1. X-- A brother and a sister acquired as joint tenants a twenty-acre parcel of land called Greenacre. They contributed equally to the purchase price. Several years later, the brother proposed that they build an apartment development on Greenacre. The sister rejected the proposal but orally agreed that the brother could go ahead on his own on the northerly half of Greenacre and she could do what she wished with the southerly half of Greenacre. The brother proceeded to build an apartment development on, and generally developed and improved, the northerly ten acres of Greenacre. The sister orally permitted the southerly ten acres of Greenacre to be used by the Audubon Society as a nature preserve. The brother died, leaving his entire estate to his son. The will named the sister as executrix of his will, but she refused to serve.

In an appropriate action to determine the respective interests of the sister and the brother's son in Greenacre, if the son is adjudged to be the owner of the northerly ten acres of Greenacre, the most likely reason for the judgment will be that

A. the close blood relationship between the brother and sister removes the necessity to comply with the Statute of Frauds.

B. the sister's conduct during the brother's lifetime estops her from asserting title to the northerly half of Greenacre.

C. the joint tenancy was terminated by the oral agreement of the brother and the sister at the time it was made.

D. the sister had a fiduciary obligation to her nephew by reason of her being named executrix of the brother's will.

2. X-- A brother and sister acquired as joint tenants a twenty-acre parcel of land called Greenacre. They contributed equally to the purchase price. Several years later, the brother proposed that they build an apartment development on Greenacre. The sister rejected the proposal but orally agreed that the brother could go ahead on his own on the northerly half of Greenacre and she could do what she wished with the southerly half of Greenacre. The brother proceeded to build an apartment development on, and generally developed and improved, the northerly ten acres of Greenacre. The sister orally permitted the southerly ten acres of Greenacre to be used by the Audubon Society as a nature preserve. The brother died, leaving his entire estate to his son. The will named the sister as executrix of his will, but she refused to serve.

In an appropriate action to determine the respective interests of the sister and the brother's son in Greenacre, if the sister is adjudged to be the owner of all of Greenacre, the most likely reason for the judgment will be that

A. the Statute of Frauds prevents the proof of the sister's oral agreement.

B. the brother could not unilaterally sever the joint tenancy.

C. the sister's nomination as executrix of the brother's estate does not prevent her from asserting her claim against the son.

D. the record title of the joint tenancy in Greenacre can be changed only by a duly recorded instrument.

3. In 1960, the owner in fee simple of Barrenacres, a large, undeveloped tract of land, granted an easement to the Water District "to install, inspect, repair, maintain, and replace pipes" within a properly delineated strip of land twenty feet wide across Barrenacres. The easement permitted the Water District to enter Barrenacres for only the stated purposes. The Water District promptly and properly recorded the deed. In 1961, the Water District installed a water main which crossed Barrenacres within the described strip; the Water District has not since entered Barrenacres.

In 1965, the landowner sold Barrenacres to a purchaser, but the deed, which was promptly and properly recorded, failed to refer to the Water District easement. The purchaser built his home on Barrenacres in 1965, and since that time he has planted and maintained, at great expense in money, time, and effort, a formal garden area which covers, among other areas, the surface of the twenty-foot easement strip.

In 2006, the Water District proposed to excavate the entire length of its main in order to inspect, repair, and replace the main, to the extent necessary. At a public meeting, at which the purchaser was present, the Water District announced its plans and declared its intent to do as little damage as possible to any property involved. The purchaser objected to the Water District plans.

Assume that the purchaser reserved his rights and after the Water District completed its work sued for the $5,000 in damages he suffered by reason of the Water District entry. The purchaser's attempt to secure damages probably wil

A. succeed, because his deed from the owner did not mention the easement.

B. succeed, because of an implied obligation imposed on the Water District to restore the surface to its condition prior to entry.

C. fail, because of the public interest in maintaining a continuous water supply.

D. fail, because the Water District acted within its rights.

4. In 1990, the owner in fee simple absolute, conveyed Stoneacre, a five-acre tract of land. The relevant, operative words of the deed conveyed to "the church [a duly organized religious body having power to hold property] for the life of my son and from and after the death of my said son to all of my grandchildren and their heirs and assigns in equal shares; provided, the church shall use the premises for church purposes only."

In an existing building on Stoneacre, the church immediately began to conduct religious services and other activities normally associated with a church.

In 2005, the church granted a neighbor a right to remove sand and gravel from a one-half acre portion of Stoneacre upon the payment of royalty. The neighbor has regularly removed sand and gravel since 2005 and paid royalty to the church. The church has continued to conduct religious services and other church activities on Stoneacre.

All four of the living grandchildren of the grantor joined by a guardian ad litem to represent unborn grandchildren, instituted suit against the church and the neighbor seeking damages for the removal of sand and gravel and an injunction preventing further acts of removal. There is no applicable statute. Which of the following best describes the likely disposition of this lawsuit?

A. The plaintiffs should succeed, because the interest of the church terminated with the first removal of sand and gravel.

B. The church and the neighbor should be enjoined, and damages should be recovered but impounded for future distribution.

C. The injunction should be granted, but damages should be denied, because the grantor and his son are not parties to the action.

D. Damages should be awarded, but the injunction should be denied.

5. By her validly executed will, a woman devised a certain tract of land to her son for his life with remainder to such of his children as should be living at his death, "Provided, however, that no such child of my son shall mortgage or sell, or attempt to mortgage or sell, his or her interest in the property prior to attaining 25 years of age: and, if any such child of my son shall violate this provision, then upon such violation his or her interest shall pass to and become the property of the remaining children of my son then living, share and share alike."

The woman's will included an identical provision for each of her four other children concerning four other tracts of land. The residuary clause of the will gave the residuary estate to the woman's five children equally. The woman died and was survived by the five children named in her will and by eleven grandchildren. Several additional grandchildren have since been born.

In an action for a declaration of rights, it was claimed that the attempted gifts to the woman's grandchildren were entirely void and that the interests following the life estates to the woman's children passed to the children absolutely by the residuary clause. Assuming that the action was properly brought with all necessary parties and with a guardian ad litem appointed to represent the interests of unborn and infant grandchildren, the decision should be that

A. the attempted gifts to grandchildren are void under the Rule Against Perpetuities.

B. the attempted gifts to grandchildren are void as unlawful restraints on alienation.

C. the provisions concerning grandchildren are valid and will be upheld according to their terms.

D. even if the provisions against sale or mortgage by the grandchildren are void, the remainders to grandchildren are otherwise valid and will be given effect.

6. The following events took place in a state that does not recognize common-law marriage. The state does recognize the common-law estate of tenancy by the entirety and has no statute on the subject.

A man and woman, who were never formally married, lived together over a seven-year period. During this time the woman identified herself using the man's last name with the knowledge and consent of the man. The couple maintained several charge accounts at retail stores under the husband's last name, and they filed joint income tax returns using his last name for both of them.

Within this period the man decided to buy a home. The deed was in proper form and identified the grantees as "Mr. and Mrs. [last name], and their heirs and assigns forever as tenants by the entirety." The man made a down payment of $10,000, and gave a note and mortgage for the unpaid balance. The couple signed the note and mortgage as husband and wife. The man made monthly payments as they became due until he and the woman had a disagreement and he abandoned her and the house. The woman then made the payments for three months. She then brought an action against the man for partition of the land in question. The prayer for partition should be

A. denied, because a tenant by the entirety has no right to partition.

B. denied, because the man has absolute title to the property.

C. granted, because the tenancy by the entirety that was created by the deed was severed when the man abandoned the woman.

D. granted, because the estate created by the deed was not a tenancy by the entirety.

7. X--A grantor conveyed a farm "to my daughter, her heirs and assigns, so long as the premises are used for residential and farm purposes, then to her son and his heirs and assigns." The jurisdiction in which the farm is located has adopted the common-law Rule Against Perpetuities unmodified by statute. As a consequence of the conveyance, the grantor’s interest in the farm is

A. nothing.

B. a possibility of reverter.

C. a right of entry for condition broken.

D. a reversion in fee simple absolute.

8. X-- A tract of land was conveyed to a woman and a man by a deed which, in the jurisdiction in which the land is situated, created a co-tenancy in equal shares and with the right of survivorship. The jurisdiction has no statute directly applicable to any of the problems posed.

The woman, by deed, conveyed "my undivided one-half interest in [the land]" to her friend. The woman has since died. In an appropriate action between the friend and the man in which title to the land is at issue, the man will

A. prevail, because he is the sole owner of the land.

B. prevail if, but only if, the co-tenancy created in the woman and the man was a tenancy by the entirety.

C. not prevail if he had knowledge of the conveyance prior to the woman's death.

D. not prevail, because the friend and the man own the tract of land as tenants in common.

9. X-- Meadowview is a large tract of undeveloped land. The man who owns Meadowview prepared a development plan creating 200 house lots in Meadowview with the necessary streets and public areas. The plan was fully approved and duly recorded. However, construction of the streets has not yet begun, and none of the streets can be opened as public ways until they are completed in accordance with the applicable ordinances.

College Avenue, a street in the Meadowview development, abuts a parcel of land that is adjacent to Meadowview and owned by a pharmacist. This parcel has no access to any public way except a poorly developed road that is inconvenient and cannot be used without great expense. The pharmacist sold the parcel to a friend. The description used in the deed was the same as that used in prior deeds except that the portion of the description which formerly said, "thence by land of Meadowview, north-easterly a distance of 200 feet, more or less," was changed to "thence by College Avenue as laid out on the Plan of Meadowview," with full reference to the plan and its recording data. The friend now seeks a building permit that shows she intends to use College Avenue for access to her parcel of land. The man objects to the granting of a building permit on the grounds that he has never granted any right to the pharmacist or her friend to use College Avenue. There are no governing statutes or ordinances relating to the problem.

The man brings an appropriate action in which the right of the friend to use College Avenue without an express grant from the man is at issue. The best argument for the man in this action is that

A. the friend’s right must await the action of appropriate public authorities to open College Avenue as a public street, since no private easements arose by implication.

B. the Statute of Frauds prevents the introduction of evidence which might prove the necessity for the friend to use College Avenue.

C. the friend’s right to use College Avenue is restricted to the assertion of a way by necessity, and the facts preclude the success of such a claim.

D. the friend would be unjustly enriched if he were permitted to use College Avenue.

10. The owner in fee simple of Highacre, an apartment house property, entered into an enforceable written agreement to sell Highacre to a buyer. The agreement provided that a good and marketable title was to be conveyed free and clear of all encumbrances. However, the agreement was silent as to the risk of fire prior to closing, and there is no applicable statute in the state where the land is located. The premises were not insured. The day before the scheduled closing date, Highacre was wholly destroyed by fire. When the buyer refused to close, the seller brought an action for specific performance. If the seller prevails, the most likely reason will be that

A. the failure of the buyer to insure his interest as the purchaser of Highacre precludes any relief for him.

B. the remedy at law is inadequate in actions concerning real estate contracts, and either party is entitled to specific performance.

C. equity does not permit consideration of surrounding circumstances in actions concerning real estate contracts.

D. the doctrine of equitable conversion applies.

11. A landlord, the owner in fee simple of a small farm consisting of thirty acres of land improved with a house and several outbuildings, leased the same to a tenant for a ten-year period. After two years had expired, the government condemned twenty acres of the property and allocated the compensation award to the landlord and tenant according to their respective interest so taken. It so happened, however, that the twenty acres taken embraced all of the farm's tillable land, leaving only the house, outbuildings, and a small woodlot. There is no applicable statute in the jurisdiction where the property is located nor any provision in the lease relating to condemnation. The tenant quit possession, and the landlord brought suit against him to recover rent. The landlord will

A. lose, because there has been a frustration of purpose which excuses the tenant from further performance of his contract to pay rent.

B. lose, because there has been a breach of the implied covenant of quiet enjoyment by the landlord's inability to provide the tenant with possession of the whole of the property for the entire term.

C. win, because of the implied warranty on the part of the tenant to return the demised premises in the same condition at the end of the term as they were at the beginning.

D. win, because the relationship of landlord and tenant was unaffected by the condemnation, thus leaving the tenant still obligated to pay rent.

12. A landowner owns and possesses Goodacre, on which there is a lumber yard. The landowner conveyed to an electric company the right to construct and use an overhead electric line across Goodacre to serve other properties. The conveyance was in writing, but the writing made no provision concerning the responsibility for repair or maintenance of the line. The electric company installed the poles and erected the electric line in a proper and workmanlike manner. Neither the landowner nor the electric company took any steps toward the maintenance or repair of the line after it was built. Neither party complained to the other about any failure to repair. Because of the failure to repair or properly maintain the line, it fell to the ground during a storm. In doing so, it caused a fire in the lumber yard and did considerable damage. The landowner sued the electric company to recover for damages to the lumber yard. The decision should be for

A. The landowner, because the owner of an easement has a duty to maintain the easement so as to avoid unreasonable interference with the use of the servient tenement by its lawful possessor.

B. The landowner, because the owner of an easement is absolutely liable for any damage caused to the servient tenement by the exercise of the easement.

C. The electric company, because the possessor of the servient tenement has a duty to give the easement holder notice of defective conditions.

D. The electric company, because an easement holder's right to repair is a right for its own benefit, and is therefore inconsistent with any duty to repair for the benefit of another.

13. A diner containing a drive-in hamburger and ice cream stand recently opened for business in a suburban town. The diner's business hours are from 9:00 a.m. to midnight. It is in an area that for fifteen years has been zoned for small retail businesses, apartment buildings, and one-and two-family residences. The zoning code specifies that "small retail business" includes "businesses where food and drink are dispensed for consumption on the premises." The diner was the first drive-in in the town. For seven years, a husband and wife have owned and lived in their single-family residence, which is across the street from the diner.

The diner is heavily patronized during the day and night by high school students. The noise and lights of the cars, the lights illuminating the diner's parking lot, and the noise from the loudspeaker of the ordering system prevented the homeowners from sleeping before midnight. Paper cups, napkins, and other items from the drive-in are regularly blown into the homeowners' front yard by the prevailing wind. The traffic to and from the diner is so heavy on the street in front of their house that the homeowners are afraid to allow their small children to play in the front yard.

The homeowners have asserted a claim against the diner based on private nuisance. The most likely effect of the fact that the homeowners were in the area before the diner is that it

A. requires that the homeowners' interest be given priority.

B. is irrelevant because of the zoning ordinance.

C. is irrelevant because conforming economic uses are given priority.

D. is some, but not controlling, evidence.

14. The following facts concern a tract of land in a state which follows general United States law. Each instrument is in proper form, recorded, marital property rights were waived when necessary, and each person named was adult and competent at the time of the transaction.

1. In 1970 Oleg, the owner, conveyed his interest in fee simple "to my brothers Bob and Bill, their heirs and assigns as joint tenants with the right of survivorship."

2. In 1980 Bob died, devising his interest to his only child, "Charles, for life, and then to Charles' son, Sam, for life, and then to Sam's children, their heirs and assigns."

3. In 2000 Bill died, devising his interest "to my friend, Frank, his heirs and assigns."

4. In 2002 Frank conveyed by quitclaim deed "to Paul, his heirs and assigns whatever right, title and interest I own."

Paul has never married. Paul has contracted to convey marketable record title in the land to Patrick. Can Paul do so?

A. Yes, without joinder of any other person in the conveyance.

B. Yes, if Charles, Sam, and Sam's only child (Gene, aged 25) will join in the conveyance.

C. No, regardless of who joins in the conveyance, because Sam may have additional children whose interests cannot be defeated.

D. No, regardless of who joins in the conveyance, because a title acquired by quitclaim deed is impliedly unmerchantable.

15. Homer conveyed his home to wife, Wanda, for life, remainder to his daughter, Dixie. There was a $20,000 mortgage on the home, requiring monthly payment covering interest to date plus a portion of the principal. Which of the following statements about the monthly payment is correct?`

A. Wanda must pay the full monthly payment.

B. Wanda must pay a portion of the monthly payment based on an apportionment of the value between Wanda's life estate and Dixie's remainder.

C. Wanda must pay the portion of the monthly payment which represents interest.

D. Dixie must pay the full monthly payment.

16. X-- Assume for the purposes of these questions that you are counsel to the state legislative committee that is responsible for real estate laws in your state. The committee wants you to draft a statute governing the recording of deeds that fixes priorities of title, as reflected on the public record, as definitely as possible. Which of the following, divorced from other policy considerations, would best accomplish this particular result?

A. Eliminate the requirement of witnesses to deeds

B. Make time of recording the controlling factor

C. Make irrebuttable the declarations in the deeds that valuable consideration was paid

D. Make the protection of bona fide purchasers the controlling factor

17. A seller and a buyer execute an agreement for the sale of real property on September 1, 2001. The jurisdiction in which the property is located recognized the principle of equitable conversion and has no statute pertinent to this problem.

Assume for this question only that the seller dies before closing and his will leaves his personal property to a friend and his real property to his sister. There being no breach of the agreement by either party, which of the following is correct?

A. Death, an eventuality for which the parties could have provided, terminates the agreement if they did not so provide.

B. The sister is entitled to the proceeds of the sale when it closes, because the doctrine of equitable conversion does not apply to these circumstances.

C. The friend is entitled to the proceeds of the sale when it closes.

D. Title was rendered unmarketable by the seller's death.

18. A landowner holds title in fee simple to a tract of 1,500 acres. He desires to develop the entire tract as a golf course, country club, and residential subdivision. He contemplates forming a corporation to own and to operate the golf course and country club; the stock in the corporation will be distributed to the owners of lots in the residential portions of the subdivision, but no obligation to issue the stock is to ripen until all the residential lots are sold. The price of the lots is intended to return enough money to compensate the landowner for the raw land, development costs (including the building of the golf course and the country club facilities), and developer's profit, if all of the lots are sold. The landowner's market analyses indicate that he must create a scheme of development that will offer prospective purchasers (and their lawyers) a very high order of assurance that several aspects will be clearly established:

1. Aside from the country club and golf course, there will be no land use other than for residential use and occupancy in the 1,500 acres.

2. The residents of the subdivision will have unambiguous rights and access to the club and golf course facilities.

3. Each lot owner must have an unambiguous right to transfer his lot to a purchaser with all original benefits.

4. Each lot owner must be obligated to pay annual dues to a pro rata share (based on the number of lots) of the club's annual operating deficit (whether or not such owner desires to make use of club and course facilities).

In the context of all aspects of the scheme, which of the following will offer the best chance of implementing the requirement that each lot owner pay annual dues to support the club and golf course?

A. Covenant

B. Easement

C. Mortgage

D. Personal contractual obligation by each purchaser

19. X-- Two neighbors are equal tenants in common of a strip of land 10 feet wide and 100 feet deep which lies between the lots on which their respective homes are situated. Both neighbors need the use of the 10-foot strip as a driveway; and each fears that a new neighbor might seek partition and leave him with an unusable 5-foot strip.

The best advice about how to solve their problem is

A. a covenant against partition.

B. an indenture granting cross easements in the undivided half interest of each.

C. partition into two separate 5-foot wide strips and an indenture granting cross easements.

D. a trust to hold the strip in perpetuity.

20. X-- By way of a gift, a father executed a deed naming his daughter as grantee. The deed contained descriptions as follows:

(1) All of my land and dwelling known as 44 Main Street, Midtown, United States, being one acre.

(2) All that part of my farm, being a square with 200-foot sides, the southeast corner of which is in the north line of my neighbor.

The deed contained covenants of general warranty, quiet enjoyment, and right to convey.

The father handed the deed to his daughter who immediately returned it to her father for safekeeping. Her father kept it in his safe deposit box. The deed was not recorded.

The property at 44 Main Street covered 7/8 of an acre of land, had a dwelling and a garage situated thereon, and was subject to a right of way, described in prior deeds, in favor of a second neighbor. The father owned no other land on Main Street. This neighbor had not used the right of way for ten years and it was not visible on inspection of the property.

The description of 44 Main Street was

A. sufficient, because the discrepancy in area is not fatal.

B. not sufficient, because it contained no metes and bounds.

C. not sufficient, because the acreage given was not correct.

D. not sufficient, because a deed purporting to convey more than a grantor owns is void ab initio.

21. X-- An owner owned in fee simple three adjoining vacant lots fronting on a common street in a primarily residential section of a city which had no zoning laws. The lots were identified as Lots 1, 2, and 3. The owner conveyed Lot 1 to a man and Lot 2 to a woman. The owner retained Lot 3, which consisted of three acres of woodland. The woman, whose lot was between the other two, built a house on her lot.

The man erected a house on his lot. The owner made no complaint to either the man or woman concerning the houses they built. After both the man and woman had completed their houses, the two of them agreed to and did build a common driveway running from the street to the rear of their respective lots. The driveway was built on the line between the two houses so that one-half of the way was located on each lot. The man and woman exchanged right-of-way deeds by which each of them conveyed to the other, his heirs and assigns, an easement to continue the right of way. Both deeds were properly recorded. After the man and woman had lived in their respective houses for thirty years, a new public street was built bordering on the rear of Lots 1, 2, and 3. The man informed the woman that, since the new street removed the need for their common driveway, he considered the right-of-way terminated; therefore, he intended to discontinue its use and expected the woman to do the same.

In an action brought by the woman to enjoin the man from interfering with her continued use of the common driveway between the two lots, the decision should be for

A. the man, because the termination of the necessity for the easement terminated the easement.

B. the man, because the continuation of the easement after the change of circumstances would adversely affect the marketability of both lots without adding any commensurate value to either.

C. the woman, because an incorporeal hereditament lies in grant and cannot be terminated without a writing.

D. the woman, because the removal of the need for the easement created by express grant does not affect the right to the easement.

22.X-- The owner of Newacre executed and delivered to a power company a right-of-way deed for the building and maintenance of an overhead power line across Newacre. The deed was properly recorded. Newacre then passed through several intermediate conveyances until it was conveyed to a new owner about ten years after the date of the right-of-way deed. All the intermediate deeds were properly recorded, but none of them mentioned the right-of-way.

The new owner entered into a written contract to sell Newacre to a developer. By the terms of the contract, the new owner promised to furnish an abstract of title to the developer. The new owner contracted directly with an abstract company to prepare and deliver an abstract to the developer, and the abstract company did so. The abstract omitted the right-of-way deed. The developer delivered the abstract to his attorney and asked the attorney for an opinion as to title. The attorney signed and delivered to the developer a letter stating that, from the attorney's examination of the abstract, it was his "opinion that the new owner had a free and unencumbered marketable title to Newacre."

The new owner conveyed Newacre to the developer by a deed which included covenants of general warranty and against encumbrances. The developer paid the full purchase price. After the developer had been in possession of Newacre for more than a year, he learned about the right-of-way deed. The new owner, the developer, the abstract company, and the developer's attorney were all without actual knowledge of the existence of the right-of-way to the conveyance from the new owner to the developer.

If the developer sues the abstract company for damages caused to the developer by the presence of the right-of-way, the most likely result will be a decision for

A. the developer, because the developer was a third-party creditor beneficiary of the contract between the new owner and the abstract company.

B. the developer, because the abstract prepared by the abstract company constitutes a guarantee of the developer's title to Newacre.

C. the abstract company, because the abstract company had no knowledge of the existence of the right-of-way.

D. the abstract company, because there was no showing that any fraud was practiced upon the developer.

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If the developer sues the new owner because of the presence of the right-of-way, the most likely result will be a decision for

A. the developer, because the new owner is liable for his negligent misrepresentation.

B. the developer, because the covenants in the new owner's deed to the developer have been breached.

C. the new owner, because the developer relied upon the abstract company, not the new owner, for information concerning title.

D. the new owner, because the new owner was without knowledge of any defects in the title to Newacre.

24. In 1995 a man executed his will which in pertinent part provided, "I hereby give, devise, and bequeath Greenvale to my surviving widow for life, remainder to such of my children as shall live to attain the age of 30, but if any child who dies under the age of 30 is survived by a child or children, such child or children shall take and receive the share which his, her, or their parent would have received had such parent lived to attain the age of 30."

At the date of writing of his will, the man was married and had two sons. The man's wife died in 2000, and the man remarried in 2002 and had a third child in 2004--a daughter. At his death in 2010, the man was survived by his second wife and three children.

In a jurisdiction which recognizes the common law Rule Against Perpetuities unmodified by statute, the result of the application of the rule is that the

A. remainder to the children and to the grandchildren is void because the man could have subsequently married a person who was unborn at the time the man executed his will.

B. remainder to the children is valid, but the substitutionary gift to the grandchildren is void because the man could have subsequently married a person who was unborn at the time the man executed his will.

C. gift in remainder to the sons or their children is valid, but the gift to the daughter or her children is void.

D. remainder to the children and the substitutionary gift to the grandchildren are valid.

25. At a time when an owner held Lot 1 in the Fairoaks subdivision in fee simple, the owner's son executed a warranty deed that recited that the owner's son conveyed Lot 1, Fairoaks, to his girlfriend. The deed was promptly and duly recorded.

After the recording of the deed from the owner's son to his girlfriend, the owner conveyed Lot 1 to his son by a warranty deed that was promptly and duly recorded. Later, the owner's son conveyed the property to a buyer by warranty deed, and the deed was promptly and duly recorded. The buyer paid the fair market value of Lot 1 and had no knowledge of any claim of the girlfriend.

In an appropriate action, the buyer and the girlfriend contest title to Lot 1. In this action, judgment should be for

A. the girlfriend, because the girlfriend's deed is senior to the buyer's.

B. the buyer, because the buyer paid value without notice of the girlfriend's claim.

C. the girlfriend or the buyer, depending on whether a subsequent grantee is bound, at common law, by the doctrine of estoppel by deed.

D. the girlfriend or the buyer, depending on whether the girlfriend's deed is deemed recorded in the buyer's chain of title.

26. A widower owns in fee simple a ranch, Ranchacre. The widower has one child, a son, who is married. The widower has one grandchild, who is also married but has no children. In an effort to dispose of Ranchacre to his descendants and to honor a request by the grandchild that she be skipped in any disposition, the widower conveys Ranchacre to his son for life with the remainder to the grandchild's children in fee simple.

What interest, if any, is created in favor of the grandchild's unborn children at the time of the conveyance?

A. A contingent remainder

B. A vested remainder subject to divestment

C. A springing use

D. None

27. X-- A seller agreed to sell and a buyer agreed to buy a described lot on which a single-family residence had been built. Under the contract, the seller agreed to convey marketable title subject only to conditions, covenants, and restrictions of record and all applicable zoning laws and ordinances. The lot was subject to a 10-foot side line setback originally set forth in the developer's duly recorded subdivision plot. The applicable zoning ordinance zones that property for single-family units and requires an 8.5-foot side line setback.

Prior to closing, a survey of the property was made. It revealed that a portion of the seller's house was 8.4 feet from the side line.

The buyer refused to consummate the transaction on the ground that the seller's title is not marketable. In an appropriate action, the seller seeks specific performance. Who will prevail in such an action?

A. The seller, because any suit against the buyer concerning the setback would be frivolous.

B. The seller, because the setback violation falls within the doctrine de minimis non curat lex.

C. The buyer, because any variation, however small, amounts to a breach of contract.

D. The buyer, because the fact that the buyer may be exposed to litigation is sufficient to make the title unmarketable.

28. For valuable consideration, the owner of Riveracre signed and gave to the grantee a duly executed instrument that provided as follows: "The grantor may or may not sell Riveracre during her lifetime, but at her death, or if she earlier decides to sell, the property will be offered to [the grantee] at $500 per acre. [The grantee] shall exercise this right, if at all, within sixty days of receipt of said offer to sell." The grantee recorded the instrument. The instrument was not valid as a will.

Is the grantee's right under the instrument valid?

A. Yes, because the instrument is recorded.

B. Yes, because the grantee's right to purchase will vest or fail within the period prescribed by the Rule Against Perpetuities.

C. No, because the grantee's right to purchase is a restraint on the owner's power to make a testamentary disposition.

D. No, because the grantee's right to purchase is an unreasonable restraint on alienation.

29. X-- A ten-lot subdivision was approved by the proper governmental authority. The authority's action was pursuant to a map filed by a developer, which included an undesignated parcel in addition to the ten numbered lots. The shape of the undesignated parcel is different and somewhat larger than any one of the numbered lots. Subdivision building restrictions were imposed on "all the lots shown on said map."

The developer contracts to sell the unnumbered lot, described by metes and bounds, to a buyer. Is title to the parcel marketable?

A. Yes, because the undesignated parcel is not a lot to which the subdivision building restrictions apply.

B. Yes, because the undesignated parcel is not part of the subdivision.

C. No, because the undesignated parcel has never been approved by the proper governmental authority.

D. No, because the map leaves it uncertain whether the unnumbered lot is subject to the building restrictions.

30. A man owned Blackacre in fee simple and by his will specifically devised Blackacre as follows: "To my daughter, her heirs and assigns, but if my daughter dies survived by a husband and a child or children, then to my daughter's husband during his lifetime with remainder to my daughter's children, their heirs and assigns. Specifically provided, however, that if my daughter dies survived by a husband and no child, Blackacre is specifically devised to my nephew, his heirs and assigns."

While the man's will was in probate, the nephew quitclaimed all interest in Blackacre to the daughter's husband. Three years later, the daughter died, survived by her husband but no children. The daughter left a will devising her interest in Blackacre to her husband. The only applicable statute provides that any interest in land is freely alienable.

The nephew instituted an appropriate action against the husband to establish title to Blackacre. Judgment should be for

A. the nephew, because his quitclaim deed did not transfer his after acquired title.

B. the nephew, because the husband took nothing under the man's will.

C. the husband, because the nephew had effectively conveyed his interest to the husband.

D. the husband, because the doctrine of after acquired title applies to a devise by will.

31. X-- An owner conveyed Goldacre to "my son, his heirs and assigns, but if my son dies and is not survived by children by his present wife, then to my neice and his heirs and assigns." Shortly after taking possession, the son discovered rich metal deposits on the land, opened a mining operation, and removed and sold a considerable quantity of valuable ore without giving the neice any notice of his action. The son has no children. The son, his wife, and the neice are all still living. The neice brought an action in equity for an accounting of the value of the ore removed and for an injunction against further removal.

If the decision is for the son, it will be because

A. the neice has no interest in Goldacre.

B. the right to take minerals is an incident of a defeasible fee simple.

C. the right to take minerals is an incident of the right to possession.

D. there was no showing that the son acted in bad faith.

32. An unmarried couple purchased a condominium as tenants in common and lived in the condominium for three years. Subsequently, they made a verbal agreement that, on the death of either of them, the survivor would own the entire condominium, and, as a result, they decided they did not need wills.

