wrongful claim or eviction. In this case, the facts do not indicate that any valid claim existed because the teacher prevailed over the adjoining owner in an action to quiet title. Because the landowner conveyed good title, and did not fail to defend against any valid claims that existed at the time of the conveyance, the landowner should prevail, and answer C is correct.

165. Answer C is correct. A deed must be delivered to be valid. Delivery is a question of intent. The words of the landowner included "this is yours," showing the necessary intent to strip himself of dominion and control over the deed and to immediately transfer the title. In addition, handing the deed to the grantee raises a rebuttable presumption of delivery. Recording the deed is not required and thus the request not to record the document until later is irrelevant so long as delivery was present.

166. Answer D is correct. Under the doctrine of equitable conversion, the risk of loss goes to the party with the equitable title if the contract is silent. Equitable conversion occurs when the contract is capable of specific performance. This contract was silent regarding the risk of loss and there were no conditions to be met. The buyer thus had the equitable title at the time of the loss. If there is no statute, the Uniform Vendor and Purchaser Act, which places the risk of loss on the one in possession, is not applicable. The court found for the seller, and thus the minority common law rule, which places the risk on the seller under these facts, is inapplicable. Thus, Answer D is correct.

167. Answer C is correct. The first bank had priority. The second bank was a necessary party to the foreclosure proceeding and was given notice of the sale. When the second bank failed to appear at the foreclosure proceeding, or to take any other action, the buyer at the sale received the title the farmer had at the time the mortgage was given to the first bank, which was free of any mortgage liens. The buyer and the farmer did not act in collusion, so there could be no claim of fraud when the farmer reacquired her original interest in the farm. Thus, Answer C is correct and Answer B is incorrect.

168. Answer B is correct. The landlord and the tenant agreed in the lease that if any part of the land was condemned, the lease would terminate and the landlord would receive the entire condemnation award.

169. Answer B is correct. The landlord granted the legal right of possession to the tenant, which means that neither the landlord nor anyone holding of the landlord prevented the tenant from going into possession at the commencement of the lease term. The previous tenant's lease term had ended before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. As stated in the question, the court found for the landlord, and thus there is no rule in this jurisdiction that the landlord need also put the tenant into actual possession.

170. Answer D is correct. The cousin and the investor had a valid contract for the sale of the farm. The contract did not specify that time was of the essence, and thus the investor should be able to enforce the contract within a reasonable time after the proposed closing date. The cousin acquired the land two weeks after the intended closing date, which was within a reasonable time period afterward.

171. Answer B is correct. When the man delivered the deed to his attorney with instructions to deliver it to the nephew on his death, he was attempting to create a valid death escrow. Neither a written nor an oral contract is required for a valid death escrow, since most are gratuitous. To create a valid death escrow, however, the man had to place the deed beyond his control, reserving no power over it once it had been given to the attorney. Because the man instructed the attorney to return the deed to the man if he asked, the man did not place the deed beyond his control, and no death escrow was created. Thus, Answer B is correct.

172. Answer A is correct. The restriction constitutes an equitable servitude. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds (referencing all lots within the 100 acre tract) clearly indicates the restriction is intended to bind subsequent grantees. The duly recorded subdivision plan and the deed language provide subsequent grantees with record notice of the restriction. And a restriction on what can and cannot be built on the land clearly meets the requirement that the restriction touch and concern that land, so the equitable servitude is enforceable. If the woman prevails, it will be on the basis of that enforceable servitude. Answer B is incorrect because the woman’s rights as a taxpayer do not give her a legal interest in another's property. Answer C is incorrect because the woman is not a creditor beneficiary. Answer D is incorrect because whether the friend is a BFP is irrelevant to determining whether he is bound by the restriction.

173. Answer A is correct. There are four elements that must be met for a covenant to run with the land at law, which are: 1) intent that it run with the land, 2) notice, 3) "touch and concern" of the covenant to the the land, and 4) privity of estate. The facts indicate that all four elements are present, so answer A is correct. Many students will incorrectly choose answer C as it appears to indicate that the purchaser did not have notice of the restrictive covenant. The facts, however, indicate that the subdivision plan was duly recorded, and that recording suffices to put the purchaser on notice. Answer D is also incorrect; the purchaser being a "remote grantee" is irrelevant to whether or not there is privity of estate. Answer B is incorrrect because, although it may be true, answer A is a better answer than answer B.

174. D is the correct answer. This question highlights the need to ensure you are answering what the examiners have actually asked, rather than what you expected to be asked. Although most of the facts in this question deal with the details of a restrictive covenant running with the land, the issue being tested is public dedications, not restrictive covenants. Where there is: 1) an expressed intent to dedicate land for public use, and 2) an acceptance of the dedication, title to the land will pass to the public entity. Because there has been a dedication and an acceptance, answers A and B cannot be correct. Answer C is incorrect because the friend's constructive notice has no legal effect on conveyance of title to the school board.

175. C is the correct answer. The easement described in the facts is an express easement in gross. Unlike an easement appurtenant, which involves two plots of land, an easement in gross involves only one. The holder of an easement is entitled to reasonable use of that easement in accordance with whatever scope of use the express grant defined. Where the easement holder makes excessive use of the easement that is beyond its scope, the landowner may sue for an injunction preventing such use, but is not entitled to terminate the original grant. In this case, the facts indicate that the Water District may "inspect, repair and replace" portions of its pipeline. All of those tasks are explicitly permitted by the easement granted by the landowner in 1960. As such, the Water District's actions clearly constitute reasonable use and are within the scope of the easement. Therefore, answer C is correct.

