NAILING THE BAR™

333 Multiple-Choice Questions for First-Year Law Students

Tim Tyler, Ph.D.
Attorney at Law

NAILING THE BAR

333 Multiple-Choice Questions for First-Year Law Students

[Hyperlinked eBook]

Tim Tyler, Ph.D.
Attorney at Law

Published by Practical Step Press

--www.PracticalStepPress.com--

Copyright © 2014 by Practical Step Press. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording or any information storage or retrieval system, without permission in writing from the publisher. Printed in the United States of America.

ISBN 978-1-936160-34-1

Copyright © Practical Step Press, 2014. All rights reserved.

Introduction

This eBook provides 333 multiple-choice questions divided into 10 one-hour practice tests. The questions cover the subjects of **contracts**, **UCC** (Articles I and II), **torts**, **crimes** and **criminal procedure**. The UCC law tested here may also be called "**Sales**" at some law schools.

The ten practice tests are separated by area of law, and subject matter within those areas. The first 9 practice tests cover **Common Law Contracts, UCC (Articles 1 & 2), Torts,** and **Crimes**, which are always taught in the first year of law school. The last practice test, Test #10, covers **Criminal Procedure**, which is often, but not always taught in the first year of law school.

In addition the book provides tips, insights and winning strategies for success on multiple-choice exams in general and the California First Year Law Students Exam (FYLSX or "Baby Bar") in particular.

The questions presented here are in the same style that has been used by the FYLSX for many years, and the first 9 practice tests cover the same four areas of law that are tested on the FYLSX: **Common Law Contracts, UCC (Articles 1 & 2), Torts,** and **Crimes**. These areas of law are also tested on the Multi-State Bar Exam (MBE).

However, none of the questions presented here are from actual FYLSX or MBE exams. We created them all to reflect the type of questions, legal issues, and subject areas tested on the FYLSX and MBE over the past years without actually duplicating any of the actual questions presented on the FYLSX or MBE or in any other source.

SCORING SHEETS. For each 33-question test you will need to download and print a Practice Scoring Sheet. The Practice Scoring Sheet is the "computer readable" sheet with "bubbles" you are to fill in to indicate your answers. The Practice Scoring Sheets can be obtained from the Practical Step Press website at this link:

Practice Scoring Sheet.

MARKING THE BOOK. You can "mark" this eBook by using the "Sticky Note" and "highlight" features of Adobe Reader. Download the latest version of Adobe Reader for free from the web. We recommend downloading directly from Adobe at their website: **www.Adobe.com**

Then just select "COMMENT" from the tool bar at the top of the screen and the "Sticky Note" and "highlight" icons. Click on the document anywhere and add your comments and markings that way. A list of all your comments and highlights will be shown on the sidebar to the right. You can save your annotations and leap to any of them by clicking on them. Clear the sidebar by clicking on "COMMENT" again.

HYPERLINKS TO THE WEB: Use the web hyperlinks embedded in this eBook to quickly access referenced materials on the web. To return quickly to this eBook use -

- Alt + Tab on a PC or
- Command + Tab on a Mac (the Command key is the ⌘ key).

Copyright © Practical Step Press, 2014. All rights reserved.

HYPERLINK YOUR LAW LIBRARY: This schedule has embedded hyperlinks to the six eBooks listed below in the "Answers and Explanations" following each practice exam.

1. **Simple Contracts & UCC Outline (O-1e)**
2. **Simple Torts Outline (O-2e)**
3. **Simple Crimes Outline (O-3e)**
4. **Simple Criminal Procedure Outline (O-4e)**
5. **Simple Real Property Outline (O-8e)**
6. **Simple Remedies Outline (O-10e)**

If you have any of these eBooks put them in the same folder with this eBook. Then you can immediately leap to the referenced materials by just clicking on the links. And you can annotate both this eBook and your other eBooks by using the "sticky note" and "highlight" features of Adobe Reader.

LAW LIBRARY FOLDER STRUCTURE. You can put any or all of these eBooks and this eBook in any folder with any name. That law library folder can have any name but the FREE Study Schedule and other eBook files must have the following names:

1. O-1e.pdf
2. O-2e.pdf
3. O-3e.pdf
4. O-4e.pdf
5. O-8e.pdf
6. O-10e.pdf
7. MQ1e.pdf

These eBooks have all been updated with the hyperlinks. If you are using older eBook versions with earlier publication dates (prior to 2014) the links may be misaligned by a page or two. However the hyperliuks should still get you close to the referenced materials.

This can be a tremendous time-saver that allows you to immediately research areas of law where you are may be confused or uncertain.

If you link from this eBook to your other eBooks this eBook will close But you can return to this eBook by using:

- Alt + ← on a PC (hold down Alt and hit left arrow) or
- Command + ← on a Mac (hold down the ⌘ key and hit left arrow).

If you move about within any linked eBook and want to return to this FREE Study Schedule you may have to enter this more than once to get back to where you started if you moved around to different outline pages.

These same books are available in paper form at the following links:

1. **Simple Contracts & UCC Outline (O-1), ISBN 978-1-936160-06-8**
2. **Simple Torts Outline (O-2), ISBN 978-1-936160-07-5**
3. **Simple Crimes Outline (O-3), ISBN 978-1-936160-08-2**
4. **Simple Criminal Procedure Outline (0-4), ISBN 978-1-936160-24-2**
5. **Simple Real Property Outline (O-8), ISBN 978-1-936160-28-0**
6. **Simple Remedies Outline (O-10), ISBN 978-1-936160-30-3**

Copyright © Practical Step Press, 2014. All rights reserved.

Table of Contents

Copyright © Practical Step Press, 2014. All rights reserved.

Copyright © Practical Step Press, 2014. All rights reserved.

Chapter 1: Multiple-Choice Exam Overview

The questions presented here reflect the type of questions, structure and scoring used on California First-Year Law Student Exam (FYLSX).

However, on the FYLSX questions from several areas of law are mixed together, while here the subject matter is separated by both area of law and categories of issues within those areas of law.

Also, the FYLSX presents students with 100 multiple-choice questions to be answered in 3 hours, while the 10 tests presented here each have 33 questions to be answered in only 1 hour.

It is possible your law professor could present you with multiple-choice questions that are different from the questions presented here. But in general that is not going to happen at all. The reason is that it is very difficult and very time-consuming to create a multiple-choice law exam. And most law professors are simply too lazy to do that.

1. Question Structure

Each of the multiple-choice questions here presents a "fact pattern" and a "CALL" that asks a question about the given facts and 4 "possible answers" or "answer choices" labeled A, B, C or D. Students are to indicate the "best" answer by filling in the "oval" or "bubble" next to it on a computer readable Practice Scoring Sheet with a number "2" pencil.

Most of the CALLS ask you to choose the "best answer", but some questions ask you to choose the "worst answer". In that case the "worst answer" given the fact pattern is the "best answer" for you to choose.

Some of the questions present 3-4 "assertions" or "facts" and the "possible answers" concern which of the assertions or facts are correct (or incorrect).

The unique feature that makes Bar questions different from other multiple-choice exams, and far more difficult, is that you are to select the "best" answer instead of a "correct" answer. In fact,

- For some questions there are **no entirely correct answers** at all;
- For other questions there are **multiple correct answers**;
- Many questions provide **two correct answers that are only slightly different**; and
- The questions must be answered in such a limited time period **budgeting time is critical**.

On the FYLSX some questions are **not actually scored**. Possibly these are some of the questions that have no correct answer or multiple correct answers. Possibly students are intentionally confronted with impossible questions to answer simply to test their ability to function under that type of stress.

In any event, you must anticipate being confronted with some questions that are **impossible to answer correctly!** When that happens you must simply choose one of the **best answer** from the given possibilities and move on!

The most important thing to understand in this regard is – **do not get mentally paralyzed by an impossible question**.

Copyright © Practical Step Press, 2014. All rights reserved.

2. Subject Matter Tested

The questions presented in this book test the following areas of law and they are divided by issue:

- **Common Law Contracts, UCC (Articles 1 & 2);**
- **Torts;**
- **Crimes and Criminal Procedure;**

The subject areas tested on the FYLSX are from these areas of law, and the issues and areas of law tested are all mixed together:

- **Common Law Contracts, UCC (Articles 1 & 2);**
- **Torts;** and
- **Crimes** (not Criminal Procedure).

3. Subject Matter NOT Tested

Many, many of the things you have studied in law school, learned in law school, and were told about in law school, and which may be very important for you to be an effective attorney are NOT tested on the FYLSX! So you should not waste time reviewing and fretting about much of what occupied your time in law school when you are preparing for those exams.

Partly this is because the "multiple-choice question" format makes it difficult or impossible to test certain legal or equitable concepts. And partly it is a decision made by the Bar examiners.

First, those exams WILL test you on your knowledge of **common law** and **broadly adopted modern rules** of law (contracts, torts and crimes) and the **UCC rules** to the extent they change common law contract rules.

But the FYLSX does NOT test you directly on the following:

- **Case Law**. You are never asked questions about specific cases. You are tested on the bright line rules that arose out of specific cases (e.g. the "public figure" rule that resulted from *New York Times v. Sullivan*) but you will never be asked to identify the holdings of a particular case.
- **Historical Development of the Law.** You will never be asked about how the law developed historically (e.g. the development and relationship between Courts of Law and Equity).
- **Antiquated and Abandoned Legal Concepts.** You will only be tested on your knowledge of the law as it currently exists.
- **Broad Legal Concepts.** The multiple-choice format of the FYLSX presents a fact pattern followed by answer choices relevant to those given facts. That approach prevents them from directly testing broad legal concepts. In other words, you will not be asked questions such as, "Which of the following statements most accurately presents the modern view of accomplice liability?"
- **Model Rules and Restatements.** The FYLSX does NOT test anything concerning the "**Model Penal Code**", "**Restatement of Torts**", or "**Restatement of Contracts**". So any answer that expressly refers to those is a wrong answer.

The end result of this is that multiple-choice questions focus to a substantial extent on "legal trivia" or "factoids" and your ability to logically eliminate or "weed out" the worst answer choices that you have been given. And they do NOT test you directly on a large portion of the materials you have spent so much

Copyright © Practical Step Press, 2014. All rights reserved.

of your time studying. Your knowledge of those things will certainly help you answer some of the questions. But the questions themselves do not directly ask you about that particular knowledge.

4. Test Scoring

There is no penalty for wrong answers, so it is VERY IMPORTANT to answer all 33 questions in ONE HOUR. If you end the exam with questions unanswered, you are going to lose those points. But the "correct answers" are generally equally distributed between the four choices, so if you simply fill in answers for questions on the Practice Scoring Sheet randomly, you will, on average, pick up 4 more points!

If you are running out of time and absolutely must fill in some of the score sheet "bubbles" pick one of the answers at random. It really does not matter which one you choose.

The number of questions answered correctly on the FYLSX are called "raw scores" and those are "scaled" to produce some final score. This "scaling" process changes with every year and you have no control over it. So for all practical purposes the "raw score" is all you should be concerned with.

5. Required Performance Levels

The precise level of accuracy required of you on Bar exams varies. However, you typically must answer no less than 70% of the questions correctly to pass. And, it is quite possible for scores over 70% to be failing grades.

A **common false notion** is that you can pass t if you only answer 65% of the questions correctly. This is simply false most of the time. Generally you must answer at least 70% of the questions correctly to pass any Bar exam, and sometimes you must do even better than that.

Another **common false notion** is that if your score is over some magic level (e.g. over 85% correct) you will pass your Bar exams, no matter how badly you write answers to essay questions and other parts of the exam. This is also false in almost every case.

One way of looking at the exam is that a student must, at a bare minimum, be able to do the following:

Pick the right answer with certainty HALF of the time -	that gives you 50% right
Guess between two best answers a FOURTH of the time -	that gives you 12.5% right
Guess between three best answers the REST of the time -	that gives you 8.125% right
And if you add that up -	that gives you 70.625% right

This is the MINIMAL level of performance you have to achieve, slightly more than 70% of the answers correct. And there is no guarantee that even this will give you a passing score. But you can be almost certain anything less than this is going to result in failure.

Copyright © Practical Step Press, 2014. All rights reserved.

6. Take Good Pencils, Good Erasers and an Analog Watch!

Be sure to take about 5 new, sharpened #2 pencils with you to the exam! And be sure they have good, new erasers. Not those old pencils with erasers hard as a rock!

Pencils are always allowed, but you may find that pens, highlighters and even "post-it notes" may not be allowed in the exam room.

Also take a reliable analog watch. The Bar examiners are not going to let you look at a cell phone for obvious reasons! They have a clock on the wall where you take the exam, but don't depend on that. Get a cheap analog watch at the drug store. You can often get them for about $20.

It is amazing that at every exam there are a few law students who show up unprepared with no watch and one old pencil stub.

Copyright © Practical Step Press, 2014. All rights reserved.

Chapter 2: Two Critical Multiple-Choice Test Strategies

It should go without saying (but probably should be said anyway) that the basic thing you have to do to pass multiple-choice law exams is to study hard and know the principles of law being tested. The purpose of the test is to find if students know the law, and you simply cannot pass the exam if you do not.