Two years later, the couple was involved in the same automobile accident. The woman was killed immediately. The man died one week later. Both died intestate. The woman's sole heir is her brother. The man's sole heir is his mother. The brother claimed one-half of the condominium, and the mother claimed all of it. The jurisdiction has no applicable statute except for the Statute of Frauds; nor does it recognize common-law marriages.

In an appropriate action by the mother claiming the entire ownership of the condominium, the court will find that

A. The mother owns the entire interest because the couple did not make wills in reliance upon their oral agreement.

B. The mother owns the entire interest because she is entitled to reformation of the deed to reflect the verbal agreement.

C. The brother and the mother each own an undivided one-half interest because the couple each died as the result of the same accident.

D. The brother and the mother each own an undivided one-half interest because the Statute of Frauds applies.

33. X-- In 1986, a cement company constructed a plant for manufacturing ready-mix concrete in Lakeville. At the time, the company was using bagged cement, which caused little or no dust. In 2000, the plaintiff bought a home approximately 1,800 feet from the cement plant.

One year ago, the cement company stopped using bagged cement and began to receive cement in bulk shipments. Since then, at least five truckloads of cement have passed the plaintiff's house daily. Cement blows off the trucks and into the the plaintiff's house. When the cement arrives at the cement plant, it is blown by forced air from the trucks into the storage bin. As a consequence cement dust fills the air surrounding the plant to a distance of 2,000 feet. The plaintiff's house is the only residence within 2,000 feet of the plant.

If the plaintiff asserts a claim against the cemente company based on nuisance, will the plaintiff prevail?

A. Yes, unless using bagged cement would substantially increase the cement company's costs.

B. Yes, if the cement dust interfered unreasonably with the use and enjoyment of the plaintiff's property.

C. No, because the cement company is not required to change its industrial methods to accommodate the needs of one individual.

D. No, if the cement company's methods are in conformity with those in general use in the industry.

34. X-- A landowner entered a hospital to undergo surgery and feared that she might not survive. She instructed her lawyer by telephone to prepare a deed conveying Blackacre, a large tract of undeveloped land, as a gift to her nephew, who lived in a distant state. Her instructions were followed, and, prior to her surgery, she executed a document in a form sufficient to constitute a deed of conveyance. The deed was recorded by the lawyer promptly and properly as she instructed him to do. The recorded deed was returned to the lawyer by the land record office. The landowner, in fact, recovered from her surgery and the lawyer returned the recorded deed to her.

Before the landowner or the lawyer thought to inform the nephew of the conveyance, the nephew was killed in an auto accident. The nephew's will left all of his estate to a satanic religious cult. The landowner was very upset at the prospect of the cult's acquiring Blackacre.

The local taxing authority assessed the next real property tax bill on Blackacre to the nephew's estate.

The landowner brought an appropriate action against the nephew's estate and the cult to set aside the conveyance to the nephew.

If the landowner loses, it will be because

A. the gift of Blackacre was inter vivos rather than causa mortis.

B. the showing of the nephew's estate as the owner of Blackacre on the tax rolls supplied what otherwise would be a missing essential element for a valid conveyance.

C. disappointing the nephew's devisee would violate the religious freedom provisions of the First Amendment to the Constitution.

D. delivery of the deed is presumed from the recording of the deed.

35. Two adjacent, two-story, commercial buildings were owned by a businessman. The first floors of both buildings were occupied by various retail establishments. The second floors were rented to various other tenants. Access to the second floor of each building was reached by a common stairway located entirely in Building 1. While the buildings were being used in this manner, the businessman sold Building 1 to a friend by warranty deed which made no mention of any rights concerning the stairway. About two years later the businessman sold Building 2 to a co-worker. The stairway continued to be used by the occupants of both buildings. The stairway became unsafe as a consequence of regular wear and tear. The owner of Building 2 entered upon Building 1 and began the work of repairing the stairway. The owner of Building 1 demanded that the owner of Building 2 discontinue the repair work and vacate Building 1. When the owner of Building 2 refused, the owner of Building 1 brought an action to enjoin the owner of Building 2 from continuing the work.

Judgment should be for

A. the owner of Building 1, because the owner of Building 2 has no rights in the stairway.

B. the owner of Building 1, because the owner of Building 2's rights in the stairway do not extend beyond the normal life of the existing structure.

C. the owner of Building 2, because he has an easement in the stairway and an implied right to keep the stairway in repair.

D. the owner of Building 2, because he has a right to take whatever action is necessary to protect himself from possible tort liability to persons using the stairway.

36. X-- A father owned two adjoining parcels known as Lot 1 and Lot 2. Both parcels fronted on Main Street and abutted a public alley in the rear. Lot 1 was improved with a commercial building that covered all of the Main Street frontage of Lot 1; there was a large parking lot on the rear of Lot 1 with access from the alley only.

Fifteen years ago, the father leased Lot 1 to his son for 15 years. The son has continuously occupied Lot 1 since that time. Thirteen years ago, without his father's permission, the son began to use a driveway on Lot 2 as a better access between Main Street and the parking lot than the alley.

Eight years ago, the father conveyed Lot 2 to his daughter and, five years ago, the father conveyed Lot 1 to his son by a deed that recited "together with all the appurtenances."

Until last week, the son continuously used the driveway over Lot 2 to the son's parking lot in the rear of Lot 1.

Last week the daughter commenced construction of a building on Lot 2 and blocked the driveway used by the son. The son has commenced an action against the daughter to restrain her from blocking the driveway from Main Street to the parking lot at the rear of Lot 1.

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

If the son loses, it will be because

A. the father owned both Lot 1 and Lot 2 until eight years ago.

B. the son has access to the parking lot from the alley.

C. mere use of an easement is not adverse possession.

D. no easement was mentioned in the deed from the father to his daughter.

37. Two friends, a man and a woman, owned a large tract of land, Blackacre, in fee simple as joint tenants with right of survivorship. While the woman was on an extended safari in Kenya, the man learned that there were very valuable coal deposits within Blackacre, but he made no attempt to inform the woman. Thereupon, the man conveyed his interest in Blackacre to his wife who immediately reconveyed that interest to the man. The common-law joint tenancy is unmodified by statute.

Shortly thereafter, the man was killed in an automobile accident. His will, which was duly probated, specifically devised his one-half interest in Blackacre to his wife. The woman then returned from Kenya and learned what had happened. The woman brought an appropriate action against the wife, who claimed a one-half interest in Blackacre, seeking a declaratory judgment that she, the woman, was the sole owner of Blackacre.

In this action, who should prevail?

A. The wife, because the man and the woman were tenants in common at the time of the man's death.

B. The wife, because the man's will severed the joint tenancy.

C. The woman, because the joint tenancy was reestablished by the wife's reconveyance to the man.

D. The woman, because the man breached his fiduciary duty as her joint tenant.

38. At the time of his death last week, the testator owned Blackacre, a small farm. By his duly probated will, drawn five years ago, the testator did the following:

(1) devised Blackacre "to Arthur for the life of Baker, then to Casper";

(2) gave "all the rest, residue and remainder of my Estate, both real and personal, to my friend Fanny."

At his death, the testator was survived by Arthur, Casper, Sonny (the testator's son and sole heir), and Fanny. Baker had died a week before the testator.

Title to Blackacre is now in

A. Arthur for life, remainder to Casper.

B. Casper, in fee simple.

C. Sonny, in fee simple.

D. Fanny, in fee simple.

39. X-- A businessman owned two adjacent parcels, Blackacre and Whiteacre. Blackacre fronts on a poor unpaved public road, while Whiteacre fronts on Route 20, a paved major highway. Fifteen years ago, the businessman conveyed to his son Blackacre "together with a right-of-way 25 feet wide over the east side of Whiteacre to Route 20." At that time, Blackacre was improved with a ten-unit motel. Ten years ago, the businessman died. His will devised Whiteacre "to my son for life, remainder to my daughter." Five years ago, the son executed an instrument in the proper form of a deed, purporting to convey Blackacre and Whiteacre to a friend in fee simple. The friend then enlarged the motel to 12 units. Six months ago, the son died and the daughter took possession of Whiteacre. She brought an appropriate action to enjoin the friend from using the right-of-way.

In this action, who should prevail?

A. the daughter, because merger extinguished the easement.

B. the daughter, because the friend has overburdened the easement.

C. The friend, because he has an easement by necessity.

D. The friend, because he has the easement granted by the businessman to the son.

40. Twenty-five years ago, a seller conveyed Blackacre to a buyer by a warranty deed. The seller at that time also executed and delivered an instrument in the proper form of a deed, purporting to convey Whiteacre to the buyer. The seller thought she had title to Whiteacre but did not; therefore, no titled passed by virtue of the Whiteacre deed. Whiteacre consisted of three acres of brushland adjoining the west boundary of Blackacre. The buyer has occasionally hunted rabbits on Whiteacre, but less often than annually. No one else came on Whiteacre except occasional rabbit hunters.

Twenty years ago, the buyer planted a row of evergreens in the vicinity of the opposite (east) boundary of Blackacre and erected a fence just beyond the evergreens to the east. In fact both the trees and the fence were placed on Greenacre, owned by a neighbor, which bordered the east boundary of Blackacre. The buyer was unsure of the exact boundary, and placed the trees and the fence in order to establish his rights up to the fence. The fence is located ten feet within Greenacre.

Now, the buyer has had his property surveyed and the title checked and has learned the facts.

The period of time to acquire title by adverse possession in the jurisdiction is 15 years.

The buyer consulted his lawyer, who properly advised that, in an appropriate action, the buyer would probably obtain title to

A. Whiteacre but not the the ten-foot strip of Greenacre.

B. the ten-foot strip of Greenacre but not to Whiteacre.

C. both Whiteacre and the ten-foot strip of Greenacre.

D. neither Whiteacre nor the ten-foot strip of Greenacre.

41. A leasing company owned Blackacre, a tract of 100 acres. Six years ago, the leasing company leased a one-acre parcel, located in the northeasterly corner of Blackacre, for a term of 30 years, to a restaurant. The restaurant intended to and did construct a fast-food restaurant on the one-acre parcel.

The lease provided that:

1. The restaurant was to maintain the one-acre parcel and improvements thereon, to maintain full insurance coverage on the one-acre parcel, and to pay all taxes assessed against the one-acre parcel.

2. The leasing company was to maintain the access roads and the parking lot areas platted on those portions of Blackacre that adjoined the one-acre parcel and to permit the customers of the restaurant to use them in common with the customers of the other commercial users of the remainder of Blackacre.

3. The restaurant was to pay its share of the expenses for the off-site improvements according to a stated formula.

Five years ago, the leasing company sold the one-acre parcel to an investor; the conveyance was made subject to the lease to the restaurant. However, the investor did not assume the obligations of the lease and the leasing company retained the remainder of Blackacre. Since that conveyance five years ago, the restaurant has paid rent to the investor.

The restaurant refused to pay its formula share of the off-site improvement costs as provided in the lease. The leasing company brought an appropriate action against the restaurant to recover such costs.

The most likely outcome would be in favor of

A. the leasing company, because the use of the improvements by the customers of the restaurant imposes an implied obligation on the restaurant.

B. the leasing company, because the conveyance of the one-acre parcel to the investor did not terminate the restaurant's covenant to contribute.

C. the restaurant, because the conveyance of the one-acre parcel to the investor terminated the privity of estate between the leasing company and the restaurant.

D. the restaurant, because the investor, as the restaurant's landlord, has the obligation to pay the maintenance costs by necessary implication.

42. A brother and sister owned Blackacre as joint tenants, upon which was situated a two-family house. The brother lived in one of the two apartments and rented the other apartment to a tenant. The brother got in a fight with the tenant and injured him. The tenant obtained and properly filed a judgment for $10,000 against the brother.

The statute in the jurisdiction reads: Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The sister, who lived in a distant city, knew nothing of the tenant's judgment. Before the tenant took any further action, the brother died. The common-law joint tenancy is unmodified by statute.

The sister then learned the facts and brought an appropriate action against the tenant to quiet title to Blackacre.

The court should hold that the tenant has

A. a lien against the whole of Blackacre, because he was a tenant of both the brother and the sister at the time of the judgment.

B. a lien against the brother's undivided one-half interest in Blackacre, because his judgment was filed prior to the brother's death.

C. no lien, because the sister had no actual notice of the tenant's judgment until after the brother's death.

D. no lien, because the brother's death terminated the interest to which the tenant's lien attached.

43. A decedent owned in fee simple Blueacre, a farm of 300 acres. He died and by will, duly admitted to probate, devised Blueacre to his surviving widow for life with remainder in fee simple to his three children, Anne, Betty, and Carter. All three children survived the decedent.

At the time of the decedent's death, there existed a mortgage on Blueacre that the decedent had given ten years earlier to secure a loan for the purchase of the farm. At his death, there remained $40,000 in unpaid principal, payable in installments of $4,000 per year for the next ten years. In addition, there was interest due at the rate of 10% per annum, payable annually with the principal installment. The widow took possession and, out of a gross income of $50,000 per year, realized $25,000 net income after paying all expenses and charges except the principal installment and interest due on the mortgage.

Carter and Anne wanted the three children, including Betty, to each contribute one-third of the amount needed to pay the mortgage installments. Betty objected, contending that the widow should pay all of these amounts out of the profits she had made in operation of the farm. When foreclosure of the mortgage seemed imminent, Betty sought legal advice.

If Betty obtained sound advice relating to her rights, she was told that

A. her only protection would lie in instituting an action for partition to compel the sale of the life estate of the widow and to obtain the value of Betty's one-third interest in remainder.

B. she could obtain appropriate relief to compel the widow personally to pay the sums due because the income is more than adequate to cover these amounts.

C. she could be compelled personally to pay her share of the amounts due because discharge of the mortgage enhances the principal.

D. she could not be held personally liable for any amount, but her share in remainder could be lost if the mortgage installments were not paid.

44. X-- A man executed and delivered a promissory note and a mortgage securing the note to a mortgage company, which was named as payee in the note and as mortgagee in the mortgage. The note included a statement that the indebtedness evidenced by the note was "subject to the terms of a contract between the maker and the payee of the note executed on the same day" and that the note was "secured by a mortgage of even date." The mortgage was promptly and properly recorded. Subsequently, the mortgage company sold the man's note and mortgage to a bank and delivered to the bank a written assignment of the man's note and mortgage. The assignment was promptly and properly recorded. The mortgage company retained possession of both the note and the mortgage in order to act as collecting agent. Later, being short of funds, the mortgage company sold the note and mortgage to a woman at a substantial discount. The mortgage company executed a written assignment of the note and mortgage to the woman and delivered to him the note, the mortgage, and the assignment. The woman paid value for the assignment without actual knowledge of the prior assignment to the bank and promptly and properly recorded her assignment. The principal of the note was not then due, and there had been no default in payment of either interest or principal.

If the issue of ownership of the man's note and mortgage is subsequently raised in an appropriate action by the bank to foreclose, the court should hold that

A. The woman owns both the note and the mortgage.

B. The bank owns both the note and the mortgage.

C. The woman owns the note, and the bank owns the mortgage.

D. The bank owns the note, and the woman owns the mortgage.

45. X-- The owner of Blackacre in fee simple mortgaged Blackacre to a man to secure a loan of $100,000. The mortgage was promptly and properly recorded. The owner later mortgaged Blackacre to a woman to secure a loan of $50,000. The mortgage was promptly and properly recorded. Subsequently, the owner conveyed Blackacre to a businessman. About a year later, the businessman borrowed $100,000 from an elderly widow and gave her a mortgage on Blackacre to secure repayment of the loan. The elderly widow did not know about the mortgage held by the woman. The understanding between the businessman and the elderly widow was that the businessman would use the $100,000 to pay off the mortgage held by the man and that the elderly widow would, therefore, have a first mortgage on Blackacre. The elderly widow's mortgage was promptly and properly recorded. The businessman paid the $100,000 received from the elderly widow to the man and obtained and recorded a release of the the man's mortgage.

The $50,000 debt secured by the woman's mortgage was not paid when it was due, and the woman brought an appropriate action to foreclose, joining the owner, the businessman, and the elderly widow as defendants and alleging that the woman's mortgage was senior to the elderly widow's mortgage on Blackacre.

If the court rules that the elderly widow's mortgage is entitled priority over the woman's mortgage, which of the following determinations are necessary to support that ruling?

I. The man's mortgage was originally senior to the woman's mortgage.

II. The elderly widow is entitled to have the man's mortgage revived for her benefit, and the elderly widow is entitled to be subrogated to the man's original position as senior mortgagee.

III. There are no countervailing equities in favor of the woman.

A. I and II only.

B. I and III only.

C. II and III only.

D. I, II, and III.

46. A landowner owned Blueacre, a valuable tract of land located in York County. The owner executed a document in the form of a warranty deed of Blueacre, which was regular in all respects except that the only language designating the grantees in each of the granting and habendum clauses was: "The leaders of all the Protestant Churches in York County." The instrument was acknowledged as required by statute and promptly and properly recorded. The owner told his lawyer, but no one else, that he had made the conveyance as he did because he abhorred sectarianism in the Protestant movement and because he thought that the leaders would devote the asset to lessening sectarianism.

The owner died suddenly and unexpectedly a week later, leaving a will that bequeathed and devised his entire estate to a friend. After probate of the will became final and the administration on the owner's estate was closed, the friend instituted an appropriate action to quiet title to Blueacre and properly served as defendant each Protestant church situated in the county.

The only evidence introduced consisted of the chain of title under which the owner held, the probated will, the recorded deed, the fact that no person knew about the deed except the owner and his lawyer, and the conversation the owner had with his lawyer described above.

In such action, judgment should be for

A. the friend, because there is inadequate identification of the grantees in the deed.

B. the friend, because the state of the evidence would not support a finding of delivery of the deed.

C. the defendants, because a deed is prima facie valid until rebutted.

D. the defendants, because recording established prima facie delivery until rebutted.

47. A businessman who owned Blackacre and Whiteacre, two adjoining parcels, conveyed Whiteacre to a gas company owner and covenanted in the deed to the gas company owner that when he, the businessman, sold Blackacre he would impose restrictive covenants to prohibit uses that would compete with the filling station that the gas company owner intended to construct and operate on Whiteacre. The deed was not recorded.

The gas company owner constructed and operated a filling station on Whiteacre and then conveyed Whiteacre to his nephew, who continued the filling station use. The deed did not refer to the restrictive covenant and was promptly and properly recorded.

The businessman then conveyed Blackacre to a man, who knew about the businessman's covenant prohibiting the filling station use but nonetheless completed the transaction when he noted that no such covenant was contained in the businessman's deed to him. The man began to construct a filling station on Blackacre.

The nephew brought an appropriate action to enjoin the man from using Blackacre for filling station purposes.

If the nephew prevails, it will be because

A. The man had actual knowledge of the covenant to impose restrictions.

B. The man is bound by the covenant because of the doctrine of negative reciprocal covenants.

C. business-related restrictive covenants are favored in the law.

D. The man has constructive notice of the possibility of the covenant resulting from circumstances.

48. A landowner owned and occupied Blackacre, which was a tract of land improved with a one-family house. His friend orally offered him $50,000 for Blackacre, the fair market value, and he accepted. Because they were friends, they saw no need for attorneys or written contracts and shook hands on the deal. The friend paid the landowner $5,000 down in cash and agreed to pay the balance of $45,000 at an agreed closing time and place.

Before the closing, the friend inherited another home and asked the landowner to return his $5,000. The landowner refused, and, at the time set for the closing, the landowner tendered a good deed to the friend and declared his intention to vacate Blackacre the next day. The landowner demanded that the friend complete the purchase. The friend refused. The fair market value of Blackacre has remained $50,000.

In an appropriate action brought by the landowner against the friend for specific performance, if the landowner loses, the most likely reason will be that

A. the agreement was oral.

B. keeping the $5,000 is the landowner's exclusive remedy.

C. The friend had a valid reason for not closing.

D. The landowner remained in possession on the day set for the closing.

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

Two years later, the owner contracted to sell Whiteacre to his friend and to convey a marketable title "subject to rights of the tenant under her lease." The friend refused to close because of the outstanding option assigned to the brother.

The owner brought an appropriate action against the friend for specific performance.

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

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

A. In a contract to buy, any form of "subject to a lease" clause that fails to mention expressly an existing option means that the seller is agreeing to sell free and clear of any option originally included in the lease.

B. Marketable title can be conveyed so long as any outstanding option not mentioned in the purchase contract has not yet been exercised.

C. Options to purchase by lessees are subject to the Rule Against Perpetuities.

D. Options to purchase contained in a lease cannot be assigned separately from the lease.

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

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

The businesswoman brought an appropriate action to terminate the easement.

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

A. The businesswoman, because the religious group excessively expanded the use of the dominant tenement.

B. The businesswoman, because the parking on the driveway exceeded the scope of the easement.

C. The religious group, because expanded use of the easement does not terminate the easement.

D. The religious group, because the businesswoman's use of self-help denies her the right to equitable relief.

51.A farmer leased a barn to his neighbor for a term of three years. The neighbor took possession of the barn and used it for his farming purposes. The lease made the farmer responsible for structural repairs to the barn, unless they were made necessary by actions of the neighbor. One year later, the farmer conveyed the barn and its associated land to a buyer "subject to the lease to [the neighbor]." The neighbor paid the next month's rent to the buyer. The next day a portion of an exterior wall of the barn collapsed because of rot in the interior structure of the wall. The wall had appeared to be sound, but a competent engineer, on inspection, would have discovered its condition. Neither the buyer nor the neighbor had the barn inspected by an engineer. The neighbor was injured as a result of the collapse of the wall. The farmer had known that the wall was dangerously weakened by rot and needed immediate repairs, but had not told the neighbor or the buyer. There is no applicable statute. The neighbor brought an appropriate action against the farmer to recover damages for the injuries he sustained. The buyer was not a party.

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

A. The neighbor should lose, because the buyer assumed all of the farmer's obligations by reason of the neighbor's assignment to her.

B. The neighbor should recover, because there is privity between lessor and lessee and it cannot be broken unilaterally.

C. The neighbor should recover, because the farmer knew of the danger but did not warn the neighbor.

D. The neighbor should lose, because he failed to inspect the barn.

52. X--An owner conveyed Blackacre to a buyer by a warranty deed. The buyer recorded the deed four days later. After the conveyance but prior to the buyer's recording of the deed, a lender properly filed a judgment against the owner.

The two pertinent statutes in the jurisdiction provide the following: 1) any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered, and 2) no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.The recording act has no provision for a grace period.

The lender joined both the owner and the buyer in an appropriate action to foreclose the judgment lien against Blackacre.If the lender is unsuccessful, it will be because

A. the owner's warranty of title to the buyer defeats the lender's claim.

B. the lender is not a purchaser for value.

C. any deed is superior to a judgment lien.

D. four days is not an unreasonable delay in recording a deed.

53. X-- Sixty years ago by a properly executed and recorded deed, a grandfather conveyed Greenacre, a tract of land: "To my grandson for life, then to my grandson's widow for her life, then to my grandson's child or children in equal shares." At that time, the grandson was six years old. Shortly thereafter, the grandfather died testate. His grandson was his only heir at law. The grandfather's will left his entire estate to First Church. Twenty-five years ago, when he was 41, the grandson married Maria who was then 20 years old; they had one child. Maria and the child were killed in an automobile accident three years ago when the child was 21. The child died testate, leaving his entire estate to the American Red Cross. His father (the grandson) was the child's sole heir at law. Two years ago, the grandson married Zelda. They had no children. This year, the grandson died testate, survived by his widow, Zelda, to whom he left his entire estate. The common-law Rule Against Perpetuities is unchanged by statute in the jurisdiction.

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

A. First Church, because the widow of the grandson was unborn at the time of conveyance and, hence, the remainder violated the Rule Against Perpetuities.

B. Zelda, because her life estate and her inheritance from the grandson (who was the grandfather's sole heir at law and who was the child's sole heir at law) merged the entire title in her.

C. the American Red Cross, because the child had a vested remaider interest (as the only child of the grandson) that he inherited, the life estate to the grandson's widow being of no force and effect.

D. Zelda for life under the terms of the grandfather's deed, with the remainder to the American Red Cross as the successor in interest to the grandson's only child.

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

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

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

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

If the agency prevails in that action, it will be because

A. the facts constitute adverse possession and title to the portion of Blackacre concerned has vested in the agency.

B. The man's failure to keep himself informed as to the agency's use of Blackacre and his failure to object constituted implied consent to the continuation of that use.

C. the interest of the public in the conversion of waste to energy overrides any entitlement of the son to equitable remedies.

D. the power of eminent domain of the state makes the claim of the son moot.

55. The owner of Greenacre, a tract of land, owned it in fee simple. Five years ago, he executed and delivered to a woman an instrument in the proper form of a warranty deed that conveyed Greenacre to the woman "for and during the term of her natural life." No other estate or interest or person taking an interest was mentioned. The woman took possession of Greenacre and has remained in possession. Fifteen months ago, the owner died, leaving a will that has been duly admitted to probate. The will, inter alia had the following provision:

"I devise Greenacre to my best friend for her natural life and from and after her death to my second best friend, his heirs and assigns, forever."

Administration of the owner's estate has been completed. The best friend claims the immediate right to possession of Greenacre. The second best friend also asserts a right to immediate possession. In an appropriate lawsuit to which the woman, the best friend, and the second best friend are parties, who should be adjudged to have the right to immediate possession?

A. The woman, because no subsequent act of the owner would affect her life estate.

B. The best friend, because the owner's will was the final and definitive expression of his intent.

C. The best friend, because the woman's estate terminated with the death of the owner.

D. The second best friend, because the woman's estate terminated with the owner's death and all that the owner had was the right to transfer his reversion in fee simple.

56. X-- An owner owned in fee simple two adjoining lots, Lot 1 and 2. He conveyed in fee simple Lot 1 to a veterinarian. The deed was in usual form of a warranty deed with the following provision inserted in the appropriate place: "Grantor, for himself, his heirs **and assigns, does covenant and agree that any reasonable expense incurred by grantee, his heirs and assigns, as the result of having to** repair the retaining wall presently situated on Lot 1 at the common boundary with Lot 2, shall be reimbursed one-half the costs of repairs; and by this provision the parties intend a covenant running with the land."

The veterinarian conveyed Lot 1 in fee simple to a woman by warranty deed in usual and regular form. The deed omitted any reference to the retaining wall or any covenant. Fifty years after the owner's conveyance to the veterinarian, the woman conveyed Lot 1 in fee simple to a man by warranty deed in usual form; this deed omitted any reference to the retaining wall or the covenant.

There is no statute that applies to any aspect of the problems presented except a recording act and a statute providing for acquisition of title after ten years of adverse possession. All conveyances by deeds were for a consideration equal to fair market value.

The deed from the owner to the veterinarian was never recorded. All other deeds were promptly and properly recorded. Lot 2 is now owned by a businessman, who took by intestate succession from the owner, now dead.

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

If judgment is for the businessman, it will be because

A. The man is barred by adverse possession.

B. The veterinarian's deed from the owner was never recorded.

C. The man did not know about the covenant until after he had incurred the expenses and, hence, could not have relied on it.

D. The man's expenditures were not proved to be reasonable and customary.

57. X-- A woman entered into a valid written contract to purchase Blackacre, a large tract of land, from its owner for its fair market value of $50,000. The contract was assignable by the woman. The woman duly notified the owner to convey title to the woman and a friend of the woman whom the woman had not seen for many years.

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

Unknown to the woman or her brother, the friend had died several months before the closing. The friend's will, which was duly probated, devised "All my real estate to my nephew" and the residue of his estate to the woman.

The woman and the nephew have been unable to agree as to the status or disposition of Blackacre. The nephew brought an appropriate action against the owner and the woman to quiet title to an undivided one-half interest in Blackacre.

The court should hold that legal title to Blackacre is vested

A. all in the owner.

B. all in the woman.

C. one-half in the woman and one-half in the owner.

D. one-half in the woman and one-half in the nephew.

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

If the investor wins, it will be because

A. the owner failed to disclose a latent defect.

B. the investor made a proper inspection.

C. the situation constitutes a health hazard.

D. the owner breached the implied warranty of habitability and fitness for purpose.

59. A brother and sister were jointly in possession of Greenacre in fee simple as tenants in common. They joined in a mortgage of Greenacre to a local bank. The brother erected a fence along what he considered to be the true boundary between Greenacre and the adjoining property, owned by the neighbor. Shortly thereafter, the brother had an argument with his sister and gave up his possession of Greenacre. The debt secured by the mortgage has not been paid. The neighbor surveyed his land and found that the fence erected a year earlier by the brother did not follow the true boundary. Part of the fence was within Greenacre. Part of the fence encroached on the neighbor's land. The neighbor and the sister executed an agreement fixing the boundary line in accordance with the fence constructed by the brother. The agreement, which met all the formalities required in the jurisdiction, was promptly and properly recorded.

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

In such action, the brother will

A. win, because the local bank was not a party to the agreement.

B. win, because one tenant in common cannot bind another tenant in common to a boundary line agreement.

C. lose, because the agreement, as a matter of law, was mutually beneficial to the sister and the brother.

D. lose, because the sister was in sole possession of the premises at the time the agreement was signed.

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

Now, the owner has defaulted on repayment with $55,000 still due on the loan. The owner is still in possession. Which of the following best states the parties' rights in Blackacre?

A. The lender's oral agreement to reconvey is invalid under the Statute of Frauds, so the lender owns Blackacre outright.

B. The owner, having defaulted, has no further rights in Blackacre, so the lender may obtain summary eviction.

C. The attempted security arrangement is a creature unknown to the law, hence a nullity; the lender has only a personal right to $55,000 from the owner.

D. The lender may bring whatever foreclosure proceeding is appropriate under the laws of the jurisdiction.

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

Greenacre at all relevant times has been vacant unoccupied land.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." No other statute is applicable.

The son has sued the woman to establish who owns Greenacre.

The court will hold for

A. The son, because the woman was a donee.

B. The son, because the neighbor's purchase cut off the woman's rights.

C. The woman, because she recorded before the son.

D. The woman, because the son was a subsequent donee.

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

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

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

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

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

There is no applicable statute.

The best argument for the godson is that

A. Acme cannot purchase the nephew's life estate, because life estates are not assignable.

B. the proposed demolition of the building constitutes waste.

C. the godson's payment of the mortgage principal has subrogated him to the nephew's rights as a life tenant and bars the nephew's assignment of the life estate without the godson's consent.

D. continued existence of the one-story building is more in harmony with the ultimate use as a park than the proposed change in use.

63. A farmer owned Purpleacre, a tract of land, in fee simple. By will duly admitted to probate after his death, the farmer devised Purpleacre to "any wife who survives me with remainder to such of my children as are living at her death." The farmer was survived by his wife and by three adult children. Thereafter, one of the children died and by will duly admitted to probate devised his entire estate to a friend. The remaining two siblings were the deceased sibling's heirs at law. Later the wife died. In an appropriate lawsuit to which the two remaining siblings and the friend are parties, title to Purpleacre is at issue.