176. Answer C is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the transferee. Execution and delivery of a deed, however, will not suffice to establish legal title where the deed fails to adequately identify the grantee to whom it was delivered and the exact plot of land it purports to convey. In this case, the facts indicate that the deed was executed (signed) by the landowner and delivered to the purchaser, who accepted it. By leaving blank the line indicating the exact plot number to be transferred, the landowner created an implied agency in the purchaser to fill in that line of the deed.

177. B is the correct answer. A leasehold agreement between a landlord and tenant creates a contractual obligation for both parties in relation to a specified piece of property. Specifically, a landlord is required to allow the tenant to possess the land once the lease commences, and the tenant is required to pay rent and refrain from committing waste. In this case, the tenant contends that the landlord has violated her rights under the lease by raising her rent above that of other tenants and by attempting to retake possession of the land. While the tenant is incorrect in arguing that all tenants must be charged the same rent, she may be able to prevent the landlord from retaking possession. The facts indicate that the landlord did not raise the rent or seek to end the tenancy until after the tenant organized a tenants association. As such, if the tenant prevails, it will be because the landlord is not allowed to evict her in retaliation for exercising her legal right to associate. Therefore, answer B is correct.

178. Answer D is correct. The only requirements for transferring legal title in land are execution and delivery of the deed. Execution occurs when the seller (the party to be charged) signs the deed. Delivery is effected by proving intent to pass title, even if the transferor never physically gives the title document to the transferee. It is the intent to pass title, not physical possession of the deed, that determines validity of a conveyance. Once title has been conveyed, the grantee can return it by executing and delivering a new deed back to the grantor, not by merely destroying the original deed. Here, the grantor intended to pass title to the daughter, physically delivered a deed to the daughter, and the daughter accepted it. The grantor's execution and delivery of the deed plus the daughter's acceptance of it transferred title to the daughter. Subsequent destruction of the physical deed is irrelevant to the daughter's ownership.

179. The correct answer is C. This question requires you to understand the doctrine of merger. Where two parties contract for the purchase and sale of a plot of land, the seller is generally required to provide marketable title at the closing and to deliver the deed to the buyer who, presumably, will accept it. Once the buyer accepts the deed, the sale contract merges into the deed, and any contract provisions that were not memorialized in that deed are destroyed. In this case, as soon as the landowner and the painter's sale closed, and the painter accepted the quitclaim deed from the landowner, any contract provisions relating to covenants of title were destroyed. Therefore, the painter's only basis for a claim against landowner will arise from the deed, as the contract and all its provisions no longer exist.

180. Answer A is correct. This question requires you to distinguish between an assignment and a sublease. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. A landlord is free to place limits on alienation within the terms of the lease, thereby preventing the tenant from re-assigining, subletting, or both. Any such restriction, however, will be strictly construed according to its explicit terms. In this case, the landlord has only prohibited the tenant from subletting. The restriction will be strictly construed, and since it does not state that assignment is prohibited, the tenant is free to assign his interest.

181. Answer D is correct. The restrictions in the deeds to first 140 lots sold constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. That restriction, however, may only be enforced by and against owners of those 140 lots. Some students will incorrectly believe that a subdivision of 325 lots that are all bound by the same restrictions was created. But for an equitable servitude to bind an entire subdivision, it must be found in the common building plan for that subdivision. There is no such plan according to the facts presented - there was only a plan for lots 1 through 140. Because only the owner of a lot with a deed identifying the restriction may enforce that restriction, answer D presents the businessman's best argument. Answer A, B and C are all incorrect because the restrictions on lots 1 through 140 have no relevance to the businessman, who does not own one of those lots.

182. Answer B is correct. The Rule Against Perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open; 2) contingent remainders; and 3) executory interests. The Rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after everyone alive at the time of the conveyance has died. If it could, then the interest is void. In this case, the will devises the property to the cousin if he is still alive in thirty years. Because the cousin is a life in being, a conveyance subject to the condition that he be alive to receive it does not violate the RAP. If the interest must vest before the cousin dies, that is clearly sooner than the death of the cousin plus 21 years.

183. Answer A is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open; 2) contingent remainders; and 3) executory interests. The rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after everyone alive at the time of the conveyance has died. If it could, the interest is void.

184. Answer C is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open; 2) contingent remainders; and 3) executory interests. The rule dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void. Answering RAP questions is best accomplished in two parts: 1) identify the type of interests created by the language of the deed, and 2) if the interest is one of the three that the RAP applies to, determine whether it would be possible for that interest to vest any later than twenty-one years after everyone alive at the time of the conveyance has died. If it could, the interest is void.

185. Answer A is correct. With regard to real estate purchases, the time period between contracting and closing is governed by the doctrine of equitable conversion. Once the contract is signed, the risk of loss for any damage to the property that: 1) occurs before the closing, and 2) is not the seller's fault, will fall on the buyer. This is true regardless of whether the seller still physically possesses the land. That is because through the doctrine of equitable conversion, title to the property has been "converted" to the buyer through the operation of equitable principles. As such, where a buyer dies before closing, her estate equitably owns the property (because the buyer equitably owned it), and is required to pay for that property (just as the buyer would have been) at the closing. Therefore, answer A is correct.