Having said that, many, many students fail multiple-choice law exams like the FYLSX even though they studied very hard and knew the law in depth. In fact, some of the very best law students manage to fail these exams. The reason is that they did not master the TWO CRITICAL STRATEGIES. Those are:

- Budgeting Time, and
- Gaming the Questions.

These are TWO separate and distinct strategies. And you have to master both of them to pass multiple-choice law exams. And they have absolutely nothing to do with knowing the law being tested.

1. Budgeting Time

Multiple-choice law exams are "horse race" exams! At the beginning the sealed test booklet will be sitting in front of you, and you are not to open it. Then the proctors will announce, "You may now open your test booklet and begin!"

On the FYLSX you have 1 hour to answer 33.3 questions. That is 1.8 minutes (1 minute, 48 seconds) per question. That gives you 1.8 minutes (1 minute, 48 seconds) to answer each question. That is an odd number, and it would leave you without any time left at the end for review. So the better way to look at it is that you need to finish about 6 questions every 10 minutes.

Students often that think they will just "do their best to go as fast as possible" are simply stupid. Doing your best is no more a "strategy" for passing multiple-choice law exams than prayer that you (or your girlfriend) won't get pregnant is some form of "birth control method".

Your strategy should be as follows –

1. Have a watch so you can check the time, and synchronize it.
2. Put time marks in the test booklet BEFORE you start trying to answer questions;
3. Check the time each time you reach one of those time marks;
4. And if you fall behind the timeline, strategically skip questions to get on the necessary timeline. The way to pick the questions to skip is explained below.

---o0o---

A. Synchronize Your Watch!

When you take law school and Bar exams they almost always have a clock on the wall for you to check the time. But they almost always fail to start the exam on time because there is always some fool who is late sitting down and getting situated. There is almost always some "problem". So the exam will almost never start on time.

The proctors will give you extra time at the end of the exam so you have the full amount of time allotted to answer the questions. But they do not reset that clock on the wall.

Copyright © Practical Step Press, 2014. All rights reserved.

Later when you are in a an absolute panic you won't be able to remember whether the exam started 5 minutes late, 8 minutes late or what. At that moment you won't know if you are on track or falling behind.

And there have been situations when the clock on the wall stops working!

Toward the end of the exam the proctors will announce, "You have ten minutes left," or something like that. And a collective groan will go up from the students that have fallen so far behind that they will fail the exam.

So synchronize your watch so you will always know exactly how much time you have left, and whether you are keeping on track, running late or actually getting ahead of schedule.

Do this by pulling out the stem on your watch, set the hands to the hour (e.g. to 9:00 am), and when the proctor announces, "Begin!" push in the stem on your watch and make sure the second hand starts turning.

Don't have a watch? Some people don't have a watch because they rely entirely on their cell phone to know what time it is. But obviously the proctors are NOT going to let you take out a cell phone and look at it during the exam. If you could do that, you could put all sorts of crib sheet material on your cell phone. So that is not going to be allowed.

So if you don't have a watch you are going to have to borrow one or else use a small wind-up or battery powered clock or something like that as a substitute for the watch.

---o0o---

B. Put Time Marks in the Test Booklet First!

To avoid running out of time, INSERT TIME MARKS IN THE TEST BOOKLET so you can stay on track. You need to finish the exam with a few minutes to spare so you can check your work, and go back to review questions you might have had to skip (This is discussed in "Strategic Question Skipping" below.)

When you are taking the practice tests in this publication (if it is in an eBook format) PUT STICKY NOTES or HIGHLIGHT on the Test questions in the PDF for your time marks. But on actual multiple-choice law exams you are going to mark the time marks in the actual test booklet with a pencil or pen. DON'T PUT MARKS ON THE SCORING SHEET because the computer will get all upset.

This is extremely important. As the exam begins you can observe other law students doing two things. One group will be madly flipping through the test booklet putting in their time marks, and the other group will be answering the exam questions and wondering what the other people are doing. You should be in the first group, flipping through the test booklet. The other students that are intent on answering Question #1 does not know what it going on, and that is the group that is going to be running out of time before they finish the exam.

Ten-Minute Marks. The tests in this book require you to answer 33 questions in 1 hour. On the FYLSX students have to answer 100 questions in 3 hours. In either case you should try to answer 6 questions every 10 minutes. That pace will leave you with time left for review when you finish the exam.

This is only one way you can insert time marks, but a pace of 6 questions every 10 minutes is fairly easy to calculate. So put time marks after question #6, #12, #18, #24 and #30. That should leave you with 5 minutes left for review. You might not that much time for review, so you can go a little slower than this pace. But if you go very much slower you are likely to run out of time before you finish the exam.

Copyright © Practical Step Press, 2014. All rights reserved.

This approach will produce the following time schedule –

In the -	Answer -	And finish–	Elapsed Time –
first 10 minutes	6 questions	#6	10 minutes
next 10 minutes	6 questions	#12	20 minutes
next 10 minutes	6 questions	#18	30 minutes
next 10 minutes	6 questions	#24	40 minutes
next 10 minutes	6 questions	#30	50 minutes
next 5 minutes	3 questions	#33	55 minutes
next 5 minutes		Review	1 hour
Total – 1 hours	33 questions		

Then start taking the test, and every time you come to one of your time marks **CHECK THE CLOCK!** You should be around a 10 minute mark on your watch when you hit the "Ten-Minute" marks, but if you are a little behind that is no problem. But if you get more than 2-3 questions behind this schedule you are going to have to speed things up. This is where "Strategic Question Skipping" discussed below comes into play.

You absolutely must finish MORE than 11 questions each 20 minutes.

---o0o---

C. Strategic Question Skipping to Save Time

If you get behind on the "time curve" you have to start skipping some questions to catch up to where you need to be. But don't just skip questions at random, and don't just skip the questions at the end of the exam booklet. Strategically identify and skip questions along the way that are **big time-wasters**, to the extent that is necessary.

When you decide to skip a question draw a big "X" or "?" on that question in the test booklet, "dog ear" the page it is on, fill in one of the "bubbles" on the Practice Scoring Sheet, and move on! [1]

Long Fact Patterns. Questions with extremely long fact patterns are **big time-wasters**. If you have to skip questions, skip those without even reading the facts. In this situation fill in a "bubble" on the Practice Scoring Sheet at random. It is as likely as any to be correct. Mark these questions with a big "X" and move on!

Multiple Correct Answers. If you are behind time and run across a question with two or more correct answers, **don't waste time agonizing** over which of them is "more correct" than the other. Just mark the test booklet with a reminder which two or three answers seem plausible so you can come back to the question later, mark down one of the two or three possible answers on your score sheet, and mark the question (e.g. a big question mark "?"), and move on!

No Correct Answers. If you are behind time and run across a question with no apparently correct answers, **don't waste time agonizing** over it. Just fill in a "bubble" on the Practice Scoring Sheet at random. It is as likely as any to be correct. It might also be one of those questions the Bar never scores anyway. Mark these questions with a big "X" and move on!

[1] Use the "Sticky Note" feature of Adobe Reader. See the Introduction for more information.

Copyright © Practical Step Press, 2014. All rights reserved.

After you finish answering all of the questions on your Practice Scoring Sheet you can go back to those questions you skipped in the test booklet and spend more time pondering them. Often you will find the answer you marked on the Practice Scoring Sheet is right anyway.

Be sure to have a good eraser so you can change your answers on the Practice Scoring Sheet!

---o0o---

D. Answer Every Question!

There is no penalty for guessing wrong on the FYLSX so ALWAYS ANSWER EVERY QUESTION on the Practice Scoring Sheet, even if it is just a blind guess!

Watch the clock, and pay attention to the proctors. Toward the end of the exam period the proctors will generally announce that time is running short (e.g. "Five minutes!") When you only have 2-3 minutes left, fill in all of the remaining "bubbles" on the Practice Scoring Sheet without bothering to even read the questions. Be aware that the proctors may not warn you time is running short so be prepared to do this on your own.

Mark on your test booklet (not the Practice Scoring Sheet) which questions you have "answered" without actually reading them. (e.g. mark a large "X" or other symbol on the question). Then, after you have filled in all of the remaining "bubbles" on the Practice Scoring Sheet you can go back to those questions, read them and decide if the answer you marked (e.g. the "bubble" for answer "C") is correct or not. You can always erase the answer you marked at that time and fill in a different "bubble". [2]

2. Gaming the Questions

Having a strategy to budget time on multiple-choice law exams is discussed above. An entirely different strategy is to "game the questions". This means to increase your chances of selecting the right answers by using logical reasoning, even if you know nothing at all about the law being tested.

As discussed in the introduction, you must be able to do the following, at a bare minimum -

Pick the right answer with certainty HALF of the time -	that gives you 50% right
Guess between two best answers a FOURTH of the time -	that gives you 12.5% right
Guess between three best answers the REST of the time -	that gives you 8.125% right
And -	that gives you 70.625% right

This is the MINIMAL level of performance you have to achieve. And it means you do, in fact, have to know the law well enough to answer at least half the questions correctly, and with certainty. BUT, your success beyond that requires an ability to eliminate one or two of the answer choices based on logical reasoning that may have nothing at all to do with understanding the law.

---o0o---

[2] Use the "Sticky Note" feature of Adobe Reader with this eBook. See the Introduction for more information.

Copyright © Practical Step Press, 2014. All rights reserved.

A. Getting Inside the Question Writer's Head

Multiple-choice law questions are easier to answer if you understand what the question writers (Bar examiners or law professors) were thinking when they wrote the questions.

1) Questions are Designed to Test a Particular Area of Law

Multiple-choice law question writers set out to test your knowledge in a particular area of law. For example, they intend to write a "contract law" question. In this book we tell you the area of law being tested. But on the FYLSX questions involving several areas of law are all mixed together.

Often the question writers do not want YOU to easily understand what area of law their question is testing. So they will throw facts into the fact pattern which suggest the question is about something entirely different. For example, facts suggesting a tort question may be presented, even though the area of law actually being tested is contract law. Those added facts are "red herrings". The question writer is essentially testing whether you can figure out the area of law at issue.

2) The CALL and Answer Choices Determine Area of Law

The area of law a question is intended to test is indicated by the CALL of the question, or else in the possible answers themselves. The CALL is the question actually asked of you at the end of the fact pattern. For example, the CALL might be "Which of the following is Dan guilty of committing?" A CALL like that tells you this is a crime question, so all of the facts that suggest other areas of law are irrelevant (red herrings).

3) Watch for Frequently Tested Issues

Within the area of law being tested there are certain legal issues or rules that are tested much more frequently than others. And some "issues" don't seem to be tested at all. You need to familiarize yourself with the frequently tested issues. The only way to do that is to answer a lot of practice multiple-choice law questions. For example, in a trial for attempted murder the prosecution must prove, beyond a reasonable doubt, the defendant acted with intent to kill. Law students are often totally ignorant of that fact. The Bar examiners have picked up on this, so it is a frequently tested legal rule on the FYLSX.

4) Is the Question About a Civil or Criminal Action?

The Bar examiners test to see if you can distinguish between civil actions and criminal actions.

5) Expect Long Fact Patterns and Short Answer Choices

The "multiple-choice" format of multiple-choice law questions makes it necessary (or at least customary) for the four possible answers (A, B, C or D) to be relatively short statements. As a result, if any of the questions are long, the length is always in the fact pattern and not in the answer choices. The effect of that is often that the questions focus on legal trivia or "factoids" more than on broad legal concepts.

6) Questions May be Designed to Play on Emotions

Some of the multiple-choice law questions are designed to elicit an emotional response. That is almost always intended to sucker you in to picking the wrong answer instead of using your knowledge of the law. So as soon as you see some horrible situation being described in the fact pattern, be sure to take an objective and reasoned approach to selecting your answer choice.

Copyright © Practical Step Press, 2014. All rights reserved.

Buried within one of the possible answers to these questions may be a word or phrase that totally controls everything.

> **For Example:** The question may say, "Bob decided to kill Vickie so he got a gun, stalked Vickie, jumped out of the bushes, confronted her, and shot and brutally killed her in front of her five sobbing children. If Bob is tried for murder he will be found:
>
> (A) Guilty of murder.
> (B) Guilty of manslaughter.
> (C) Guilty of first degree murder.
> (D) Not guilty if he acted in reasonable self defense."

Obviously the facts in this question are intended to cause you to think about what a terrible guy Bob is, a brutal murderer, and then you may leap to the conclusion Bob has murdered Vickie. That might make you select answer (A), or perhaps answer (C). If you do that, you might not even bother to read or think about answer (D). But (D) is the correct answer because if he acted in reasonable self defense, he would have to be acquitted.

---o0o---

B. Jump Long Fact Patterns and Go to the CALL

When you see a long, long fact pattern, it is likely to be filled with red herrings, irrelevant facts and a lot of nonsense that is just put there to waste your time and confuse you.

So before you even read any of that "filler" skip down to the CALL of the question and read through the answer choices. That will give you a better idea what the question is really about.

THEN go back up and read through the fact pattern. If you do this, you will be able to mentally skip over, reject and ignore a lot of the nonsense in the fact pattern. That lets you focus on the relevant facts and save time.