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

A. The two siblings and the friend, because the earliest vesting of remainders is favored and reference to the wife's death should be construed as relating to time of taking possession.

B. The two siblings and the friend, because the provision requiring survival of children violates the Rule Against Perpetuities since the surviving wife might have been a person unborn at the time of writing of the will.

C. The two remaining siblings, because the deceased sibling's remainder must descend by intestacy and is not devisable.

D. The two remaining siblings, because the remainders were contingent upon surviving the life tenant.

64. A woman owned Goldacre, a tract of land, in fee simple. By warranty deed, she conveyed Goldacre in fee simple to her brother for a recited consideration of "$10 and other valuable consideration." The deed was promptly and properly recorded. One week later, the woman and her brother executed a written document that stated that the conveyance of Goldacre was for the purpose of establishing a trust for the benefit of the woman's son. Her brother expressly accepted the trust and signed the document with the woman. This written agreement was not authenticated to be eligible for recordation and there never was an attempt to record it.

The brother entered into possession of Goldacre and distributed the net income from Goldacre to his sister's son at appropriate intervals. Five years later, the brother conveyed Goldacre in fee simple to a friend by warranty deed. The friend paid the fair market value of Goldacre, had no knowledge of the written agreement between the brother and sister, and entered into possession of Goldacre.

The woman's son made demand upon the friend for distribution of income at the next usual time income from the trust would have distributed. The friend refused. The son brought an appropriate action against the friend for a decree requiring her to perform the trust the brother had theretofore recognized.

In such action, judgment should be for

A. The son, because a successor in title to the trustee takes title subject to the grantor's trust.

B. The son, because equitable interests are not subject to the recording act.

C. The friend, because, as a bona fide purchaser, she took free of the trust encumbering the brother's title.

D. The friend, because no trust was ever created since the woman had no title at the time of the purported creation.

65. X-- A doctor owned Blackacre, which was improved with a dwelling. Her neighbor owned Whiteacre, an adjoining unimproved lot suitable for constructing a dwelling. The neighbor executed and delivered a deed granting to the doctor an easement over the westerly 15 feet of Whiteacre for convenient ingress and egress to a public street, although the doctor's lot did abut another public street. The doctor did not then record the neighbor's deed. After the doctor constructed and started using a driveway within the described 15-foot string in a clearly visible manner, the neighbor borrowed $10,000 cash from a bank and gave the bank a mortgage on Whiteacre. The mortgage was promptly and properly recorded. The doctor then recorded the neighbor's deed granting the easement. The neighbor subsequently defaulted on her loan payments to the bank.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In an appropriate foreclosure action as to Whiteacre, brought against the doctor and the neighbor, the bank seeks, among other things, to have the doctor's easement declared subordinate to the bank's mortgage, so that the easement will be terminated by completion of the foreclosure.

If the doctor's easement is NOT terminated, it will be because

A. the recording of the deed granting the easement prior to the foreclosure action protects the doctor's rights.

B. the easement provides access from Blackacre to a public street.

C. the doctor's easement is appurtenant to Blackacre and thus cannot be separated from Blackacre.

D. visible use of the easement by the doctor put the bank on notice of the easement.

66. A hockey fan had a season ticket for her home team's hockey games at the local arena(Section B, Row 12, Seat 16). During the intermission between the first and second periods of a game, the hockey fan solicited signatures for a petition urging that the coach of the hockey team be fired.

The local arena and hockey team are owned by a privately owned entity. As evidenced by many prominently displayed signs, this entity prohibits all solicitations anywhere within the arena at any time and in any manner. The privately owned entity notified the hockey fan to cease her solicitation of signatures.

The hockey fan continued to seek signatures on her petition during the hockey team's next three home games at the arena. Each time, the entity notified the hockey fan to cease such solicitation. The hockey fan announced her intention to seek signatures on her petition again during the hockey team's next home game at the arena. The entity wrote a letter informing her that her season ticket was canceled and tendered a refund for the unused portion. The hockey fan refused the tender and brought an appropriate action to establish the right to attend all home games.

In this ac­tion, the court will decide for

A. the privately owned entity, because it has a right and obligation to control activities on realty it owns and has invited the public to visit.

B. the privately owned entity, because the hockey fan's ticket to hockey games created only a license.

C. the hockey fan, because, having paid value for the ticket, her right to be present cannot be revoked.

D. the hockey fan, because she was not committing a nuisance by her activities.

67. A corporation owned Blackacre in fee simple, as the real estate records showed. The corporation entered into a valid written contract to convey Blackacre to an individual buyer. At closing, the buyer paid the price in full and received an instrument in the proper form of a deed, signed by duly authorized corporate officers on behalf of the corporation, purporting to convey Blackacre to the buyer. The buyer did not then record the deed or take possession of Blackacre. Next, a man (who had no knowledge of the contract or the deed) obtained a substantial money judgment against the corporation. Then, the buyer recorded the deed from the corporation. Thereafter, the man properly filed the judgment against the corporation. A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." Afterward, the buyer entered into a written contract to convey Blackacre to a developer. The developer objected to the buyer's title and refused to close. The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance shall be good against subsequent purchasers for value and without notice."

The buyer brought an appropriate action to require the developer to complete the purchase contract.

The court should decide for

A. the developer, because the man's judgment was obtained before the buyer recorded the deed from the corporation.

B. the developer, because even though the corporation's deed to the buyer prevented the man's judgment from being a lien on Blackacre, the man's filed judgment poses a threat of litigation.

C. the buyer, because she recorded her deed before the man filed his judgment.

D. the buyer, because she received the deed from the corporation before the man filed his judgment.

68. A man's estate plan included a revocable trust established 35 years ago with a bank as trustee. The principal asset of the trust has always been Blackacre, a very profitable, debt-free office building. The trust instrument instructs the trustee to pay the net income to the man for life, and, after the death of the man, to pay the net income to his wife for life; and, after her death, to distribute the net trust estate as she may appoint by will, or in default of her exercise of this power of appointment, to the man's son (the wife's stepson).

The man died 30 years ago survived by his wife and son. The man had not revoked or amended the trust agreement. A few years after the man's death, his wife remarried. She then had a daughter, was widowed for a second time, and then died last year. Her will contained only one dispositive provision: "I give my entire estate to my daughter, and I intentionally make no provision for my stepson." The daughter is now 22 years old. The common-law Rule Against Perpetuities is unmodified by statute in the jurisdiction. There are no other applicable statutes.

The stepson brought an appropriate action against the daughter to determine who was entitled to the net trust estate and thus to Blackacre.

If the court rules for the daughter, it will be because

A. the wife's life estate and general power of appointment merge into complete ownership in the wife.

B. the Rule Against Perpetuities does not apply to general powers of appointment.

C. the jurisdiction deems "entire estate" to be a reference to Blackacre or to the wife's general power of appointment.

D. the wife intended that her stepson should not benefit by reason of her death.

69. A landlord owned Blackacre in fee simple. Three years ago, the landlord and a tenant agreed to a month-to-month tenancy with the tenant paying the landlord rent each month. After six months of the tenant's occupancy, the landlord suggested to the tenant that she could buy Blackacre for a monthly payment of no more than her rent. The landlord and the tenant orally agreed that the tenant would pay $25,000 in cash, the annual real estate taxes, the annual fire insurance premiums, and the costs of maintaining Blackacre, plus the monthly mortgage payments that the landlord owed on Blackacre. They further orally agreed that within six years the tenant could pay whatever mortgage balances were then due and the landlord would give her a warranty deed to the property. The tenant's average monthly payments did turn out to be the same as her monthly rent.

The tenant fully complied with all of the obligations she had undertaken. She made some structural modifications to Blackacre. Blackacre is now worth 50% more than it was when the landlord and the tenant made their oral agreement. The tenant made her financing arrangements and was ready to complete the purchase of Blackacre, but the landlord refused to close. The tenant brought an appropriate action for specific performance against the landlord to enforce the agreement.

The court should rule for

A. The landlord, because the agreements were oral and violated the statute of frauds.

B. The landlord, subject to the return of the $25,000, because the arrangement was still a tenancy.

C. The tenant, because the doctrine of part performance applies.

D. The tenant, because the statute of frauds does not apply to oral purchase and sale agreements between landlords and tenants in possession.

70. By a writing, an owner leased his home, Blackacre, to a tenant for a term of three years, ending December 31 of last year, at a rent of $1,000 per month. The lease provided that the tenant could sublet and assign. The tenant lived in Blackacre for one year and paid the rent promptly. After one year, the tenant leased Blackacre to a friend for one year at a rent of $1,000 per month.

The friend took possession of Blackcare and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30 the friend abandoned Blackacre, which remained vacant for the balance of that year. The tenant again took possession of Blackacre at the beginning of the third and final year of the term but paid the owner no rent.

At the end of the lease term, the owner brought an appropriate action against both the tenant and the friend to recover $24,000, the unpaid rent.

In such action the owner is entitled to a judgment

A. against the tenant individually for $24,000, and no judgment against the friend.

B. against the tenant individually for $18,000, and against the friend individually for $6,000.

C. against the tenant for $12,000, and against the tenant and the friend jointly and severally for $12,000.

D. against the tenant individually for $18,000, and against the tenant and the friend jointly and severally for $6,000.

71. A landowner owned Lot 1 in fee simple in a properly approved subdivision, designed and zoned for industrial use. His neighbor owned the adjoining Lot 2 in the same subdivision. The plat of the subdivision was recorded as authorized by statute.

Twelve years ago, the landowner erected an industrial building wholly situated on Lot 1 but with one wall along the boundary common with Lot 2. The construction was done as authorized by a building permit, validly obtained under applicable statutes, ordinances, and regulations. Further, the construction was regularly inspected and passed as being in compliance with all building code requirements.

Lot 2 remained vacant until six months ago, when the neighbor began excavation pursuant to a building permit authorizing the erection of an industrial building situated on Lot 2 but with one wall along the boundary common with Lot 1. The excavation caused subsidence of a portion of Lot 1 that resulted in injury to the landowner's building. The excavation was not done negligently or with any malicious intent to injure. In the jurisdiction, the time to acquire title by adverse possession or rights by prescription is 10 years.

The landowner brought an appropriate action against the neighbor to recover damages resulting from the injuries in the building on Lot 1.

In such lawsuit, judgment should be for

A. The landowner, if, but only if, the subsidence would have occurred without the weight of the building on Lot 1.

B. The landowner, because a right for support, appurtenant to Lot 1, had been acquired by adverse possession or prescription.

C. The neighbor, because Lots 1 and 2 are urban land, as distinguished from rural land and, therefore, under the circumstances the landowner had the duty to protect any improvements on Lot 1.

D. The neighbor, because the construction and the use to be made of the building were both authorized by the applicable law.

72. X--The owner of Blackacre, a single-family residence, conveyed a life estate in Blackacre to a landlord fifteen years ago. Fourteen years ago, the landlord, who had taken possession of Blackacre, leased Blackacre to a tenant for a term of 15 years at the monthly rent of $500.

Eleven years ago, the landlord died intestate leaving her son as her sole heir. The tenant regularly paid rent to the landlord and, after the landlord's death, to the son until last month. The period in which to acquire title by adverse possession in the jurisdiction is 10 years. In an appropriate action, the tenant, the original owner, and the son each asserted ownership of Blackacre.

The court should hold that title in fee simple is in

A. the original owner, because the owner held a reversion and the landlord has died.

B. the son, because the landlord asserted a claim adverse to the owner when the landlord executed a lease to the tenant.

C. the son, because the tenant's occupation was attributable to the son, and the landlord died 11 years ago.

D. the tenant, because of the tenant's physical occupancy and because the tenant's term ended with the landlord's death.

73. X-- A landowner owned Greenacre, a tract of land, in fee simple. The landowner executed an instrument in the proper form of a deed, purporting to convey Greenacre to a purchaser in fee simple. The instrument recited that the conveyance was in consideration of "$5 in hand paid and for other good and valuable consideration." The landowner handed the instrument to the purchaser and the purchaser promptly and properly recorded it.

Two months later, the landowner brought an appropriate action against the purchaser to cancel the instrument and to quiet title. In support, the landowner proved that no money in fact had been paid by the purchaser, notwithstanding the recitation, and that no other consideration of any kind had been supplied by the purchaser.

In such action, landowner should

A. lose, because any remedy the landowner might have had was lost when the instrument was recorded.

B. lose, because the validity of conveyance of land does not depend upon consideration being paid, whether recited or not.

C. prevail, because the recitation of consideration paid may be contradicted by parol evidence.

D. prevail, because recordation does not make a void instrument effective.

74. X-- A banker owned Goldacre, a tract of land, in fee simple. The banker and a buyer entered into a written agreement under which the buyer agreed to buy Goldacre for $100,000, its fair market value. The agreement contained all the essential terms of a real estate contract to sell and buy, including a date for closing. The required $50,000 down payment was made. The contract provided that in the event of the buyer's breach, the banker could retain the $50,000 deposit as liquidated damages.

Before the date set for the closing in the contract, the buyer died. On the day that the administratrix of the buyer's estate was duly qualified, which was after the closing date, the administratrix made demand for return of the $50,000 deposit. The banker responded by stating that she took such demand to be a declaration that the administratrix did not intend to complete the contract and that the banker considered the contract at an end. The banker further asserted that she was entitled to retain, as liquidated damages, the $50,000. The reasonable market value of Goldacre had increased to $110,000 at that time.

The administratrix brought an appropriate action against the banker to recover $50,000. In answer, the banker made no affirmative claim but asserted that she was entitled to retain the $50,000 as liquidated damages as provided in the contract.

In such lawsuit, judgment should be for

A. the administratrix, because the provision relied upon by the banker is unenforceable.

B. the administratrix, because the death of the buyer terminated the contract as a matter of law.

C. the banker, because the court should enforce the express agreement of the contracting parties.

D. the banker, because the doctrine of equitable conversion prevents termination of the contract upon the death of a party.

75. X-- A landowner owned Blackacre in fee simple, as the land records showed, when he contracted to sell Blackacre to a buyer. Two weeks later, the buyer paid the agreed price and received a warranty deed. A week thereafter, when neither contract nor deed had been recorded and while the owner remained in possession of Blackacre, a creditor properly filed a money judgment against the owner. She knew nothing of the buyer's interest.

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

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

The creditor brought an appropriate action to enforce her lien against Blackacre in the buyer's hands.

If the court decides for the buyer, it will most probably be because

A. the doctrine of equitable conversion applies.

B. the jurisdiction's recording act does not protect creditors.

C. The owner's possession gave the creditor constructive notice of the buyer's interest.

D. The buyer was a purchaser without notice.

76. X-- A woman owned several vacant lots in a subdivision. She obtained a $50,000 loan from a bank and executed and delivered to the bank a promissory note and mortgage describing Lots 1, 2, 3, 4, and 5. The mortgage was promptly and properly recorded.

Upon payment of $10,000, the woman obtained a release of Lot 2 duly executed by the bank. She altered the instrument of release to include Lot 5 as well as Lot 2 and recorded it. The woman thereafter sold Lot 5 to an innocent purchaser for value.

The bank discovered that the instrument of release had been altered and brought an appropriate action against the woman and the purchaser to set aside the release as it applied to Lot 5. The woman did not defend against the action, but the purchaser did.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

The court should rule for

A. the purchaser, because the bank was negligent in failing to check the recordation of the release.

B. the purchaser, because she was entitled to rely on the recorded release.

C. the bank, because he purchaser could have discovered the alteration by reasonable inquiry.

D. the bank, because the alteration of the release was ineffective.

77. X-- Thirty years ago, the original owner of Greenacre, a lot contiguous to Blueacre, in fee simple, executed and delivered to his neighbor an instrument in writing which was denominated "Deed of Conveyance." In pertinent part it read, "[The owner] does grant to [the neighbor] and her heirs and assigns a right-of-way for egress and ingress to Blueacre." If the quoted provision was sufficient to create an interest in land, the instrument met all other requirements for a valid grant. The neighbor held record title in fee simple to Blueacre, which adjoined Greenacre.

Twelve years ago the owner's son succeeded to the original owner's title in fee simple in Greenacre and seven years ago the neighbor's daughter succeeded to the neighbor's title in fee simple to Blueacre by a deed which made no mention of a right-of-way or driveway. At the time the neighbor's daughter took title, there existed a driveway across Greenacre which showed evidence that it had been used regularly to travel between the main roadand Blueacre. Blueacre did have frontage on a side road, but this means of access was seldom used because it was not as convenient to the dwelling situated on Blueacre as was the main road. The driveway originally was established by the neighbor. The neighbor's daughter has regularly used the driveway since acquiring title. The period of time required to acquire rights by prescription in the jurisdiction is ten years.

Six months ago the son notified the neighbor's daughter that the son planned to develop a portion of Greenacre as a residential subdivision and that the daughter should cease any use of the driveway. After some negotiations, the son offered to permit the daughter to construct another driveway to connect with the streets of the proposed subdivision. The daughter declined this offer on the ground that travel from Blueacre to the main road would be more circuitous.

The neighbor's daughter brought an appropriate action against the son to obtain a definitive adjudication of the respective rights of the daughter and the son. In such lawsuit the son relied upon the defense that the location of the easement created by the grant from the original owner to the neighbor was governed by reasonableness and that the son's proposed solution was reasonable.

The son's defense should

A. fail, because the location had been established by the acts of the neighbor and the original owner.

B. fail, because the location of the easement had been fixed by prescription.

C. prevail, because the reasonableness of the son's proposal was established by the neighbor's daughter's refusal to suggest any alternative location.

D. prevail, because the servient owner is entitled to select the location of a right-of-way if the grant fails to identify its location.

78. X--Three years ago a landowner conveyed Blackacre to his niece for $50,000 by a deed that provided: "By accepting this deed, [the niece] covenants for herself, her heirs and assigns, that the premises herein conveyed shall be used solely for residential purposes and, if the premises are used for nonresidential purposes, the landowner, his heirs and assigns, shall have the right to repurchase the premises for the sum of one thousand dollars ($1,000)." In order to pay the $50,000 purchase price for Blackacre, the niece obtained a $35,000 mortgage loan from the bank. The landowner had full knowledge of the mortgage transaction. The deed and mortgage were promptly and properly recorded in proper sequence. The mortgage, however, made no reference to the quoted language in the deed.

Two years ago the niece converted her use of Blackacre from residential to commerical without the knowledge or consent of the landowner or of the bank. The niece's commercial venture failed, and the niece defaulted on her mortgage payments to the bank. Blackacre now has a fair market value of $25,000.

The bank began appropriate foreclosure proceedings against the niece. The landowner properly intervened, tendered $1,000, and sought judgment that the niece and the bank be ordered to convey Blackacre to the landowner, free and clear of the mortgage.

The common law Rule Against Perpetuities is unmodified by statute. If the court rules against the landowner, it will be because

A. the provision quoted from the deed violates the Rule Against Perpetuities.

B. the bank had no actual knowledge of, and did not consent to, the violation of the covenant.

C. the rights reserved by the landowner were subordinated, by necessary implication, to the rights of the bank as the lender of the purchase money.

D. the consideration of $1,000 was inadequate.

79. Six years ago, the owner of Blackacre in fee simple executed and delivered to a widower an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "[the widower] and his heirs." At that time, the widower had one child.

Three years ago, the widower executed and delivered to a buyer an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "[the buyer]." The child did not join in the deed. The buyer was and still is unmarried and childless.

The only possibly applicable statute in the jurisdiction states that any deed will be construed to convey the grantor's entire estate, unless expressly limited. Last month, the widower died, never having remarried. His child is his only heir.

Blackacre is now owned by

A. the child, because the widower's death ended the buyer's life estate pur autre vie.

B. the buyer in fee simple pursuant to the widower's deed.

C. the child and the buyer as tenants in common of equal shares.

D. the child and the buyer as joint tenants, because both survived the widower.

80. A grantor executed an instrument in the proper form of a warranty deed purporting to convey a tract of land to his church. The granting clause of the instrument ran to the church "and its successors forever, so long as the premises are used for church purposes." The church took possession of the land and used it as its site of worship for many years. Subsequently, the church wanted to relocate and entered into a valid written contract to sell the land to a buyer for a substantial price. The buyer wanted to use the land as a site for business activities and objected to the church's title. The contract contained no provision relating to the quality of title the church was bound to convey. There is no applicable statute. When the buyer refused to close, the church sued the buyer for specific performance and properly joined the grantor as a party.

Is the church likely to prevail?

A. No, because the grantor's interest prevents the church's title from being marketable.

B. No, because the quoted provision is a valid restrictive covenant.

C. Yes, because a charitable trust to support religion will attach to the proceeds of the sale.

D. Yes, because the grantor cannot derogate from his warranty to the church.

81. An investor purchased a tract of land, financing a large part of the purchase price by a loan from a business partner that was secured by a mortgage. The investor made the installment payments on the mortgage regularly for several years. Then the investor persuaded a neighbor to buy the land, subject to the mortgage to his partner. They expressly agreed that the neighbor would not assume and agree to pay the investor's debt to the partner. The investor's mortgage to the partner contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." However, without seeking his partner's consent, the investor conveyed the land to the neighbor, the deed stating in pertinent part " . . . , subject to a mortgage to [the partner]," and giving details and recording data related to the mortgage. The neighbor took possession of the land and made several mortgage payments, which the partner accepted. Now, however, neither the neighbor nor the investor has made the last three mortgage payments. The partner has sued the neighbor for the amount of the delinquent payments.

In this action, for whom should the court render judgment?

A. The neighbor, because she did not assume and agree to pay the investor's mortgage debt.

B. The neighbor, because she is not in privity of estate with the partner.

C. The partner, because the investor's deed to the neighbor violated the due-on-sale clause.

D. The partner, because the neighbor is in privity of estate with the partner.

82.X-- A businessman owned a hotel, subject to a mortgage securing a debt he owed to a bank. The businessman later acquired a nearby parking garage, financing a part of the purchase price by a loan from a financing company, secured by a mortgage on the parking garage. Two years thereafter, the businessman defaulted on the loan owed to the bank, which caused the full amount of that loan to become immediately due and payable. The bank decided not to foreclose the mortgage on the hotel at that time, but instead properly sued for the full amount of the defaulted loan. The bank obtained and properly filed a judgment for that amount. A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments. Shortly thereafter, the bank brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The financing company was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted in the following: The net proceeds of the sale of the hotel to a third party were $200,000 less than the bank's mortgage balance. The net proceeds of the sale of the parking garage to a fourth party were $200,000 more than the financing company's mortgage balance.

How should the $200,000 surplus arising from the bid on the parking garage be distributed?

A. It should be paid to the bank.

B. It should be paid to the businessman.

C. It should be paid to the financing company.

D. It should be split equally between the bank and the financing company.

83. X-- A fee-simple landowner lawfully subdivided his land into 10 large lots. The recorded subdivision plan imposed no restrictions on any of the 10 lots. Within two months after recording the plan, the landowner conveyed Lot 1 to a buyer by a deed that contained no restriction on the lot's use. There was then a lull in sales. Two years later, the real estate market in the state had generally improved and, during the next six months, the landowner sold and conveyed eight of the remaining nine lots. In each of the eight deeds of conveyance, the landowner included the following language: "It is a term and condition of this conveyance, which shall be a covenant running with the land for the benefit of each of the 10 lots [with an appropriate reference to the recorded subdivision plan], that for 15 years from the date of recording of the plan, no use shall be made of the premises herein conveyed except for single-family residential purposes." The buyer of Lot 1 had actual knowledge of what the landowner had done. The landowner included the quoted language in part because the zoning ordinance of the municipality had been amended a year earlier to permit professional offices in any residential zone. Shortly after the landowner's most recent sale, when he owned only one unsold lot, the buyer of Lot 1 constructed a one-story house on Lot 1 and then conveyed Lot 1 to a doctor. The deed to the doctor contained no reference to any restriction on the use of Lot 1. The doctor applied for an appropriate certificate of occupancy to enable her to use a part of the house on Lot 1 as a medical office. The landowner, on behalf of himself as the owner of the unsold lot, and on behalf of the other lot owners, sued to enjoin the doctor from carrying out her plans and to impose the quoted restriction on Lot 1.

Who is likely to prevail?

A. The doctor, because Lot 1 was conveyed without the inclusion of the restrictive covenant in the deed to the first buyer and the subsequent deed to the doctor.

B. The doctor, because zoning ordinances override private restrictive covenants as a matter of public policy.

C. The landowner, because the doctor, as a successor in interest to the first buyer, is estopped to deny that Lot 1 remains subject to the zoning ordinance as it existed when Lot 1 was first conveyed by the landowner to the first buyer.

D. The landowner, because with the first buyer's knowledge of the facts, Lot 1 became incorporated into a common scheme.

84. A seller entered into a written contract to sell a tract of land to an investor. The contract made no mention of the quality of title to be conveyed. Thereafter, the seller and the investor completed the sale, and the seller delivered a warranty deed to the investor. Soon thereafter, the value of the land increased dramatically. The investor entered into a written contract to sell the land to a buyer. The contract between the investor and the buyer expressly provided that the investor would convey a marketable title. The buyer's attorney discovered that the title to the land was not marketable, and had not been marketable when the original seller conveyed to the investor. The buyer refused to complete the sale. The investor sued the original seller on multiple counts. One count was for breach of the contract between the seller and the investor for damages resulting from the seller's failure to convey to the investor marketable title, resulting in the loss of the sale of the land to the subsequent buyer.

Who is likely to prevail on this count?

A. The investor, because the law implies in the contract a covenant that the title would be marketable.

B. The investor, because the original seller is liable for all reasonably foreseeable damages.

C. The original seller, because her contract obligations as to title merged into the deed.

D. The original seller, because she did not expressly agree to convey marketable title.

85. When a homeowner became ill, he properly executed a deed sufficient to convey his home to his nephew, who was then serving overseas in the military. Two persons signed as witnesses to qualify the deed for recordation under an applicable statute. The homeowner handed the deed to his nephew's friend and said, "I want [the nephew] to have my home. Please take this deed for him." Shortly thereafter, the nephew's friend learned that the homeowner's death was imminent. One day before the homeowner's death, the nephew's friend recorded the deed. The nephew returned home shortly after the homeowner's death. The nephew's friend brought him up to date, and he took possession of the home. The homeowner died intestate, leaving a daughter as his sole heir. She asserted ownership of his home. The nephew brought an appropriate action against her to determine title to the home. The law of the jurisdiction requires only two witnesses for a will to be properly executed.

If the court rules for the nephew and against the daughter, what is the most likely explanation?

A. The deed was delivered when the homeowner handed it to the nephew's friend.

B. The delivery of the deed was accomplished by the recording of the deed.

C. The homeowner's death consummated a valid gift causa mortis to the nephew.

D. The homeowner's properly executed deed was effective as a testamentary document.

86. A landowner orally gave his neighbor permission to share the use of the private road on the landowner's land so that the neighbor could have more convenient access to the neighbor's land. Only the landowner maintained the road. After the neighbor had used the road on a daily basis for three years, the landowner conveyed his land to a grantee, who immediately notified the neighbor that the neighbor was not to use the road. The neighbor sued the grantee seeking a declaration that the neighbor had a right to continue to use the road.

Who is likely to prevail?

A. The grantee, because an oral license is invalid.

B. The grantee, because the neighbor had a license that the grantee could terminate at any time.

C. The neighbor, because the grantee is estopped to terminate the neighbor's use of the road.

D. The neighbor, because the neighbor's use of the road was open and notorious when the grantee purchased the land.

87. A man owned property that he used as his residence. The man received a loan, secured by a mortgage on the property, from a bank. Later, the man defaulted on the loan. The bank then brought an appropriate action to foreclose the mortgage, was the sole bidder at the judicial sale, and received title to the property as a result of the foreclosure sale.

Shortly after the foreclosure sale, the man received a substantial inheritance. He approached the bank to repurchase the property, but the bank decided to build a branch office on the property and declined to sell.

If the man prevails in an appropriate action to recover title to the property, what is the most likely reason?

A. He had used the property as his residence.

B. He timely exercised an equitable right of redemption.

C. The court applied the doctrine of exoneration.

D. The jurisdiction provides for a statutory right of redemption.

88. X-- By a valid written contract, a seller agreed to sell land to a buyer. The contract stated, "The parties agree that closing will occur on next May 1 at 10 a.m." There was no other reference to closing. The contract was silent as to quality of title.

On April 27, the seller notified the buyer that she had discovered that the land was subject to a longstanding easement in favor of a corporation for a towpath for a canal, should the corporation ever want to build a canal.

The buyer thought it so unlikely that a canal would be built that the closing should occur notwithstanding this outstanding easement. Therefore, the buyer notified the seller on April 28 that he would expect to close on May 1. When the seller refused to close, the buyer sued for specific performance.

Will the buyer prevail?

A. No, because the easement renders the seller's title unmarketable.

B. No, because rights of third parties are unresolved.

C. Yes, because the decision to terminate the contract for title not being marketable belongs only to the buyer.

D. Yes, because the seller did not give notice of the easement a reasonable time before the closing date.

89. X--A rectangular parcel of undeveloped land contained three acres and had 150 feet of frontage on a public street. The applicable zoning ordinance required that a buildable lot contain at least two acres and have frontage of not less than 100 feet on a public street.

A brother and sister owned the land as tenants in common, the brother owning a one-third interest and the sister owning a two-thirds interest. Neither of them owned any other real property.

The sister brought an appropriate action to partition the land and proposed that a two-acre rectangular lot with 100 feet of frontage be set off to her and that a one-acre rectangular lot with 50 feet of frontage be set off to the brother. The brother's defense included a demand that the land be sold and its proceeds be divided one-third to the brother and two-thirds to the sister.

Who will prevail?

A. The brother, because partition by sale is the preferred remedy, unless a fair price is not the likely result of a sale.

B. The brother, because the zoning ordinance makes it impossible to divide the land fairly.

C. The sister, because partition by sale is not appropriate if the subject property can be physically divided.

D. The sister, because the ratio of the two lots that would result from her proposal conforms exactly to the ownership ratio.

90. X-- Twenty-five years ago, a man who owned a 45-acre tract of land conveyed 40 of the 45 acres to a developer by warranty deed. The man retained the rear five-acre portion of the land and continues to live there in a large farmhouse.

The deed to the 40-acre tract was promptly and properly recorded. It contained the following language: "It is a term and condition of this deed, which shall be a covenant running with the land and binding on all owners, their heirs and assigns, that no use shall be made of the 40-acre tract of land except for residential purposes." Subsequently, the developer fully developed the 40-acre tract into a residential subdivision consisting of 40 lots with a single-family residence on each lot.