186. D is the correct answer. This question is best approached by process of elimination. The fact pattern sets out the landowner's plan for developing the land he owns. The issue is not readily apparent because there are so many elements of the landowner's plan. The issue is only discernable by looking at the call of the question, which asks which choice would be the landowner's greatest obstacle to the success of the plan set out in the fact pattern. Of the four alternatives, only answer D is actually true under the facts.

187. Answer D is correct. The only requirements that must be met for a conveyance of land to be valid (and thereby transfer legal title in that land from one party to another) are execution and delivery of the deed. The execution requirement is satisfied as long as the deed is signed by the party to be charged (the seller). Delivery of a deed is established by a proven intent to pass title, even if the title document was never physically given to the transferee. In this case, there is no dispute as to whether the deed was accepted by the buyer. However, it is unclear whether the deed can be considered "executed," since it was the son, not the father, who signed it. Because the outcome of the suit will depend upon whether the son's powers of attorney included the power to execute the deed, answer D is correct. Answer A, B and C are all incorrect because none of those facts or issues will be determinative in a suit regarding transfer of title.

188. C is correct. The restrictions described in the facts constitute equitable servitudes. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees, 2) that the subsequent grantee had notice of the servitude, and 3) that the restriction touches and concerns the land. In this case, the facts indicate that all three elements can be established. The express language of the deeds indicates the restriction is intended to bind subsequent grantees. The recording of those deeds would provide later purchasers with record notice of the restriction. And a restriction on what can be built on the land clearly meets the requirement that the restriction touch and concern that land, so an enforceable equitable servitude was created. For an equitable servitude to bind an entire subdivision, however, it must be found in the common building plan for that subdivision. If it is, then anyone who owns a plot of land within the subdivision is bound by the restrictions and may file suit to enforce those restrictions against other owners. In this case, the facts state that a subdivision plan outlining restrictions that would apply to all plats within it was approved by the local government. Because the restrictions were found in the common plan, owners may sue to enforce the restrictions, and answer C is correct.

189. B is correct. The warranty of marketable title is implied in all land sales contracts. This warranty requires the seller to provide a marketable title to the buyer on (but not before) the closing date. To be considered "marketable," the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. Further, in establishing whether an encumbrance exists with regard to local codes or ordinances, it is important to distinguish between building codes and zoning laws. A property being in violation of the building code is not considered an encumbrance, and title to that building is marketable. In contrast, where a property is in violation of zoning laws, the violation is considered an encumbrance and the title is unmarketable.

190. C is the correct answer. This question illustrates the advantage of reading the call of the question before the fact pattern. The issue only concerns Blackacre; Whiteacre is a red-herring that is meant to confuse and distract. The executory interest in Blackacre's deed violates the rule against perpetuities (RAP) because its conditions will not vest within 21 years after some life in being at the creation of the interest. There is no measuring life in Blackacre's condition and no means to ensure the conditions will vest or fail in a specific time frame. Consequently, the second clause granting the land to the Red Cross will be stricken, so answer D is incorrect.

191. B is correct; this is a void executory interest. The words "as long as" identify Blackacre's deed as a fee simple determinable with an executory interest in the Red Cross. Executory interests are subject to the rule against perpetuities (RAP). If it is not certain that a reversionary interest will vest within 21 years from the end of the lives in being at the time of the creation of the interest, the interest is considered void and the court will strike the offending clause from the granting instrument. The key words "but if ever" place the time frame of the executory interest into violation.

192. Answer D is correct. While a landowner possesses a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. As such, the woman has no legal basis for a cause of action against the owner. Answer A is incorrect because the woman has no natural right to an easement for light and air, so there can be no obstruction of that right. Answer B is incorrect because reliance is irrelevant to determination of the woman's rights. Answer C is incorrect because intent is likewise irrelevant to determining those rights.

193. C is correct. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. By contrast, a sublease is a transfer by a tenant to another party (a "sublessee") for a time period shorter than the time remaining on the lease. A landlord is free to place limits on alienation within the terms of the lease, thereby preventing its tenant from assigning, subletting, or both. Any such restriction will be strictly construed according to its explicit terms, and the landlord is considered the beneficiary of the clause's benefits. Further, if the landlord prohibited the tenant from assigning/subletting in the terms of the lease, but subsequently gave the tenant permission to do so despite the provision, that permission serves to forever waive the non-assignment/non-sublet clause. In this case, the landlord has waived the non-assignment/non-sublet provisions of the lease by accepting rent payments from the friend. Because the landlord is the beneficiary of that provision, the sister has no right to sue to enforce its terms, and answer C is correct.

194. C is correct. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. This requirement may be waived by the parties, however, if they explicitly state they are doing so within the sale contract. In this case, the purchaser contracted to purchase Meadowacre "subject to easements, covenants, and restrictions of record." That provision, however, will be construed to mean the encumbrances that were recorded at the time of contracting. Because the landowner caused the title to become further encumbered after the contract was entered, the purchaser is not required to perform. Therefore, answer C is correct, and answers A and B must be incorrect. Answer D is incorrect because nuisance is irrelevant to the determination of the parties' contractual rights.