---o0o---

C. Read All Answer Choices before Deciding

Never decide with certainty that a given answer choice is the best answer without reading and considering ALL of the answer choices presented. It is very common for several answers to be "correct" but the first "correct" statement of the law you come across is not necessarily the best answer.

For example, you may have TWO (or three) CORRECT answers, but one of them is simply better than the others.

---o0o---

D. Facts and Conditions Stated in Answer Choices Change Everything

Answer choices often present "additional facts" or "conditions" that must be considered as absolute facts or conditions that exist in addition to the facts given in the fact pattern.

For example, if one of the answer choices says, "if D acted reasonably," you must accept that D acted reasonably, no matter how unreasonable his actions appear to be in the fact pattern.

If one of the answer choices says, "if D acted without intent to steal," you must accept that D acted without intent to steal, no matter how strongly the given facts suggest he did intend to steal.

Copyright © Practical Step Press, 2014. All rights reserved.

---o0o---

E. Restrict Answer Choice Facts and Conditions to the Question at Hand

When two or more questions are based on the same fact pattern, any facts or conditions that might be stated in the answer choices for one of the questions should be accepted and considered in isolation as to that question only, and should not be assumed or projected to the other questions based on the same fact pattern.

For example, if two questions are based on a single fact pattern, and one of the questions poses an answer that says, "if D acted reasonably," only accept that "D acted reasonably" with respect to that question and do not assume or project that D acted reasonably after moving on to the second question based on the same fact pattern.

---o0o---

F. Strategic Answer Guessing

Above "Strategic Question Skipping to Save Time" was explained under "Budgeting Time." The corollary to that for "Gaming the Questions" is "Strategic Answer Guessing". That means narrowing down the field of four possible answers (A, B, C and D) to either one answer choice that is clearly correct, or else to narrow the field down to two or three plausible answers and choosing the best of them using logical deduction.

Here are **10 rules for Strategic Answer Guessing**:

1) Eliminate the Worst Answers First

The best strategy on any multiple-choice law test is almost always to **identify and eliminate wrong answer choices** as much as it is identifying the "correct answer".

Answer Elimination Order. You do not have to consider answer choices in the order they are presented, and the best strategy is often to look for the worst possible answer of the four choices presented and eliminate it from consideration first.

Then look at the remaining three possible answers and usually one of them is also inferior to the other two. Kicking out the second worst answer reduces your problem down to simply choosing between the remaining two possibilities.

Sometimes you can eliminate three bad answers and then select the best answer with certainty. You have to be able to do that at least half the time. Sometimes you can eliminate two bad answers and must guess between the other two possibilities. And sometimes you can only eliminate one bad answer and must guess between the remaining three choices.

2) Eliminate Answers Citing the Wrong Law

It is essential that you determine the area of law that applies to any particular question with certainty. Then eliminate or reject any of the answer choices that cite or refer to the wrong body of law.

On the FYLSX the term "area of law" generally means torts law, contract law, UCC, or criminal law. Usually evidence and constitutional law questions on that exam are obvious. But that is not true when the

Copyright © Practical Step Press, 2014. All rights reserved.

"right to confront adverse witnesses" comes into play. In those cases there is something of a crossover between evidence and criminal procedure rules.

On the FYLSX the areas of law tested are torts law, contract law, UCC, and criminal law.

Your determination of which body of law applies may be decided by the fact pattern alone, by the CALL alone, and in some cases by the answer choices given. But if the CALL or facts clearly determine the area of law, any answer choices that refer to the wrong body of law should be eliminated from consideration.

For example, if the CALL of the question says a private individual started or filed a legal action, it cannot be a criminal law or criminal procedure question, so any answer choices that are based on those areas of law are WRONG and should be rejected out of hand.

Conversely, if the CALL asks about whether some party is "guilty" it is a crime question and any answer choices based on civil law (contracts or torts) are WRONG and should be rejected.

> **For Example:** The question may cite a series of facts and ask, "Bob is guilty of:
>
> (A) Battery.
> (B) Assault.
> (C) Defamation.
> (D) Trespass to land."

As soon as you see the word "guilty" in the CALL you should realize this is a CRIMES question and not a civil issue. Battery, assault and trespassing can all be prosecuted as crimes OR tort causes of action.

Although the term "trespass to land" is typically used in tort law, trespassing onto other people's land can also be prosecuted as a crime. It may be called "trespassing", and it may also be charged as "disturbing the peace". But the act of trespassing onto someone else's land is clearly both a tort and a crime.

But defamation is strictly a civil matter. So it cannot possibly be the correct answer given the CALL of this question and should be rejected out of hand, regardless of what the fact pattern may say.

Why does the question writer put in possible answers that cite the wrong law? To test whether you studied the law enough to know the distinctions between the different areas of law.

For the FYLSX you are only to use common law and broadly adopted modern rules and UCC Sections 1 & 2 for UCC questions.

Therefore, any answer that cites other bodies of law such as the "**Model Penal Code**", "**Restatement of Torts**", or "**Restatement of Contracts**" is automatically WRONG and should be immediately eliminated from consideration.

3) Eliminate Answers Citing Strange Cases

In law school you were probably told to buy a "case book" and read a lot of "case decisions". If you actually did that you were a gullible fool. Case decisions are important to understand basic legal principles, but you can pick that up faster, cheaper, and understand it all better, but just reading "canned briefs" like Casenotes or Legalines.

The reality is that there are no more than about 10 cases in the entire history of the law that are worth citing on Bar exam essays. Those cases are mentioned in Nailing the Bar's "Simple Outlines". Examples would be *Palsgraf* or *New York Times v. Sullivan*.

But any answer choices on the MBE that cite strange cases you have never heard of are WRONG answers and should be rejected or eliminated out of hand.

Copyright © Practical Step Press, 2014. All rights reserved.

Why does the question writer cite fictitious cases? To test whether you actually read through the case law and studied enough to know the important cases.

4) Eliminate Answers Using Strange Latin or Foreign Terms

In law school you should have learned a few Latin terms. For example, you should have heard of and understand the meaning of *mens rea*.

But on the multiple-choice law exams any answer choice that uses strange Latin or other foreign language terms is almost certainly WRONG and should be rejected or eliminated out of hand. If a "possible answer" refers to "the principle of *sono somnium*" it is clearly a wrong answer because unless you are proficient in Latin you have never heard of that term. [In Latin that term means "utter nonsense".]

Why does the question writer cite fictitious Latin terms? To test whether you studied the law enough to actually know which Latin terms are legitimate.

5) Favor Answers Citing Reasonableness Unless Strict Liability Applies

If there is anything you should have learned in your study of law it is that the laws, and the entire legal system, is almost always based on reasonableness. That means reasonable people, acting reasonably, based on reasonable appearances. So answer choices that include the word "reasonable" (e.g. "D is not liable if he acted reasonably") are to be favored over other answer choices.

EXCEPTING STRICT LIABILITY crimes and torts. In those cases it is entirely irrelevant whether or not a defendant acted "reasonably" or not! So it is important for you to know what the strict liability crimes and torts are, and be aware that in those few cases answers citing "reasonable" beliefs, acts, etc. are generally WRONG and should be rejected or eliminated from consideration.

6) Disfavor Answers Citing Absolute Conclusions

Another thing you should have learned in your legal studies is that rules of law almost always have exceptions, those exceptions often have exceptions of their own, and sometimes there are even exceptions to the exceptions. There are always unusual situations, overriding facts, etc. And Courts often disagree.

Further, even when a moving party (plaintiff, prosecutor or petitioner) can present a prima facie case, the responding party (defendant, respondent) may still be able to establish a convincing affirmative defense.

So few things are absolutely certain, and you should avoid answer choices that state absolute conclusions and lean in favor of answer choices that give "qualified conclusions". For example, an answer choice that says, "Bob is guilty," is not as good as an answer choice that says, "Bob's guilt could be proven."

7) Favor Answers Couched in Generalities

This is a corollary to the strategy cited immediately above, disfavoring answers that cite absolute conclusions. Qualified answers and those "couched in generalities" are usually preferable to those that are stated in absolutes. This means that answers that say something is "generally" or "more likely" to be true are usually "better" answers than those that conclude something is absolutely true. For example, an answer that says, "Dan will lose," is not as good an answer as one that says, "Dan is likely to lose."

As with everything else there are exceptions to this rule.

Copyright © Practical Step Press, 2014. All rights reserved.

8) Eliminating Three Bad Answers at the Same Time

Sometimes you can eliminate three of the "possible answers" or "choices" by logical deduction at the same time, and quickly identify the correct answer by the process of elimination. If three of the four "possible answers" given for an FYLSX question depend on the existence of the same single fact, and that common fact is disproven or cannot be proven by the given facts, then all three of those possible answers are clearly wrong and the fourth must be correct.

For example: Suppose a given question asks:

> For which of the following crimes can the defendant be convicted?
>
> (A) Attempted murder;
> (B) Attempted murder and robbery;
> (C) Attempted murder, robbery and assault;
> (D) Robbery only.

You should immediately recognize that answers (A), (B) and (C) all contain "attempted murder" as an element, and conviction for attempted murder requires proof of intent to kill beyond a reasonable doubt.

So if the facts do not support a finding the defendant acted in a manner that would convince a reasonable jury beyond a reasonable doubt that he intended to kill, attempted murder cannot be proven. And that means all three of those "possible answers" are clearly wrong, and (D) must be the correct answer.

Note this is true, even if you believe the defendant could or should be convicted of some other crime besides robbery.

Another type of question that you may encounter lists a series of assertions followed by answer choices as to which of those assertions are true (or false).

For example: Suppose a given question asks, "For which of the following crimes can the defendant be convicted?

> I. Attempted murder;
> II. Attempted murder and robbery;
> III. Attempted murder, robbery and assault;
> IV. Robbery only.
>
> (A) III
> (B) II
> (C) IV
> (D) I"

Answer choices A, B and D all include attempted murder, and that requires proof of intent to kill. So if that cannot be proven they all have to be wrong and only answer choice D could be correct.

Copyright © Practical Step Press, 2014. All rights reserved.

9) Eliminate Answers that Assume Unstated Facts

The facts stated in the fact pattern for a multiple-choice law question are givens, not to be ignored or disputed. And facts or conditions may be stated in answers such as, "If Dick intended to kill his attorney…" But when facts are ambiguous or unstated do not assume it to be true. Don't assume it is not true either.

---o0o---

G. Leaping is Better than Lingering

If you are still undecided between two or three answer choices after applying the 10 Strategic Answer Guessing rules given above PICK AN ANSWER CHOICE AND MOVE ON. You can mark the question with a big question mark ("?") if you want, and maybe you will have time later to come back and agonize over the question again.

You are far better off to LEAP to an answer than to LINGER around, wasting time on a question that quite possibly has no clearly correct answer at all. Otherwise you may linger forever, wasting valuable time and producing no benefit to yourself at all.

Copyright © Practical Step Press, 2014. All rights reserved.

Chapter 3: How to Use These Practice Exams

Multiple-choice questions test your knowledge of the fine-points of the law. Those fine points determine why one answer choice is the "best" answer choice and the other answer choices are not. Every law student is expected to know the general rules of law, so multiple-choice questions seldom test those things. Rather, multiple-choice questions usually test whether you know the exceptions to the general rules, the exceptions to the exceptions, or even the exceptions to the exceptions to the exceptions. That is the sort of legal trivia or what might be called "factoids" tested by multiple-choice questions.

Strategic guessing, time management, and strategic question skipping can dramatically improve your exam performance. But beyond that you can only improve your overall performance on multiple-choice law exams by improving your knowledge of those fine-points in the law.

Use these timed practice exams to "**find out what you don't know about the law**". Then use the references given in the answers / explanations to the questions you missed to read more detailed explanations of the law in those areas where your knowledge is weak or confused.

1. These Questions are Intentionally Hard

First, you must understand and accept that the questions asked on tests like the FYLSX are hard. And the questions presented in these 10 tests are intended to be as hard or even harder. So if you do poorly on Test #1 don't be surprised and don't give up.

If you study the answer explanations for the questions you miss, and refer to the study materials referenced there, your understanding of the fine points of law being tested will improve, and you will do better and better as you proceed through the remaining exams.

2. Review the Law Being Tested FIRST

DO NOT take any of the multiple-choice tests here without first thoroughly reviewing the areas of law being tested: **Common Law Contracts, UCC (Articles 1 & 2), Torts,** and **Crimes** on practice Tests #1-#9 and **Criminal Procedure** on practice Test #10

It does you absolutely no good to take any of the practice exams in this book without first completing a thorough review of the areas of law tested. If you are going to take the FYLSX get a FREE FYLSX Study Schedule at **www.PracticalStepPress.com**.

You can review your old commercial outlines like Gilbert's or Emanuel's, if you have them. And you can review your old class notes. But to save a lot of time get Nailing the Bar "**Simple Outlines**". They are cheap and deliberately written to be quick reads, and you can read and completely understand them in a single day.

The abbreviated and condensed format of the **Simple Outlines** makes them subject to criticism that they do not cover all the cases and rich historical development your professors assigned you to read. Well, duh! None of that blather is tested on Bar exams anyway.