Although there have been multiple transfers of ownership of each of the 40 lots within the subdivision, none of them included a reference to the quoted provision in the deed from the man to the developer, nor did any deed to a subdivision lot create any new covenants restricting use. Last year, a major new medical center was constructed adjacent to the subdivision. A doctor who owns a house in the subdivision wishes to relocate her medical offices to her house. For the first time, the doctor learned of the restrictive covenant in the deed from the man to the developer. The applicable zoning ordinance permits the doctor's intended use. The man, as owner of the five-acre tract, however, objects to the doctor's proposed use of her property. There are no governing statutes other than the zoning code. The common law Rule Against Perpetuities is unmodified in the jurisdiction.

Can the doctor convert her house in the subdivision into a medical office?

A. No, because the owners of lots in the subdivision own property benefitted by the original residential covenant and have the sole right to enforce it.

B. No, because the man owns property benefitted by the original restrictive covenant and has a right to enforce it.

C. Yes, because the original restrictive covenant violates the Rule Against Perpetuities.

D. Yes, because the zoning ordinance allows the doctor's proposed use and preempts the restrictive covenant.

91. Five years ago, an investor who owned a vacant lot in a residential area borrowed $25,000 from a friend and gave the friend a note for $25,000 due in five years, secured by a mortgage on the lot. The friend neglected to record the mortgage. The fair market value of the lot was then $25,000.

Three years ago, the investor discovered that the friend had not recorded his mortgage and in consideration of $50,000 conveyed the lot to a buyer. The fair market value of the lot was then $50,000. The buyer knew nothing of the friend's mortgage. One month thereafter, the friend discovered the sale to the buyer, recorded his $25,000 mortgage, and notified the buyer that he held a $25,000 mortgage on the lot.

Two years ago, the buyer needed funds. Although she told her bank of the mortgage claimed by the investor's friend, the bank loaned her $15,000, and she gave the bank a note for $15,000 due in two years secured by a mortgage on the lot. The bank promptly and properly recorded the mortgage. At that time, the fair market value of the lot was $75,000.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Both notes are now due and both the investor and the buyer have refused to pay. The lot is now worth only $50,000.

What are the rights of the investor's friend and the bank in the lot?

A. Both mortgages are enforceable liens and the friend's has priority because it was first recorded.

B. Both mortgages are enforceable liens, but the bank's has priority because the buyer was an innocent purchaser for value.

C. Only the friend's mortgage is an enforceable lien, because the bank had actual and constructive notice of the investor's fraud.

D. Only the bank's mortgage is an enforceable lien, because the buyer was an innocent purchaser for value.

92. A grantor owned two tracts of land, one of 15 acres and another of five acres. The two tracts were a mile apart. Fifteen years ago, the grantor conveyed the smaller tract to a grantee. The grantor retained the larger tract. The deed to the grantee contained, in addition to proper legal descriptions of both properties and identifications of the parties, the following:

I, the grantor, bind myself and my heirs and assigns that in the event that the larger tract that I now retain is ever offered for sale, I will notify the grantee and his heirs and assigns in writing, and the grantee and his heirs and assigns shall have the right to purchase the larger tract for its fair market value as determined by a board consisting of three qualified expert independent real estate appraisers.

With appropriate references to the other property and the parties, there followed a reciprocal provision that conferred upon the grantor and her heirs and assigns a similar right to purchase the smaller tract, purportedly binding the grantee and his heirs and assigns.

Ten years ago, a corporation acquired the larger tract from the grantor. At that time, the grantee had no interest in acquiring the larger tract and by an appropriate written document released any interest he or his heirs or assigns might have had in the larger tract.

Last year, the grantee died. The smaller tract passed by the grantee's will to his daughter. She has decided to sell the smaller tract. However, because she believes the corporation has been a very poor steward of the larger tract, she refuses to sell the smaller tract to the corporation even though she has offered it for sale in the local real estate market.

The corporation brought an appropriate action for specific performance after taking all of the necessary preliminary steps in its effort to exercise its rights to purchase the smaller tract.

The daughter asserted all possible defenses. The common law Rule Against Perpetuities is unmodified in the jurisdiction.

If the court rules for the daughter, what is the reason?

A. The provision setting out the right to purchase violates the Rule Against Perpetuities.

B. The grantee's release 10 years ago operates as a waiver regarding any right to purchase that the corporation might have.

C. The two tracts of land were not adjacent parcels of real estate, and thus the right to purchase is in gross and is therefore unenforceable.

D. Noncompliance with a right to purchase gives rise to a claim for money damages, but not for specific performance.

93. A mother who died testate devised her farm to her son and her daughter as "joint tenants with right of survivorship." The language of the will was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute in the jurisdiction. After the mother's death and with the daughter's permission, the son took sole possession of the farm and agreed to pay the daughter a stipulated monthly rent.

Several years later, the son defaulted on a personal loan, and his creditor obtained a judgment against him for $30,000. The creditor promptly and properly filed the judgment.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." Six months later, the son died. There are no other applicable statutes.

Is the creditor entitled to enforce its judgment lien against the farm?

A. No, because the daughter became sole owner of the farm free and clear of the creditor's judgment lien when the son died.

B. No, because the son's interest was severed from the daughter's interest upon the filing of the lien.

C. Yes, because a joint tenancy cannot be created by devise, and the son died owning a 50% undivided interest in the farm as a tenant in common.

D. Yes, because the son died owning a 50% undivided interest in the farm as a joint tenant with the daughter.

94. A businesswoman owned two adjoining tracts of land, one that was improved with a commercial rental building and another that was vacant and abutted a river. Twenty years ago, the businesswoman conveyed the vacant tract to a grantee by a warranty deed that the businesswoman signed but the grantee did not. The deed contained a covenant by the grantee as owner of the vacant tract that neither he nor his heirs or assigns would "erect any building" on the vacant tract, in order to preserve the view of the river from the commercial building on the improved tract. The grantee intended to use the vacant tract as a nature preserve. The grantee promptly and properly recorded the deed.

Last year, the businesswoman conveyed the improved tract to a businessman. A month later, the grantee died, devising all of his property, including the vacant land, to his cousin.

Six weeks ago, the cousin began construction of a building on the vacant tract. The businessman objected and sued to enjoin construction of the building.

Who is likely to prevail?

A. The businessman, because the commercial building was constructed before the cousin began his construction project.

B. The businessman, because the cousin is bound by the covenant made by the grantee.

C. The cousin, because an equitable servitude does not survive the death of the promisor.

D. The cousin, because the grantee did not sign the deed.

95. A seller owns a 400-acre tract of land with 5,000 feet of frontage on a county highway. The seller and a buyer entered into a written agreement for the sale of a portion of the tract identified only as "a parcel of land, containing not less than 100 acres and having not less than 1,000 feet of frontage on the county highway, whose exact location and dimensions are to be determined by the parties hereto, at a price of $8,000 per acre."

Shortly after the execution of the agreement, the parties met to stake out the parcel of land to be sold, but they could not agree. The disagreement intensified, and the seller repudiated the contract. The buyer has sued the seller for specific performance. The seller has asserted all available defenses.

Is the buyer entitled to specific performance of the contract?

A. No, because a contract for the sale of real property that requires further agreement on an essential element cannot be specifically enforced.

B. No, because the purchase price was not fixed by, nor determinable under, the contract terms.

C. Yes, because the contract bound the parties to act in good faith and to agree upon the specific land to be conveyed.

D. Yes, because the equity powers of the court enable the court to appoint a master, or to take other appropriate action, to identify the land to be conveyed.

96. X-- A woman owned a house on a lot abutting a public street. Six months ago, the city validly revised its zoning ordinances and placed the woman's lot and the surrounding lots abutting the public street from the north in a zone limited to residential use; the lots abutting the public street on the south side were zoned for both residential and light business use.The woman asked the city's zoning appeals board to approve her proposal to operate a court-reporting service from her house. This type of use would be permitted on the south side of the public street and, in fact, one such business has existed there for several years.

The board approved the woman's proposal.Why?

A. A variance was granted.

B. The doctrine of amortization applied.

C. The doctrine of change of circumstances applied.

D. The woman's use of her house was a nonconforming use.

97.A woman died testate. In her will, she devised a farm she owned to her husband for life, remainder to her niece. Her will did not specify the duties of the husband and the niece with regard to maintenance and expenses related to the farm. The husband took sole possession of the farm, did not farm the land, and did not rent the land to a third person, although the fair rental value was substantial.

For two years in a row after the woman died, the county assessor sent the tax bills to the niece, but the niece did not pay the bills, because she and the husband could not agree on who should pay them. Finally, the niece paid the taxes to avoid a tax foreclosure sale.

The niece then sued the husband for reimbursement for the two years' worth of property taxes. There is no applicable statute. Is the niece likely to prevail?

A. No, because remaindermen are solely responsible for the payment of property taxes.

B. No, because the county assessor sent the bills to the niece.

C. No, because the woman's will was silent on responsibility for payment of property taxes.

D. Yes, because the niece paid an obligation that was the sole responsibility of the husband.

98. A woman acquired title to a four-acre lot. Several years later, she executed a mortgage on the lot to a bank to secure repayment of a $100,000 loan. Subsequently, the woman executed a mortgage on the same four-acre lot to a finance company to secure repayment of a $50,000 loan. Both mortgages were promptly recorded.

The woman recently defaulted on both loans. The bank promptly initiated foreclosure proceedings and sent proper notice to all necessary parties. The current fair market value of the four-acre lot is $250,000.

The finance company has filed a timely motion in the foreclosure proceeding asking the court to require the bank to first foreclose on two of the four acres in the four-acre lot. The bank opposes this motion and insists that it has the right to subject the entire four-acre lot to the foreclosure sale.

Will the court grant the finance company's motion?

A. No, because the bank holds a purchase-money mortgage.

B. No, because the entire four-acre lot is subject to the bank's senior mortgage.

C. Yes, because a pro rata foreclosure of the lot will not prejudice the rights of the bank.

D. Yes, because of the "two funds" rule of marshalling.

99. X-- Last year, a buyer and a seller entered into a valid contract for the sale of a parcel of real property. The contract contained no contingencies. The seller was killed in a car accident before the parcel was conveyed, but the closing eventually took place with the conveyance by a deed from the personal representative of the seller's estate. The personal representative of the seller's estate wants to distribute the proceeds of the real property sale. The seller's will was executed many years ago and was duly admitted to probate. Paragraph 5 of his will leaves all of the seller's real property to his son, and Paragraph 6 leaves the residue of the estate to the seller's daughter. No other provisions of the will are pertinent to the question regarding to whom the proceeds of the sale should be distributed.

What will determine who receives the proceeds?

A. Whether Paragraph 5 refers specifically to the parcel of real property that was sold or simply to "all of my real property."

B. Whether the closing date originally specified in the contract was a date before or after the seller's death.

C. Whether the jurisdiction has adopted the doctrine of equitable conversion.

D. Whether the sale was completed in accordance with a court order.

100. A man owned Goldacre, a tract of land, in fee simple. At a time when Goldacre was in the adverse possession of a stranger, the man's neighbor obtained the oral permission of the man to use as a road or driveway a portion of Goldacre to reach adjoining land, Twin Pines, which the neighbor owned in fee simple. Thereafter, during all times relevant to this problem, the neighbor used this road across Goldacre regularly for ingress and egress between Twin Pines and a public highway. The stranger quit possession of Goldacre before acquiring title by adverse possession. Without any further communication between the man and the neighbor, the neighbor continued to use the road for a total period, from the time he first began to use it, sufficient to acquire an easement by prescription. The man then blocked the road and refused to permit its continued use. The neighbor brought suit to determine his right to continue use of the road. The neighbor should

A. win, because his use was adverse to the stranger's and once adverse it continued adverse until some affirmative showing of a change.

B. win, because the neighbor made no attempt to renew permission after the stranger quit possession of Goldacre.

C. lose, because his use was with permission.

D. lose, because there is no evidence that he continued adverse use for the required period after the stranger quit possession.

101. X-- buyer and seller entered into a valid, enforceable written contract by which the buyer agreed to purchase Blackacre, which was the seller's residence. One of the contract provisions was that after closing, the seller had the right to remain in residence at Blackacre for up to 30 days before delivering possession to the buyer. The closing took place as scheduled. Title passed to the buyer and the seller remained in possession.

Within a few days after the closing, the new house next door that was being constructed for the seller was burned to the ground, and at the end of the 30-day period the seller refused to move out of Blackacre; instead, he tendered to the buyer a monthly rental payment in excess of the fair rental value of Blackacre. The buyer rejected the proposal and that day brought an appropriate action to gain immediate possession of Blackacre. The contract was silent as to the consequences of the seller's failure to give up possession within the 30-day period, and the jurisdiction in which Blackacre is located has no statute dealing directly with this situation, although the landlord-tenant law of the jurisdiction requires a landlord to give a tenant 30 days notice before a tenant may be evicted. The buyer did not give the seller any such 30-day statutory notice.

The buyer's best legal argument in support of his action to gain immediate possession is that the seller is a

A. trespasser ab initio.

B. licensee.

C. tenant at sufferance.

D. tenant from month to month.

102. An owner in fee simple laid out a subdivision of 325 lots on 150 acres of land. He obtained governmental approval (as required by applicable ordinances) and, between 1998 and 2000, he sold 140 of the lots, inserting in each of the 140 deeds the following provision:

"The grantee, for himself and his heirs, assigns and successors, covenants and agrees that the premises conveyed herein shall have erected thereon one single-family dwelling and that no other structure (other than a detached garage, normally incident to a single-family dwelling) shall be erected or maintained; and, further, that no use shall ever be made or permitted to be made other than occupancy by a single family for residential purposes only."

Because of difficulty encountered in selling the remaining lots for single family use, in January 2001, the owner advertised the remaining lots with prominent emphasis: "These lots are not subject to any restriction and purchasers will find them adaptable to a wide range of uses."

A buyer had purchased one of the 140 lots and brought suit against the owner to establish that the remaining 185 lots, as well as the 140 sold previously, can be used only for residential purposes by single families. Assuming that procedural requirements have been met to permit adjudication of the issue the buyer has raised, which of the following is the most appropriate comment?

A. The owner should win because the provision binds only the grantee.

B. The outcome turns on whether a common development scheme had been established for the entire subdivision.

C. The outcome turns on whether there are sufficient land areas devoted to multiple-family uses within the municipality to afford reasonable opportunity for all economic classes to move into the area so as to satisfy the standards of equal protection of the law.

D. The buyer should win under an application of the doctrine which requires construction of deeds to resolve any doubt against the grantor.

103. A realty company developed a residential development which included single-family dwellings, town houses, and high-rise apartments for a total of 25,000 dwelling units. Included in the deed to each unit was a covenant under which the grantee's "heirs and assigns" agreed to purchase electrical power only from a plant the realty company promised to build and maintain within the development. The realty company constructed the plant and necessary power lines. The plant did not supply power outside the development. An appropriate and fair formula was used to determine price.

After constructing and selling 12,500 of the units, the realty company sold its interest in the development to an investor company. The investor company operated the power plant and constructed and sold the remaining 12,500 units. Each conveyance from the investor company contained the same covenant relating to electrical power that the realty company had included in the 12,500 conveyances it had made.

A woman bought a dwelling unit from a man, who had purchased it from the realty company. Subsequently, the woman, whose lot was along the boundary of the development, ceased buying electrical power from the investor company and began purchasing power from General Power company, which provided such service in the area surrounding the development. Both General Power and the investor company have governmental authorization to provide electrical services to the area. The investor company instituted an appropriate action against the woman to enjoin her from obtaining electrical power from General Power. If judgment is for the woman, it will most likely be because

A. the covenant does not touch and concern the land.

B. the mixture of types of residential units is viewed as preventing one common development scheme.

C. the covenant is a restraint on alienation.

D. there is no privity of estate between the woman and the investor company.

104. X--A businessman had title to Brownacre in fee simple. Without the businessman's knowledge, a nearby farmer entered Brownacre in 1980 and constructed an earthen dam across a watercourse. The earthen dam trapped water that the farmer used to water a herd of cattle he owned. After twelve years of possession of Brownacre, the farmer gave possession of Brownacre to his oldest son. At the same time, the farmer also purported to transfer his cattle and all his interests in the dam and water to his son by a document that was sufficient as a bill of sale to transfer personal property but was insufficient as a deed to transfer real property.

One year later, the son entered into a lease with the businessman to lease Brownacre for a period of five years. After the end of the five-year term of the lease, the son remained on Brownacre for an additional three years and then left Brownacre. At that time the businessman conveyed Brownacre by a quitclaim deed to a friend. The period of time to acquire title by adverse possession in the jurisdiction is ten years.

After the businessman's conveyance to the friend, title to Brownacre was in

A. the farmer.

B. the businessman.

C. the son.

D. the businessman's friend.

105. X--A young woman owned Greenacre in fee simple. She executed two instruments in the proper form of deeds. The first instrument purported to convey an undivided one-half interest in Greenacre to a husband and wife as joint tenants with right of survivorship. The second instrument purported to convey an undivided one-half interest in Greenacre to the husband and wife's only child. The child was thirteen years old at the time. The common-law joint tenancy is unmodified by statute.

No actual consideration was paid for the deeds. The young woman handed the two deeds to the husband. He promptly and properly recorded the deed to himself and his wife and put the deed to their daughter in a safe-deposit box without recording it.

The same year, the husband, wife, and daughter were on a vacation when the plane in which they were flying went down, and all three were killed simultaneously. All three died intestate. The applicable statute in the jurisdiction provides that "when title to property on its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneous, the property of each person, shall be disposed of as if he had survived." An appropriate action was instituted by the heirs of the family. The young woman, who is not an heir of any of the deceased, was a party to the action.

The court should determine that title to Greenacre is

A. entirely in the young woman.

B. one-half in the heirs of the husband and one-half in the heirs of the wife.

C. one-half in the young woman, one-quarter in the heirs of the husband, and one-quarter in the heirs of wife.

D. one-half in the heirs of the daughter, one-quarter in the heirs of the husband, and one-quarter in the heirs of the wife.

106. A man owned Greenfield, a tract of land. His best friend wanted to buy Greenfield and offered $20,000 for it. The man knew that his best friend was insolvent, but replied, "As a favor to you as an old friend, I will sell Greenfield to you for $20,000 even though it is worth much more, if you can raise the money within one month." The best friend wrote the following words, and no more, on a piece of paper: "I agree to sell Greenfield for $20,000." The man then signed the piece of paper and gave it to his friend.

Three days later, the man received an offer of $40,000 for Greenfield. He asked his best friend if he had raised the $20,000. When the best friend answered, "Not yet," the man told him that their deal was off and that he was going to accept the $40,000 offer.

The next week, the best friend secured a bank commitment to enable him to purchase Greenfield. The best friend immediately brought an appropriate action against the man to compel him to convey Greenfield to the best friend. The following points will be raised during the course of the trial.

I. The parol evidence rule.

II. Construction of the contract as to time of performance.

III. The best friend's ability to perform.

Which will be relevant to decision in favor of the best friend?

A. I only.

B. I and II only.

C. II and III only.

D. I, II, and III.

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

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

I. Is time of the essence?

II. Parol evidence rule.

III. Statute of Frauds.

IV. Specific Performance.

A. I and III only.

B. II and IV only.

C. II, III, and IV only.

D. I, II, III, and IV.

108. X-- A businessman owned five adjoining rectangular lots, numbered 1 through 5 inclusive, all fronting on Main Street. All of the lots are in a zone limited to one- and two-family residences under the zoning ordinance. Two years ago, the businessman conveyed Lots 1, 3, and 5. None of the three deeds contained any restrictions. Each of the new owners built a one-family residence.

One year ago, the businessman conveyed Lot 2 to a recent college graduate. The deed provided that each of the recent graduate and the businessman, their respective heirs and assigns, would use Lots 2 and 4 respectively only for one-family residential purposes. The deed was promptly and properly recorded. The graduate built a one-family residence on Lot 2.

Last month, the businessman conveyed Lot 4 to a law student. The deed contained no restrictions. The deed from the businessman to the recent college graduate was in the title report examined by the law student's lawyer. The law student obtained a building permit and commenced construction of a two-family residence on Lot 4.

The recent graduate, joined by the owners of Lots 1, 3, and 5, brought an appropriate action against the law student to enjoin the proposed use of Lot 4, or, alternatively, to recover damages caused by the law student's breach of covenant.

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

A. All plaintiffs should be awarded their requested judgment for injunction because there was a common development scheme, but award of damages should be denied to all.

B. The recent college graduate should be awarded an appropriate remedy, but recovery by the other plaintiffs is doubtful.

C. Injunction should be denied, but damages should be awarded to all plaintiffs, measured by diminution of market value, if any, suffered as a result of the proximity of the law student's two-family residence.

D. All plaintiffs should be denied any recovery or relief because the zoning preempts any private scheme of covenants.

109. The owner in fee simple of Orchardacres, mortgaged Orchardacres to a lender to secure the payment of a loan she made to him. The loan was due at the end of the growing season of the year in which it was made. The owner maintained and operated an orchard on the land, which was his sole source of income. Halfway through the growing season, the owner experienced severe health and personal problems and, as a result, left the state; his whereabouts were unknown. The lender learned that no one was responsible for the cultivation and care of the orchard on Orchardacres. The lender undertook to provide, through employees, the care of the orchard and the harvest for the remainder of the growing season. The net profits were applied to the debt secured by the mortgage on Orchardacres. During the course of the harvest, a business invitee was injured by reason of a fault in the equipment used. Under applicable tort case law, the owner of the premises would be liable for the business invitee's injuries. The business invitee brought an appropriate action against the lender to recover damages for the injuries suffered, relying on this aspect of tort law.

In such lawsuit, judgment should be for

A. the business invitee, if, but only if, the state is a title theory state, because in other jurisdictions a mortgagee has no title interest but only a lien.

B. the business invitee, because the lender was a mortgagee in possession.

C. the lender, because she acted as agent of the owner only to preserve her security interest.

D. the lender, if, but only if, the mortgage expressly provided for her taking possession in the event of danger to her security interest.

110. Blackacre is a three-acre tract of land with a small residence. The owner of Blackacre rented it to a tenant at a monthly rental of $200. The tenant and the owner orally agreed that the tenant would purchase Blackacre from the owner for the sum of $24,000, payable at the rate of $200 a month for ten years and also would pay the real estate taxes and the expenses of insuring and maintaining Blackacre. The owner agreed to give the tenant a deed to Blackacre after five years had passed and $12,000 had been paid on account and to accept from the tenant a note secured by a mortgage for the balance.

The tenant continued in possession of Blackacre and performed his obligations as orally agreed. The tenant, without consulting the owner, made improvements for which he paid $1,000. When the tenant had paid $12,000, he tendered a proper note and mortgage to the owner and demanded the delivery of the deed as agreed. The owner did not deny the oral agreement but told the tenant that she had changed her mind, and she refused to complete the transaction. The tenant then brought an action for specific performance. The owner pleaded the Statute of Frauds as her defense. If the owner wins, it will be because

A. nothing the tenant could have done would have overcome the original absence of a written agreement.

B. the actions and payments of the tenant are as consistent with his being a tenant as with an oral contract.

C. the tenant did not secure the owner's approval for the improvements that he made.

D. the owner has not received any unconscionable benefit, and, therefore, the tenant is not entitled to equitable relief.

111. In 1997 a landowner held Blackacre, a tract of land, in fee simple absolute. In that year he executed and delivered to a purchaser a quitclaim deed which purported to release and quitclaim to the purchaser all of the right, title and interest of the owner in Blackacre. The purchaser accepted the quitclaim and placed the deed in his safety deposit box.

The owner was indebted to a creditor in the amount of $35,000. In September, 2001, the owner executed and delivered to the creditor a warranty deed, purporting to convey the fee simple to Blackacre, in exchange for a full release of the debt he owed to the creditor. The creditor immediately recorded his deed.

In December, 2001, the purchaser caused his quitclaim deed to Blackacre to be recorded and notified the creditor that he (the purchaser) claimed title.

Assume that there is no evidence of occupancy of Blackacre and assume, further, that the jurisdiction where Blackacre is situated has a recording statute which required good faith and value as elements of the junior claimant's priority. Which of the following is the best comment concerning the conflicting claims of the purchaser and the creditor?

A. The purchaser cannot succeed, because the quitclaim through which he claims prevents him from being bona fide (in good faith).

B. The outcome will turn on the view taken as to whether the creditor paid value within the meaning of the statute requiring this element.

C. The outcome will turn on whether the purchaser paid value (a fact not given in the statement).

D. The purchaser's failure to record until December, 2001, estops him from asserting title against the creditor.

112. A landowner held 500 acres in fee simple absolute. In 1990 the owner platted and obtained all required governmental approvals of two subdivisions of 200 acres each.

In 1990 and 1991 commercial buildings and parking facilities were constructed on one, Royal Center, in accordance with the plans disclosed by the plat for each subdivision. Royal Center continues to be used for commercial purposes.

The plat of the other, Royal Oaks, showed 250 lots, streets, and utility and drainage easements. All of the lots in Royal Oaks were conveyed during 1990 and 1991. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs and assigns, requiring the lots to be used only for single-family, residential purposes until 2015. The deeds expressly stated that these provisions were enforceable by the owner of any lot in the Royal Oaks subdivision.

At all times since 1979, the 200 acres of Royal Center have been zoned for shopping center use, and the 200 acres in Royal Oaks have been zoned for residential use in a classification which permits both single-family and multiple-family use.

Assume that the owner now desires to open his remaining 100 acres as a residential subdivision of 125 lots (with appropriate streets, etc.). He has, as an essential element of his scheme, the feature that the restrictions are identical with those he planned for the original Royal Oaks residential subdivision and, further, that lot owners in Royal Oaks should be able to enforce (by lawsuits) restrictions on the lots in the 100 acres. The zoning for the 100 acres is identical with that for the 200 acres of Royal Oaks residential subdivision. Which of the following best states the chance of success for his scheme?

A. He can restrict use only to the extent of that imposed by zoning (that is, to residential use by not more than four dwelling units per lot).

B. He cannot restrict the 100 acres to residential use because of the conflicting use for retail commercial purposes in the 200 acres comprising the shopping center.

C. He cannot impose any enforceable restriction to residential use only.

D. Any chance of success depends upon the 100 acres being considered by the courts as part of a common development scheme which also includes the 200 acres of Royal Oaks.

113. An owner conveyed Greenacre, her one-family residence, to "Perez for life, remainder to Rowan, her heirs and assigns, subject, however, to First Bank's mortgage thereon." There was an unpaid balance on the mortgage of $10,000, which is payable in $1,000 annual installments plus interest at 6 percent on the unpaid balance, with the next payment due on July 1. Perez is now occupying Greenacre. The reasonable rental value of the property exceeds the sum necessary to meet all current charges. There is no applicable statute.

Under the rules governing contributions between life tenants and remaindermen, how should the burden for payment be allocated?

A. Rowan must pay the principal payment, but Perez must pay the interest to First Bank.

B. Rowan must pay both the principal and interest payments to First Bank.

C. Perez must pay both the principal and interest payments to first Bank.

D. Perez must pay the principal payment, but Rowan must pay the interest to First Bank.

114. A grantor conveyed her only parcel of land to a grantee by a duly executed and delivered warranty deed, which provided:

To have and to hold the described tract of land in fee simple, subject to the understanding that within one year from the date of the instrument, said grantee shall construct and thereafter maintain and operate on said premises a public health center.

The grantee constructed a public health center on the tract within the time specified, and operated it for five years. At the end of this period, the grantee converted the structure into a senior citizens' recreational facility. It is conceded by all parties in interest that a senior citizens' recreational facility is not a public health center.

In an appropriate action, the grantor seeks a declaration that the change in the use of the facility has caused the land and structure to revert to her. In this action, the grantor should

A. win, because the language of the deed created a determinable fee, which leaves a possibility of reverter in the grantor.

B. win, because the language of the deed created a fee subject to condition subsequent, which leaves a right of entry or power of termination in the grantor.

C. lose, because the language of the deed created only a contractual obligation and did not provide for retention of property interest by the grantor.

D. lose, because an equitable charge is enforceable only in equity.

115. A man and a woman owned Brownacre as joint tenants with the right of survivorship. The man executed a mortgage on Brownacre to a lender in order to secure a loan. Subsequently, but before the indebtedness was paid to the lender, the man died intestate with his son as his only heir at law. The jurisdiction in which Brownacre is located recognizes the title theory of mortgages.

In an appropriate action, the court should determine that title to Brownacre is vested

A. in the woman, with the entire interest subject to the mortgage.

B. in the woman, free and clear of the mortgage.

C. half in the woman, free of the mortgage, and half in the son subject to the mortgage.

D. half in the woman and half in the son, with both subject to the mortgage.

116. While hospitalized, a client requested her attorney to draw a deed conveying her home to her son. While the client remained in the hospital, the deed was drawn, properly executed, and promptly recorded. On being informed of the existence of the deed, the son told his mother, "I want no part of the property; take the deed right back." The client recovered and left the hospital, but shortly thereafter, before any other relevant event, the son died intestate.

The client brought an appropriate action against the son's heirs to determine title.

If the client wins, it will be because

A. the court will impose a constructive trust to carry out the intent of the deceased son.

B. the presumption of delivery arising from the recording is not valid unless the grantee has knowledge at the time of the recording.

C. the son's declaration was a constructive reconveyance of the land.

D. there was no effective acceptance of delivery of the deed.

117. X-- A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and to erect a building of greater height. The defendant has received all governmental approvals required to pursue her project.

There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.).

After the defendant had torn down the existing building, she proceeded to excavate deeper. The defendant used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards.

The plaintiff notified the defendant that cracks were developing in the building situated on the plaintiff's lot. The defendant took the view that any subsidence suffered by the plaintiff was due to the weight of the plaintiff's building, and correctly asserted that none would have occurred had the plaintiff's soil been in its natural state. The defendant continued to excavate.

The building on the plaintiff's lot did suffer extensive damage, requiring the expenditure of $750,000 to remedy the defects.

Which of the following is the best comment concerning the plaintiff's action to recover damages from the defendant?

A. The defendant is liable, because she removed necessary support for the plaintiff's lot.

B. The defendant cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved.

C. Once land is improved with a building, the owner cannot invoke the common law right of lateral support.

D. The defendant's only obligation was to satisfy all local, state, and federal safety regulations.

118. A business woman was the owner in fee simple of adjoining lots known as Lot 1 and Lot 2. She built a house in which she took up residence on Lot 1. Thereafter, she built a house on Lot 2, which she sold, house and lot, to a buyer. Consistent with the contract of sale and purchase, the deed conveying Lot 2 from the business woman to the buyer contained the following clause:

In the event the buyer, his heirs or assigns, decide to sell the property hereby conveyed and obtain a purchaser ready, willing, and able to purchase Lot 2 and the improvements thereon on terms and conditions acceptable to the buyer, said Lot 2 and improvements shall be offered to the business woman, her heirs or assigns, on the same terms and conditions. The business woman, her heirs or assigns, as the case may be, shall have ten days from said offer to accept said offer and thereby to exercise said option.