195. C is correct. This question highlights the need to carefully identify which facts relate to the principle of law being tested and which are superfluous. A cursory analysis of the question may lead some students to incorrectly choose answer A - the facts state that the brother has maintained possession for 30 years, and answer A suggests that the brother wins because he has acquired title by adverse possession. It is, however, ownership, not possession, that is relevant to answering the question presented. The brother and the sister's legal rights as tenants in common are unaffected by the degree to which they each physically possess the land. Although any one co-tenant has the right to possess the entire property, that possession in no way alters their ownership rights or those of the other co-tenants. Further, the brother has taken no action that could be characterized as adverse to his sister's possessory rights - he has made no attempt to prevent his sister's access to the land. Instead, the sister has simply chosen not to exercise her rights to physically possess the property yet. Since the brother has made no attempt to oust his sister from the land, her rights are unaffected by her physical absence, and answer C is correct.

196. C is correct. The warranty of marketable title is implied in all land sale contracts. This warranty requires the seller to provide marketable title to the buyer on (but not before) the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictions, covenants, easements or other limiting provisions that are not explicitly identified in the contract. A seller will not be expected to perform on the contract where doing so will require her to immediately enter a dispute over whether she holds good title. In this case, the facts indicate that the true owner is the record owner of Wideacre, and that the seller has apparently acquired title through adverse possession. The seller, however, had not obtained any judicial determination that he has acquired title to the land. The expense of filing or defending a suit to determine whether the buyer or the true owner holds good title will fall to the buyer, rather than the seller, if the purchase goes forward. Because the buyer will not be forced to "buy" this lawsuit along with the property, answer C is correct. Title need not be perfect, but it must be free of questions that present an unreasonable risk of litigation. Remember that on the MBE, title acquired by adverse possession is always unmarketable.

197. B is correct. The agreement between the owner and miner created a profit a prendre for the miner. A profit gives the holder a right to enter onto another's land for the purpose of removing some sort of natural resource. Rather than a license, a profit is a property right, and is thereby afforded all the usual statutory and constitutional protections associated with such rights. Because the miner has a property right in Stoneacre, a governmental taking will entitle the miner to share in any condemnation award given to the owner. Therefore, answer B is correct.

198. A is correct. The rule against perpetuities (RAP) applies to three types of interests: 1) vested remainders subject to open, 2) contingent remainders, and 3) executory interests. The rule against perpetuities dictates that where any of these interests would vest outside of a life in being plus 21 years, it is void.

199. Choice A is correct. To obtain land through adverse possession, a party must, for the length of the statutory period: 1) have actual physical possession or occupancy of the land, 2) maintain that possession continuously and without interruption, 3) exclude others from possession, 4) have "hostile" possession (be there without permission), and 5) maintain "open and notorious" possession. In this case, the farmer physically occupied the land for twelve years, did so without interruption, excluded others from possession, and did so without the busnessman's permission. Further, his construction of the dam clearly renders his use open and notorious. As such, the farmer has acquired title to the land through adverse possession. His title is unaffected by the subsequent leases and conveyances, as he has become the sole owner of the property. Therefore, answer A is correct.

200. C is the correct answer. An assignment of a lease by a tenant occurs where the tenant transfers all his rights and duties under a lease to another party (an "assignee") for the entire length of time remaining on the lease. Even after making an assignment, however, an assignor remains liable to the landlord for payments due on the lease. In this case, the facts indicate that Brenda assigned her entire interest to Carolyn. Although Brenda would normally remain liable to Ann for the remainder of the lease despite making the assignment, it appears that she has been released from liability by Ann's novation. A novation is an act that serves to substitute new parties for the original parties to an agreement, or substitutes new obligations between the original contract parties. Ann's acceptance of rent payments caused the non-assignment provision of the lease to be forever waived, and her letter to Brenda appears to constitute a novation substituting Carolyn for Brenda. Therefore, answer C is correct. Answers A, B and D are incorrect as they all state principles of law that are irrelevant to these facts.

201. Answer B is correct. With regard to defects on a property, sellers are required to disclose all known defects that will not be open and obvious to a buyer and are prohibited from concealing such defects in any way. Answers A and C are incorrect for the same reason - the woman is required to disclose defects to the buyer, not just her agent, even if the buyer is using the same agent.There is, however, no obligation to disclose defects where a property is being sold "as is." The "as is" provision may suffice to put the plaintiff on notice that there may be defects in the property other than those that are open and obvious, so if the woman prevails, it will be because of the "as is" provision. Thus, answer B is correct.

202. C is correct. The recording act quoted in this question is a race-notice act. To prevail under a race-notice act, a party must be a bona fide purchaser ("BFP") who: 1) was the first to record their deed (won the race) who also 2) acquired the land without notice of earlier purchasers. In this case, the first BFP to record its deed was the bank, and it did so without notice of the gentleman's conveyance to the buyer, so C is correct.

203. D is correct. Unless the language of a conveyance indicates a clear intent to create a joint tenancy, the grantees will own the property as tenants in common. In this case, there is no language in the mother's conveyance indicating an intent to create a joint tenancy, so the sister and brother both hold an equal 50% interest in the property as tenants in common. The creditor's lien only entitles him to property owned by the brother, so answers A and C are incorrect. Answer B is incorrect because the creditor's lien was on the brother's interest in Blackacre, and that interest terminated when the property was sold.

204. C is the correct answer. Although the man had no authority to enter the contract at the time it was executed, he acquired good title to the property before the closing date, so answer A is incorrect. The remedies available to the purchaser upon the man's breach of the sale contract include damages and specific performance. Answer C is a better choice than answer D because it is the man's acquisition of good title before the closing that provides a basis for the purchaser's claim against him for breach of contract, not the mere fact that he may be unjustly enriched.