Copyright © Practical Step Press, 2014. All rights reserved.

3. Take These Practice Tests under Exam Conditions

The purpose of taking the practice tests in this book is to prepare for real exams, so take these practice exam under simulated exam conditions!

---o0o---

A. Always Test Yourself in a Timed Setting

Always test yourself in a **timed setting** (33 questions in 1 hour). If you do this right, you will almost certainly experience the feeling of PANIC that sets in when you realize you are going to run out of time and fail the exam. Experiencing and confronting that feeling of panic is essential to doing well on an actual exam. Once you conquer that fear you will be able to walk into your exams confident that you are fully prepared.

If you do not test yourself in a timed setting you are cheating yourself, you will avoid confronting that panic situation, you will walk into the actual exam knowing that you are not really prepared, and you will probably run out of time.

It simply does you absolutely no good to take any of the practice exams in this book without strictly limiting yourself to a timed setting of 1 HOUR PER EXAM of 33 questions.

Frequently law students tell me they cheated on the practice exams but will speed up later or "rise to the challenge" in the actual exam. That is simply stupid and personally dishonest.

---o0o---

B. Fill in the "Bubbles" on the Practice Scoring Sheet

Print out your Practice Scoring Sheet in advance at this link: **Practice Scoring Sheet**.

Be sure you have a 1 hour period in which you can take each exam without being interrupted.

As you do each exam under testing conditions, mark your Practice Scoring Sheet with a #2 pencil just as you would in a real exam. Fill in the "bubbles" on the Practice Scoring Sheet as you would under a real exam.

If you just put an "X" or check mark on the Practice Scoring Sheets instead of filling in the "bubble", you will go faster, get done faster, and then on the real exam you will likely go slower that you expect and run out of time!

---o0o---

Copyright © Practical Step Press, 2014. All rights reserved.

C. Reading Questions from eBooks versus Paper Books

This eBook cannot be printed. But you can simply read these multiple-choice questions from your computer screen, and you can do that without losing any of the functionality inherent in using a paper booklet. There is no clear advantage or disadvantage in reading the questions in one format or the other. With a paper booklet (as is provided in a real exam) you have to physically turn the pages, and in eBook format you have to physically turn the "pages" with a mouse or keyboard key.

As for marking the pages of the test booklet (inserting "time marks" or marking questions you have "strategically skipped", guessed at or otherwise want to visit again) a paper book lets you "dog-ear" or turn down the corners on the pages involved, and you can mark the questions with a pencil. With an eBook you can insert "Sticky Notes" using Adobe Reader, and that lets you go back to those pages and questions as quickly.

---o0o---

D. Complete Entire Practice Test in One Sitting

On the actual FYLSX they are required to answer 100 questions in 3 hours. Here the tests are set up for you to answer questions at the same speed, but only to answer 33 questions in 1 hour. This is so you can test yourself on specific issues within a specific area of law. After each test you should spend several hours, or even a day or two, reviewing those questions that confused you and the issues that you failed to answer correctly. The goal here is to learn the rules of law and "find out what you did wrong".

ALWAYS answer an entire practice test in the allowed time. DO NOT just answer a few questions, quit, and come back to it later. If you do that you will not experience the actuality of what actual exam conditions are really like. AND you will have no clear idea of whether you are prepared for the real exams or not.

4. Score Yourself after Taking Each Test

After you have taken one of the practice exams in this book in a timed setting, score yourself, evaluate your performance, and improve your knowledge in those areas where you have proven weak.

In this section we will refer to the fist practice test, Test #1, but once you have gone through this process for Test #1 you must simply repeat the process as you go through Tests #2 - #10.

---o0o---

A. Grade Yourself Using the Answer Sheet

After you have taken the first practice exam, Test #1, grade yourself by comparing your answer choices on the Practice Scoring Sheet to the Test #1 Answer Sheet that follows the Test #1 multiple choice questions.

Mark each question you got wrong on the Answer Sheet. Use the "highlighter" feature of Adobe Reader. Just click on "COMMENT" at the upper right end of the tool bar. That opens the "Annotations" menu in the sidebar. Select the "highlight text" tool, and drag the cursor across the question you missed and the area of law it was testing.

When you have finished grading your exam, add up the questions you got wrong in each column and enter that amount in the row at the bottom marked, "less Wrong". Subtract the number you got wrong from the total number of questions and enter that amount in the row marked, "No. Right".

Copyright © Practical Step Press, 2014. All rights reserved.

Now calculate the number of questions you got right as a percent of total questions and enter that result in the row marked, "% Right".

---o0o---

B. Evaluate Your Performance

If you did not get MORE THAN 70% of the practice questions on Test #1 correct, you need to improve your performance.

---o0o---

C. Read the Answers and Explanations for Questions You Missed

Your fastest path to real improvement is to focus on your weakest areas, the questions you got wrong. So read the Test #1 Answers and Explanations for the questions you got wrong.

You could read the Answers and Explanations for all questions in Test #1, but there is not much point in that. It would simply be a waste of time to read the Answers and Explanations for questions you understood and answered correctly anyway.

It is important for you to understand the possible reasons why you are stymied and confused when certain areas of law and certain legal issues in those areas are tested. The possible reasons are:

- You were lazy: Your class covered the issue but you didn't study it;
- You knew it but forgot it: You studied the issue when you took the class but later forgot about it;
- Your professor never covered that issue; or
- Your professor taught it wrong.

Law students often assume their law professors are competent. The longer professors have taught the class, the more likely they are regarded by both the students and the law school administration to be unquestionable authorities. But in realty law professors often have no particular expertise in the areas of law they teach, they have never written a law book, they receive no feedback from their students that fail Bar exams, and their classroom performance is not monitored by anyone at all.

---o0o---

D. Study the Law being Tested on the Questions You Missed

If the explanation given for a question you answered wrong does not help you understand why your selected answer was not the "best answer" research that legal issue. The Answers and Explanations have numerous references to areas in the **Simple Outlines** that cover the legal issues being tested. Go to those referenced sections of the **Simple Outlines** and study those legal issues in detail.

You can save a lot of time by using the **hyperlinks** in the Test Answers and Explanations in the eBook version of this publication to switch back and forth to the referenced sections of the **Simple Outlines**. This is also explained in the Introduction. You simply have to have this eBook in the same folder with the **Simple Outline** eBooks.

---o0o---

Copyright © Practical Step Press, 2014. All rights reserved.

E. Do it Again!

That is all there is to it. After you take Test #1 and go through the steps above, you simply do it all over again with Test #2, and then Test # 3, and so on. It is not rocket science.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #1– Contracts – Terms and Formation

Test #1 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **common law contract formation** (offer, acceptance, consideration, and Statute of Frauds) and **common law terminology**. For this first test we have inserted time marks for you. The Answers and Explanations follow.

Question 1

Paul painted Elwood's house. Elwood agreed to pay Paul "standard rates" for his services. After painting was completed, Paul and Elwood executed the following written document:

> "In exchange for Paul's prior services in painting his house, Elwood, a licensed electrician, agrees to rewire Paul's house. Paul hereby releases any claim he may have against Elwood for the unpaid painting bill."

Elwood started work on Paul's house but skipped town without finishing. The house was not inhabitable and Paul had to pay another electrician $2,000 to finish it.

1) If Paul sues Elwood for breach of contract, which of the following will be the court's decision?

(A) Paul can recover for Elwood's breach of a valid agreement made in settlement and discharge of an unliquidated claim by Paul against Elwood for Paul's prior painting services.
(B) Paul can only recover for Elwood's breach of promise under the doctrine of promissory estoppel because there was no bargained for consideration for Elwood's promise.
(C) Paul cannot recover more than nominal damages in any event, because his other damages, if any, were speculative.
(D) Paul cannot recover because Elwood's promise to rewire Paul's house was given in substance, if not in form, for Paul's past services.

Questions 2-3

Bob thought Sam's home was beautiful and he often told Sam if he ever wanted to sell it he (Bob) would like to buy it. On June 10 Sam decided to sell his house to Bob. He drafted a real estate contract to sell the house to Bob, signed it and mailed it to Bob. The document had all necessary terms. Bob received the contract on June 12. He immediately signed it and mailed it back to Sam. Later that day, Bob had second thoughts and decided to cancel the agreement. He called Sam June 13 and told him to ignore the signed contract because he had changed his mind. Sam received the signed contract the next day, June 14.

2) Does Sam have an enforceable contract for the sale of his home under the broadly adopted view in the United States?

(A) Yes, because Bob told Sam he was withdrawing his acceptance by telephone instead of by mail.
(B) Yes, because Bob's act of mailing the signed document was an effective acceptance of Sam's offer.
(C) No, because Bob effectively retracted his acceptance before Sam received it.
(D) No, because the U.S. Postal Service was an agent for Bob, not for Sam, and under U.S. Postal Regulations Bob might have retrieved the document after mailing it back to Sam on June 12.

Copyright © Practical Step Press, 2014. All rights reserved.

3) Suppose Sam had said, "Fine. I agree to cancel the contract." Then if Bob changed his mind again and decided he wanted to buy Sam's house after all, does Bob have an enforceable contract to buy Sam's house under the broadly adopted view in the United States?

(A) Yes, because a written contract to sell and purchase real estate cannot be rescinded, even if it is still executory and even if there is mutual agreement.
(B) Yes, because Bob received no consideration for rescission of any contract the parities might have had.
(C) No, because Bob's retraction of his earlier acceptance of Sam's offer operated as a valid offer to rescind any contract the parties might have had, and Sam accepted that offer to rescind.
(D) No, because the minds of the parties never met at precisely the same instance.

Question 4

Owen wrote to Paul on June 1, "I will pay you $8,000 to paint my house. You must start no later than July 1 and finish no later than July 10." Paul responded on June 5 by letter, "I will not paint your house for less than $10,000." On June 10 Paul wrote to Owen, "I have changed my mind. I accept your offer and will do the work for $8,000. I will start on July 1 and finish by July 10, unless I hear differently from you." Owen never responded to either of Paul's letters. Owen left the country on June 30. Paul started painting the house on July 1 without Owen's knowledge.

4) Is Owen obligated to pay Paul $8,000 when he completes painting the house?

(A) Yes, if Paul completes painting by July 10.
(B) Yes, because Paul accepted the contract before Owen changed position in reliance.
(C) No, because Paul rejected Owen's offer to paint the house.
(D) No, because Owen left the country without approving the fact that Paul would do the work as originally requested.

Question 5

Daddy told Nancy if she went to law school he would pay her tuition and expenses plus a bonus of $1,000 for every "A" she got on her final grade in each class. Gramps told Nancy he was so proud of her he would pay her the money Daddy promised, if Daddy did not. Nancy went to law school, Daddy paid for her tuition and expenses, and she earned A's on her final exams in three classes. But Daddy died suddenly and the executor of his estate refused to pay Nancy the $3,000 bonus she had been promised for the A's.

5) If Nancy tries to force Gramps to pay her the $3,000 bonus she was promised she will fail because:

(A) The contract was illusory.
(B) The contract was oral.
(C) The agreement with Gramps is unsupported by consideration.
(D) Nancy received a year's worth of free tuition and expenses so that was sufficient to compensate her for receiving the three A's.

Questions 6-7

Vickie's doctor told her she had a fatal, incurable disease. In desperation Vickie went to Dr. Quackie who claimed to have a miracle cure. No price was agreed upon. Dr. Quackie treated Vickie for a month but her condition failed to improve. Her father, Benny, then told Dr. Quackie that if he could cure Vickie he would pay him $25,000. After four more months of treatment Vickie's condition was dramatically improved, and her regular doctor told her she had completely recovered.

6) Dr. Quackie bills Vickie $10,000. If Vickie refuses to pay and he sues her, what will Dr. Quackie recover?

(A) Whatever he states his normal fee is for the treatments he provided.
(B) The reasonable value of his services under implied contract theory.
(C) Nothing because their original agreement failed to state a price term.
(D) Nothing because Dr. Quackie cannot prove his treatments were the cause of Vickie's recovery.

Copyright © Practical Step Press, 2014. All rights reserved.

TIME MARK – You should not have used more than 10 minutes to here! You should have 50 minutes left.

7) If Benny refuses to pay Dr. Quackie and he sues him, what will Dr. Quackie recover?

(A) Nothing because Benny's promise was not supported by consideration to him.
(B) Nothing because Dr. Quackie had a pre-existing duty to treat Vickie under their earlier agreement.
(C) The reasonable value of his services because they are worth less than $25,000.
(D) $25,000 because Benny was bargaining for Dr. Quackie to cure Vickie.

Question 8

Daddy was so proud of Nancy for passing the Bar exam that he announced he was going to pay to have an office remodeled for her to start her practice. He leased space in an office building, hired a designer to draw up plans and hired Bill for to gut and remodel the space according to the plans for $35,000. Bill gutted the space and discovered a supporting pier in the center of one of the walls prevented him from implementing the plans unless he installed an engineered beam that would cost him $4,500 he had not anticipated. He told Daddy he would have to pay him $4,500 more or it would be impossible for him to do the work.