Three years after delivery and recording of the deed and payment of the purchase price, the buyer became ill and moved to a climate more compatible with his health. The buyer's daughter orally offered to purchase the premises from the buyer at its then fair market value. The buyer declined his daughter's offer but instead deeded Lot 2 to his daughter as a gift.

Immediately thereafter, the buyer's daughter sold Lot 2 to a man at the then fair market value of Lot 2. The sale was completed by the delivery of deed and payment of the purchase price. At no time did the buyer or his daughter offer to sell Lot 2 to the business woman.

The business woman learned of the conveyance to the buyer's daughter and the sale by the daughter to the man one week after the conveyance of Lot 2 from the daughter to the man. The business woman promptly brought an appropriate action against the man to enforce rights created in him by the deed of the business woman to the buyer. The business woman tendered the amount paid by the man into the court for whatever disposition the court deemed proper. The common-law Rule Against Perpetutities is unmodified by statute.

Which of the following will determine whether the business woman will prevail?

I. The parol evidence rule.

II. The Statute of Frauds.

III. The type of recording statute of the jurisdiction in question.

IV. The Rule Against Perpetuities

A. I only.

B. IV only.

C. I and IV only.

D. II and III only.

119.A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project.

There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.).

Assume that no problems with subsidence or other misadventures occurred during construction of the defendant's new building. However, when it was completed, the plaintiff discovered that the shadow created by the new higher building placed her building in such deep shade that the ability to lease space was diminished, and the rent she could charge and the occupancy rate were substantially lower. Assume that these facts are proved in an appropriate action the plaintiff instituted against the defendant for all and any relief available.

Which of the following is the most appropriate comment concerning this lawsuit?

A. The plaintiff is entitled to a mandatory injunction requiring the defendant to restore conditions to those existing with the prior building insofar as the shadow is concerned.

B. The court should award permanent damages, in lieu of an injunction, equal to the present value of all rents lost and loss on rents for the reasonable life of the building.

C. The court should award damages for losses suffered to the date of trial and leave open recovery of future damages.

D. Judgment should be for the defendant, because the plaintiff has no cause of action.

120. An owner contracted to sell Blackacre to his cousin. The written contract required the owner to provide evidence of marketable title of record, specified a closing date, stated that "time is of the essence," and provided that at closing, the owner would convey by warranty deed. The cousin paid the owner $2,000 earnest money toward the $40,000 purchase price.

The title evidence showed that an undivided one-eighth interest in Blackacre was owned by a woman. The cousin immediately objected to title and said he would not close on the owner's title. The owner responded, accurately, that the woman was his daughter who would be trekking in Nepal until two weeks after the specified closing date. He said that she would gladly deed her interest upon her return, and that meanwhile his deed warranting title to all of Blackacre would fully protect the cousin. The owner duly tendered his deed but the cousin refused to close.

The cousin brought an appropriate action to recover the $2,000 earnest money promptly after the specified closing date. The owner counterclaimed for specific performance, tendering a deed from himself and the woman, who had by then returned.

The court will hold for

A. the owner, because the woman's deed completing the transfer was given within a reasonable time.

B. the owner, because his warranty deed would have given his cousin adequate interim protection.

C. the cousin, because the owner's title was not marketable and time was of the essence.

D. the cousin, because under the circumstances the earnest money amount was excessive.

121. A banker owned Whiteacre, a dwelling house situated on a two-acre lot in an area zoned for single-family residential uses only. Although it was not discernible from the outside, Whiteacre had been converted by the banker from a single-family house to a structure that contained three separate apartments, in violation of the zoning ordinance. Further, the conversion was in violation of the building code.

The banker and an employee entered into a valid written contract for the purchase and sale of Whiteacre. The contract provided that the banker was to convey to the employee a marketable title. The contract was silent as to zoning. The employee had fully inspected Whiteacre.

Prior to the closing, the employee learned that Whiteacre did not conform to the zoning ordinance and refused to close even though the banker was ready, willing, and able to perform his contract obligations. The banker brought an appropriate action for specific performance against the employee .

In that action, the banker should

A. win, because the banker was able to convey a marketable title.

B. win, because the employee was charged with knowledge of the zoning ordinance prior to entering the contract.

C. lose, because the illegal conversion of Whiteacre creates the risk of litigation.

D. lose, because the illegal conversion of Whiteacre was done by the banker rather than by a predecessor.

122. By warranty deed, a woman conveyed Blackacre to her friend and her neighbor "as joint tenants with right of survivorship." The friend and neighbor are not related. The friend conveyed all her interest to her boyfriend by warranty deed and subsequently died intestate. Thereafter, the neighbor conveyed to his girlfriend by warranty deed.

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

Title to Blackacre is in

A. The girlfriend.

B. The woman.

C. The girlfriend and the boyfriend.

D. The girlfriend and the heirs of the friend.

123. 3 months ago, a buyer agreed in writing to buy a property owner's single-family residence, Liveacre, for $110,000. The buyer paid the owner a $5,000 deposit to be applied to the purchase price. The contract stated that the owner had the right at his option to retain the deposit as liquidated damages in the event of the buyer's default. The closing was to have taken place last week. Six weeks ago, the buyer was notified by his employer that he was to be transferred to another job 1,000 miles away. The buyer immediately notified the owner that he could not close, and therefore he demanded the return of his $5,000. The owner refused, waited until after the contract closing date, listed with a broker, and then conveyed Liveacre for $108,000 to a subsequent purchaser found by the real estate broker. The subsequent purchaser paid the full purchase price and immediately recorded his deed. The subsequent purchaser knew of the prior contract with the original buyer. In an appropriate action, the original buyer seeks to recover the $5,000 deposit from the owner.

The most probable result will be that the owner

A. must return the $5,000 to the original buyer, because the owner can no longer carry out his contract with the original buyer.

B. must return the $5,000 to the original buyer, because he was legally justified in not completing the contract.

C. must return $3,000 to the original buyer, because the owner's damages were only $2,000.

D. may keep the $5,000 deposit, because the original buyer breached the contract.

124. X-- A woman owned Woodsedge, a tract used for commercial purposes, in fee simple and thereafter mortgaged it to a bank. She signed a promissory note secured by a duly executed and recorded mortgage. There was no "due on sale" clause, that is, no provision that, upon sale, the whole balance then owing would become due and owing. The woman conveyed Woodsedge to a friend "subject to a mortgage to the bank, which the grantee assumes and agrees to pay." The friend conveyed Woodsedge to his son "subject to an existing mortgage to the bank." A copy of the note and the mortgage that secured it had been exhibited to each grantee.

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

There is no applicable statute or regulation.

In an appropriate foreclosure action, the bank joined the woman, her friend, and the son as defendants. At the foreclosure sale, although the fair market value for Woodsedge in its depreciated state was obtained, a deficiency resulted.

The bank is entitled to collect a deficiency judgment against

A. the woman only.

B. the woman and the friend only.

C. the friend and his son only.

D. the woman, the friend, and the son.

125. X-- A testator owned Blackacre, a vacant one-acre tract of land. Five years ago, he executed a deed conveying Blackacre to "the church for the purpose of erecting a church building thereon." Three years ago, the testator died leaving his son as his sole heir at law. His duly probated will left "all my estate, both real and personal, to my friend."

The church never constructed a church building on Blackacre and last month the church, for valid consideration, conveyed Blackacre to a developer.

The developer brought an appropriate action to quiet title against the son, the friend, and the church, and joined the appropriate state official. Such official asserted that a charitable trust was created which has not terminated.

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

A. the developer.

B. the son.

C. the friend.

D. the state official.

126. A brother and a sister acquired title in fee simple to Blackacre, as equal tenants in common, by inheritance from their aunt. During the last 15 years of her lifetime, the aunt allowed the brother to occupy an apartment in the house on Blackacre, to rent the other apartment in the house to various tenants, and to retain the rent. The brother made no payments to the aunt; and since the aunt's death 7 years ago, he has made no payments to his sister. For those 22 years, the brother has paid the real estate taxes on Blackacre, kept the building on Blackacre insured, and maintained the building. At all times, the sister has lived in a distant city and has never had anything to do with the aunt, her brother, or Blackacre.

Recently, the sister needed money to run her business and demanded that her brother join her in selling Blackacre. He refused.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years. There is no other applicable statute.

The sister brought an appropriate action against her brother for partition. The brother asserted all available defenses and counterclaims.

In that action, the court should

A. deny partition and find that title has vested in the brother by adverse possession.

B. deny partition, confirm the tenancy in common, but require an accounting to determine if either the sister or brother is indebted to the other on account of the rental payment, taxes, insurance premiums, and maintenance costs.

C. grant partition and require, as an adjustment, an accounting to determine if either the sister or brother is indebted to the other on account of the rental payments, taxes, insurance premiums, and maintenance costs.

D. grant partition to the sister and brother as equal owners, but without an accounting.

127. A brother and sister owned Greenacre in fee simple as tenants in common, each owning an undivided one-half interest. The brother and sister joined in mortgaging Greenacre to a private lender by a properly recorded mortgage that contained a general warranty clause. The brother became disenchanted with land-owning and notified his sister that he would no longer contribute to the payment of installments due to the private lender. After the mortgage was in default and the private lender made demand for payment of the entire amount of principal and interest due, the sister tendered to the private lender, and the private lender deposited, a check for one-half of the amount due the private lender. The sister then demanded a release of her undivided one-half interest. The private lender refused to release any interest in Greenacre. The sister promptly brought an action against the private lender to quiet title to an undivided one-half interest in Greenacre.

In such action, the sister should

A. lose, because the private lender's title had been warranted by an express provision of the mortgage.

B. lose, because there was no redemption from the mortgage.

C. win, because the sister is entitled to marshalling.

D. win, because the cotenancy of the mortgagors was in common and not joint.

128. X-- A business owner owned a hotel, subject to a mortgage securing a debt the owner owed to bank. The owner later acquired a nearby parking garage, financing a part of the purchase price by a loan from a private lender, secured by a mortgage on the parking garage. Two years thereafter, the owner defaulted on the loan owed to the bank, which caused the full amount of that loan to become immediately due and payable. The bank decided not to foreclose on the mortgage on the owner's hotel at that time, but instead brought an action, appropriate under the laws of the jurisdiction and authorized by the mortgage loan documents, for the full amount of the defaulted loan. The bank obtained and properly filed a judgment for that amount.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments.

The bank later brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The private lender was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted as follows:

The bank purchased the hotel for $100,000 less than its mortgage balance.

The bank purchased the parking garage for an amount that is $200,000 in excess of the private lender's mortgage balance.

The $200,000 surplus arising from the bid paid by the bank for the parking garage should be paid

A. $100,000 to the bank and $100,000 to the owner.

B. $100,000 to the private lender and $100,000 to the owner.

C. $100,000 to the bank and $100,000 to the private lender.

D. $200,000 to the owner.

129. A woman owned Blueacre, a tract of land, in fee simple. The woman wrote and executed, with the required formalities, a will that devised Blueacre to "my daughter for life with remainder to my descendants per stirpes." At the time of writing the will, the woman had a husband and no descendants living other than her two children, a daughter and a son.

The woman died and the will was duly admitted to probate. The woman's husband predeceased her. The woman was survived by her two children, four grandchildren, and one great-grandchild. The two children were the woman's sole heirs at law.

The two children brought an appropriate action for declaratory judgment as to title of Blueacre. Guardians ad litem were appointed and all other steps were taken so that the judgment would bind all persons interested whether born or unborn.

In that action, if the court rules that the daughter has a life estate in the whole of Blueacre and that the remainder is contingent, it will be because the court chose one of several possible constructions and that the chosen construction

A. related all vesting to the time of writing of the will.

B. related all vesting to the death of the woman.

C. implied a condition that remaindermen survive the daughter.

D. implied a gift of a life estate to the son.

130. Thirty years ago, a landowner conveyed land by warranty deed to a church (a charity) "so long as the land herein conveyed is used as the site for the principal religious edifice maintained by said church."

Twenty years ago, the landowner died intestate, survived by a single heir.

One year ago, the church dissolved and its church building situated on the land was demolished.

There is no applicable statute. The common law Rule Against Perpetuities is unmodified in the jurisdiction.

In an appropriate action, the landowner's heir and the attorney general, who is the appropriate official to assert public interests in charitable trusts, contest the right to the land.

In such action, who will prevail?

A. The landowner's heir, as successor to the landowner's possibility of reverter.

B. The landowner's heir, because a charity cannot convey assets donated to it.

C. The attorney general, because cy pres should be applied to devote the land to religious purposes to carry out the charitable intent of the landowner.

D. The attorney general, because the landowner's attempt to restrict the church's fee simple violated the Rule Against Perpetuities.

131. A seller who owned land in fee simple entered into a valid written agreement to sell the land to a buyer by installment purchase. The contract stipulated that the seller would deliver to the buyer, upon the payment of the last installment due, "a warranty deed sufficient to convey a fee simple title." The contract contained no other provision that could be construed as referring to title.

The buyer entered into possession of the land. After making 10 of the 300 installment payments obligated under the contract, the buyer discovered that there was outstanding a valid and enforceable mortgage on the land, securing the payment of a debt in the amount of 25 percent of the purchase price that the buyer had agreed to pay. There was no evidence that the seller had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of the seller. The value of the land was then four times the amount due on the debt secured by the mortgage.

The buyer quit possession of the land, stopped making payments on the contract, and demanded that the seller repay the amounts that the buyer had paid under the contract. After the seller refused the demand, the buyer sued the seller to recover damages for the seller's alleged breach of the contract.

In such action, should damages be awarded to the buyer?

A. Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.

B. Yes, because an installment purchase contract is treated as a mortgage and the outstanding mortgage impairs the buyer's equity of redemption.

C. No, because an installment purchase contract is treated as a security device.

D. No, because the time for the seller to deliver marketable title has not arrived.

132. A man contacted his lawyer regarding his right to use a path that was on his neighbor's vacant land.

Fifteen years ago, after a part of the path located on his land and connecting his cabin to the public highway washed out, the man cleared a small part of his neighbor's land and rerouted a section of the path through the neighbor's land.

Twelve years ago, the neighbor leased her land to some hunters. For the next 12 years, the hunters and the man who had rerouted the path used the path for access to the highway.

A month ago, the neighbor discovered that part of the path was on her land. The neighbor told the man that she had not given him permission to cross her land and that she would be closing the rerouted path after 90 days.

The man's land and the neighbor's land have never been in common ownership.

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

What should the lawyer tell the man concerning his right to use the rerouted path on the neighbor's land?

A. The man has fee title by adverse possession of the land included in the path.

B. The man has an easement by necessity to use the path.

C. The man has an easement by prescription to use the path.

D. The man has no right to use the path.

133.X-- Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?

A. The lease is void, and the tenant is evicted.

B. The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.

C. The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.

D. The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.

134. X-- A woman died, devising land that she owned in another state to her daughter, who was then 17 years old.

A neighbor who owned the property immediately adjacent to the land wrongfully began to possess the land at that time. For 24 of the next 25 years, the neighbor planted and harvested crops on the land, hunted on it, and parked cars on it. However, in the sixth year after he first took possession of the land, the neighbor neither planted crops nor hunted nor parked cars on the land because he spent that entire year living in Europe. The neighbor built a small gardening shed on the land, but he never built a residence on it.

When the daughter was 28, she was declared mentally incompetent and had a conservator appointed to oversee her affairs. Since then, she has continuously resided in a care facility.

The applicable statute of limitations provides as follows: "An ejectment action shall be brought within 21 years after the cause of action accrues, but if the person entitled to bring the cause of action is under age 18 or mentally incompetent at the time the cause of action accrues, it may be brought by such person within 10 years after attaining age 18 or after the person becomes competent."

If the daughter's conservator wins an ejectment action against the neighbor, what will be the most likely explanation?

A. The daughter was age 17 when the neighbor first took possession of the land.

B. Because the daughter is mentally incompetent, the statute of limitations has been tolled.

C. The neighbor never built a residence on the land.

D. The neighbor was not in continuous possession of the land for 21 years.

135. Meadowview is a large tract of undeveloped land. The man who owns Meadowview prepared a development plan creating 200 house lots in Meadowview with the necessary streets and public areas. The plan was fully approved by all necessary governmental agencies and duly recorded. However, construction of the streets, utilities, and other aspects of the development of Meadowview has not yet begun, and none of the streets can be opened as public ways until they are completed in accordance with the applicable ordinances of the municipality in which Meadowview is located. College Avenue, one of the streets laid out as part of the Meadowview development, abuts Whiteacre, an adjacent one-acre parcel owned by a woman. Whiteacre has no access to any public way except an old, poorly developed road which is inconvenient and cannot be used without great expense. The woman sold Whiteacre to a friend. The description used in the deed from the woman to the friend was the same as that used in prior deeds except that the portion of the description which formerly said, "thence by land of Black, north-easterly a distance of 200 feet, more or less," was changed to "thence by College Avenue as laid out on the Plan of Meadowview North 46-East 201.6 feet," with full reference to the plan and its recording data.

The friend now seeks a building permit which will show that the friend intends to use College Avenue for access to Whiteacre. The man objects to the granting of a building permit on the grounds that he has never granted any right to the woman or her friend to use College Avenue. There are no governing statutes or ordinances relating to the problem. The man brings an appropriate action in which the right of the friend to use College Avenue without an express grant from the man is at issue.

The best argument for the friend in this action is that

A. there is a way by necessity over Meadowview's lands to gain access to a public road.

B. the deed from the woman to her friend referred to the recorded plan and therefore created rights to use the streets delineated on the plan.

C. sale of lots in Meadowview by reference to its plan creates private easements in the streets shown in the plan.

D. the recording of the plan is a dedication of the streets shown on the plan to public use.

136. X-- A testator devised his farm "to my son for life, then to my son's children and their heirs and assigns." The son, a widower, had two unmarried adult children. In an appropriate action to construe the will, the court will determine that the remainder to children is

A. indefeasibly vested.

B. contingent.

C. vested subject to partial defeasance.

D. vested subject to complete defeasance.

137. X-- By way of a gift, a father executed a deed naming his daughter as grantee. The deed contained descriptions as follows:

(1) All of my land and dwelling known as 44 Main Street, Midtown, United States, being one acre.

(2) All that part of my farm, being a square with 200-foot sides, the southeast corner of which is in the north line of my neighbor.

The deed contained covenants of general warranty, quiet enjoyment, and right to convey.

The father handed the deed to his daughter who immediately returned it to her father for safekeeping. Her father kept it in his safe deposit box. The deed was not recorded.

The property at 44 Main Street covered 7/8 of an acre of land, had a dwelling and a garage situated thereon, and was subject to a right of way, described in prior deeds, in favor of a different neighbor. The father owned no other land on Main Street. This neighbor had not used the right of way for ten years and it was not visible on inspection of the property.

The description of part of the father's farm

A. is sufficient if consideration has been paid.

B. is sufficient because no ambiguity therein appears on the face of the deed.

C. could be enforced if the deed contained a covenant of seisin.

D. is insufficient because of vagueness.

138. The owner of Blackacre conveyed a right-of-way to a utility company "for the underground transportation of gas by pipeline, the location of right-of-way to be mutually agreed upon by [the owner] and [the utility company]." The utility company then installed a six-inch pipeline at a location selected by it and not objected to by the owner. Two years later, the utility company advised the owner of its intention to install an additional six-inch pipeline parallel to and three feet laterally from the original pipeline. In an appropriate action, the owner sought a declaration that the utility company has no right to install the second pipeline.

If the owner prevails, it will be because

A. any right implied to expand the original use of the right-of-way creates an interest that violates the Rule Against Perpetuities.

B. the original installation by the utility company defined the scope of the easement.

C. the owner did not expressly agree to the location of the right-of-way.

D. the assertion of the right to install an additional pipeline constitutes inverse condemnation.

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

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

A. The brother's purported deed forfeited his life estate, so the nephew owns Profitacre in fee simple.

B. The girlfriend owns an estate for her life, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.

C. The girlfriend owns an estate for the life of the brother, is entitled to all income, and must pay real estate taxes; the nephew owns the remainder interest.

D. The girlfriend owns an estate for the life of the brother and is entitled to all income; the nephew owns the remainder interest, and must pay real estate taxes.

140. A woman owned Blackacre, her home. Her daughter lived with her and always referred to Blackacre as "my property." Two years ago, the daughter, for a valuable consideration, executed and delivered to her boyfriend an instrument in the proper form of a warranty deed purporting to convey Blackacre to the boyfriend in fee simple, reserving to herself an estate for two years in Blackacre. The boyfriend promptly and properly recorded the deed. One year ago, the woman died and by will, duly admitted to probate, left her entire estate to the daughter. One month ago, the daughter, for a valuable consideration, executed and delivered to a buyer an instrument in the proper form of a warranty deed purporting to convey Blackacre to the buyer, who promptly and properly recorded the deed. The daughter was then in possession of Blackacre and the buyer had no actual knowledge of the deed to the boyfriend. Immediately thereafter, the daughter gave possession to the buyer. The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law." Last week, the daughter fled the jurisdiction. Upon learning the facts, the buyer brought an appropriate action against the boyfriend to quiet title to Blackacre. If the buyer wins, it will be because

A. the daughter had nothing to convey to the boyfriend two years ago.

B. the daughter's deed to the boyfriend was not to take effect until after the daughter's deed to the buyer.

C. the buyer was first in possession.

D. the daughter's deed to the boyfriend was not in the buyer's chain of title.

141. X-- A landlord owned Blackacre. The landlord entered into a written three-year lease of Blackacre with a tenant. Among other provisions, the lease prohibited the tenant from "assigning this lease, in whole or in part, and from subletting Blackacre, in whole or in part." In addition to a house, a barn, and a one-car garage, Blackacre's 30 acres included several fields where first the landlord, and now the tenant, grazed sheep. During the following months, the tenant;

I. By a written agreement allowed one neighbor exclusive use of the garage for storage, under lock and key, of his antique automobile for two years, charging him $240.

II. Told a different neighbor that the neighbor could use the fields to practice her golf as long as she did not disturb the tenant's sheep.

Which, if any, of the tenant's actions constituted a violation of the lease?

A. I only.

B. II only.

C. Both I and II.

D. Neither I nor II.

142. A landowner died, validly devising his land to his wife "for life or until remarriage, then to" their daughter. Shortly after the landowner's death, his daughter executed an instrument in the proper form of a deed, purporting to convey the land to her friend. A year later, the daughter died intestate, with her mother, the original landowner's wife, as her sole heir. The following month, the wife re-married. She then executed an instrument in the proper form of a deed, purporting to convey the land to her new husband as a wedding gift.

Who now owns what interest in the land?

A. The daughter's friend owns the fee simple.

B. The wife owns the fee simple.

C. The wife's new husband has a life estate in the land for the wife's life, with the remainder in the daughter's friend.

D. The wife's new husband owns the fee simple.

143. A rancher and a farmer own adjacent tracts of rural land. For the past nine years, the rancher has impounded on her land the water that resulted from rain and melting snow, much of which flowed from the farmer's land. The rancher uses the water in her livestock operation. Recently, the farmer increased the size of his farming operation and built a dam on his land near the boundary between the two tracts. Because of the dam, these waters no longer drain from the farmer's land onto the rancher's land. There is no applicable statute. The rancher sued the farmer to restrain him from interfering with the natural flow of the water onto her land. Who is likely to prevail?

A. The farmer, because he has the right to use all of the water impounded on his land.

B. The farmer, because the rancher's past impoundment of water estops her from asserting the illegality of the farmer's dam.

C. The rancher, because she has acquired riparian rights to use the water.

D. The rancher, because the farmer is estopped to claim all of the surface water on his land.

144. X-- A man died testate. The man's estate consisted of a residence as well as significant personal property. By his duly probated will, the man devised the residence to a friend who was specifically identified in the will. The residue of the estate was given to a stated charity.

The man's friend, although alive at the time the man executed the will, predeceased the man. The friend's wife and their child, who has a disability, survived the man.

The value of the residence has increased significantly because of recent zoning changes. There is credible extrinsic evidence that the man wanted his friend to own the residence after the man's death so that the friend and his wife could care for their child there.

There is no applicable statute.

If both the charity and the child claim the residence, to whom should the estate distribute the residence?

A. The charity, because the devise to the friend adeemed.

B. The charity, because the devise to the friend lapsed.

C. The child, because extrinsic evidence exists that the man's intent was to benefit the child.

D. The child, because no conditions of survivorship were noted in the will.

145. In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites. The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

One of the individual purchasers, who purchased his lot from the man, has placed a mobile home on it, and the woman brings an action against this purchaser to force him to remove it. The result of this action will be in favor of

A. the woman, because the restrictive covenant in her deed runs with the land.

B. the woman, because the presence of the mobile home may adversely affect the market value of her land.

C. the purchaser, because his deed did not contain the restrictive covenant.

D. the purchaser, because he is not a direct but a remote grantee of the owner.

146. A tenant occupied an apartment in a building owned by a landlord. She paid rent of $125 in advance each month. During the second month of occupancy, the tenant organized the other tenants in the building as a tenants' association, and the association made demands of the landlord concerning certain repairs and improvements the tenants wanted. When the tenant tendered rent for the third month, the landlord notified her that rent for the fourth and subsequent months would be $200 per month. The tenant protested and pointed out that all other tenants paid rent of $125 per month. Thereupon, the landlord gave the required statutory notice that the tenancy was being terminated at the end of the third month. By an appropriate proceeding, the tenant contests the landlord's right to terminate. If the tenant succeeds, it will be because

A. a periodic tenancy was created by implication.

B. the doctrine prohibiting retaliatory eviction is part of the law of the jurisdiction.

C. the $200 rent demanded violates the agreement implied by the rate charged to other tenants.

D. the law implies a term of one year in the absence of any express agreement.

147. The owner in fee simple of Brownacre conveyed Brownacre by quitclaim deed to her daughter who paid no consideration for the conveyance. The deed was never recorded. About a year after the delivery of the deed, the grantor decided that this gift had been ill-advised. She requested that her daughter destroy the deed, which the daughter dutifully and voluntarily did. Within the month following the destruction of the deed, the grantor and the daughter were killed in a common disaster. Each of the successors in interest claimed title to Brownacre. In an appropriate action to determine the title to Brownacre, the probable outcome will be that

A. The grantor was the owner of Brownacre, because the daughter was a donee and therefore could not acquire title by quitclaim deed.

B. The grantor was the owner of Brownacre, because title to Brownacre reverted to her upon the voluntary destruction of the deed by the daughter.

C. The daughter was the owner of Brownacre, because her destruction of the deed to Brownacre was under the undue influence of the grantor.

D. The daughter was the owner of Brownacre, because the deed was merely evidence of her title, and its destruction was insufficient to cause title to pass back to the grantor.

148. X-- A testator owned Hilltop in fee simple. By his will, he devised as follows: "Hilltop to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, the testator had three children and two grandchildren.

Which of the following additions to or changes in the facts above would produce a violation of the common-law Rule Against Perpetuities?

A. A posthumous child was born to the testator.

B. The testator's will expressed the intention to include all afterborn grandchildren in the gift.

C. The instrument was an inter vivos conveyance rather than a will.

D. The testator had no grandchildren living at the time of his death.

149. X--In 1975, the owner of both Blackacre and Whiteacre executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To my neighbor and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to the American Red Cross." Whiteacre was conveyed "To my girlfriend and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1995, then to the Salvation Army." In 1980, the owner died, leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner's sole heir. The common law rule against perpetuities applies in the state where the land is located, and the state also has a statute providing that, "All future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests."

In 1985 the neighbor and girlfriend entered into a contract with a buyer whereby the neighbor and girlfriend contracted to sell Blackacre to the buyer in fee simple. After examining title, the buyer refused to perform on the ground that the neighbor and girlfriend could not give good title. The neighbor and girlfriend joined in an action against the buyer for specific performance. Prayer for specific performance will be

A. granted, because the neighbor and daughter together own a fee simple absolute in Blackacre.

B. granted, because the neighbor alone owns the entire fee simple in Blackacre.

C. denied, because the brother has a valid interest in Blackacre.

D. denied, because the American Red Cross has a valid interest in Blackacre.

150. A sister and brother, as lessees, signed a valid lease for a house. The landlord, duly executed the lease and delivered possession of the premises to the lessees. During the term of the lease, the brother verbally invited his friend to share the house with the lessees. The friend agreed to pay part of the rent to the landlord, who did not object to this arrangement, despite a provision in the lease that provided that "any assignment, subletting or transfer of any rights under this lease without the express written consent of the landlord is strictly prohibited, null, and void." The sister objected to the friend's moving in, even if the friend were to pay a part of the rent.

When the friend moved in, the sister brought an appropriate action against the landlord, the brother, and the friend for a declaratory judgment that the brother had no right to assign. The brother's defense was that he and the sister were tenants in common for a term of years, and that he, the brother, had a right to assign a fractional interest in his undivided one-half interest. In this action, the sister will

A. prevail, because a cotenant has no right to assign all or any part of a leasehold without the consent of all interested parties.

B. prevail, because the lease provision prohibits assignment.

C. not prevail, because she is not the beneficiary of the non-assignment provision in the lease.

D. not prevail, because her claim amounts to a void restraint on alienation.

151. A landowner entered into a written contract to sell her house and six acres known as Meadowacre to a purchaser for $75,000. Delivery of the deed and payment of the purchase price were to be made six months after the contract. The contract provided that Meadowacre was to be conveyed "subject to easements, covenants, and restrictions of record." The contract was not recorded.

After the contract was signed but before the deed was delivered, an electric company decided to run a high-voltage power line in the area and required an easement through a portion of Meadowacre. The landowner, by deed, granted an easement to the electric company in consideration of $5,000; the deed was duly recorded.

The power line would be a series of towers with several high-voltage lines that would be clearly visible from the house on Meadowacre but would in no way interfere with the house.

When the purchaser caused the title to Meadowacre to be searched, the deed of easement to the electric company was found. The landowner appeared at the time and place scheduled for the closing and proffered an appropriate deed to the purchaser and demanded the purchase price. The purchaser refused to accept the deed. In an appropriate action for specific performance against the purchaser, the landowner demanded $75,000.