205. The correct answer is D. A deed to a dead person does not convey good title and is, therefore, void. In this case, the facts tell us that the best friend died a week before delivery of the deed, thus the transaction was incomplete while he was alive. The fact that the owner and the best friend's mother were unaware of the best friend's death is irrelevant.

206. Choice A is correct. The recording act quoted in the facts of this question is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded the deed without notice of earlier purchasers. When the businessman purchased the 95 acre portion of Blackacre, a title search on those 95 acres would not have revealed any deeds including a residential subdivision restriction. While the owner may have promised the buyer he would include such restrictions in the deeds for subsequent sales of Blackacre, he did not do so. Because the businessman purchased Blackacre without notice of any restrictive covenants affecting that land, no such covenants can be enforced against him, so answer A is correct. Answers B, C, and D are all incorrect statements of law.

207. Always determine what interests each party holds before attempting to answer a question of this type. The facts indicate that the friend has a life estate, the uncle has a vested remainder, and his heirs and assigns have a vested remainder subject to open. The owner retained no interest in the property. As such, answers A and D are incorrect, because no one held a contingent remainder.

208. Answer B is correct. A landowner has the right to lateral (side) support of its land from all neighboring parcels of land. This right, however, extends only to the land itself, not the structures built upon it. This means that if a landowner excavates its own land, and collapse of the neighboring land and a structure built on that land occurs, the excavating landowner is strictly liable only if the neighboring land would have collapsed even without the weight of the structure. In other words, the excavator must leave enough support in place that the neighboring land without any structures on it would not collapse. Otherwise, the excavator will only be liable for damages caused by her negligence.

209. D is correct. In this case, the farmer's son's interest in Greenacre is a future interest, contingent upon his earning a college degree by the time he reaches age 30. As such, the present interest in Greenacre is still held by the farmer, who is the college classmate's landlord. Although the farmer's son will become sole owner of the property if he succeeds in earning his degree before age 30, he has yet to meet that contingency. Therefore, the college classmate is still a tenant of the farmer, and answer D is correct.

210. C is correct. In this case, the school district's interest was a fee simple determinable (meaning it could be terminated), and the testator's interest was a possibility of reverter. According to the facts, the only event that could terminate the school district's interest would be to cease using the land for "school purposes." When that event occurred, the school's interest terminated and the land reverted back to the testator. The testator, however, had died by the time his interest reverted, so that interest went to Fanny in accordance with the dictates of the testator's duly probated will. Note that if the testator had not bequeathed his estate to Fanny, then the interest would have reverted to the testator's son as the testator's only heir, and answer B would have been correct. Therefore, C is correct, and A, B, and D are incorrect.

211. B is correct. Keep in mind that with many questions you may be able to determine the correct answer by simply eliminating all the incorrect choices. Right off the bat, we see that B is a true statement of law, though it is very general. Therefore, we must check the other three to determine if there is a better choice available. In this question, answer A is incorrect because the performance the neighbor was obligated to make was paying the man $100,000 - use of the lot in no way constitutes a part performance of that payment. Answer C is incorrect because the doctrine of equitable conversion is irrelevant to the facts presented - it addresses who bears the risk for damage or destruction of a property after the sale contract is executed. Answer D is incorrect because the recording of the contract is irrelevant to the man's right to seek specific performance. Answer B is a correct statement of law, and having eliminated all three other choices we know that there is no better, more specific answer available. Therefore, it is clear that answer B is correct.

212. B is correct. The easement described in the facts is an easement appurtenant - one that benefits a specific piece of land. An easement appurtenant will automatically run with the land, and after being recorded for the first time does not need to be re-identified in any deeds accompanying later conveyances. Therefore, answer B is correct and answer D is incorrect. Answer C is incorrect because the buyer did not have an easement in gross. Although answer A is legally correct, answer B is a better answer, because the easement appurtenant would have passed to the buyer even if he did not have an easement by implication.

213. Answer C is correct. Although the bank's mortgage has priority over the vendor's, whether the vendor can remove the windows depends upon whether they are regarded as fixtures. The bank's mortgage on the home will be limited to the structure and any items attached to it that have become fixtures. A court will consider the degree to which the item is attached, whether there will be damage to the structure if the item is removed, and whether general custom dictates that such an item stays with a property or goes out with the seller. Considering that there is a low degree of attachment (the inserts are "easily removable") and no damage will result from the removal, the inserts will not be considered fixtures and the vendor may enforce its lien. Therefore, answer C is correct, and A, B, and D are incorrect.

214. C is the correct answer. In general, a seller is required to provide marketable title on the closing date. To be considered marketable, the title must be free of encumbrances, such as mortgages, restrictive covenants and easements. Where the contract does not state that "time is of the essence," then the seller is required to provide marketable title within a reasonable time after the scheduled closing date. If the seller is able to do so, the buyer has no grounds for refusing to perform and the seller may sue for damages or specific performance. In this case, the owner has made arrangements that will render the title free of all encumbrances (the mortgage) at the closing. Therefore, the owner was entitled to bring an action for specific performance, and will succeed in that action because he can provide marketable title.