8) If Daddy agreed to pay $4,500 more but refuses to pay it after Bill has finished work, what is Daddy's best argument?

(A) He agreed to pay $4,500 more because Bill put him under duress.
(B) He never made any representations to Bill about supporting piers in the existing space.
(C) Bill previously agreed to do the work according to the plans for the original contract price.
(D) It is impossible for him to come up with more money than he originally agreed to pay.

Question 9

Owen wanted his house painted. He got a bid from Bill for $4,000 and several other bids between $4,500 and $5,000. He accepted Bill's bid, but before Bill started work he called Owen and said he had discovered an error in his calculations and could not possibly do the work for less than $4,600. Owen responded to Bill's statement by saying, "O.K., I'll pay you the extra $600, but I think it's unfair."

9) After Bill finishes painting the house how much does Owen owe him?

(A) $4,000, because Bill was already under a pre-existing duty to paint the house for that amount.
(B) $4,000, because Owen's promise to pay him the additional $600 was not in writing.
(C) $4,600 if Bill reasonably relied on Owen's promise to pay the additional money to his detriment.
(D) $4,600, because the promise to pay the additional $600 was an accord and satisfaction.

Question 10

Garth took his classic 1975 Pacer to Wayne's garage to have the brakes checked. Wayne said Garth needed a complete brake job including new shoes, pads, fluid, milling of parts, turning of drums, replacement of valves and flushing of lines. Wayne calculated what he thought it would cost him to do the work and gave Garth an estimate of $300. Garth responded, "If you can get all the work done by Friday it's a deal." Wayne said, "You got it." Garth left the car with Wayne.

10) Which of the following is correct?

(A) Wayne and Garth have neither a unilateral nor a bilateral contract at this point.
(B) Wayne and Garth have either a unilateral or a bilateral contract, subject to court interpretation.
(C) Wayne and Garth are promisors and promisees in a bilateral contract.
(D) Garth is a promisor and Wayne is a promisee in a unilateral contract.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 11

Bob always admired Sam's Ford Mustang. Sam decided to sell the car and buy a new one. He figured the dealer would give him $10,000 on a trade-in so he sent Bob an email that said, "I am going to get a new car. I will sell my Mustang to you for $10,000 if you want it." Bob emailed back, "It isn't worth that much. Would you take $9,000?" Sam was irked and fired back, "No!! (:-{) " The next day Bob handed Sam a check for $10,000.

11) Sam refused to accept it. If Bob sues Sam:

(A) Sam would lose.
(B) Sam would lose because he rejected Bob's counteroffer.
(C) Bob would lose because his counteroffer was an implied rejection of Sam's offer.
(D) Sam would lose because under the holding of *Benderman v. Martiniez* (2005) the parol evidence rule bars introduction of evidence of emoticons in prior or contemporaneous written agreements.

Question 12

Vendor Able had a contract with County to sell it five computers of a certain type every month for seven months. He sent supplier Bob, a wholesaler he had never dealt with before, a fax explaining what he needed and asking for, "a price quote on 10 computers to be delivered by May 1". Bob responded by fax, "I can deliver 10 computers from my present inventory for $2,000 each." Able responded by fax, "Good. I will buy the 10 computers for $2,000 each."

12) If nothing more was said, has a contract formed between Able and Bob?

(A) Yes, because Able's second fax was an acceptance of Bob's offer to sell him the 10 computers.
(B) Yes, because Bob's first fax was an acceptance of Able's offer to buy the 10 computers.
(C) No, because Able's fax was an offer that Bob never accepted.
(D) No, because none of the faxes were worded with sufficiently definite and certain terms to be offers.

TIME MARK – You should not have used more than 20 minutes to here! You should have 40 minutes left.

Question 13

Owen kept his boat, Res Judicata, at Mike's marina. Mike was a grouchy but expert mechanic with a boat repair facility where he would rebuild engines, fix hulls and do other marine repairs. Owen's boat needed an engine overhaul. He approached Mike on a hot day while Mike was working on someone else's boat and said, "My engine needs an standard overhaul. I'll pay you $2,000 if you can have the work done before the 4th of July." Mike just glared at him silently. Owen felt awkward and sheepishly left. Over the next two weeks Owen dropped by the marina a few times and saw that Mike had done nothing to his boat. Owen felt Mike was not going to do the work he needed so he began looking for someone else to do. But the next time Owen went to the marina he discovered Mike had taken the engine out of his boat and dismantled it. Mike worked occasionally on the engine but July 4th came and went and Mike's boat was unusable. Finally Owen approached Mike and asked him when he would have the work finished. Mike got mad and told Owen, "Get the hell out of my marina and take your boat with you!"

13) If Owen sues Mike for breach of contract the Court would:

(A) Find Owen's offer lapsed before Mike began work, no contract formed, and Mike is not liable for breach of contract.
(B) Find a unilateral contract formed when Mike began work and Mike is liable for breach of contract.
(C) Find a bilateral contract formed when Mike began work and he is liable for breach of contract.
(D) Find a bilateral contract formed when Mike began work and Owen must pay him for the work he has done based on *quantum meruit*.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 14

Hal and Wanda decided to sell their home. They called "real estate Ron" and he spent two hours explaining how he would list and market their house to get them the very best price. He estimated the house would sell for $200,000. They agreed to give him an exclusive right to list the house for sale for 90 days, and agreed to pay him a fee of $12,000 if he sold the house in that time period. The next week they told their niece, Jenny, about their plans and Jenny offered to buy the house from them. She said, "This way you don't have to pay the real estate agent." That sounded good to them so they sold the house to Jenny for $200,000. She paid them $20,000 down and they carried the loan balance at 5%. When Jenny was moving her furniture into the house Ron came buy with some clients and was shocked to hear Jenny's story. Ron went to Hal and Wanda and demanded to be paid his commission. Hal said, "Why should we pay you? We sold it ourselves, no thanks to you!"

14) If Ron sues Hal and Wanda for his commission:

(A) He will lose if Hal and Wanda's agreement with Jenny is in writing.
(B) He will lose because he didn't participate in the negotiations with Jenny.
(C) He will lose if he didn't have Hal and Wanda sign a written listing agreement.
(D) He will win because Hal and Wanda are bound by promissory estoppel.

Question 15

Natasha Fatale, the famous choreographer and owner of *Le Ballets de l'Élan* told Bullwinkle, "You have great talent. If you study under Boris Badenov for only two years and show improvement I will pay for your lessons." Bullwinkle took the lessons, which were very expensive, and his dancing skills improved dramatically. But Natasha died shortly before the two year period elapsed.

15) Can Bullwinkle successfully recover from Natasha's estate?

(A) No, because Natasha received no benefit from Bullwinkle's studies.
(B) Yes, because there was an exchange of consideration between Bullwinkle and Badenov.
(C) No, because Bullwinkle received benefits, not a detriment, from his studies under Badenov.
(D) Yes, because Natasha promised to pay if Bullwinkle improved as a student of Badenov.

Question 16

Paul was injured in an auto accident while on vacation far from home and treated in Our Lady of Perpetual Ailments Hospital. He gave Hospital all of the information necessary for them to bill his health insurance carrier, Blue Circle, directly. Hospital agreed they would bill Blue Circle and not Paul. But after Hospital billed Blue Circle, it sent the payment to Paul, not to Hospital. Paul spent all the money on methamphetamine.

16) If Hospital sues Paul for the money, it's best argument is:

(A) Hospital's services were necessary to protect Paul's health and well-being.
(B) Hospital was an intended third-party beneficiary of Paul's contract with Blue Circle.
(C) Paul owed Hospital for the services he receive under an implied-in-fact contract.
(D) When Paul received the payment from Blue Circle he held it in constructive trust for Hospital.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 17

Tom, Dick and Harry entered into an oral partnership agreement to engage in real estate development. They each contributed money and bought a real estate portfolio. Tom sold some land owned by the partnership and used the proceeds to pay off his gambling debts. Dick and Harry discovered what Tom had done.

17) In a law suit by Dick and Harry against Tom:

(A) Tom cannot raise the Statute of Frauds as a defense because the oral partnership agreement is not within the statute.
(B) Tom cannot raise the Statute of Frauds as a defense because the oral partnership agreement is within the statute but each member of a general partnership is authorized to sell partnership assets without consent from the other partners.
(C) Tom can raise the Statute of Frauds as a defense because the oral partnership agreement is within the statute.
(D) Tom can raise the Statute of Frauds as a defense because the underlying suit arises out of a sale of land.

Question 18

Bill agrees to build a house for Homer for on a lot by the sea according to plans. Bill completes 90% of the structure and then a fire burns it down.

18) Does Bill have to complete performance by the contract?

(A) No, the contract is void because the subject matter of the contract was destroyed through no fault of either party.
(B) No, the contract is void because of impossibility of performance.
(C) Yes, but he is entitled to quantum meruit reimbursement from Homer for the work he did before the fire.
(D) Yes, Builder must perform the original contract without any compensation for the destruction caused by the fire.

TIME MARK – You should not have used more than 30 minutes to here! You should have 30 minutes left.

Question 19

Home Store was preparing for its big Fourth of July Sale on home improvement products. It prepared a newspaper advertisement featuring blow-out bargains on featured items with special prices for the holiday weekend. On the first page of the ad was a picture of a backyard swing set with the heading "One only! Rycoh Model 1234 swing-set. Regularly $495, only $49.50! First come, first served!" At the bottom of the page it said, "Prices for July 1-4 only". Bob was a pressman for the local newspaper, and it was his job to prepare the ad for distribution. He decided to be the first in line so he could get the swing set for his children. So on the morning of July 1 he went to the Home Store and waited in front of the door from 4 a.m. until it opened at 9 a.m. When the store opened he rushed in and said he was there to buy the swings. The store clerk said, "The manager bought that for his own kids," and refused to sell Bob another swing set for the same price.

19) If Bob sues to obtain either the swing set or the retail price difference, which of the following is most likely?

(A) He will lose because the store's advertisement is not an offer.
(B) He will lose because the manager bought the swings before the store opened.
(C) He will win because he accepted the store's offer.
(D) He will win because he was the first person who offered to buy the swings.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 20-22

Barbie was walking through the marina in her new bikini when she saw 23-year old Ken in a Speedo waxing his mast, his tan, bulging muscles glistening in the mid-day sun. On the dock was a prominent sign, "Sail the Bay! All day cruises with Captain Ken - $200." "Oooh, your boat sure is big!" Barbie exclaimed. "Would you like to go sailing?" Ken asked coyly. "Hop on board and I'll show you the Bay." Barbie hopped on and they spent the day sailing and enjoying each other's company. At the end of the day Barbie said, "That was a thrill." Ken said, "That will be $200, please." Barbie replied, "Oh! I will pay you tomorrow." Then before Barbie left she said, "If I come back tomorrow with my girlfriend, Bunny, and pay you another $200 will you promise to take us both at the same time?" Ken said, "It's a deal. I'm up for that."

20) If Barbie never comes back:

(A) Ken has a right to be awarded $200 for the first day based on implied-in-fact contract theory and $200 the second day based on express contract.
(B) Ken has a right to be awarded $200 based on implied-in-fact contract if Barbie knew he expected to be paid.
(C) Ken has no right to be awarded anything.
(D) Ken has a right to be paid $200 if he conferred material benefits on Barbie.

21) Ken's promise to give Bunny the same thrilling ride the next day:

(A) Created a third-party beneficiary contract subject to a condition precedent.
(B) Was a unilateral contract.
(C) Created an unconditional bilateral contract.
(D) Was a gratuitous promise.

22) If Barbie was 17 years old:

(A) No contract formed between Ken and Barbie.
(B) Any contract between Kan and Barbie would have to be in writing.
(C) Ken could enforce a contract against Barbie if he detrimentally relied.
(D) Barbie could enforce any contract that formed against Ken.

Questions 23-24

Garth took his classic 1975 Pacer to Wayne's garage for a brake job. Wayne prepared an estimate and Garth signed it.

23) Unless otherwise agreed, which of these is a constructive condition?

(A) Wayne must complete repairs before he is entitled to payment.
(B) Wayne must substantially perform before he is entitled to payment.
(C) Wayne may demand payment in advance before he starts the job.
(D) Wayne may demand payment before he releases the car to Garth.

24) If Wayne promised to have the car ready by Saturday but did not have it finished until Monday, what of the following, if true, is his best defense?

(A) Timely performance was not an express condition.
(B) It was impossible for him to have the car ready by Saturday because the fish were biting.
(C) He couldn't finish the car because he got stoned.
(D) Garth suffered no damages.

TIME MARK – You should not have used more than 40 minutes to here! You should have 20 minutes left.

.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 25

Mark got an unusually high gas bill for March. He contacted the gas company to find out why, and a repairman discovered plumbing work Mark had done without a permit had caused a gas leak. He told Mark it was a fire hazard and he had to fix it as quickly as possible. Mark agreed on April 3 to pay Paul the plumber $1600 to fix the leak. Paul estimated the job would take him 4 hours but was uncertain when he could fit it into his schedule. Paul promised to quickly call Mark back to arrange a day to do the work. Paul failed to call Mark for two weeks, and Mark called him on April 17. At that time Paul scheduled the work for April 29, a day when Mark would be home. When Paul arrived to do the work on April 29 Mark was not there because he was rushed to the hospital the night before for emergency surgery. Paul could not get in the house so he left without doing the work. Mark did not get released from the hospital until May 1. When he arrived at his house he found it had burned down the day before because of the gas leak. Paul demands payment of $1600 and Mark refuses to pay.