In this action, the landowner should

A. obtain an order for specific performance at a price of $75,000.

B. obtain an order for specific performance at a price of $70,000.

C. lose, because the purchaser did not contract to take subject to the easement to the electric company.

D. lose, because a high-voltage power line is a nuisance per se.

152. X-- A businessman had title to Brownacre in fee simple. Without the businessman's knowledge, a nearby farmer entered Brownacre in 1980 and constructed an earthen dam across a watercourse. The earthen dam trapped water that the farmer used to water a herd of cattle he owned. After twelve years of possession of Brownacre, the farmer gave possession of Brownacre to his oldest son. At the same time, the farmer also purported to transfer his cattle and all his interests in the dam and water to his son by a document that was sufficient as a bill of sale to transfer personal property but was insufficient as a deed to transfer real property.

One year later, the son entered into a lease with the businessman to lease Brownacre for a period of five years. After the end of the five-year term of the lease, the son remained on Brownacre for an additional three years and then left Brownacre. At that time the businessman conveyed Brownacre by a quitclaim deed to a friend. The period of time to acquire title by adverse possession in the jurisdiction is ten years.

Assume that after the businessman's conveyance to his friend, title to Brownacre was in the farmer.

After the businessman's conveyance to his friend, title to the earthen dam was in

A. the person who then held title to Brownacre in fee simple.

B. the son, as purchaser of the dam under the bill of sale.

C. the person who then owned the water rights as an incident thereto.

D. the farmer, as the builder of the dam.

153. X-- Ann leased commercial property to Brenda for a period of ten years. The lease contained the following provision: "No subleasing or assignment will be permitted unless with the written consent of the lessor." One year later, Brenda assigned all interest in the lease to Carolyn, who assumed and agreed to perform the lessee's obligations under the terms of the lease. Ann learned of the assignment and wrote to Brenda that she had no objection to the assignment to Carolyn and agreed to accept rent from Carolyn instead of Brenda.

Thereafter, Carolyn paid rent to Ann for a period of five years. Carolyn then defaulted and went into bankruptcy. In an appropriate action, Ann sued Brenda for rent due.

If Ann loses, it will be because there was

A. laches.

B. an accord and satisfaction.

C. a novation.

D. an attornment.

154. A mother owned Blackacre, a two-family apartment house on a small city lot not suitable for partition-in-kind. Upon the mother's death, her will devised Blackacre to "my son and daughter." A week ago, a creditor obtained a money judgment against the son, and properly filed the judgment in the county where Blackacre is located. A statute in the jurisdiction provides: any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The son needed cash, but the daughter did not wish to sell Blackacre. The son commenced a partition action against the daughter and the creditor.

Assume that the court properly ordered a partition by judicial sale.

After the sale, the creditor's judgment will be a lien on

A. all of Blackacre.

B. only a one-half interest in Blackacre.

C. all of the proceeds of a sale of Blackacre.

D. only the portion of the proceeds of sale due to the brother.

155. X-- A man entered into a valid written contract to sell Blackacre, a large tract of land, to a purchaser. At that time, Blackacre was owned by the man's father; the man had no title to Blackacre and was not the agent of the father.

After the contract was executed and before the scheduled closing date, the father died intestate, leaving the man as his sole heir. Shortly thereafter, the man received an offer for Blackacre that was substantially higher than the purchase price in the contract with the purchaser. The man refused to close with the purchaser even though she was ready, willing, and able to close pursuant to the contract.

The purchaser brought an appropriate action for specific performance against the man.

In that action, the purchaser should be awarded

A. nothing, because the man had no authority to enter into the contract with the purchaser.

B. nothing, because the doctrine of after-acquired title does not apply to executory contracts.

C. judgment for specific performance, because the man acquired title prior to the scheduled closing.

D. judgment for specific performance, to prevent unjust enrichment of the man.

156. X--A farmer owned Greenacre in fee simple. The small house on Greenacre was occupied, with the farmer's oral permission, rent-free, by the farmer's son, and the college classmate of the farmer's son. The farmer's son was then 21 years old.

The farmer, by properly executed instrument, conveyed Greenacre to "my beloved son, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then Greenacre shall become the sole property of my beloved daughter, her heirs and assigns." At the time of conveyance, the farmer's son and the college classmate attended a college located several blocks from Greenacre. Neither had earned a college degree.

One week after the delivery of the deed to the farmer's son, the farmer's son recorded the deed and immediately told the college classmate that he was going to begin charging the college classmate rent since "I am now your landlord." There is no applicable statute.

The farmer's son and the college classmate did not reach an agreement, and the farmer's son served the appropriate notice to terminate whatever tenancy the college classmate had. The farmer's son then sought, in an appropriate action, to oust the college classmate.

Who should prevail?

A. The farmer's son, because the conveyance created a fee simple subject to divestment in the farmer's son.

B. The farmer's son, because the farmer's conveyance terminated the college classmate's tenancy.

C. The college classmate, because the farmer's permission to occupy preceded the farmer's conveyance to the farmer's son.

D. The college classmate, because the college classmate is a tenant of the farmer, not of the farmer's son.

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

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

The court should decide for

A. the doctor, because he has an easement by implication.

B. the doctor, because the easement appurtenant passed to him as a result of the buyer's deed to him.

C. the owner, because the buyer's easement in gross was not transferable.

D. the owner, because the buyer's deed failed expressly to transfer the right-of-way to the doctor.

158. The owner of Greenacre, a tract of land, mortgaged Greenacre to a bank to secure his preexisting obligation to the bank. The mortgage was promptly and properly recorded. The owner and a buyer then entered into a valid written contract for the purchase and sale of Greenacre, which provided for the transfer of "a marketable title, free of encumbrances." The contract did not expressly refer to the mortgage.

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

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

A. the mortgage is not entitled to priority because it was granted for preexisting obligations.

B. the doctrine of equitable conversion supports the result.

C. The owner's arrangements for the payment of the mortgage fully satisfied the owner's obligation to deliver marketable title.

D. the existence of the mortgage was not the buyer's real reason for refusing to close.

159. A plaintiff and a defendant own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height. Last year the defendant decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on the parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project. As the defendant's new building was in the course of construction, the plaintiff realized that the shadows it would create would place her (the plaintiff's) building in such deep shade that the rent she could charge for space in her building would be substantially reduced.

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

The court should

A. grant to the plaintiff the requested injunction.

B. award the plaintiff damages measured by the loss of rental value, but not an injunction.

C. grant judgment for the defendant, because she had secured all the necessary governmental approvals for the new building.

D. grant judgment for the defendant, because the plaintiff has no legal right to have sunshine continue to reach the windows of her building.

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

During the 90 days, the seller sold and conveyed Blackacre by warranty deed for a substantial consideration to a buyer. The problem of the loading docks was not discussed in the negotiations.Upon expiration of the 90 days, the municipality required the buyer to stop using the loading docks. This action substantially reduced the value of Blackacre.The buyer brought an appropriate action against the seller seeking cancellation of the deed and return of all monies paid.

Such action should be based upon a claim of

A. misrepresentation.

B. breach of the covenant of warranty.

C. failure of consideration.

D. mutual mistake.

161. X-- A land owner owned in fee simple Lots 1 and 2 in an urban subdivision. The lots were vacant and unproductive. They were held as a speculation that their value would increase. The land owner died and, by his duly probated will, devised the residue of his estate (of which Lots 1 and 2 were part) to his sister for life with remainder in fee simple to his niece. The land owner's executor distributed the estate under appropriate court order, and notified the sister that future real estate taxes on Lots 1 and 2 were her responsibility to pay.

Except for the statutes relating to probate and those relating to real estate taxes, there is no applicable statute.

The sister failed to pay the real estate taxes due for Lots 1 and 2. To prevent a tax sale of the fee simple, the niece paid the taxes and demanded that the sister reimburse her for same. When the sister refused, the niece brought an appropriate action against the sister to recover the amount paid.

In such action, the niece should recover

A. the amount paid, because a life tenant has the duty to pay current charges.

B. the present value of the interest that the amount paid would earn during the sister's lifetime.

C. nothing, because the sister's sole possession gave the right to decide whether or not taxes should be paid.

D. nothing, because the sister never received any income from the lots.

162. X-- A farmer and a rancher owned Greenacre, a large farm, in fee simple as tenants in common, each owning an undivided one-half interest. For five years the farmer occupied Greenacre and conducted farming operations. The farmer never accounted to the rancher for any income, but the farmer did pay all real estate taxes when the taxes were due and kept the buildings located on Greenacre insured against loss from fire, storm, and flood. The rancher lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price the rancher wanted.

The farmer died intestate, survived only by the farmer's sole heir. Thereafter, the sole heir occupied Greenacre but was inexperienced in farming operations. The result was a financial disaster. The sole heir failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At such sale the rancher was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of Greenacre.

Thereafter, the rancher instituted an appropriate action against the sole heir to quiet title in and to recover possession of Greenacre. The sole heir asserted all defenses available to her.

Except for the statutes related to real estate taxes and tax sales, there is no applicable statute.

In this lawsuit, the rancher is entitled to a decree quieting title so that the rancher is the sole owner in fee simple of Greenacre

A. because the rancher survived the farmer.

B. because the farmer's sole heir defaulted in the obligations undertaken by the farmer.

C. unless the farmer's sole heir pays the rancher one-half of the reasonable market value of Greenacre.

D. unless the farmer's sole heir pays the rancher one-half of the amount the rancher paid for the tax deed.

163. A landowner owned Greenacre, a tract of land, in fee simple. The landowner entered into a valid written agreement with a purchaser under which the landowner agreed to sell and the purchaser agreed to buy Greenacre by installment purchase. The contract stipulated that the landowner would deliver to the purchaser, upon the payment of the last installment due, "a warranty deed sufficient to convey the fee simple." The contract contained no other provision that could be construed as referring to title.

The purchaser entered into possession of Greenacre. After making 10 of the 300 installment payments obligated under the contract, the purchaser discovered that there was outstanding a valid and enforceable mortgage on Greenacre, securing the payment of debt in the amount of 25% of the purchase price the purchaser had agreed to pay. There was no evidence that the landowner had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of the landowner. The value of Greenacre now is four times the amount on the debt secured by the mortgage.

The purchaser quit possession of Greenacre and demanded that the landowner repay the amounts the purchaser had paid under the contract. After the landowner refused the demand, the purchaser brought an appropriate action against the landowner to recover damages for the landowner's alleged breach of the contract.

In such action, should damages be awarded to the purchaser?

A. No, because the time for the landowner to deliver marketable title has not arrived.

B. No, because the purchaser assumed the risk by taking possession.

C. Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.

D. Yes, because the risk of loss assumed by the purchaser in taking possession relates only to physical loss.

164. X-- A landowner owned Blackacre in fee simple and conveyed Blackacre to a teacher by warranty deed. An adjoining owner asserted title to Blackacre and brought an appropriate action against the teacher to quiet title to Blackacre. The teacher demanded that the landowner defend the teacher's title under the deed's covenant of warranty, but the landowner refused. The teacher then successfully defended at her own expense.

The teacher brought an appriopriate action against the landowner to recover the teacher's expenses incurred in defending against the adjoining owner's action to quiet title to Blackacre.

In this action, the court should decide for

A. the teacher, because in effect it was the landowner's title that was challenged.

B. the teacher, because the landowner's deed to her included the covenant of warranty.

C. the landowner, because the title the landowner conveyed was not defective.

D. the landowner, because the adjoining owner may elect which of the landowner or the teacher to sue.

165. A landowner executed an instrument in the proper form of a deed, purporting to convey his land to a friend. The landowner handed the instrument to the friend, saying, "This is yours, but please do not record it until after I am dead. Otherwise, it will cause me no end of trouble with my relatives." Two days later, the landowner asked the friend to return the deed to him because he had decided that he should devise the land to the friend by will rather than by deed. The friend said that he would destroy the deed and a day or so later falsely told the landowner that the deed had been destroyed. Six months later, the landowner, who had never executed a will, died intestate, survived by a daughter as his sole heir at law. The day after the landowner's death, the friend recorded the deed from him. As soon as the daughter discovered this recording and the friend's claim to the land, she brought an appropriate action against the friend to quiet title to the land. For whom should the court hold?

A. The daughter, because the death of the landowner deprived the subsequent recordation of any effect.

B. The daughter, because the friend was dishonest in reporting that he had destroyed the deed.

C. The friend, because the deed was delivered to him.

D. The friend, because the deed was recorded by him.

166. A seller owned a single family house. A buyer gave the seller a signed handwritten offer to purchase the house. The offer was unconditional and sufficient to satisfy the statute of frauds, and when the seller signed an acceptance an enforceable contract resulted.

The house on the land had been the seller's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction. Two weeks after the parties had entered into their contract, one week after the buyer had obtained a written mortgage lending commitment from a lender, and one week before the agreed-upon closing date, the house was struck by lightning and burned to the ground. The loss was not insured, because three years earlier, the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. The buyer declared the contract voided by the fire, but the seller asserted a right to enforce the contract despite the loss.

There is no applicable statute.

If a court finds for the seller, what is the likely reason?

A. The contract was construed against the buyer, who drafted it.

B. The lender's written commitment to make a mortgage loan to the buyer made the contract of sale fully binding on the buyer.

C. The risk of loss falls on the party in possession, and constructive possession passed to the buyer on the contract date.

D. The risk of loss passed to the buyer on the contract date under the doctrine of equitable conversion.

167. A farmer borrowed $100,000 from a bank and gave the bank a promissory note secured by a mortgage on the farm that she owned. The bank promptly and properly recorded the mortgage, which contained a due-on-sale provision.

A few years later, the farmer borrowed $5,000 from a second bank and gave it a promissory note secured by a mortgage on her farm. The bank promptly and properly recorded the mortgage.

Subsequently, the farmer defaulted on her obligation to the first bank, which then validly accelerated the debt and instituted nonjudicial foreclosure proceedings as permitted by the jurisdiction. The second bank received notice of the foreclosure sale but did not send a representative to the sale. At the foreclosure sale, a buyer who was not acting in collusion with the farmer outbid all other bidders and received a deed to the farm.

Several months later, the original farmer repurchased her farm from the buyer, who executed a warranty deed transferring the farm to her. After the farmer promptly and properly recorded that deed, the second bank commenced foreclosure proceedings on the farm. The farmer denied the validity of the second bank's mortgage.

Does the second bank continue to have a valid mortgage on the farm?

A. Yes, because of the doctrine of estoppel by deed.

B. Yes, because the original owner reacquired title to the farm.

C. No, because the purchase at the foreclosure sale by the buyer under these facts eliminated the second bank's junior mortgage lien.

D. No, because of the due-on-sale provision in the farmer's mortgage to the first bank.

168. X-- Six years ago, a landlord and a tenant entered into a 10-year commercial lease of land. The written lease provided that, if a public entity under the power of eminent domain condemned any part of the land, the lease would terminate and the landlord would receive the entire condemnation award. Thereafter, the city condemned approximately two-thirds of the land.

The tenant notified the city and the landlord that an independent appraisal of the value of the tenant's possessory interest established that it substantially exceeded the tenant's obligation under the lease and that the tenant was entitled to share the award. The appraisal was accurate.

In an appropriate action among the landlord, the tenant, and the city as to the right of the tenant to a portion of the condemnation award, for whom will the court likely find?

A. The landlord, because the condemnation superseded and canceled the lease.

B. The landlord, because the parties specifically agreed as to the consequences of condemnation.

C. The tenant, because the landlord breached the landlord's implied warranty of quiet enjoyment.

D. The tenant, because otherwise the landlord would be unjustly enriched.

169. A landlord and a tenant orally agreed to a commercial tenancy for a term of six months beginning on July 1. Rent was to be paid by the first day of each month, and the tenant paid the first month's rent at the time of the agreement. When the tenant arrived at the leased premises on July 1, the tenant learned that the previous tenant had not vacated the premises at the end of her lease term on May 31 and did not intend to vacate. The tenant then successfully sued the previous tenant for possession. The tenant did not inform the landlord of the eviction action until after the tenant received possession.

The tenant then sued the landlord, claiming damages for that portion of the lease period during which the tenant was not in possession.

If the court finds for the landlord, what will be the most likely explanation?

A. By suing the previous tenant for possession, the tenant elected that remedy in lieu of a suit against the landlord.

B. The landlord had delivered the legal right of possession to the tenant.

C. The tenant failed to timely vacate as required to sue for constructive eviction.

D. The tenant had not notified the landlord before bringing the eviction action.

170. Six months ago, a man told his cousin that he would give her his farm as a gift on her next birthday. The cousin then entered into a valid written contract to sell the farm to an investor with the closing to take place "one week after [the cousin's] next birthday."

The man failed to convey the farm to the cousin on her birthday. One week after the cousin's birthday, on the intended closing date, the investor first learned of the cousin's inability to convey the farm because the man had breached his promise. The investor considered suing the cousin but realized that she could not compel the cousin to convey the farm because it was still owned by the man.Two weeks after the cousin's birthday, the man died. Under his valid will, the man devised the farm to the cousin. Within a week, the executor of the man's estate gave the cousin an executor's deed to the farm in compliance with state law. The investor promptly learned of this transfer and demanded that the cousin convey the farm to her. The cousin refused.

The investor sued the cousin for specific performance.

Who will likely prevail?

A. The cousin, because the contract to convey was not signed by the legal owner of the farm as of the date of the contract and was therefore void.

B. The cousin, because she received title by devise rather than by conveyance.

C. The investor, because the contract to convey merged into the executor's deed to the cousin.

D. The investor, because the contract to convey remained enforceable by her within a reasonable period of time after the proposed closing date.

171.X-- A man decided to give his farm to his nephew. The man took a deed to his attorney and told the attorney to deliver the deed to the nephew upon the man's death. The man also told the attorney to return the deed to him if he asked. None of these instructions to the attorney were in writing, and the deed was not recorded. The man then e-mailed the nephew informing him of the arrangement.

Shortly thereafter, the nephew died testate. In his will, he devised the farm to his daughter. Several years later, the man died intestate, survived by two sons. The nephew's daughter immediately claimed ownership of the farm and demanded that the attorney deliver the deed to her.

Must the attorney deliver the deed to the daughter?

A. No, because a gratuitous death escrow is void unless supported by a written contract.

B. No, because the man never placed the deed beyond his control.

C. Yes, because the death of the nephew rendered the gratuitous death escrow irrevocable by the man.

D. Yes, because the deed to the nephew was legally delivered when the man took it to his attorney.

Question 31 Real Property - Rights in Land

172. In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites.

The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

The friend has announced his intention of erecting a fast food restaurant on the ten-acre tract, and the woman has filed an action to enjoin the friend. If the woman wins, it will be because

A. the woman has an equitable servitude concerning the use of the tract.

B. the woman, as a taxpayer, has legal interest in the use of the tract.

C. the woman is a creditor beneficiary of the owner's promise with respect to the tract.

D. the friend is not a bona fide purchaser.

173. In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites.

The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

One of the individual purchasers, who purchased his lot from the man, has placed a mobile home on it, and the woman brings an action against this purchaser to force him to remove it. The result of this action will be in favor of

A. the woman, because the restrictive covenant in her deed runs with the land.

B. the woman, because the presence of the mobile home may adversely affect the market value of her land.

C. the purchaser, because his deed did not contain the restrictive covenant.

D. the purchaser, because he is not a direct but a remote grantee of the owner.

174. In 2000, the owner of a 100-acre tract prepared and duly recorded a subdivision plan called Happy Acres. The plan showed 90 one-acre lots and a ten-acre tract in the center that was designated "Future Public School." The owner published and distributed a brochure promoting Happy Acres which emphasized the proximity of the lots to the school property and indicated potential tax savings "because the school district will not have to expend tax money to acquire this property." There is no specific statute concerning the dedication of school sites. The owner sold 50 of the lots to individual purchasers. Each deed referred to the recorded plan and also contained the following clause: "No mobile home shall be erected on any lot within Happy Acres." A woman was one of the original purchasers from the owner.

In 2006, the owner sold the remaining 40 lots and the ten-acre tract to a man by a deed which referred to the plan and contained the restriction relating to mobile homes. The man sold the 40 lots to individual purchasers and the ten-acre tract to a friend. None of the deeds from the man referred to the plan or contained any reference to mobile homes.

In 2007, the school board of the district in which Happy Acres is situated has voted to erect a new school on the ten-acre tract. In an appropriate action between the school board and the friend to determine title, the result will be in favor of

A. the friend, because the school board has been guilty of laches.

B. the friend, because his deed did not refer to the subdivision plan.

C. the school board, because the friend had constructive notice of the proposed use of the tract.

D. the school board, because there has been a dedication and acceptance of the tract.

175. In 1960, the owner in fee simple of Barrenacres, a large, undeveloped tract of land, granted an easement to the Water District "to install, inspect, repair, maintain, and replace pipes" within a properly delineated strip of land twenty feet wide across Barrenacres. The easement permitted the Water District to enter Barrenacres for only the stated purposes. The Water District promptly and properly recorded the deed. In 1961, the Water District installed a water main which crossed Barrenacres within the described strip; the Water District has not since entered Barrenacres.

In 1965, the landowner sold Barrenacres to a purchaser, but the deed, which was promptly and properly recorded, failed to refer to the Water District easement. The purchaser built his home on Barrenacres in 1965, and since that time he has planted and maintained, at great expense in money, time, and effort, a formal garden area which covers, among other areas, the surface of the twenty-foot easement strip.

In 2006, the Water District proposed to excavate the entire length of its main in order to inspect, repair, and replace the main, to the extent necessary. At a public meeting, at which the purchaser was present, the Water District announced its plans and declared its intent to do as little damage as possible to any property involved. The purchaser objected to the Water District plans.

The purchaser asked his attorney to secure an injunction against the Water District and its proposed entry upon his property. The best advice that the attorney can give is that the purchaser's attempt to secure injunctive relief will be likely to\

A. succeed, because the purchaser's deed from the landowner did not mention the easement

B. succeed, because more than forty years have passed since the Water District last entered Barrenacres.

C. fail, because the Water District's plan is within its rights.

D. fail, because the Water District's plan is fair and equitable.

176. A landowner was the owner of a large subdivision. A purchaser became interested in purchasing a lot but could not decide between Lot 40 and Lot 41. The price and fair market value of each of those two lots was $5,000. The purchaser paid the landowner $5,000, which the landowner accepted, and the landowner delivered to the purchaser a deed which was properly executed, complete, and ready for recording in every detail except that the space in the deed for the lot number was left blank. The landowner told the purchaser to fill in either Lot 40 or Lot 41 according to his decision and then to record the deed. The purchaser visited the development the next day and completely changed his mind, selecting Lot 25. He filled in Lot 25 and duly recorded the deed. The price of Lot 25 and its fair market value was $7,500.

Immediately upon learning what the purchaser had done, the landowner brought an appropriate action against the purchaser to rescind the transaction. If the landowner loses, the most likely basis for the judgment is that

A. The landowner's casual business practices created his loss.

B. the need for certainty in land title records controls.

C. the agency implied to complete the deed cannot be restricted by the oral understanding.

D. the recording of the deed precludes any questioning of its provisions in its recorded form.

177. A tenant occupied an apartment in a building owned by a landlord. She paid rent of $125 in advance each month. During the second month of occupancy, the tenant organized the other tenants in the building as a tenants' association, and the association made demands of the landlord concerning certain repairs and improvements the tenants wanted. When the tenant tendered rent for the third month, the landlord notified her that rent for the fourth and subsequent months would be $200 per month. The tenant protested and pointed out that all other tenants paid rent of $125 per month. Thereupon, the landlord gave the required statutory notice that the tenancy was being terminated at the end of the third month. By an appropriate proceeding, the tenant contests the landlord's right to terminate. If the tenant succeeds, it will be because

A. a periodic tenancy was created by implication.

B. the doctrine prohibiting retaliatory eviction is part of the law of the jurisdiction.

C. the $200 rent demanded violates the agreement implied by the rate charged to other tenants.

D. the law implies a term of one year in the absence of any express agreement.

178. The owner in fee simple of Brownacre conveyed Brownacre by quitclaim deed to her daughter who paid no consideration for the conveyance. The deed was never recorded. About a year after the delivery of the deed, the grantor decided that this gift had been ill-advised. She requested that her daughter destroy the deed, which the daughter dutifully and voluntarily did. Within the month following the destruction of the deed, the grantor and the daughter were killed in a common disaster. Each of the successors in interest claimed title to Brownacre. In an appropriate action to determine the title to Brownacre, the probable outcome will be that

A. The grantor was the owner of Brownacre, because the daughter was a donee and therefore could not acquire title by quitclaim deed.

B. The grantor was the owner of Brownacre, because title to Brownacre reverted to her upon the voluntary destruction of the deed by the daughter.

C. The daughter was the owner of Brownacre, because her destruction of the deed to Brownacre was under the undue influence of the grantor.

D. The daughter was the owner of Brownacre, because the deed was merely evidence of her title, and its destruction was insufficient to cause title to pass back to the grantor.

179. A landowner contracted to sell a tract of land to a painter by general warranty deed. However, at the closing the painter did not carefully examine the deed and accepted a quitclaim deed without covenants of title. The painter later attempted to sell the land to a purchaser, who refused to perform because the landowner had conveyed an easement for a highway across the land before the painter bought the property.

The painter sued the landowner for damages. Which of the following arguments will most likely succeed in the landowner's defense?

A. The existence of an easement does not violate the contract.

B. The mere existence of an easement which is not being used does not give rise to a cause of action.

C. The painter's cause of action must be based on the deed and not on the contract.

D. The proper remedy is rescission of the deed.

180. A landlord leased a warehouse building and the lot on which it stood to a tenant for a term of ten years. The lease contained a clause prohibiting the tenant from subletting his interest. Can the tenant assign his interest under the lease?

A. Yes, because restraints on alienation of land are strictly construed.

B. Yes, because disabling restraints on alienation of land are invalid.

C. No, because the term "subletting" includes "assignment" when the term is employed in a lease.

D. No, because even in the absence of an express prohibition on assignment, a tenant may not assign without the landlord's permission.

181. An owner in fee simple laid out a subdivision of 325 lots on 150 acres of land. He obtained governmental approval (as required by applicable ordinances) and, between 1998 and 2000, he sold 140 of the lots, inserting in each of the 140 deeds the following provision: "The grantee, for himself and his heirs, assigns and successors, covenants and agrees that the premises conveyed herein shall have erected thereon one single-family dwelling and that no other structure (other than a detached garage, normally incident to a single-family dwelling) shall be erected or maintained; and, further, that no use shall ever be made or permitted to be made than occupancy by a single family for residential purposes only."

Because of difficulty encountered in selling the remaining lots for single family use, in January 2001, the owner advertised the remaining lots with prominent emphasis: "These lots are not subject to any restriction and purchasers will find them adaptable to a wide range of uses."

Suppose that the owner sold 50 lots during 2001 without inserting in the deeds any provision relating to structures or uses. A businessman purchased one of the 50 lots and proposes to erect a service station and to conduct a retail business for the sale of gasoline, etc. A woman purchased a lot from a man who had purchased from the owner in 1998, and the deed had the provision that it quoted in the fact situation. The woman brings suit to prevent the businessman from erecting the service station and from conducting a retail business. In the litigation between the woman and the businessman, which of the following constitutes the best defense for the businessman?

A. The owner's difficulty in selling with provisions relating to use establishes a change in circumstances which renders any restrictions which may once have existed unenforceable.

B. Enforcement of the restriction, in view of the change of circumstances, would be an unreasonable restraint on alienation.

C. Since the proof (as stated) does not establish a danger of monetary loss to the woman, the woman has failed to establish one of the necessary elements in a cause of action to prevent the businessman from using his lots for business purposes.

D. The facts do not establish a common building or development scheme for the entire subdivision.

182. X-- A landowner owned Brightacre (a tract of land) in fee simple. He conveyed it "to [his friend], his heirs and assigns; but if [his cousin] shall be living thirty years from the date of this deed, then to [his cousin], his heirs and assigns." The limitation "to [his cousin], his heirs and assigns" is

A. valid, because the cousin's interest is a reversion.

B. valid, because the interest will vest, if at all, within a life in being.

C. valid, because the cousin's interest is vested subject to divestment.

D. invalid.

183. X--A testator owned Hilltop in fee simple. By his will, he devised as follows: "Hilltop to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, the testator had three children and two grandchildren.

Courts hold such a devise valid under the common-law Rule Against Perpetuities. What is the best explanation of that determination?

A. All of the testator's children would be measuring lives.

B. The rule of convenience closes the class of beneficiaries when any grandchild reaches the age of 21.

C. There is a presumption that the testator intended to include only those grandchildren born prior to his death.

D. There is a subsidiary rule of construction that dispositive instruments are to be interpreted so as to uphold interests rather than to invalidate them under the Rule Against Perpetuities.

184. X-- A testator owned Hilltop in fee simple. By his will, he devised as follows: "Hilltop to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born." At the time of his death, the testator had three children and two grandchildren.

Which of the following additions to or changes in the facts above would produce a violation of the common-law Rule Against Perpetuities?

A. A posthumous child was born to the testator.

B. The testator's will expressed the intention to include all afterborn grandchildren in the gift.

C. The instrument was an inter vivos conveyance rather than a will.

D. The testator had no grandchildren living at the time of his death.

185. A seller and a buyer execute an agreement for the sale of real property on September 1, 2001. The jurisdiction in which the property is located recognized the principle of equitable conversion and has no statute pertinent to this problem. Assume for this question only that the buyer dies before closing, there being no breach of the agreement by either party. Which of the following is appropriate in most jurisdictions?

A. The buyer's heir may specifically enforce the agreement.

B. The seller has the right to return the down payment and cancel the contract.

C. Death terminates the agreement.

D. Any title acquired would be unmarketable by reason of the buyer's death.

186. A landowner holds title in fee simple to a tract of 1,500 acres. He desires to develop the entire tract as a golf course, country club, and residential subdivision. He contemplates forming a corporation to own and to operate the golf course and country club; the stock in the corporation will be distributed to the owners of lots in the residential portions of the subdivision, but no obligation to issue the stock is to ripen until all the residential lots are sold. The price of the lots is intended to return enough money to compensate the landowner for the raw land, development costs (including the building of the golf course and the country club facilities), and developer's profit, if all of the lots are sold. The landowner's market analyses indicate that he must create a scheme of development that will offer prospective purchasers (and their lawyers) a very high order of assurance that several aspects will be clearly established:

1. Aside from the country club and golf course, there will be no land use other than for residential use and occupancy in the 1,500 acres.

2. The residents of the subdivision will have unambiguous rights and access to the club and golf course facilities.

3. Each lot owner must have an unambiguous right to transfer his lot to a purchaser with all original benefits.

4. Each lot owner must be obligated to pay annual dues to a pro rata share (based on the number of lots) of the club's annual operating deficit (whether or not such owner desires to make use of club and course facilities).

Of the following, the greatest difficulty that will be encountered in establishing the scheme is that

A. any judicial recognition will be construed as state action which, under current doctrines, raises a substantial question whether such action would be in conflict with the Fourteenth Amendment.