215. C is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. In this case, the facts state that the buyer was "unaware of the son's possession." The buyer, however, is charged with inquiry notice by virtue of the fact that the son's possession and use of the land was open and notorious. Inquiry notice requires the buyer to make reasonable inquiries, and he is charged with knowing any information the inquiries would yield. Under this theory, the buyer's notice prevents him from being protected by the recording statute, so the correct answer is C.

216. B is correct. The recording statute identified in the facts is a notice act. To prevail under a notice act, a party must be a bona fide purchaser ("BFP") who recorded his or her deed without notice of earlier purchasers. To be a BFP, a party must give value for his or her interest in the land. In this case, the customer's interest arises from a judgment lien against the financier rather than payment of valuable consideration. Therefore, the buyer is protected against the customer (who is not a BFP) by the recording statute, and is receiving marketable title at the closing. As such, he has no grounds for refusing to perform, and answer B is correct. Answer A is incorrect because it is the recording act, not equitable principles, which dictates that the financier should prevail. Answers C and D do not state accurate principles of law and are thereby incorrect.

217. D is correct. While a landowners possess a number of rights with regard to their property, as well as the areas above and below it, there are no rights to sunlight, fresh air, or view. Furthermore, there are no facts to suggest the creation of a negative easement or restrictive covenant, which would give the plaintiff a right to sunlight. As such, the plaintiff has no legal basis for a cause of action against the defendant. Answer D is correct, and answers A, B, and C are incorrect.

218. A is correct. Because the buyer purchased the property in reliance on a misrepresentation made by the the seller, that misrepresentation will serve as the basis for the buyer's cause of action and answer A is correct. Answer B is incorrect because the seller has not breached the covenant of warranty - that is a covenant relating to the title to the property. The facts do not indicate that the seller gave bad title. Answer C is incorrect because valuable consideration for the transaction was provided by both parties. Answer D is incorrect because the facts indicate that the seller was aware of the impending restriction on trailer use, so there was no mistake on the seller's part.

219. D is correct. This question deals with whether or not any of the items that the scientist installed have become fixtures. The general rule is that if an improvement qualifies as a fixture, it may not be removed. If, however, there is an agreement between an owner and tenant as to what the tenant may install and/or remove, that agreement will be given effect. The facts state that the scientist and the businessman entered an agreement (as part of the lease) that she would be free to remove any items that she installed upon termination of her lease. Therefore, answer D is correct, and answers A, B, and C are incorrect.Had there not been an agreement that was dispositive, the court would consider the degree to which an item is attached, whether there will be damage to the structure if the item is removed, and whether general custom dictates that such an item stays with a property or goes out with the seller.

220. B is correct. Intent, rather than mere physical possession, is determinative with regard to the purported delivery of a deed. In this case, it is clear from the facts that the owner's intent was that title would not pass to the nephew until he reached age 21 and had earned a college degree. The nephew's physical possession of and recording of the deed contrary to the owner's intent does not negate that intent. Therefore, the deed was never delivered to the nephew, and answer B is correct.

221. A is correct. The mortgagor of a property is generally free to transfer title to that property BUT: 1) the mortgagor remains personally liable on the mortgage, and 2) all subsequent grantees take the property subject to the mortgage. Further, subsequent grantees do not become personally liable on the mortgage unless they explicitly assume the mortgage. Therefore, the mortgagor will always be personally liable on the mortgage, all subsequent grantees who assume the mortgage will be personally liable on it, and all subsequent grantees (whether they assume the mortgage or not) can lose the property through foreclosure if the mortgage is not paid. The facts state that the friend did not assume the mortgage, so she has no personal liability to the bank with regard to mortgage payments. Although she voluntarily made such payments for a few months, she was under no obligation to do so. Therefore, answer A is correct. The bank, however, has the right to foreclose on the mortgage if the payments are not made, so the friend stands to lose the property unless either she or the carpenter makes the payments. Further, the carpenter's conveyance without the bank's permission allows the bank, pursuant to the due-on-sale clause, to demand immediate payment of the entire outstanding mortgage balance.

222. D is correct. The following estates are identified by the facts: the sister held a life estate, and the niece held a vested remainder. A life tenant has a duty not to commit voluntary or permissive waste relevant to the property during the life tenancy. Failures to keep the property in repair, to pay real estate taxes, or to pay interest on any mortgage on the property will all constitute permissive waste. That responsibility, however, is limited; it only extends as far as the amount of income the land generates. Therefore, while it is the sister's responsibility and not the niece's to pay the taxes, the sister is only responsible for paying taxes in an amount equal to the income she receives from the property, which in this case is $0. Because the niece has no recourse against the sister, answers A and B are incorrect and answer D is correct. Note that answer C is incorrect because possession is irrelevant to a life tenant's responsibilities - the sister is charged with those responsibilities whether she physically possesses the land or not.

223. D is correct. This question requires you to understand the rights and duties of tenants in common. Co-tenants have a right to contribution from each other for certain expenditures such as taxes, mortgage payments and necessary repairs. This is logical considering that even though a co-tenant only owns part of the land, each of these expenditures must be paid in full - i.e. you cannot pay half of the taxes or mortgage payment on a property, or fix one-half of an item needing repair. An accounting is generally the means employed to determine each co-tenant's respective contribution rights. In this case, an accounting is unnecessary because the property is generating no income, and there is only one expenditure to divide - the cost of the tax deed. The farmer's sole heir must pay one-half of the cost of that deed if she wishes to retain her one-half interest in the property, so answer D is correct.