25) Will Paul succeed in a breach of contract action against Mark?

(A) Yes, because Mark made and breached an implied-in-fact promise to let Paul into the house on April 29.
(B) Yes, but any recovery by Paul will be subject to an offset to Mark on account of his damage from the fire.
(C) No, because Paul did nothing about his agreement with Mark from April 3 to April 29.
(D) No, because Mark's obligations under the contract were subject to an implied condition precedent that failed because of supervening impossibility.

Question 26

Dan the disk jockey on radio station KKK announced that the station would give an all expense paid vacation to Hawaii to the seventh caller on the "morning prize line". Pam called the "prize line" and was the seventh caller. Dan announced Pam's name on the air and told her she had won the vacation prize. She was elated until her boss told her he would not let her take time off to go on the trip. Pam angrily quit her job, bought a new bikini and luggage and got a fake tan to prepare for her trip. But KKK fired Dan and told Pam it would not send her to Hawaii.

26) Will Pam succeed in a breach of contract action against KKK?

(A) Yes, because Dan made a unilateral contract offer which Pam accepted by performing the requested act, calling the station.
(B) Yes, because Pam reasonably relied on Dan's assurance she had won the trip, causing her detriment.
(C) No, because Pam did not promise to do anything for KKK.
(D) No, if Pam is a minor.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 27

Tramp told Reverend Foulwell, "I am selling the Crystal Palace in Atlantic City. When the sale is complete I will give your church $1 million to establish an orphanage." Foulwell responded, "That's wonderful. In exchange we will name the new orphanage after you, Mr. Tramp." Foulwell paid an architect $50,000 to design the new orphanage. Then the sale of the casino fell through and Tramp refused to give the church any money.

27) Will Foulwell succeed in a breach of contract action against Tramp?

(A) No, because no contract formed.
(B) No, because the contract was subject to sale of the casino, a condition precedent that failed.
(C) Yes, because Tramp's promise to pay the $1 million was given in exchange for Foulwell's promise to name the orphanage after Tramp.
(D) Yes, because Foulwell reasonably relied to his detriment by paying the architect to design the orphanage.

Question 28

Calhoun worked in Rhett Butler's saw mill. One day a log broke loose and was about to crush Mr. Butler. Calhoun jumped in the way and saved Mr. Butler's life. Calhoun was badly injured as a result and could never work again. Mr. Butler announced to everyone that he owed Calhoun for saving his life so he would continue to pay him even though he was too injured to work. Rhett paid Calhoun for several years. Then he died and his widow, Scarlet O'Hara, inherited his estate. Scarlet stopped paying Calhoun.

28) Will Calhoun succeed in a breach of contract action against Scarlet?

(A) No, because moral obligation is insufficient consideration to support a contract.
(B) No, because the prior services of Calhoun were not given in exchange for being paid in the future.
(C) Yes, if moral obligation is considered to be legal consideration.
(D) Yes, if Calhoun relied on Rhett's promise.

Question 29

Vic was crossing the street when he was struck and badly injured by a hit-and-run driver. Metro Ambulance was called to the scene and it transported the unconscious Vic to Our Lady of Hopeless Cases Hospital. Unfortunately he was dead on arrival. Metro sent Vic's family a bill that has not been paid, and Metro files an action against his estate.

29) Will Metro succeed in the action against Vic's estate?

(A) Yes, because Vic was legally obligated to pay Metro's claim.
(B) Yes, based on an implied-in-law contract between Metro and Vic.
(C) No, if Vic was unconscious and did not knowingly accept Metro's services.
(D) No, because Vic did not receive an unjust enrichment.

Question 30

Farmer agreed to rent a 100 acre tract to Tom for the period from January 1, 2004 through December 31, 2005 in exchange for $7,200, to be paid in $300 installments at the beginning of each month. Tom took possession of the land from January 1, 2004 to June 15, 2004, but never made any of the monthly payments. Then he abandoned the land and repudiated the contract.

30) Will Farmer succeed in a breach of contract action against Tom?

(A) Yes, but only if the contract was in writing.
(B) Yes, because Tom took possession of the land.
(C) Yes, for $1,800.
(D) Yes, if Tom made valuable improvements to the land.

TIME MARK – You should not have used more than 50 minutes to here! You should have 10 minutes left.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 31

Bill agreed to build a house for Homer on land Homer owned in exchange for $100,000. Bill reasonably expected to make a profit of $20,000 on the job. During construction Bill spent $60,000 for labor and materials. Then before the house was finished Homer objected that Bill's workmanship was unsatisfactory. Homer repudiated the contract, ordered Bill to get off his land, and vowed to pay him nothing.

31) In a breach of contract action Bill has a right to recover:

(A) $100,000, the contract amount, because Homer committed a major breach.
(B) $90,000, if Bill proves Homer could complete the house for additional cost of $10,000.
(C) $100,000, if Bill proves Homer would have a completed house worth $130,000 for additional cost of $10,000.
(D) $80,000, the sum of his reliance damages and expectation damages.

Question 32

Lolita bought a $5,000 home entertainment center from Fried Electronics on credit using a fake driver's license she had purchased earlier on the internet so she could buy alcohol. She was only 17 years old but the driver's license indicated she was 21. After six months she stopped making her payments on the entertainment center. Fried Electronics repossessed the equipment and resold it at salvage for $1,000. Fried sued Lolita for the balance due on the contract.

32) If Fried obtains a judgment against Lolita it would be because:

(A) Fried reasonably expected to be paid under the terms of the contract.
(B) Lolita breached the contract.
(C) Lolita committed criminal fraud.
(D) Lolita committed civil fraud.

Question 33

Cindy went out of her way to help her poor, elderly neighbor, Mildred, for several years. Mildred lived on a very limited income and her daughters, Drizella and Anastasia, never did anything to help her. Then one day Mildred won the Lottery. She told Cindy, "I owe you so much for the things you have done for me over the years. I am going to repay you $50,000 for doing all of those nice things." The next week Mildred died. Drizella and Anastasia took all Mildred's money and refused to pay Cindy. Cindy sued Mildred's estate for the $50,000 she had been promised.

33) Cindy will:

(A) Win a judgment for $50,000 because Mildred promised her that amount.
(B) Win a judgment for the reasonable value of her services.
(C) Recover nothing.
(D) Recover enough to prevent Drizella and Anastasia from reaping an unjust enrichment.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #1 Answer Sheet

Question	Answer
1	A
2	B
3	C
4	D
5	B
6	B
7	D
8	C
9	A
10	C
11	A
12	C
13	A
14	C
15	D
16	C
17	A
18	D
19	C
20	B
21	A
22	D
23	A
24	D
25	D
26	C
27	A
28	C
29	D
30	C
31	B
32	D
33	C
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #1 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Contracts & UCC Outline**".

1) **(A)** Clearly Elwood and Paul created a contract with an open (uncertain) term, the price Elwood had to pay Paul. That could have caused a problem but they settled that uncertainty by agreement after the fact. The second agreement is not a modification of the first contract. Rather it is a second contract to settle the uncertainty of the first contract. [See "**Simple Contracts & UCC Outline**", **reasonable certainty of terms, p. 2**.] (C) is wrong because their second contract established what Elwood owed Paul, ending any possible "speculation". (D) is wrong because the phrase "in substance, but not form" is simply nonsense meaning nothing. (B) is wrong because their second agreement is a valid contract and "promissory estoppel" is only an equitable remedy that cannot be awarded unless there is no legally enforceable contract in the first place. [See "**Simple Contracts & UCC Outline**", **promissory estoppel, p. 96**.] Everything (A) states is true, so it is the right answer.

2) **(B)** If an offer does not require acceptance by any particular means, an acceptance sent by the same method the offer was sent, or by a faster method, is effective (binding) upon dispatch. [See "**Simple Contracts & UCC Outline**", **acceptance effective on dispatch, p. 18**.] Sam's offer did not require Bob to respond in any particular way and Bob sent his acceptance the same way Sam sent the offer, so Bob's acceptance was effective as soon as he mailed it. Therefore (B) correct. Once an acceptance is effective both parties are bound and there are no "take backs" no matter how they are communicated, whether the offeree can get into the Post Office, or even if offerees try to retract acceptances before offerors know of them. Therefore (A), (C) and (D) are all wrong.

3) **(C)** The parties to a contract neither has fully performed can always mutually agree to rescind or cancel the contract because that agreement is effectively a "contract to rescind the contract" in which each party releases the other from unperformed duties in exchange for being released in return from unperformed duties. [See "**Simple Contracts & UCC Outline**", **contract rescission, p. 28**.] Therefore (A) and (B) are wrong. (D) is wrong because it simply makes no sense at all. Clearly there is a "meeting of the minds" because both are agreeing on June 13 to cancel the contract. Therefore only (C) is right.

4) **(D)** Notice that the communications are in quotes. Read quoted statements carefully and accept that those were the exact words between the parties. Given that, the operative fact here is that Paul started painting the house without talking with Owen to find out what color he wanted, what grade of paint or anything else. Under common law a contract offer is a manifestation of present contractual intent, communicated to an offeree, that is sufficiently certain in terms that an objective observer would reasonably believe assent would form a bargain. That means that if the offeree says, "Ok!" an observer would believe that both parties are legally bound to a clear and complete agreement. [See "**Simple Contracts & UCC Outline**", **the OK rule, p. 3**.] Owen may have told Paul he wanted his house painted, how much he was willing to pay, and when the work was to be done, but critical details still had to be settled. No reasonable person would believe that a contract existed until the parties talked about those details. [See "**Simple Contracts & UCC Outline**", **reasonable certainty of terms, p. 2**.] The missing facts should give you a clue. You were not told whether Owen got the rejection first, the acceptance first, or if he got either at all. You are not told if Owen changed position in reliance on the rejection. Since all those facts are missing there is show (A), (B) or (C) are true, so the best answer is (D).

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(B)** Gramps is guaranteeing Daddy's debt to Nancy so his promise is unenforceable at law under the Statute of Frauds unless it is put in writing. [See "**Simple Contracts & UCC Outline**", **contracts guaranteeing debts of others, p. 36**.] Guarantees of debts are not "illusory" so (A) is wrong. And they are supported by consideration (Gramps is offering to pay in exchange for Nancy getting A's) so (C) is wrong. And (D) is simply nonsense because contract rights do not depend on emotional argument. (B) is the correct answer.

6) **(B)** If parties start contract performance without agreeing on the price to be paid the contract is not void. [See "**Simple Contracts & UCC Outline**", **reasonable certainty of terms, p. 2**.] Therefore (C) is wrong. Instead the implied price is a "reasonable" price, so (B) is the right answer. (A) is wrong because Dr. Quackie's "normal" fee could be unreasonable. (D) is wrong because even if Dr. Quackie promised Vickie would be cured he does not have to prove that his treatments were the reason she was cured.

7) **(D)** Consideration is a bargained for exchange of value. Benny promised to pay Dr. Quackie if he would cure Vickie, and in exchange, Dr. Quackie continued to treat Vickie until she was cured. [See "**Simple Contracts & UCC Outline**", **consideration / conditional promises, p. 5**.] (A) is wrong because that is an exchange of value. (B) is wrong because Dr. Quackie's agreement with Vickie was an "at will" agreement that he could terminate at any time. He had no duty to keep treating her. In fact, that is the very reason Benny offered to pay him a reward if he would actually cure her and not give up and quit. (C) is wrong because Benny promised to pay $25,000, and that is what Dr. Quackie has a right to receive, not just some "reasonable amount". Therefore (D) is right.

8) **(C)** Answer (D) is wrong because although "impossibility" is a recognized contract defense, it requires performance to be impossible by anyone, not just by the breaching party. Obviously if inability to pay was a legal defense we would all be using it. [See "**Simple Contracts & UCC Outline**", **supervening impossibility, p. 27**.] (B) is wrong because it is irrelevant. Bill is not claiming there was no contract to begin with because Daddy concealed or misrepresented the facts. (A) would be a good defense if the modification agreement were enforceable, but it is not. (C) is the right answer because Bill agreed to do the work for the original contract price and that gave him a pre-existing duty to do the work, and Daddy's promise to pay him $4,500 more was unsupported by any exchange of consideration. As a result, Daddy's promise to pay more is legally unenforceable. Bill could try to enforce it in equity pleading "detrimental reliance" or "promissory estoppel" but he would fail because he got Daddy to promise to pay him that extra money by threatening to breach the contract and walk away. That gave him unclean hands so he cannot prevail in equity.