B. the scheme, if effective, renders title unmarketable.

C. one or more of the essential aspects outlined by the landowner will result in a restraint on alienation.

D. there is a judicial reluctance to recognize an affirmative burden to pay money in installments and over an indefinite period as a burden which can be affixed to bind future owners of land.

187. A father gave his son a power of attorney containing the following provision:

"My attorney is specifically authorized to sell and convey any part or all of my real property."

The son conveyed part of his father's land to a buyer by deed in the customary form containing covenants of title. The buyer sues the father for breach of a covenant. The outcome of the buyer's suit will be governed by whether

A. deeds without covenants are effective to convey realty.

B. the jurisdiction views the covenants as personal or running with the land.

C. the buyer is a bona fide purchaser.

D. the power to "sell and convey" is construed to include the power to execute the usual form of deed used to convey realty.

188. An owner held 500 acres in fee simple absolute. In 1990 the owner platted and obtained all required governmental approvals of two subdivisions of 200 acres each.

In 1990 and 1991 commercial buildings and parking facilities were constructed on one, Royal Center, in accordance with the plans disclosed by the plat for each subdivision. Royal Center continues to be used for commercial purposes.

The plat of the other, Royal Oaks, showed 250 lots, streets, and utility and drainage easements. All of the lots in Royal Oaks were conveyed during 1990 and 1991. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs and assigns, requiring the lots to be used only for single-family, residential purposes until 2015. The deeds expressly stated that these provisions were enforceable by the owner of any lot in the Royal Oaks subdivision.

At all times since 1979, the 200 acres of Royal Center have been zoned for shopping center use, and the 200 acres in Royal Oaks have been zoned for residential use in a classification which permits both single-family and multiple-family use.

In an appropriate attack upon the limitation to residential use by single families, if the evidence disclosed no fact in addition to those listed above, the most probable judicial resolution would be that

A. there is no enforceable restriction because judicial recognition constitutes state action which is in conflict with the Fourteenth Amendment to the United States Constitution.

B. there is no enforceable restriction because of the owner's conflict of interest in that he did not make the restriction applicable to the 100 acres he retains.

C. the restriction in use set forth in the deeds will be enforced at the suit of any present owner of a lot in Royal Oaks residential subdivision.

D. any use consistent with zoning will be permitted but that any such uses that are in conflict with the restrictions in the deeds will give rise to a right to damages from the owner or the owner's successor.

189. A seller and a buyer entered into a written contract for the sale and purchase of land which was complete in all respects except that no reference was made to the quality of title to be conveyed. Which of the following will result?

A. The contract will be unenforceable.

B. The seller will be required to convey a marketable title.

C. The seller will be required to convey only what he owned on the date of the contract.

D. The seller will be required to convey only what he owned at the date of the contract plus whatever additional title rights he may acquire prior to the closing date.

190. X-- In 1975, the owner of both Blackacre and Whiteacre executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To my neighbor and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to the American Red Cross." Whiteacre was conveyed "To my girlfriend and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1995, then to the Salvation Army." In 1980, the owner died, leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner's sole heir.

The common law rule against perpetuities applies in the state where the land is located, and the state also has a statute providing that, "All future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests."

In 1985 the neighbor and girlfriend entered into a contract with a buyer whereby the neighbor and girlfriend contracted to sell Blackacre to the buyer in fee simple. After examining title, the buyer refused to perform on the ground that the neighbor and girlfriend could not give good title. The neighbor and girlfriend joined in an action against the buyer for specific performance. Prayer for specific performance will be

A. granted, because the neighbor and daughter together own a fee simple absolute in Blackacre.

B. granted, because the neighbor alone owns the entire fee simple in Blackacre.

C. denied, because the brother has a valid interest in Blackacre.

D. denied, because the American Red Cross has a valid interest in Blackacre.

191. X-- In 1975, the owner of both Blackacre and Whiteacre executed and delivered two separate deeds by which he conveyed the two tracts of land as follows: Blackacre was conveyed "To my neighbor and his heirs as long as it is used exclusively for residential purposes, but if it is ever used for other than residential purposes, to the American Red Cross." Whiteacre was conveyed "To my girlfriend and her heirs as long as it is used exclusively for residential purposes, but if it is used for other than residential purposes prior to 1995, then to the Salvation Army." In 1980, the owner died, leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner's sole heir.

The common law rule against perpetuities applies in the state where the land is located, and the state also has a statute providing that, "All future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests."

In 1976 the interest of the American Red Cross in Blackacre could be best described as a

A. valid contingent remainder.

B. void executory interest.

C. valid executory interest.

D. void contingent remainder.

192. An owner owned in fee simple three adjoining vacant lots fronting on a common street in a primarily residential section of a city which had no zoning laws. The lots were identified as Lots 1, 2, and 3. The owner conveyed Lot 1 to a man and Lot 2 to a woman. The owner retained Lot 3, which consisted of three acres of woodland. The woman, whose lot was between the other two, built a house on her lot. The woman's house included a large window on the side facing Lot 3. The window provided a beautiful view from her living room, thereby adding value to the woman's house.

The man erected a house on his lot. The owner made no complaint to either the man or woman concerning the houses they built. After both the man and woman had completed their houses, the two of them agreed to and did build a common driveway running from the street to the rear of their respective lots. The driveway was built on the line between the two houses so that one-half of the way was located on each lot. The man and woman exchanged right-of-way deeds by which each of them conveyed to the other, his heirs and assigns, an easement to continue the right of way. Both deeds were properly recorded. After the man and woman had lived in their respective houses for thirty years, a new public street was built bordering on the rear of Lots 1, 2, and 3. The man informed the woman that, since the new street removed the need for their common driveway, he considered the right-of-way terminated; therefore, he intended to discontinue its use and expected the woman to do the same. At about the same time, the owner began the erection of a six-story apartment house on Lot 3. If the apartment house is completed, it will block the view from the woman's window and will substantially reduce the value of her lot.

In an action brought by the woman to enjoin the owner from erecting the apartment building in such a way as to obstruct the view from the woman's living room window, the decision should be for

A. the woman, because the owner's proposed building would be an obstruction of the woman's natural right to an easement for light and air.

B. the woman, because she was misled by the owner's failure to complain when the woman was building her house.

C. the owner if, but only if, it can be shown that the owner's intention to erect such a building was made known to the woman at or prior to the time of the owner's conveyance to her.

D. the owner, because the woman has no easement for light, air, or view.

193. A sister and brother, as lessees, signed a valid lease for a house. The landlord, duly executed the lease and delivered possession of the premises to the lessees.

During the term of the lease, the brother verbally invited his friend to share the house with the lessees. The friend agreed to pay part of the rent to the landlord, who did not object to this arrangement, despite a provision in the lease that provided that "any assignment, subletting or transfer of any rights under this lease without the express written consent of the landlord is strictly prohibited, null, and void." The sister objected to the friend's moving in, even if the friend were to pay a part of the rent.

When the friend moved in, the sister brought an appropriate action against the landlord, the brother, and the friend for a declaratory judgment that the brother had no right to assign. The brother's defense was that he and the sister were tenants in common for a term of years, and that he, the brother, had a right to assign a fractional interest in his undivided one-half interest. In this action, the sister will

A. prevail, because a cotenant has no right to assign all or any part of a leasehold without the consent of all interested parties.

B. prevail, because the lease provision prohibits assignment.

C. not prevail, because she is not the beneficiary of the non-assignment provision in the lease.

D. not prevail, because her claim amounts to a void restraint on alienation.

194. A landowner entered into a written contract to sell her house and six acres known as Meadowacre to a purchaser for $75,000. Delivery of the deed and payment of the purchase price were to be made six months after the contract. The contract provided that Meadowacre was to be conveyed "subject to easements, covenants, and restrictions of record." The contract was not recorded. After the contract was signed but before the deed was delivered, an electric company decided to run a high-voltage power line in the area and required an easement through a portion of Meadowacre. The landowner, by deed, granted an easement to the electric company in consideration of $5,000; the deed was duly recorded. The power line would be a series of towers with several high-voltage lines that would be clearly visible from the house on Meadowacre but would in no way interfere with the house.

When the purchaser caused the title to Meadowacre to be searched, the deed of easement to the electric company was found. The landowner appeared at the time and place scheduled for the closing and proffered an appropriate deed to the purchaser and demanded the purchase price. The purchaser refused to accept the deed. In an appropriate action for specific performance against the purchaser, the landowner demanded $75,000.

In this action, the landowner should

A. obtain an order for specific performance at a price of $75,000.

B. obtain an order for specific performance at a price of $70,000.

C. lose, because the purchaser did not contract to take subject to the easement to the electric company.

D. lose, because a high-voltage power line is a nuisance per se.

195. A brother and sister, both of legal age, inherited Goodacre, their childhood home, from their father. They thereby became tenants in common. Goodacre had never been used as anything except a residence. The brother had been residing on Goodacre with his father at the time his father died. The sister had been residing in a distant city. After their father's funeral, the brother continued to live on Goodacre, but the sister returned to her own residence.

There was no discussion between the brother and the sister concerning their common ownership, nor had there ever been any administration of their father's estate. The brother paid all taxes, insurance, and other carrying charges on Goodacre. He paid no rent or other compensation to his sister, nor did his sister request any such payment.

Thirty years later, a series of disputes arose between the brother and the sister for the first time concerning their respective rights to Goodacre. The jurisdiction where the land is located recognized the usual common-law types of cotenancies, and there is no applicable legislation on the subject.

If the brother claims the entire title to Goodacre in fee simple and brings an action against the sister to quiet title, and if the state where the land is located has an ordinary 20-year adverse possession statute, the decision should be for

A. the brother, because during the past 30 years the brother has exercised the type of occupancy ordinarily considered sufficient to satisfy the adverse possession requirements.

B. the brother, because the acts of the parties indicate the sister's intention to renounce her right to inheritance.

C. the sister, because there is no evidence that the brother has performed sufficient acts to constitute her ouster.

D. the sister, because one cotenant cannot acquire title by adverse possession against another.

196. A seller and a buyer entered into a written contract for the sale and purchase of Wideacre. The contract provided that "[the seller] agrees to convey a good and marketable title to [the buyer] sixty days from the date of this contract." The purchase price was stated as $60,000. At the time set for closing the seller tendered a deed in the form agreed to in the contract. The buyer's examination of the record prior to the date of closing had disclosed, however, that the owner of record was not the seller. Further investigation by the buyer revealed that, notwithstanding the state of the record, the seller had been in what the buyer conceded as adverse possession for fifteen years. The period of time to acquire title by adverse possession in the jurisdiction is ten years. The buyer refuses to pay the purchase price or to take possession "because of the inability of the seller to transfer a marketable title."

In an appropriate action by the seller against the buyer for specific performance, the seller will

A. prevail, because he has obtained a "good and marketable title" by adverse possession.

B. prevail, because the seller's action for specific performance is an action in rem even though the true owner is not a party.

C. not prevail, because the buyer cannot be required to buy a lawsuit even if the probability is great that the buyer would prevail against the true owner.

D. not prevail, because the seller's failure to disclose his lack of record title constitutes fraud.

197. X-- The owner of Stoneacre entered into a written agreement with a miner. Under this written agreement, which was acknowledged and duly recorded, the miner, for a five-year-period, was given the privilege to enter on Stoneacre to remove sand, gravel, and stone in whatever quantities the miner desired. The miner was to make monthly payments to the owner on the basis of the amount of sand, gravel, and stone removed during the previous month. Under the terms of the agreement, the miner's privilege was exclusive against all others except the owner, who reserved the right to use Stoneacre for any purpose whatsoever including the removal of sand, gravel, and stone.

One year after the agreement was entered into, the state brought a condemnation action to take Stoneacre for a highway interchange. In the condemnation action, is the miner entitled to compensation?

A. Yes, because he has a license, which is a property right protected by the due process clause.

B. Yes, because he has a profit a prendre, which is a property right protected by the due process clause.

C. No, because he has a license, and licenses are not property rights protected by the due process clause.

D. No, because he has a profit a prendre, which is not a property right protected by the due process clause.

198. X-- An owner conveyed a farm "to my neighbor, her heirs and assigns, so long as the premises are used for residential and farm purposes, then to my son and his heirs." The common law Rule Against Perpetuities, unmodified by statute, is part of the law of the jurisdiction in which the farm is located. As a consequence of the conveyance, the son's interest in the farm is

A. nothing.

B. a valid executory interest.

C. a possibility of reverter.

D. a right of entry for condition broken.

199. X-- A businessman had title to Brownacre in fee simple. Without the businessman's knowledge, a nearby farmer entered Brownacre in 1980 and constructed an earthen dam across a watercourse. The earthen dam trapped water that the farmer used to water a herd of cattle he owned. After twelve years of possession of Brownacre, the farmer gave possession of Brownacre to his oldest son. At the same time, the farmer also purported to transfer his cattle and all his interests in the dam and water to his son by a document that was sufficient as a bill of sale to transfer personal property but was insufficient as a deed to transfer real property.

One year later, the son entered into a lease with the businessman to lease Brownacre for a period of five years. After the end of the five-year term of the lease, the son remained on Brownacre for an additional three years and then left Brownacre. At that time the businessman conveyed Brownacre by a quitclaim deed to a friend. The period of time to acquire title by adverse possession in the jurisdiction is ten years.

Assume that after the businessman's conveyance to his friend, title to Brownacre was in the farmer.

After the businessman's conveyance to his friend, title to the earthen dam was in

A. the person who then held title to Brownacre in fee simple.

B. the son, as purchaser of the dam under the bill of sale.

C. the person who then owned the water rights as an incident thereto.

D. the farmer, as the builder of the dam.

200. X-- Ann leased commercial property to Brenda for a period of ten years. The lease contained the following provision: "No subleasing or assignment will be permitted unless with the written consent of the lessor." One year later, Brenda assigned all interest in the lease to Carolyn, who assumed and agreed to perform the lessee's obligations under the terms of the lease. Ann learned of the assignment and wrote to Brenda that she had no objection to the assignment to Carolyn and agreed to accept rent from Carolyn instead of Brenda. Thereafter, Carolyn paid rent to Ann for a period of five years. Carolyn then defaulted and went into bankruptcy. In an appropriate action, Ann sued Brenda for rent due.

If Ann loses, it will be because there was

A. laches.

B. an accord and satisfaction.

C. a novation.

D. an attornment.

201.X-- Five years ago, a woman acquired Blackacre, improved with a 15-year-old dwelling. This year the woman listed Blackacre for sale with a licensed real estate broker. The woman informed the broker of several defects in the house that were not readily discoverable by a reasonable inspection, including a leaky basement, an inadequate water supply, and a roof that leaked. The plaintiff responded to the broker's advertisement, was taken by the broker to view Blackacre, and decided to buy it. The broker saw to it that the contract specified the property to be "as is" but neither the broker nor the woman pointed out the defects to the plaintiff, who did not ask about the condition of the dwelling. After closing and taking possession, the plaintiff discovered the defects, had them repaired, and demanded that the woman reimburse him for the cost of the repairs. The woman refused and the plaintiff brought an appropriate action against the woman for damages. If the woman wins, it will be because

A. the woman fulfilled the duty to disclose defects by disclosure to the broker.

B. the contract's "as is" provision controls the rights of the parties.

C. the broker became the agent of both the plaintiff and the woman and thus knowledge of the defects was imputed to the plaintiff.

D. the seller of a used dwelling that has been viewed by the buyer has no responsibility toward the buyer.

202. A gentleman owned Greenacre in fee simple of record on January 10. On that day, a bank loaned the gentleman $50,000 and the gentleman mortgaged Greenacre to the bank as security for the loan. The mortgage was recorded on January 18. The gentleman conveyed Greenacre to a buyer for a valuable consideration on January 11. The bank did not know of this, nor did the buyer know of the mortgage to the bank, until both discovered the facts on January 23, the day on which the buyer recorded the gentleman's deed. The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." There is no provision for a grace period, and there is no other relevant statutory provision.

The bank sued the buyer to establish that its mortgage was good against Greenacre. The court should decide for

A. the buyer, because he paid valuable consideration without notice before the bank recorded its mortgage.

B. the buyer, because the bank's delay in recording means that it is estopped from asserting its priority in time.

C. the bank, because the buyer did not record his deed before the bank's mortgage was recorded.

D. the bank, because after the mortgage to the bank, the gentleman's deed to the buyer was necessarily subject to its mortgage.

203. A mother owned Blackacre, a two-family apartment house on a small city lot not suitable for partition-in-kind. Upon the mother's death, her will devised Blackacre to "my son and daughter."

A week ago, a creditor obtained a money judgment against the son, and properly filed the judgment in the county where Blackacre is located. A statute in the jurisdiction provides: any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

The son needed cash, but the daughter did not wish to sell Blackacre. The son commenced a partition action against the daughter and the creditor.

Assume that the court properly ordered a partition by judicial sale.

After the sale, the creditor's judgment will be a lien on

A. all of Blackacre.

B. only a one-half interest in Blackacre.

C. all of the proceeds of a sale of Blackacre.

D. only the portion of the proceeds of sale due to the brother.

204. X-- A man entered into a valid written contract to sell Blackacre, a large tract of land, to a purchaser. At that time, Blackacre was owned by the man's father; the man had no title to Blackacre and was not the agent of the father. After the contract was executed and before the scheduled closing date, the father died intestate, leaving the man as his sole heir. Shortly thereafter, the man received an offer for Blackacre that was substantially higher than the purchase price in the contract with the purchaser. The man refused to close with the purchaser even though she was ready, willing, and able to close pursuant to the contract.

The purchaser brought an appropriate action for specific performance against the man.

In that action, the purchaser should be awarded

A. nothing, because the man had no authority to enter into the contract with the purchaser.

B. nothing, because the doctrine of after-acquired title does not apply to executory contracts.

C. judgment for specific performance, because the man acquired title prior to the scheduled closing.

D. judgment for specific performance, to prevent unjust enrichment of the man.

205. The owner of Blackacre had promised his best friend that, if at any time the owner decided to sell his summer cottage property known as Blackacre, he would give his best friend the opportunity to purchase Blackacre. At a time when the best friend was serving overseas with the United States Navy, the owner decided to sell Blackacre and spoke to his best friend's mother. Before the best friend sailed, he had arranged for his mother to become a joint owner of his various bank accounts so that she would be able to pay his bills when he was gone. When she heard from the owner, the best friend's mother took the necessary funds from the best friend's account and paid the owner $20,000, the fair market value of Blackacre. The owner executed and delivered to the best friend's mother a deed in the proper form purporting to convey Blackacre to the best friend. The mother promptly and properly recorded the deed. Shortly thereafter, the mother learned that the best friend (her son) had been killed in an accident at sea one week before the delivery of the deed. The best friend's will, which has now been duly probated, leaves his entire estate to First Church. His mother is the sole heir-at-law of the best friend.

There is no statute dealing with conveyances to dead persons.

Title to Blackacre is now in

A. First Church.

B. the best friend's mother.

C. the owner free and clear.

D. the owner, subject to a lien to secure $20,000 to the best friend's estate.

206. Blackacre was a tract of 100 acres retained by the owner after he had developed the adjoining 400 acres as a residential subdivision. The owner had effectively imposed restrictive covenants on each lot in the 400 acres. A buyer offered the owner a good price for a five-acre tract located in a corner of Blackacre far away from the existing 400-acre residential subdivision. The owner conveyed the five-acre tract to the buyer and imposed the same restrictive covenants on the five-acre tract as he had imposed on the lots in the adjoining 400 acres. The owner further covenanted that when he sold the remaining 95 acres of Blackacre he would impose the same restrictive convenants in the deed or deeds for the 95 acres. The owner's conveyance to the buyer was promptly and properly recorded. However, shortly thereafter, the owner conveyed the remaining 95 acres to a businessman for $100,000 by a deed that made no mention of any restrictive convenants in the buyer's deed. The businessman now proposes to build an industrial park which would violate such restrictive covenants if they are applicable.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In an appropriate action by the buyer to enforce the restrictive covenants against the businessman's 95-acre tract, if the businessman wins it will be because

A. the deed imposing the restrictions was not in the chain of title for the 95 acres when the businessman bought them.

B. the disparity in acreage means that the covenant can only be personal to the owner.

C. negative reciprocal covenants are not generally recognized.

D. a covenant to impose restrictions is an illegal restraint on alienation.

207. X-- The owner of Greenacre owned the land in fee simple. By warranty deed he conveyed Greenacre to a friend for life, "and from and after the death of my friend to my uncle, his heirs and assigns." Subsequently the uncle died, devising all of his estate to a hospital. The uncle was survived by his daughter, his sole heir-at-law.

Shortly thereafter the friend died, survived by the owner, the hospital, and the daughter.

Title to Greenacre now is in

A. the owner, because the contingent remainder never vested, and the owner's reversion was entitled to possession immediately upon the friend's death.

B. the hospital, because the vested remainder in the uncle was transmitted by his will.

C. The daughter, because she is the uncle's heir.

D. either the owner or the daughter, depending upon whether the destructibility of contingent remainders is recognized in the applicable jurisdiction.

208. A plaintiff and a defendant own adjoining lots in the central portion of a city. Each of their lots had an office building. The defendant decided to raze the existing building on her lot and erect a building of greater height. The defendant had received all governmental approvals required to pursue her project. There is no applicable statute or ordinance (other than those dealing with various approvals for zoning, building, etc.). After the defendant had torn down the existing building, she proceeded to excavate deeper. The defendant used shoring that met all local, state, and federal safety regulations, and the shoring was placed in accordance with those standards.

The plaintiff notified the defendant that cracks were developing in the building situated on the plaintiff's lot. The defendant took the view that any subsidence suffered by the plaintiff was due to the weight of the plaintiff's building, and correctly asserted that none would have occurred had the plaintiff's soil been in its natural state. The defendant continued to excavate.

The building on the plaintiff's lot did suffer extensive damage, requiring the expenditure of $750,000 to remedy the defects.

Which of the following is the best comment concerning the plaintiff's action to recover damages from the defendant?

A. The defendant is liable, because she removed necessary support for the plaintiff's lot.

B. The defendant cannot be held liable simply upon proof that support was removed, but may be held liable if negligence is proved.

C. Once land is improved with a building, the owner cannot invoke the common-law right of lateral support.

D. The defendant's only obligation was to satisfy all local, state, and federal safety regulations.

209. X-- A farmer owned Greenacre in fee simple. The small house on Greenacre was occupied, with the farmer's oral permission, rent-free, by the farmer's son, and the college classmate of the farmer's son. The farmer's son was then 21 years old.

The farmer, by properly executed instrument, conveyed Greenacre to "my beloved son, his heirs and assigns, upon the condition precedent that he earn a college degree by the time he reaches the age of 30. If, for any reason, he does not meet this condition, then Greenacre shall become the sole property of my beloved daughter, her heirs and assigns." At the time of conveyance, the farmer's son and the college classmate attended a college located several blocks from Greenacre. Neither had earned a college degree.

One week after the delivery of the deed to the farmer's son, the farmer's son recorded the deed and immediately told the college classmate that he was going to begin charging the college classmate rent since "I am now your landlord." There is no applicable statute.

The farmer's son and the college classmate did not reach an agreement, and the farmer's son served the appropriate notice to terminate whatever tenancy the college classmate had. The farmer's son then sought, in an appropriate action, to oust the college classmate.

Who should prevail?

A. The farmer's son, because the conveyance created a fee simple subject to divestment in the farmer's son.

B. The farmer's son, because the farmer's conveyance terminated the college classmate's tenancy.

C. The college classmate, because the farmer's permission to occupy preceded the farmer's conveyance to the farmer's son.

D. The college classmate, because the college classmate is a tenant of the farmer, not of the farmer's son.

210. Twenty years ago, a testator who owned Blackacre, a one-acre tract of land, duly delivered a deed of Blackacre "to the school district so long as it is used for school purposes." The deed was promptly and properly recorded. Five years ago, the testator died leaving his son as his only heir but, by his duly probated will, he left "all my Estate to my friend Fanny."

Last month, the school district closed its school on Blackacre and for valid consideration duly executed and delivered a quitclaim deed of Blackacre to a developer, who planned to use the land for commercial development. The developer has now brought an appropriate action to quiet title against the testator's son, Fanny, and the school district.

The only applicable statute is a provision in the jurisdiction's probate code which provides that any property interest which is descendible is devisable.

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

A. The developer.

B. The son.

C. Fanny.

D. The school district.

211. X-- A man was the owner of Blackacre, an undeveloped city lot. The man and a neighbor executed a written document in which the man agreed to sell Blackacre to the neighbor and the neighbor agreed to buy Blackacre from the man for $100,000; the document did not provide for an earnest money down payment. The man recorded the document, as authorized by statute.

The man orally gave the neighbor permission to park his car on Blackacre without charge prior to the closing. Thereafter, the neighbor frequently parked his car on Blackacre.

Another property came on the market that the neighbor wanted more than Blackacre. The neighbor decided to try to escape any obligation to the man.

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

If the man wins, it will be because

A. the neighbor's use of Blackacre for parking constitutes part performance.

B. general contract rules regarding consideration apply to real estate contracts.

C. the doctrine of equitable conversion applies.

D. the document was recorded.

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

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

The court should decide for

A. the doctor, because he has an easement by implication.

B. the doctor, because the easement appurtenant passed to him as a result of the buyer's deed to him.

C. the owner, because the buyer's easement in gross was not transferable.

D. the owner, because the buyer's deed failed expressly to transfer the right-of-way to the doctor.

213. A man owns his home, Blackacre, which was mortgaged to a bank by a duly recorded purchase money mortgage. Last year, the man replaced all of Blackacre's old windows with new windows. Each new window consists of a window frame with three inserts: regular windows, storm windows, and screens. The windows are designed so that each insert can be easily inserted or removed from the window frame without tools to adjust to seasonal change and to facilitate the cleaning of the inserts.

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

This year, the man has suffered severe financial reverses and has defaulted on his mortgage obligation to the bank and on his obligation to the vendor.

The bank brought an appropriate action to enjoin the vendor from its proposed repossession of the window inserts.

In the action, the court should rule for

A. The bank, because its mortgage was recorded first.

B. The bank, because the windows and screens, no matter their characteristics, are an integral part of a house.

C. The vendor, because the inserts are removable.

D. The vendor, because the availabilty of the old windows enables the bank to return Blackacre to its original condition.

214. The owner of Greenacre, a tract of land, mortgaged Greenacre to a bank to secure his preexisting obligation to the bank. The mortgage was promptly and properly recorded. The owner and a buyer then entered into a valid written contract for the purchase and sale of Greenacre, which provided for the transfer of "a marketable title, free of encumbrances." The contract did not expressly refer to the mortgage. Shortly after entering into the contract, the buyer found another property that much better suited her needs and decided to try to avoid her contract with the owner. When the buyer discovered the existence of the mortgage, she asserted that the title was encumbered and that she would not close. The owner responded by offering to provide for payment and discharge of the mortgage at the closing from the proceeds of the closing. The buyer refused to go forward, and the owner brought an appropriate action against her for specific performance.

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

A. the mortgage is not entitled to priority because it was granted for preexisting obligations.

B. the doctrine of equitable conversion supports the result.

C. The owner's arrangements for the payment of the mortgage fully satisfied the owner's obligation to deliver marketable title.

D. the existence of the mortgage was not the buyer's real reason for refusing to close.

215.X-- Eight years ago, a doctor, prior to moving to a distant city, conveyed Blackacre, an isolated farm, to his son by a quitclaim deed. His son paid no consideration. The son, who was 19 years old, without formal education, and without experience in business, took possession of Blackacre and operated the farm but neglected to record his deed. Subsequently, the doctor conveyed Blackacre to a buyer by warranty deed. The buyer, a substantial land and timber promoter, paid valuable consideration for the deed to him. He was unaware of the son's possession, his quitclaim deed, or his relationship to the doctor. The buyer promptly and properly recorded his deed and began removing timber from the land. Immediately upon learning of the buyer's actions, the son recorded his deed and brought an appropriate action to enjoin the buyer from removing the timber and to quiet title. The recording act of the jurisdiction provides:

"No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

In this action, the buyer should

A. prevail, because a warranty deed for valuable consideration takes priority over a quitclaim deed without consideration.

B. prevail, because the doctor's subsequent conveyance to the buyer revoked the gift to the son.

C. lose, because the son's possession charged the buyer with notice.

D. lose, because the equities favor the son.

216. X-- A financier was the owner of Greenacre, a large tract of land. The financier entered into a binding written contract with a buyer for the sale and purchase of Greenacre for $125,000. The contract required the financier to convey marketable record title.

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

Thereafter, but before the date scheduled for the closing, an old customer obtained and properly filed a final judgment against the financier in the amount of $1 million in a personal injury suit. A statute in the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

The recording act of the jurisdiction authorizes recording of contracts and also provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

There are no other relevant statutory provisions.

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

In this action, the judgment should be for

A. the financier, because in equity a purchaser takes free of judgment liens.

B. the financier, because the contract had been recorded.

C. the buyer, because the financier cannot benefit from the buyer's action in recording the contract.

D. the buyer, because the statute creating judgment liens takes precedence over the recording act.

217. A plaintiff and a defendant own adjacent parcels of land. On each of their parcels was a low-rise office building. The two office buildings were of the same height. Last year the defendant decided to demolish the low-rise office building on her parcel and to erect a new high-rise office building of substantially greater height on the parcel as permitted by the zoning and building ordinances. She secured all the governmental approvals necessary to pursue her project.

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

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

The court should

A. grant to the plaintiff the requested injunction.

B. award the plaintiff damages measured by the loss of rental value, but not an injunction.

C. grant judgment for the defendant, because she had secured all the necessary governmental approvals for the new building.

D. grant judgment for the defendant, because the plaintiff has no legal right to have sunshine continue to reach the windows of her building.

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

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

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

The buyer brought an appropriate action against the seller seeking cancellation of the deed and return of all monies paid.

Such action should be based upon a claim of

A. misrepresentation.

B. breach of the covenant of warranty.

C. failure of consideration.

D. mutual mistake.

219. X-- A little more than five years ago, a businessman completed construction of a single-family home located on Homeacre, a lot that the businessman owned. Five years ago, the businessman and a scientist entered into a valid five-year written lease of Homeacre that included the following language: "This house is rented as is, without certain necessary or useful items. The parties agree that the scientist may acquire and install such items as she wishes at her expense, and that she may remove them if she wishes at the termination of this lease." The scientist decided that the house needed, and she paid cash to have installed, standard-sized combination screen/storm windows, a freestanding refrigerator to fit a kitchen alcove built for that purpose, a built-in electric stove and oven to fit a kitchen counter opening left for that purpose, and carpeting to cover the plywood living room floor.