224. A is correct. In general, real estate purchases involve a period of several months between the time the contract is signed and the closing date. A seller is not required to provide marketable title until that closing date arrives. Under an installment contract, although the period between contracting and closing may be several years, the same rule regarding title still applies. In this case, the facts indicate that the parties have entered into an installment contract, and that upon the 300th payment, the deed would be delivered. Therefore, the landowner is not required to provide marketable title until the time arrives for the purchaser to make the 300th payment. Since there are still 290 payments to be made, the landowner's time for performance has not yet arrived, so answer A is correct.

225. C is correct. The covenant of warranty is a guarantee by the seller that the title being conveyed is marketable, and that the grantor will defend any valid claims against that title. A breach of the covenant of warranty is established when a third party interferes with possession of the land, not when a third party makes a claim against the grantee. Consequently, the grantor is not required to defend the grantee or his heirs in any action against title; rather, he must only defend against a wrongful claim or eviction. In this case, the facts do not indicate that any valid claim existed because the teacher prevailed over the adjoining owner in an action to quiet title. Because the landowner conveyed good title, and did not fail to defend against any valid claims that existed at the time of the conveyance, the landowner should prevail, and answer C is correct.

226. D is correct. The restriction described in the facts constitutes an equitable servitude. An equitable servitude in a deed is only enforceable where a party can establish: 1) intent for the restriction to be enforceable by subsequent grantees; 2) that the subsequent grantees had notice of the servitude; and 3) that the restriction touches and concerns the land. In this case, the language of the deeds ("this agreement shall bind all successor owners...[and they] may enforce this covenant") clearly indicates that the servitude is intended to bind and be enforceable by subsequent grantees. Further, the prompt and proper recording of the deeds by the farmer and the teacher provides record notice of the servitude. And a restriction on the number and type of buildings that may be erected on each plot will surely be construed to touch and concern those plots. Therefore, the teacher will prevail, and answer D is correct.

227. B is correct. Some of the most basic sticks in the bundle of property rights are those relating to use of one's land. A property owner, whether an individual or a commercial entity, is entitled to make reasonable use of its property. An owner is likewise entitled to use and enjoy their land without invasions of that use and enjoyment by the activities of other owners. In this case, the facts indicate that the woman has allowed the foliage on her lot to become overgrown. Determining the parties' respective rights requires a balancing between the woman's right to use her property as she wishes on the one hand, and the man's right to quiet enjoyment of his property on the other. For the man to prevail, he must establish that the woman's use of her land constitutes an unreasonable interference with his use of his own land. This interference, however, must be based on more than mere aesthetics or market value considerations. The man must show that a more serious interference is occurring as a result of the woman's actions, such as a threat to the safety of those on his land. Therefore, answer B represents the man's strongest argument. Answers A and C are incorrect because they do not state a basis for a private nuisance claim. Answer D is incorrect because a nuisance claim is not warranted by the mere absence of other available claims.

228. A is correct. An assignment arises when a tenant transfers all or some of the leased premises to another for the remainder of the lease term, retaining no interest in the assigned premises. In this case, prior to the agreement with the friend, the tenant had privity of contract with the landlord because of the lease. The tenant also had privity of estate because the tenant was in possession of the apartment. Subsequently, an assignment arose when the tenant transferred the premises to the friend for the remainder of the lease term of nine months. The friend was then in privity of estate with the landlord as to all promises that run with the land, including the covenant to pay rent. The tenant was not released by the landlord, however, and thus remained liable on privity of contract. Thus, Answer A is correct.

229. Answer C is correct. A deed must be delivered to be valid. Delivery is a question of intent. The words of the landowner included "this is yours," showing the necessary intent to strip himself of dominion and control over the deed and to immediately transfer the title. In addition, handing the deed to the grantee raises a rebuttable presumption of delivery. Recording the deed is not required and thus the request not to record the document until later is irrelevant so long as delivery was present.

230. D is correct. A joint tenancy is not devisable or inheritable, and cannot be severed by a will. In this case, the son and the daughter received title as joint tenants with right of survivorship. On the death of the son, the interest of the daughter swelled and she then owned the land alone and in fee simple. She had the right to devise that interest by her will to the friend.

231. C is correct. This is a race-notice jurisdiction which protects a bona fide purchaser for value without notice who records first. The creditor filed first, giving the aunt constructive notice of the judgment lien. Accordingly, the judgment lien has priority.

232. Answer A is correct. This water is diffuse surface water. Although there are different views regarding the way an owner may expel such water, an owner such as the farmer may impound such water, especially in the absence of any malice.

233. Answer D is correct. Although jurisdictions differ on which party has the risk of loss, a finding for the seller in this case means the jurisdiction hearing the case places the risk of loss on the equitable owner of the property, the buyer, under the doctrine of equitable conversion. Under the doctrine of equitable conversion, if the property is destroyed before the date set for closing, the buyer is deemed the owner of the property, and the risk of loss is on the buyer.

234. Answer C is correct. The woman has title to the deed. Estoppel by deed applies to validate a deed, and in particular a warranty deed, that was executed and delivered by a grantor who had no title to the land at that time, but who represented that he or she had such title and who thereafter acquired such title. In this case, estoppel by deed would apply in the woman's favor to estop the nephew from claiming ownership of the land upon the death of his uncle.