9) **(A)** This is a modification without consideration and not an "accord and satisfaction" because Bill does not raise a good faith, reasonable objection that Owen has breached their agreement. [See "**Simple Contracts & UCC Outline**", **accord and satisfaction, p. 56**.] Therefore, (D) is clearly wrong. And the Statute of Frauds does not require a writing here, so (B) is wrong. (A) is correct because Bill had a pre-existing duty to paint the house for $4,000 and Owen's promise to pay him another $600 is not supported by consideration (something in exchange from Bill). Under the common law of contract their modification agreement is not legally enforceable for that reason. [Ignore Restatement of Contracts, 2nd which has never been broadly adopted. Instead, see "**Simple Contracts & UCC Outline**", **supporting consideration required, p. 54**.] Therefore (A) is correct. (C) is wrong because it suggests Bill could recover in equity by pleading "promissory estoppel". But Bill made Owen promise to pay $600 more by threatening to breach the contract, and that gave him unclean hands. [See "**Simple Contracts & UCC Outline**", **equitable defenses / unclean hands, p. 100**.] That bars him from recovering in equity. Therefore (A) is the right answer.

Copyright © Practical Step Press, 2014. All rights reserved.

10) **(C)** A unilateral contract offer is one that unequivocally requires that it can only be accepted by complete performance of the act requested. Courts strongly disfavor unilateral contracts and will only find an offer to be unilateral if that intent is expressly clear. [See "**Simple Contracts & UCC Outline**", **distinguishing bilateral and unilateral contracts, p. 42**.] (B) and (D) are wrong because Garth did not unequivocally state that he would pay Wayne if, and only if, he completed performance by Friday. (B) is wrong because if they have a contract at all it has to be a bilateral contract. (C) is the only right answer.

11) **(A)** A counteroffer by an offeree implies a rejection and a rejection terminates the offeree's power to accept the original offer. A rejection is a clear expression of intent to not accept the offeror's offer. But an inquiry as to whether the offeror would accept varying terms is considered to just be an "inquiry" and not a "counteroffer" or a "rejection". [See "**Simple Contracts & UCC Outline**", **implied rejections, p. 20**.] (B) and (C) are wrong because Bob did not make a counteroffer. (D) is wrong because there is no such case or rule.

12) **(C)** An "offer" is a manifestation of present willingness to enter into a bargain (i.e. into a "contract") communicated to an offeree. The only UCC requirement is that quantity must be stated. Everything else can be imputed from past course of dealing and industry standards. But the English words "can" and "could" only manifest ability, not "willingness". The English words "will" and "would" manifest willingness. And an "offer" MUST be a statement which, when assented to with words such as "Ok!" would make an objective person conclude the offeree has indicated willingness to enter into the suggested contract. [See "**Simple Contracts & UCC Outline**", **present intent, p. 2**, and **the OK rule, p. 3**.] (B) is wrong because Able's first fax was merely a request for a price quote and not an offer to buy. (A) is wrong because Bob's first fax only said, "I can deliver…" He did not say he "would" sell them, whether he could deliver them on time or what his payment terms would be. These parties had no past course of dealing. So if Able had simply sent back a fax saying, "Ok" it would not have been very clear what he meant or was agreeing to. Therefore, Bob's statement alone was not clear enough to be an offer. (D) is wrong because Able's second fax saying, "I will buy" is clear enough to be an offer when integrated with the prior communications. (C) is correct because Bob never responded to Able's last fax.

13) **(A)** This question tests two very basic but important contract rules. (B) is wrong because unilateral contracts only arise out of offers that the offeror intends to be unilateral. Except for **general offers**, offers of rewards or bounties, unilateral contract offers must unequivocally indicate by their terms that acceptance can only be by complete performance of the acts requested. [See "**Simple Contracts & UCC Outline**", **unilateral offers, p. 9**.] Here Owen was obviously expecting Mike to say something in response like, "Yes, I can do that," or "I am really busy and don't think I can get the job done that fast." Owen obviously was not saying, "No matter how much work you do I won't pay you anything at all unless you complete all of the work by July 4th." (A) is correct because oral contract offers lapse at the end of the conversation unless the offeror expressly or impliedly indicates a willingness to leave the offer open for a longer period of time. [See "**Simple Contracts & UCC Outline**", **acceptance must be timely, p. 11**.] (C) and (D) are wrong because Owen's offer lapsed when he walked away. Mike could not accept it later. The offeror is the "king of the offer" and that means an offeree cannot opt to wait a while, begin work, and then claim the offeror is bound to something different from what the offeror proposed in the first place.

14) **(C)** Under the Statute of Frauds contracts for the conveyance of interests in land must be in writing to be legally enforceable. Usually these are contracts for the sale of land but it may also involve long term leases, easements, etc. (A) is wrong because Ron's claim derives from the fact Hal and Wanda have already sold Jenny the house and transferred it to her, so the contract between the three of them has

Copyright © Practical Step Press, 2014. All rights reserved.

been performed. Whether it was legally enforceable before it was performed is now moot. (B) is wrong because he had an "exclusive listing agreement" so he has a right to be paid his commission regardless of who buys the house or how they heard it was for sale. (C) is correct because under the Equal Dignity Rule real estate listing agreements (brokerage contracts) must also be in writing to be legally enforceable because they derive their value from a sale of land, and are, therefore, also conveyances of "interests" in land. [See "**Simple Contracts & UCC Outline**", **equal dignity rule requires written broker agreements, p. 82**.] (D) is wrong because "promissory estoppel" is an equitable theory under which a Court has discretion to grant a remedy. But equitable remedies are never a legal right and people are never "legally bound" by that concept.

15) **(D)** Contract consideration is an exchange of value sufficient for the law to find a contract formed and the parties will be bound. That is something of a tautology, but each party must give or do something that they did not have any pre-existing legal duty to give or do, in exchange for something given or done by the other party. [See "**Simple Contracts & UCC Outline", consideration, p. 5**.] (A) is wrong because contract parties do not have to receive anything. Rather they have to give or do something. (B) is wrong because the issue is whether Natasha is bound by a contract, not Badenov. (C) is wrong because even though Bullwinkle benefited from his studies, he also had to pay Badenov, and that is giving something he previously had no legal duty to do. (D) is correct because Natasha gave her promise to Bullwinkle, and in exchange (in response and reliance upon the promise) he gave his money to Badenov and studied under Badenov, and those were actions he had no legal duty to do.

16) **(C)** When a party acts to provide benefits to another party with a reasonable belief they will be compensated in return, and the other party knowingly receives those benefits, the party receiving benefits is legally obligated to pay reasonable compensation in return based on an implied-in-fact contract. [See "**Simple Contracts & UCC Outline**", **express and implied-in-fact contracts, p. 22**.] (A) is wrong because it does not matter if the services rendered were necessary or not. All that matters is that hospital reasonably expected to be paid. (B) is wrong because Hospital is not an intended third-party beneficiary of any insurance contract Paul may have with Blue Circle. (C) is correct because Paul knowingly received the services provided by Hospital, and Hospital provided those services reasonably expecting to be compensated. (D) is wrong because "constructive trust" is a tort concept and has nothing to do with contract law.

17) **(A)** Under the Statute of Frauds contracts for conveyance of interests in land must be in writing to be legally enforceable. [See "**Simple Contracts & UCC Outline**", **contracts conveying interests in land, p. 35**.] (A) is correct because the partnership agreement was not a contract for conveyance of an interest in land. Rather, it was a contract to enter into a business arrangement. The fact that the business would involve collateral contracts for the acquisition, development, leasing and sale of land is irrelevant. (C) is wrong because the partnership agreement is outside the statute. (B) is wrong because it is a non-sequitur. No matter what the of a general partnership are authorized to do does not affect whether or not a partnership agreement is within the statute. (D) is wrong because even though the suit involves a sale of land, that does not bring the partnership within the statute.

18) **(D)** Under the broadly adopted view construction contractors and other contract parties who agree to build or create structures or other products for others assume the risks that fires, theft or other calamities may destroy those works before they are completed and delivered in possession to the buyers. They can and should obtain "casualty insurance" to cover the possibility of accidental loss. After contract performance is complete works are delivered in possession to buyers the risk of loss transfers to the buyers. (A) is wrong because Bill's duty to finish construction is not extinguished. (B) is wrong because performance is not impossible. Bill just has to start over. (C) is wrong because Homer has no duty to pay Bill anything for his lost efforts. (D) is the only correct answer.

Copyright © Practical Step Press, 2014. All rights reserved.

19) **(C)** Answer (A) is wrong because the store's advertisement constituted an offer. Usually advertisements are not offers because they do not state the quantity offered for sale and/or identify to whom the offer is being addressed. But there are exceptions such as general offers, which are offers of rewards or bounties to "whoever performs a particular action". And this illustrates an exception where the quantity offered for sale is identified as "one" and the person to whom it is offered is the "first person" who accepts the offer. [See "**Simple Contracts & UCC Outline**", **advertisements rarely offers, p. 3**.] (B) is wrong because the store employees are agents of the store (duh). So if a store employee takes the swing set, the store is prevented from performing on its own offer. (C) is correct because Bob accepted the store's offer by saying he was there to buy the product. (D) is wrong because it says Bob was the first to make an "offer". The store made the "offer" so Bob is actually the first to "accept" the offer.

20) **(B)** If an individual acts to convey benefits to another person with a reasonable expectation of being compensated in return, and the other person knowingly accepts those benefits, but the parties do not enter into an express contract based on a clear offer and acceptance, an implied-in-fact contract forms which binds the parties and gives the performing party a legal right to receive reasonable compensation. [See "**Simple Contracts & UCC Outline**", **express and implied-in-fact contracts, p. 22**] (A) is wrong because Ken is owed nothing for the second day. Barbie's promise concerning the second day was subject to the express condition precedent that she would only have to pay for the second day if she came back with her girlfriend, Bunny. (B) is correct. IF Barbie knew Ken expected to be paid when he took her sailing the first day, she knowingly accepted the benefits he acted to bestow on her and that formed an implied-in-fact contract under which she owed him a "reasonable amount" and that amount would be his regular fare unless a Court found that to be an unreasonable amount. (C) would be true if he was clearly a "volunteer" but if Barbie knew he expected to be paid he has a right to compensation. (D) If Ken has a right to compensation at all, it is irrelevant whether Barbie received "material benefits" or had a terrible time.

21) **(A)** Contract promises are often called "covenants". Covenants that are subject to conditions that must hold before the covenant ripens into a duty are said to be "subject to a condition precedent". Covenants that ripen into duties that will be excused if a condition later fails are said to be "subject to a condition subsequent". [See "**Simple Contracts & UCC Outline**", **conditions precedent and subsequent, p. 8**.] Barbie has effectively said, "I offer to pay you $200 tomorrow if you will take me and my friend sailing, but only if I come back with her." That is a contract offer subject to the condition precedent that Barbie must return with Bunny. Ken agreed so a contract formed. But the performance of both parties is subject to the condition that Barbie must return with Bunny. If that condition does not hold, the promises each made fail to ripen into contractual duties. (A) is correct because the agreement between Ken and Barbie is intended to benefit Bunny, and it is subject to the condition that Barbie must return with Bunny. (B) is wrong because if Barbie returned with Bunny the next day a contract would form whether or not Ken performed at all. (C) is wrong because the contract is subject to a condition. (D) is wrong because Barbie promised to pay Ken.

22) **(D)** Contracts with parties who are minors or other people lacking contractual capacity are valid contracts but the parties lacking capacity have the right to void the contracts if they are not for providing the necessities of life, food, shelter, clothing, and medical care. [See "**Simple Contracts & UCC Outline**", **rescission for lack of capacity, p. 29**.] (A) is wrong because a contract did form between Ken and Barbie for the second day and possibly for the first day. (B) Contracts do not have to be in writing simply because some of the parties are minors or otherwise lacking capacity. (C) Contracts with minors may be enforceable in equity based on detrimental reliance or promissory estoppel but only to the extent it is necessary to prevent injustice. Otherwise it is incorrect to make an unqualified statement that the "contract could be enforced". (D) is correct because Ken is 23 years old.

Copyright © Practical Step Press, 2014. All rights reserved.

That makes him an adult an any contract that formed could be enforced against him by Barbie regardless of her age.

23) **(A)** A "constructive condition" of every contract, unless the parties specify otherwise, is that the party to perform a time-consuming duty must fully perform before the promise of the other party ripens into a duty to perform. [See "**Simple Contracts & UCC Outline**", **more time-consuming duties first, p.46**.] (B) and (C) are wrong because Wayne has no right to be paid by Garth before he finishes. (D) may be true but that has nothing to do with constructive conditions. (A) is the right answer.

24) **(D)** In order to recover in a contract action a plaintiff must be able to prove damages or else to prove legal restitution is appropriate. [See "**Simple Contracts & UCC Outline**", **awards of money judgments, p. 83**.] (A) is wrong because even if timely performance was not an express (material) condition, Garth still could collect damages if they are proven. (B) is wrong because even though Wayne would rather go fishing when the "fish are biting" that does not make contract performance impossible. (C) is wrong because voluntary intoxication is not a defense to a contract action. (D) is correct because the facts do not suggest any basis for an award of legal restitution, so if Garth suffered no damages he has no right to a money judgment against Wayne.