Last month, by legal description of the land, the businessman conveyed Homeacre to a new owner for $100,000. The new owner knew of the scientist's soon-expiring tenancy, but did not examine the written lease. As the lease expiration date approached, the new owner learned that the scientist planned to vacate on schedule, and learned for the first time that she claimed and planned to remove all of the above-listed items that she had installed.

The new owner promptly brought an appropriate action to enjoin the scientist from removing those items.

The court should decide that the scientist may remove

A. none of the items.

B. only the refrigerator.

C. all items except the carpet.

D. all of the items.

220. The owner in fee simple of Richacre, a large parcel of vacant land, executed a deed purporting to convey Richacre to her nephew. The owner told her nephew, who was then 19, about the deed and said that she would give it to him when he reached 21 and had received his undergraduate college degree. Shortly afterward the nephew searched the owner's desk, found and removed the deed, and recorded it. A month later, the nephew executed an instrument in the proper form of a warranty deed purporting to convey Richacre to his fiancee. He delivered the deed reciting that it was given in exchange for "$1 and other good and valuable consideration," and explained that to make it valid the fiancee must pay him $1. The fiancee, impressed and grateful, did so. Together, they went to the recording office and recorded the deed. The fiancee assumed the nephew had owned Richacre, and knew nothing about the nephew's dealing with the owner. Neither the owner's deed to the nephew nor the nephew's deed to his fiancee mentioned anything about any conditions.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Two years passed. The nephew turned 21, then graduated from college. At the graduation party, the owner was chatting with the fiancee and for the first time learned the foregoing facts.The age of majority in the jurisdiction is 18 years old.

The owner brought an appropriate action against the fiancee to quiet title to Richacre. The court will decide for

A. the owner, because the nephew's deed to the fiancee before the nephew satisfied the owner's conditions was void, because the fiancee had paid only nominal consideration.

B. the owner, because her deed to the nephew was not delivered.

C. the fiancee, because the nephew has satisfied the owner's oral conditions.

D. the fiancee, because the deed to her was recorded.

221. Several years ago, a carpenter purchased Goldacre, financing a large part of the purchase price by a loan from a bank that was secured by a mortgage. The carpenter made the installment payments on the mortgage regularly until last year. Then the carpenter persuaded a friend to buy Goldacre, subject to the mortgage to the bank. They expressly agreed that the friend would not assume and agree to pay the carpenter's debt to the bank. The carpenter's mortgage to the bank contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." However, without seeking the bank's consent, the carpenter conveyed Goldacre to the friend, the deed stating in pertinent part ". . . subject to a mortgage to the bank [giving details and recording data]."

The friend took possession of Goldacre and made several mortgage payments, which the bank accepted. Now, however, neither the friend nor the carpenter has made the last three mortgage payments. The bank has brought an appropriate action against the friend for the amount of the delinquent payments.

In this action, judgment should be for

A. the friend, because she did not assume and agree to pay the carpenter's mortgage debt.

B. the friend, because she is not in privity of estate with the bank.

C. the bank, because the carpenter's deed to the friend violated the due-on-sale clause.

D. the bank, because the friend is in privity of estate with the bank.

222. X-- A land owner owned in fee simple Lots 1 and 2 in an urban subdivision. The lots were vacant and unproductive. They were held as a speculation that their value would increase. The land owner died and, by his duly probated will, devised the residue of his estate (of which Lots 1 and 2 were part) to his sister for life with remainder in fee simple to his niece. The land owner's executor distributed the estate under appropriate court order, and notified the sister that future real estate taxes on Lots 1 and 2 were her responsibility to pay. Except for the statutes relating to probate and those relating to real estate taxes, there is no applicable statute.

The sister failed to pay the real estate taxes due for Lots 1 and 2. To prevent a tax sale of the fee simple, the niece paid the taxes and demanded that the sister reimburse her for same. When the sister refused, the niece brought an appropriate action against the sister to recover the amount paid.

In such action, the niece should recover

A. the amount paid, because a life tenant has the duty to pay current charges.

B. the present value of the interest that the amount paid would earn during the sister's lifetime.

C. nothing, because the sister's sole possession gave the right to decide whether or not taxes should be paid.

D. nothing, because the sister never received any income from the lots.

223. X-- A farmer and a rancher owned Greenacre, a large farm, in fee simple as tenants in common, each owning an undivided one-half interest. For five years the farmer occupied Greenacre and conducted farming operations. The farmer never accounted to the rancher for any income, but the farmer did pay all real estate taxes when the taxes were due and kept the buildings located on Greenacre insured against loss from fire, storm, and flood. The rancher lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price the rancher wanted.

The farmer died intestate, survived only by the farmer's sole heir. Thereafter, the sole heir occupied Greenacre but was inexperienced in farming operations. The result was a financial disaster. The sole heir failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At such sale the rancher was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of Greenacre.

Thereafter, the rancher instituted an appropriate action against the sole heir to quiet title in and to recover possession of Greenacre. The sole heir asserted all defenses available to her.

Except for the statutes related to real estate taxes and tax sales, there is no applicable statute.

In this lawsuit, the rancher is entitled to a decree quieting title so that the rancher is the sole owner in fee simple of Greenacre

A. because the rancher survived the farmer.

B. because the farmer's sole heir defaulted in the obligations undertaken by the farmer.

C. unless the farmer's sole heir pays the rancher one-half of the reasonable market value of Greenacre.

D. unless the farmer's sole heir pays the rancher one-half of the amount the rancher paid for the tax deed.

224. A landowner owned Greenacre, a tract of land, in fee simple. The landowner entered into a valid written agreement with a purchaser under which the landowner agreed to sell and the purchaser agreed to buy Greenacre by installment purchase. The contract stipulated that the landowner would deliver to the purchaser, upon the payment of the last installment due, "a warranty deed sufficient to convey the fee simple." The contract contained no other provision that could be construed as referring to title.

The purchaser entered into possession of Greenacre. After making 10 of the 300 installment payments obligated under the contract, the purchaser discovered that there was outstanding a valid and enforceable mortgage on Greenacre, securing the payment of debt in the amount of 25% of the purchase price the purchaser had agreed to pay. There was no evidence that the landowner had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of the landowner. The value of Greenacre now is four times the amount on the debt secured by the mortgage.

The purchaser quit possession of Greenacre and demanded that the landowner repay the amounts the purchaser had paid under the contract. After the landowner refused the demand, the purchaser brought an appropriate action against the landowner to recover damages for the landowner's alleged breach of the contract.

In such action, should damages be awarded to the purchaser?

A. No, because the time for the landowner to deliver marketable title has not arrived.

B. No, because the purchaser assumed the risk by taking possession.

C. Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.

D. Yes, because the risk of loss assumed by the purchaser in taking possession relates only to physical loss.

225. X-- A landowner owned Blackacre in fee simple and conveyed Blackacre to a teacher by warranty deed. An adjoining owner asserted title to Blackacre and brought an appropriate action against the teacher to quiet title to Blackacre. The teacher demanded that the landowner defend the teacher's title under the deed's covenant of warranty, but the landowner refused. The teacher then successfully defended at her own expense. The teacher brought an appriopriate action against the landowner to recover the teacher's expenses incurred in defending against the adjoining owner's action to quiet title to Blackacre.

In this action, the court should decide for

A. the teacher, because in effect it was the landowner's title that was challenged.

B. the teacher, because the landowner's deed to her included the covenant of warranty.

C. the landowner, because the title the landowner conveyed was not defective.

D. the landowner, because the adjoining owner may elect which of the landowner or the teacher to sue.

226. A landowner owned a large tract of land known as Peterhill. During the landowner's lifetime, the landowner conveyed the easterly half (East Peterhill), situated in one municipality, to a farmer, and the westerly half (West Peterhill), situated in a different municipality, to a teacher. Each of the conveyances, which were promptly and properly recorded, contained the following language:

The parties agree for themselves and their heirs and assigns that the premises herein conveyed shall be used only for residential purposes; that each lot created within the premises herein conveyed shall contain not less than five acres; and that each lot shall have not more than one single-family dwelling. This agreement shall bind all successor owners of all or any portion of Peterhill and any owner of any part of Peterhill may enforce this covenant.

After the landowner's death, the farmer desired to build houses on one-half acre lots in the East Peterhill tract as authorized by current applicable zoning and building codes in its municipality. The area surrounding East Peterhill in the municipality was developed as a residential community with homes built on one-half acre lots. West Peterhill was in a residential area covered by the other municipality's zoning code, which allowed residential development only on five-acre tracts of land.

In an appropriate action brought by the teacher to enjoin the farmer's proposed construction on one-half acre lots, the court will find the quoted restriction to be

A. invalid, because of the change of circumstance in the neighborhood.

B. invalid, because it conflicts with the applicable zoning code.

C. valid, but only so long as the original grantees from the landowner own their respective tracts of Peterhill.

D. valid, because the provision imposed an equitable servitude.

227. A man owns Townacres in fee simple, and a woman owns the adjoining Greenacres in fee simple. The man has kept the lawns and trees on Townacres trimmed and neat. The woman "lets nature take its course" at Greenacres. The result on Greenacres is a tangle of underbrush, fallen trees, and standing trees that are in danger of losing limbs. Many of the trees on Greenacres are near Townacres. In the past, debris and large limbs have been blown from Greenacres onto Townacres. By local standards Greenacres is an eyesore that depresses market values of real property in the vicinity, but the condition of Greenacres violates no applicable laws or ordinances.

The man demanded that the woman keep the trees near Townacres trimmed. The woman refused.

The man brought an appropriate action against the woman to require her to abate what the man alleges to be a nuisance. In the lawsuit, the only issue is whether the condition of Greenacres constitutes a nuisance.

The strongest argument that the man can present is that the condition of Greenacres

A. has an adverse impact on real estate values.

B. poses a danger to the occupants of Townacres.

C. violates community aesthetic standards.

D. cannot otherwise be challenged under any law or ordinance.

228. A landlord leased an apartment to a tenant by written lease for two years ending on the last day of a recent month. The lease provided for $700 monthly rental. The tenant occupied the apartment and paid the rent for the first 15 months of the lease term, until he moved to a new job in another city. Without consulting the landlord, the tenant moved a friend into the apartment and signed an informal writing transferring to the friend his "lease rights" for the remaining nine months of the lease. The friend made the next four monthly $700 rental payments to the landlord. For the final five months of the lease term, no rent was paid by anyone, and the friend moved out with three months left of the lease term. The landlord was on an extended trip abroad, and did not learn of the default and the vacancy until last week. The landlord sued the tenant and the friend, jointly and severally, for $3,500 for the last five months' rent.

What is the likely outcome of the lawsuit?

A. Both the tenant and the friend are liable for the full $3,500, because the tenant is liable on privity of contract and the friend is liable on privity of estate as assignee.

B. The friend is liable for $1,400 on privity of estate, which lasted only until he vacated, and the tenant is liable for $2,100 on privity of contract and estate for the period after the friend vacated.

C. The friend is liable for $3,500 on privity of estate and the tenant is not liable, because the landlord's failure to object to the friend's payment of rent relieved the tenant of liability.

D. The tenant is liable for $3,500 on privity of contract and the friend is not liable, because a sublessee does not have personal liability to the original landlord.

229. A landowner executed an instrument in the proper form of a deed, purporting to convey his land to a friend. The landowner handed the instrument to the friend, saying, "This is yours, but please do not record it until after I am dead. Otherwise, it will cause me no end of trouble with my relatives." Two days later, the landowner asked the friend to return the deed to him because he had decided that he should devise the land to the friend by will rather than by deed. The friend said that he would destroy the deed and a day or so later falsely told the landowner that the deed had been destroyed. Six months later, the landowner, who had never executed a will, died intestate, survived by a daughter as his sole heir at law. The day after the landowner's death, the friend recorded the deed from him. As soon as the daughter discovered this recording and the friend's claim to the land, she brought an appropriate action against the friend to quiet title to the land.

For whom should the court hold?

A. The daughter, because the death of the landowner deprived the subsequent recordation of any effect.

B. The daughter, because the friend was dishonest in reporting that he had destroyed the deed.

C. The friend, because the deed was delivered to him.

D. The friend, because the deed was recorded by him.

230. X-- A landowner conveyed his land by quitclaim deed to his daughter and son "as joint tenants in fee simple." The language of the deed was sufficient to create a common-law joint tenancy, which is unmodified by statute. The daughter then duly executed a will devising her interest in the land to a friend. Then the son duly executed a will devising his interest in the land to a cousin. The son died; then the daughter died. Neither had ever married. The daughter's friend and the cousin survived.

After both wills have been duly probated, who owns what interest in the land?

A. The cousin owns the land in fee simple.

B. The daughter's friend and the cousin own equal shares as joint tenants.

C. The daughter's friend and the cousin own equal shares as tenants in common.

D. The daughter's friend owns the land in fee simple.

231. A creditor received a valid judgment against a debtor and promptly and properly filed the judgment in the county. Two years later, the debtor purchased land in the county and promptly and properly recorded the warranty deed to it. Subsequently, the debtor borrowed $30,000 from his aunt, signing a promissory note for that amount, which note was secured by a mortgage on the land. The mortgage was promptly and properly recorded. The aunt failed to make a title search before making the loan. The debtor made no payment to the creditor and defaulted on the mortgage loan from his aunt. A valid judicial foreclosure proceeding was held, in which the creditor, the aunt, and the debtor were named parties. A dispute arose as to which lien has priority. A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." A second statute of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

Who has the prior lien?

A. The aunt, because a judgment lien is subordinate to a mortgage lien.

B. The aunt, because she is a mortgagee under a purchase money mortgage.

C. The creditor, because its judgment was filed first.

D. The creditor, because the aunt had a duty to make a title search of the property.

232. A rancher and a farmer own adjacent tracts of rural land. For the past nine years, the rancher has impounded on her land the water that resulted from rain and melting snow, much of which flowed from the farmer's land. The rancher uses the water in her livestock operation. Recently, the farmer increased the size of his farming operation and built a dam on his land near the boundary between the two tracts. Because of the dam, these waters no longer drain from the farmer's land onto the rancher's land. There is no applicable statute. The rancher sued the farmer to restrain him from interfering with the natural flow of the water onto her land.

Who is likely to prevail?

A. The farmer, because he has the right to use all of the water impounded on his land.

B. The farmer, because the rancher's past impoundment of water estops her from asserting the illegality of the farmer's dam.

C. The rancher, because she has acquired riparian rights to use the water.

D. The rancher, because the farmer is estopped to claim all of the surface water on his land.

233. A buyer validly contracted in writing to buy land from a seller. The contract had no contingencies and was silent as to risk of loss if there were damage to, or destruction of, property improvements between contract and closing, and as to any duty to carry insurance. As soon as the parties signed the contract, the seller (who had already moved out) canceled her insurance covering the land. The buyer did not know this and did not obtain insurance. A few days later, three weeks before the agreed closing date, the building on the land was struck by lightning and burned to the ground. There is no applicable statute. In an appropriate action, the buyer asserted the right to cancel the contract and to recover his earnest money. The seller said the risk of fire loss passed to the buyer before the fire, so the buyer must perform.

If the seller prevails, what is the most likely explanation?

A. Once the parties signed the contract, only the buyer had an insurable interest and so could have protected against this loss.

B. The buyer's constructive possession arising from the contract gave him the affirmative duty of protecting against loss by fire.

C. The seller's cancellation of her casualty insurance practically construed the contract to transfer the risk of loss to the buyer.

D. Upon execution of the contract, the buyer became the equitable owner of the land under the doctrine of equitable conversion.

234. An uncle was the record title holder of a vacant tract of land. He often told friends that he would leave the land to his nephew in his will. The nephew knew of these conversations. Prior to the uncle's death, the nephew conveyed the land by warranty deed to a woman for $10,000. She did not conduct a title search of the land before she accepted the deed from the nephew. She promptly and properly recorded her deed. Last month, the uncle died, leaving the land to the nephew in his duly probated will. Both the nephew and the woman now claim ownership of the land. The nephew has offered to return the $10,000 to the woman.

Who has title to the land?

A. The nephew, because at the time of the deed to the woman, the uncle was the owner of record.

B. The nephew, because the woman did not conduct a title search.

C. The woman, because of the doctrine of estoppel by deed.

D. The woman, because she recorded her deed prior to the uncle's death.

235. An uncle was the record title holder of a vacant tract of land. He often told friends that he would leave the land to his nephew in his will. The nephew knew of these conversations. Prior to the uncle's death, the nephew conveyed the land by warranty deed to a woman for $10,000. She did not conduct a title search of the land before she accepted the deed from the nephew. She promptly and properly recorded her deed. Last month, the uncle died, leaving the land to the nephew in his duly probated will. Both the nephew and the woman now claim ownership of the land. The nephew has offered to return the $10,000 to the woman.

Who has title to the land?

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B. The nephew, because the woman did not conduct a title search.

C. The woman, because of the doctrine of estoppel by deed.

D. The woman, because she recorded her deed prior to the uncle's death.

236. On a parcel of land immediately adjacent to a woman's 50-acre farm, a public school district built a large consolidated high school that included a 5,000-seat lighted athletic stadium. The woman had objected to the district's plans for the stadium and was particularly upset about nighttime athletic events that attracted large crowds and that, at times, resulted in significant noise and light intensity levels. On nights of athletic events, the woman and her family members wore earplugs and could not sleep or enjoy a quiet evening until after 10 p.m. In addition, light from the stadium on those nights was bright enough to allow reading a newspaper in the woman's yard. Which of the following doctrines would best support the woman's claim for damages?

A. Constructive eviction.

B. Private nuisance.

C. Public nuisance.

D. Waste.

237. A man borrowed money from a bank and executed a promissory note for the amount secured by a mortgage on his residence. Several years later, the man sold his residence. As provided by the contract of sale, the deed to the buyer provided that the buyer agreed "to assume the existing mortgage debt" on the residence. Subsequently, the buyer defaulted on the mortgage loan to the bank, and appropriate foreclosure proceedings were initiated. The foreclosure sale resulted in a deficiency.

There is no applicable statute. Is the buyer liable for the deficiency?

A. No, because even if the buyer assumed the mortgage, the seller is solely responsible for any deficiency.

B. No, because the buyer did not sign a promissory note to the bank and therefore has no personal liability.

C. Yes, because the buyer assumed the mortgage and therefore became personally liable for the mortgage loan and any deficiency.

D. Yes, because the transfer of the mortgage debt to the buyer resulted in a novation of the original mortgage and loan and rendered the buyer solely responsible for any deficiency.

238. A seller owned a single family house. A buyer gave the seller a signed handwritten offer to purchase the house. The offer was unconditional and sufficient to satisfy the statute of frauds, and when the seller signed an acceptance an enforceable contract resulted.

The house on the land had been the seller's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction. Two weeks after the parties had entered into their contract, one week after the buyer had obtained a written mortgage lending commitment from a lender, and one week before the agreed-upon closing date, the house was struck by lightning and burned to the ground. The loss was not insured, because three years earlier, the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. The buyer declared the contract voided by the fire, but the seller asserted a right to enforce the contract despite the loss.

There is no applicable statute.

If a court finds for the seller, what is the likely reason?

A. The contract was construed against the buyer, who drafted it.

B. The lender's written commitment to make a mortgage loan to the buyer made the contract of sale fully binding on the buyer.

C. The risk of loss falls on the party in possession, and constructive possession passed to the buyer on the contract date.

D. The risk of loss passed to the buyer on the contract date under the doctrine of equitable conversion.

239. A farmer borrowed $100,000 from a bank and gave the bank a promissory note secured by a mortgage on the farm that she owned. The bank promptly and properly recorded the mortgage, which contained a due-on-sale provision.

A few years later, the farmer borrowed $5,000 from a second bank and gave it a promissory note secured by a mortgage on her farm. The bank promptly and properly recorded the mortgage.

Subsequently, the farmer defaulted on her obligation to the first bank, which then validly accelerated the debt and instituted nonjudicial foreclosure proceedings as permitted by the jurisdiction. The second bank received notice of the foreclosure sale but did not send a representative to the sale. At the foreclosure sale, a buyer who was not acting in collusion with the farmer outbid all other bidders and received a deed to the farm.

Several months later, the original farmer repurchased her farm from the buyer, who executed a warranty deed transferring the farm to her. After the farmer promptly and properly recorded that deed, the second bank commenced foreclosure proceedings on the farm. The farmer denied the validity of the second bank's mortgage.

Does the second bank continue to have a valid mortgage on the farm?

A. Yes, because of the doctrine of estoppel by deed.

B. Yes, because the original owner reacquired title to the farm.

C. No, because the purchase at the foreclosure sale by the buyer under these facts eliminated the second bank's junior mortgage lien.

D. No, because of the due-on-sale provision in the farmer's mortgage to the first bank.

240.X-- Six years ago, a landlord and a tenant entered into a 10-year commercial lease of land. The written lease provided that, if a public entity under the power of eminent domain condemned any part of the land, the lease would terminate and the landlord would receive the entire condemnation award. Thereafter, the city condemned approximately two-thirds of the land.

The tenant notified the city and the landlord that an independent appraisal of the value of the tenant's possessory interest established that it substantially exceeded the tenant's obligation under the lease and that the tenant was entitled to share the award. The appraisal was accurate.

In an appropriate action among the landlord, the tenant, and the city as to the right of the tenant to a portion of the condemnation award, for whom will the court likely find?

A. The landlord, because the condemnation superseded and canceled the lease.

B. The landlord, because the parties specifically agreed as to the consequences of condemnation.

C. The tenant, because the landlord breached the landlord's implied warranty of quiet enjoyment.

D. The tenant, because otherwise the landlord would be unjustly enriched.

241. A niece inherited vacant land from her uncle. She lived in a distant state and decided to sell the land to a colleague who was interested in purchasing the land as an investment. They orally agreed upon a price, and, at the colleague's insistence, the niece agreed to provide him with a warranty deed without any exceptions. The price was paid, the warranty deed was delivered, and the deed was promptly and properly recorded. Neither the niece nor the colleague had, at that point, ever seen the land. After recording the deed, the colleague visited the land for the first time and discovered that it had no access to any public right-of-way and that none of the surrounding lands had ever been held in common ownership with any previous owner of the tract of land.

The colleague sued the niece for damages.

For whom will the court find?

A. The colleague, because lack of access makes title unmarketable.

B. The colleague, because the covenants of warranty and quiet enjoyment in the deed were breached.

C. The niece, because no title covenants were breached.

D. The niece, because the agreement to sell was oral.

242. A landowner mortgaged her land to a nationally chartered bank as security for a loan. The mortgage provided that the bank could, at its option, declare the entire loan due and payable if all or any part of the land, or an interest therein, was sold or transferred without the bank's prior written consent. Subsequently, the landowner wanted to sell the land to a neighbor by an installment land contract, but the bank refused to consent. The neighbor's credit was good, and all mortgage payments to the bank were fully current.

The landowner and the neighbor consulted an attorney about their proposed transaction, their desire to complete it, and the bank's refusal to consent. What would the attorney's best advice be?

A. Even if the landowner transfers to the neighbor by land contract, the bank may accelerate the debt and foreclose if the full amount is not paid.

B. The due-on-sale clause is void as an illegal restraint on alienation of the fee simple, so they may proceed.

C. By making the transfer in land contract form, the landowner will prevent enforcement of the due-on-sale clause if the mortgage payments are kept current.

D. The due-on-sale clause has only the effect that the proposed transfer will automatically make the neighbor personally liable on the debt, whether or not the neighbor specifically agrees to assume it.

243. A landlord and a tenant orally agreed to a commercial tenancy for a term of six months beginning on July 1. Rent was to be paid by the first day of each month, and the tenant paid the first month's rent at the time of the agreement.

When the tenant arrived at the leased premises on July 1, the tenant learned that the previous tenant had not vacated the premises at the end of her lease term on May 31 and did not intend to vacate. The tenant then successfully sued the previous tenant for possession. The tenant did not inform the landlord of the eviction action until after the tenant received possession.

The tenant then sued the landlord, claiming damages for that portion of the lease period during which the tenant was not in possession.

If the court finds for the landlord, what will be the most likely explanation?

A. By suing the previous tenant for possession, the tenant elected that remedy in lieu of a suit against the landlord.

B. The landlord had delivered the legal right of possession to the tenant.

C. The tenant failed to timely vacate as required to sue for constructive eviction.

D. The tenant had not notified the landlord before bringing the eviction action.

244. Six months ago, a man told his cousin that he would give her his farm as a gift on her next birthday. The cousin then entered into a valid written contract to sell the farm to an investor with the closing to take place "one week after [the cousin's] next birthday."

The man failed to convey the farm to the cousin on her birthday. One week after the cousin's birthday, on the intended closing date, the investor first learned of the cousin's inability to convey the farm because the man had breached his promise. The investor considered suing the cousin but realized that she could not compel the cousin to convey the farm because it was still owned by the man.

Two weeks after the cousin's birthday, the man died. Under his valid will, the man devised the farm to the cousin. Within a week, the executor of the man's estate gave the cousin an executor's deed to the farm in compliance with state law. The investor promptly learned of this transfer and demanded that the cousin convey the farm to her. The cousin refused.

The investor sued the cousin for specific performance.

Who will likely prevail?

A. The cousin, because the contract to convey was not signed by the legal owner of the farm as of the date of the contract and was therefore void.

B. The cousin, because she received title by devise rather than by conveyance.

C. The investor, because the contract to convey merged into the executor's deed to the cousin.

D. The investor, because the contract to convey remained enforceable by her within a reasonable period of time after the proposed closing date.

245. A landowner borrowed $100,000 from a lender and executed a valid mortgage on a commercial tract of land to secure the debt. The lender promptly recorded the mortgage. A year later, the landowner conveyed the same tract to a developer by a deed that expressly stated that the conveyance was subject to the mortgage to the lender and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration for the purchase. The mortgage was properly described in the deed, and the deed was properly executed by the landowner; however, because there was no provision or place in the deed for the developer to sign, he did not do so. The developer promptly recorded the deed.

The developer made the monthly mortgage payments of principal and interest for six payments but then stopped payments and defaulted on the mortgage obligation. The lender properly instituted foreclosure procedures in accordance with the governing law. After the foreclosure sale, there was a $10,000 deficiency due to the lender. Both the landowner and the developer had sufficient assets to pay the deficiency.

There is no applicable statute in the jurisdiction other than the statute relating to foreclosure proceedings.

At the appropriate stage of the foreclosure action, which party will the court decide is responsible for payment of the deficiency?

A. The developer, because he accepted delivery of the deed from the landowner and in so doing accepted the terms and conditions of the deed.

B. The developer, because he is estopped by his having made six monthly payments to the lender.

C. The landowner, because the developer was not a signatory to the deed.

D. The landowner, because he was the maker of the note and the mortgage, and at most the developer is liable only as a guarantor of the landowner's obligation.

250. X-- A man decided to give his farm to his nephew. The man took a deed to his attorney and told the attorney to deliver the deed to the nephew upon the man's death. The man also told the attorney to return the deed to him if he asked. None of these instructions to the attorney were in writing, and the deed was not recorded. The man then e-mailed the nephew informing him of the arrangement.

Shortly thereafter, the nephew died testate. In his will, he devised the farm to his daughter. Several years later, the man died intestate, survived by two sons. The nephew's daughter immediately claimed ownership of the farm and demanded that the attorney deliver the deed to her.

Must the attorney deliver the deed to the daughter?

A. No, because a gratuitous death escrow is void unless supported by a written contract.

B. No, because the man never placed the deed beyond his control.

C. Yes, because the death of the nephew rendered the gratuitous death escrow irrevocable by the man.

D. Yes, because the deed to the nephew was legally delivered when the man took it to his attorney.

251. X-- Ten years ago, a seller sold land to a buyer, who financed the purchase price with a loan from a bank that was secured by a mortgage on the land. The buyer purchased a title insurance policy running to both the buyer and the bank, showing no liens on the property other than the buyer's mortgage to the bank. Eight years ago, the buyer paid the mortgage in full.

Seven years ago, the buyer sold the land to an investor by a full covenant and warranty deed without exceptions.

Six years ago, the investor gave the land to a donee by a quitclaim deed.

Last year, the donee discovered an outstanding mortgage on the land that predated all of these conveyances. As a result of a title examiner's negligence, this mortgage was not disclosed in the title insurance policy issued to the buyer and the bank.

Following this discovery, the donee successfully sued the buyer to recover the amount of the outstanding mortgage.

If the buyer sues the title insurance company to recover the amount he paid to the donee, is he likely to prevail?

A. No, because the buyer conveyed the land to an investor.

B. No, because the title insurance policy lapsed when the buyer paid off the bank's mortgage.

C. Yes, because the d.

D. Yes, because the buyer was successfully sued by a donee and not by a bona fide purchaser for value.

252. Under the terms of his duly probated will, a testator devised his house to his "grandchildren in fee simple" and the residue of his estate to his brother. The testator had had two children, a son and a daughter, but only the daughter survived the testator. At the time of the testator's death, the daughter was 30 years old and had two minor children (grandchildren of the testator) who also survived the testator. A third grandchild of the testator, who was the child of the testator's predeceased son, had been alive when the testator executed the will, but had predeceased the testator. Under the applicable intestate succession laws, the deceased grandchild's sole heir was his mother. A statute of the jurisdiction provides as follows: "If a devisee, including a devisee of a class gift, who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will or fails to survive the testator, the issue of such deceased devisee shall take the deceased's share under the will, unless the will expressly provides that this statute shall not apply. For this purpose, words of survivorship, such as 'if he survives me,' are a sufficient expression that the statute shall not apply."

Who now owns the house?

A. The testator's brother.

B. The testator's two surviving grandchildren.

C. The testator's two surviving grandchildren and all other grandchildren who are born to the testator's daughter.

D. The testator's two surviving grandchildren and the deceased grandchild's mother.

253. A man conveyed his house to his wife for life, remainder to his only child, a son by a previous marriage. Thereafter, the man died, devising his entire estate to his son. The wife later removed a light fixture in the dining room of the house and replaced it with a chandelier that was one of her family heirlooms. She then informed her nephew and her late husband's son that after her death, the chandelier should be removed from the dining room and replaced with the former light fixture, which she had stored in the basement.

The wife died and under her will bequeathed her entire estate to her nephew. She also named the nephew as the personal representative of her estate. After the nephew, in his capacity as personal representative, removed the chandelier and replaced it with the original light fixture shortly after the wife's death, the son sued to have the chandelier reinstalled.

Who will likely prevail?

A. The nephew, because he had the right to remove the chandelier within a reasonable time after the wife's death.

B. The nephew, because of the doctrine of accession.

C. The son, because the chandelier could not be legally removed after the death of the wife.

D. The son, because a personal representative can remove only trade fixtures from real property.