235. Answer C is correct. The woman has title to the deed. Estoppel by deed applies to validate a deed, and in particular a warranty deed, that was executed and delivered by a grantor who had no title to the land at that time, but who represented that he or she had such title and who thereafter acquired such title. In this case, estoppel by deed would apply in the woman's favor to estop the nephew from claiming ownership of the land upon the death of his uncle.

236. Answer B is correct. Damages may be awarded if a private nuisance is proven. A private nuisance is a substantial and unreasonable non-trespassory interference with the use or enjoyment of one's land. The facts demonstrate a non-trespassory invasion of the woman's property rights, i.e., the bright lights and noise have distured the woman's use and enjoyment of her land. Thus, a claim for private nuisance would be the best doctrine to follow to support the woman's claim for damages.

237. With a mortgage assumption, the buyer who assumes the mortgage debt becomes primarily liable for any deficiency. The man, absent a release by the bank, also is liable, although the man is secondarily liable. This situation can be contrasted with one in which the buyer purchased "subject to the mortgage," in which case only the man would be liable for any deficiency. Thus, Answer C is correct.

238. Answer D is correct. Under the doctrine of equitable conversion, the risk of loss goes to the party with the equitable title if the contract is silent. Equitable conversion occurs when the contract is capable of specific performance. This contract was silent regarding the risk of loss and there were no conditions to be met. The buyer thus had the equitable title at the time of the loss. If there is no statute, the Uniform Vendor and Purchaser Act, which places the risk of loss on the one in possession, is not applicable. The court found for the seller, and thus the minority common law rule, which places the risk on the seller under these facts, is inapplicable. Thus, Answer D is correct.

239. Answer C is correct. The first bank had priority. The second bank was a necessary party to the foreclosure proceeding and was given notice of the sale. When the second bank failed to appear at the foreclosure proceeding, or to take any other action, the buyer at the sale received the title the farmer had at the time the mortgage was given to the first bank, which was free of any mortgage liens. The buyer and the farmer did not act in collusion, so there could be no claim of fraud when the farmer reacquired her original interest in the farm. Thus, Answer C is correct and Answer B is incorrect.

240. Answer B is correct. The landlord and the tenant agreed in the lease that if any part of the land was condemned, the lease would terminate and the landlord would receive the entire condemnation award.

241. Answer C is correct. Lack of access may render title unmarketable under the contract of sale; however, the time to challenge marketable title is prior to the acceptance of the deed. Thus, Answer A is incorrect because the colleague accepted the deed, completing the contract of sale.

242. Answer A is correct. The mortgage contains a valid due-on-sale clause. If the landowner conveys the land without the prior consent of the bank, the bank may accelerate the debt. A sale by use of an installment land contract is a transfer of the land which can trigger the due-on-sale clause.

243. Answer B is correct. The landlord granted the legal right of possession to the tenant, which means that neither the landlord nor anyone holding of the landlord prevented the tenant from going into possession at the commencement of the lease term. The previous tenant's lease term had ended before the new lease term began. The previous tenant then became a trespasser and was not holding of the landlord. As stated in the question, the court found for the landlord, and thus there is no rule in this jurisdiction that the landlord need also put the tenant into actual possession.

244. Answer D is correct. The cousin and the investor had a valid contract for the sale of the farm. The contract did not specify that time was of the essence, and thus the investor should be able to enforce the contract within a reasonable time after the proposed closing date. The cousin acquired the land two weeks after the intended closing date, which was within a reasonable time period afterward.

245. Answer A is correct. The deed stated that the conveyance was subject to the lender's mortgage and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration. While the developer did not sign the deed, the developer accepted the deed and recorded it, thereby agreeing to the mortgage assumption. When the developer assumed the mortgage obligation, the developer became personally liable to the lender, and the landowner became merely a surety. The developer, having sufficient assets to pay the deficiency judgment, must do so.

250. Answer B is correct. When the man delivered the deed to his attorney with instructions to deliver it to the nephew on his death, he was attempting to create a valid death escrow. Neither a written nor an oral contract is required for a valid death escrow, since most are gratuitous. To create a valid death escrow, however, the man had to place the deed beyond his control, reserving no power over it once it had been given to the attorney. Because the man instructed the attorney to return the deed to the man if he asked, the man did not place the deed beyond his control, and no death escrow was created. Thus, Answer B is correct.

251. C is the correct answer.

252. Answer B is correct. The testator devised his house, which he owned at his death, to his grandchildren as a class gift. The testator was survived by two grandchildren who became the sole surviving members of the class. The deceased grandchild's interest lapsed because the grandchild, though alive at the time of the will execution, died before the testator. The deceased grandchild would qualify under the anti-lapse statute, but he was not survived by any issue who would be substituted for him under the statute. Thus, Answer B is correct and Answer D is incorrect. Answer A is incorrect because the house will pass to the two surviving grandchildren as surviving members of the class and will not fall into the residue of the estate. Answer C is incorrect because, when the class closed, there were two surviving members of the class, who will take. Additional children of the testator's daughter will not take.

253. Answer A is correct. As the life tenant, the wife had a right to annex a chattel, in this case the chandelier. It was clear that the wife did not intend to make the chandelier a permanent annexation, as evidenced by her discussions with her nephew and the man's son. The wife's personal representative, the nephew, had the right to remove the chandelier within a reasonable time after the termination of the wife's life estate. Thus, Answer A is correct and Answer C is incorrect.