25) **(D)** Every contract is subject to implied material conditions. If those conditions fail through no fault of either party the contract fails or becomes "void". [See "**Simple Contracts & UCC Outline**", **implied material conditions, p. 48**.] (A) is wrong because it says Mark breached an "implied-in-fact" promise. Mark breached an express promise he would be home on April 29 to let Paul in. There actually is no such thing as an "implied-in-fact promise". There are "implied-in-fact contracts" and "implied covenants" but no "implied-in-fact promises". (B) is wrong because Paul showed up to do the work as promised and did not breach the contract. So if he could recover from Mark, it would be without any "offset". (C) is wrong because the delay from April 3 to April 29 is not what caused Mark injury. (D) is correct because Mark's sudden trip to the hospital on April 28 was unavoidable, it made it impossible for him to be present on April 29, and it voided the contract.

26) **(C)** Answer (A) is wrong because Dan was offering a "free" trip, a gift, and the requirement that Pam had to call the station was simply a requirement to determine who would "win" the prize. (B) is wrong because even though the facts might support an action in equity based on detrimental reliance or promissory estoppel, the CALL is whether Pam would win in a breach of contract action, and that means in a court of law. (D) is wrong because minors can enforce contracts against others, they just can't have contracts enforced against them, unless they are contracts for the necessities of life. (C) is correct because KKK's promise to Pam was not in exchange for any promise by Pam that she would do anything for KKK (or anyone else) in exchange. That makes KKK's promise a "gift promise". A "gift promise" is a promise to give a gift, something given free from any bargained for thing in exchange. Gift promises do not create contracts, and they can be rescinded or revoked at any time before the gift (or a token chose) is actually delivered. [See "**Simple Contracts & UCC Outline**", **offeree must give in exchange, p. 6**, **gift offers and gifts, p. 7**, and discussion of **revocability and token chose, pp. 7-8**.]

27) **(A)** Answer (A) is correct because Tramp's first statement clearly offers a gift and seeks nothing in return. When the words of the parties are quoted, pay close attention to the exact words used. Semantics is very important. Although Tramp says the gift is intended "to establish an orphanage" the word "to" does not suggest a bargained for exchange like the word "if". Tramp did not say, "I will give you this money if you promise to use it to establish an orphanage." If he had said that, it would be a contract offer, because he would be seeking a promise from Foulwell in exchange for the money. But those were not the words he used. Foulwell's response was merely a gift promise given in exchange.

Copyright © Practical Step Press, 2014. All rights reserved.

That makes this an exchange of gift promises. (B) is wrong because it assumes a contract formed when it did not. (C) is wrong because "Foulwell's response that he will name the orphanage after Tramp "in exchange" cannot retroactively change Tramp's prior statement from being the offer of a gift into a contract offer. (D) is wrong because contracts are created in law by offer and acceptance, not "detrimental reliance". Rather, detrimental reliance is an argument that if no enforceable contract exists, the court might enforce a gift promise in equity, and that is not the CALL of the question. The CALL asks if Foulwell would succeed in a "breach of contract action", not in an equitable action. [See "**Simple Contracts & UCC Outline**", **offeree must give in exchange, p. 6**, and **gift offers and gifts, p.7**.]

28) **(C)** The purpose of this question is to teach you to read each possible answer very carefully. (A) is the best statement of the law because "moral obligation" is NOT VALID CONSIDERATION to support enforcement of a contract in the vast majority of jurisdictions. Consequently, if you read answer (A) you may leap to the conclusion it is the best answer and ignore the other possibilities. But in a very small number of old, fact-bound cases Courts have reached the opposite result. That makes (C) the best answer, because if moral obligation is considered to be legal consideration in this particular jurisdiction, Calhoun would win. (B) is wrong because Butler never said he was paying Calhoun for his "prior services". Rather he was paying Calhoun out of a sense of moral obligation for saving his life. (D) is wrong because contracts are created in law by offer and acceptance, not "detrimental reliance". Rather, detrimental reliance is an argument that if no enforceable contract existed, the court might enforce Butler's promise in equity. But that is not the CALL of the question.

29) **(B)** Note that the question only says "an action" was filed and does not say that "action" was a breach of contract complaint. (A) is wrong because Vic was unconscious and did not knowingly accept the services offered by Metro. As a result there could be no "meeting of the minds", and no legally enforceable contract could have formed. Without a legal contract Vic could not be "legally obligated" and there could be no "breach of contract". (B) is correct because Metro provided its services with a reasonable expectation it would be compensated in exchange, and a Court of equity would require Vic's estate to pay Metro in order to protect the public interest based on an "implied-in-contract" theory or cause of action. [See "**Simple Contracts & UCC Outline**", **implied-in-law contract, p. 95**, where a similar example is given.] (C) is wrong because it confuses the requirements for an "implied-in-fact contract" with the equitable theory of "implied-in-law contract". [See "**Simple Contracts & UCC Outline**", **implied-in-fact contracts, p. 22**.] (D) is wrong because a Court of equity can apply an implied-in-law contract theory to either prevent "unjust enrichment" OR to protect the public interest by preventing frustration of reasonable commercial expectations.

30) **(C)** Under the Statute of Frauds a lease of land for more than a year must be in writing to be legally enforced. So, if the agreement between Farmer and Tom was oral, it is not enforceable, and Farmer could not recover the entire amount of $7,200. But month-to-month lease agreements can always be legally enforced, and since Tom agreed to pay $300 each month and had possession for over 5 months he would owe Farmer $1,800 whether the agreement was written or not. (A) is wrong because it says Farmer will "only" recover if the lease agreement was in writing, and that is not true as to the $1,800 Tom owes. (D) is wrong because making "valuable improvements" is only a requirement for enforcing oral land sales contracts under the Part Performance Doctrine, not enforcing land leases. [See "**Simple Contracts & UCC Outline**", **contracts conveying interests in land / part performance doctrine, p. 35**.] (B) is wrong because Tom would have been obligated to Farmer for at least the first month's rent even if he never took physical possession on January 1. (C) is the best answer because a Court would almost certainly interpret the agreement to bind Tom to pay $300 at the beginning of each month he occupied the land.

Copyright © Practical Step Press, 2014. All rights reserved.

31) **(B)** In a breach of contract action the non-breaching party has a right to be awarded a money judgment for the **damages** caused by the breach OR for **legal restitution** in the amount necessary to prevent the breaching party from reaping an unjust enrichment. Damages are measured as the sum of **reliance damages**, **expectation damages**, **consequential damages** and **incidental damages**. [See "**Simple Contracts & UCC Outline**", **damages, p. 85**.] Legal restitution is measured by the amount that would leave breaching parties in the same financial position they would have been in if they had not breached the contract. [See "**Simple Contracts & UCC Outline**", **legal restitution, p. 90**.] Here Homer would have been obligated to pay Bill $100,000 when he completed the house. (A) is wrong because Bill has not finished the house so he has no right to be paid the full contract price. (B) is correct because if Homer pays Bill $90,000 and someone else $10,000 to complete the house his total expenditures would be $100,000, the amount that he was obligated to pay under the contract. That way he is not reaping a benefit from breaching the contract. (C) is wrong because if Homer pays Bill $100,000 and someone else $10,000 his total expenditures would exceed the amount he was obligated to pay under the contract. (D) is wrong because Bill has a right to be awarded legal restitution in the amount of $90,000 and is not limited to just his $80,000 in damages.

32) **(A)** Contracts cannot be enforced at law against minors or other parties lacking contractual capacity unless they are for necessities of life (food, shelter, clothing, medical care, etc.) or the parties fail to repudiate the contracts within a reasonable period of time after attaining capacity (e.g. minors reaching their 18th birthdays). [See "**Simple Contracts & UCC Outline**", **rescission for lack of capacity, p. 29** and contracts with parties lacking capacity, p. 34.] However, parties that have been tricked into unenforceable contracts with parties lacking capacity may plead for a remedy based on the equitable theory of implied-in-law contract. [See "**Simple Contracts & UCC Outline**", **implied-in-law contract, p. 95**.] (B) is wrong because Lolita is only 17, so Fries cannot enforce this contract against her at law. (A) is correct because if Fries "reasonably expected to be paid" a Court of equity could grant Fries a judgment based on implied-in-law contract theory. (C) is wrong because this is a contracts question, not a crimes question. A criminal action against Lolita may punish her but it would not compensate Fries. (D) is wrong for the same reason. This is a contracts question, not a tort question. If Fries proved it was induced into the contract by fraud it could rescind the contract, but that would not give it compensation. To obtain compensation Fries must plead in equity using the argument in answer (A).

33) **(C)** Answer (A) is wrong because gift promises are not enforceable at law, and can only be enforced in equity based on theories of promissory estoppel and/or detrimental reliance. [See "**Simple Contracts & UCC Outline**", **gift offers and gifts, p. 7** and **promissory estoppel / detrimental reliance, pp. 96-97**.] (B) is wrong because Cindy provided services to Mildred as a "volunteer" and did not reasonably expected to be compensated for them. Therefore, she cannot establish the required elements of a claim of implied-in-law contract. Further, she did not change position in reliance on Mildred's promise, so she cannot prove the required elements of a claim of promissory estoppel or detrimental reliance, [See "**Simple Contracts & UCC Outline**", **promissory estoppel / detrimental reliance, pp.96-97**.] (C) is correct because Cindy has no legal or equitable basis for obtaining a remedy. (D) is wrong because the windfall Drizella and Anastasia have received was not the result of any "unjust" act on their parts. Their failure to help their mother may be morally wrong, but it was not legally wrong.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #2 – Contracts – Interpretation and Enforceability

Test #2 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **contract enforceability**, express and implied **conditions** (impossibility, frustration of purpose, illegality), **contract defenses**, **contract interpretation**, **waiver and estoppel**, and the **Parol Evidence Rule**. Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Thomas, a French literature professor in California, arranged to exchange positions for one year with Francois, a French literature professor in Paris, beginning September 1. On August 1 they entered into a written lease agreement under which Francois would lease Thomas' house. The agreement said, "It is of the essence that Thomas's house be completely painted by September 1." Thomas then entered into an agreement with Paul the painter to complete the painting of Thomas's house by August 28. The Thomas-Paul agreement contained the following: "Paul is bound hereunder if, and only if, he has been able to obtain Kelly-Moore "Sunset Yellow" paint by August 28." Paul did not begin to look for the necessary paint until August 25, when he learned that, due to manufacturing shortages, the paint could not be obtained until September 20. Paul told Thomas this on August 26, and suggested amending the agreement to provide for a painting completion date of October 1. Thomas at once advised Francois by telephone of this development, and further advised that it was then impossible to find another painting company that could have the house ready by September 1. Francois there-upon cancelled the lease and immediately made other, more expensive, housing arrangements. Thomas then wrote Paul on September 3 that his services would not be needed or accepted, and that he was expressly reserving all legal rights and remedies against Paul for breach of contract.

1) If Thomas sues Paul for breach of contract, which of the following is most likely to succeed as a defense for Paul?

   (A) The court would find Paul was bound by an implied covenant to make reasonable effort to obtain the specified paint before August 25.
   (B) Paul was excused by reason of impossibility.
   (C) Paul's notice to Thomas that he anticipated a delay in completion was not a breach of contract.
   (D) The time term and completion date was not of the essence in the Thomas-Paul contract.

2) If Francois sues Thomas for breach of contract, the court's decision will probably be in favor of:

   (A) Thomas, because his duty, if any, to provide a painted house by September 1 was effectively delegated to Paul.
   (B) Thomas, because his contract breach, if any, was deminimus.
   (C) Francois, because Thomas was negligent in not checking on Paul's progress before August 25.
   (D) Francois, because the lease provided that a painted house by September 1 was of the essence.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 3

Owen wanted his house painted. He got a bid from Bill for $4,000 and several other bids between $4,500 and $5,000. He accepted Bill's bid, but before Bill started work he called Owen and said he had discovered an error in his calculations and could not possibly do the work for less than $4,600.

3) If Owen sues Bill for breach of contract, who will prevail?

(A) Owen, if it is too late for him to accept the next lowest bid.
(B) Owen, if he did not have reason to know Bill's bid was the result of an error.
(C) Bill if he agrees to pay Owen for expenses he incurs as a result of his mistake
(D) Bill, if Owen should have known he had made a mistake.

Question 4

Bill agrees to build a house for Homer for on a lot by the sea according to plans. Then a storm causes the seashore to collapse and Homer's lot is under water.

4) Is Bill still bound by the contract?

(A) No, the contract is void because the subject matter of the contract was destroyed through no fault of either party.
(B) No, Bill is discharged from his obligation because performance is impossible.
(C) Yes, if Homer can buy a similar, alternative building lot in the same area within a reasonable period of time.
(D) No, the contract is void because of mutual mistake.

Question 5

Bill agrees to build a house for Homer for on a lot by the sea according to plans for $100,000. Bill completes 5% of the work and then a storm washes away much of the lot and the house cannot be built unless $900,000 is spent to replace the lost soil and build a protective seawall.

5) Is Bill still bound by the contract?

(A) No, if the increased costs would bankrupt him.
(B) No, the contract is void because of mutual mistake.
(C) No, Bill is discharged from his obligation because of impracticability of performance.
(D) Yes, but he may bring an action against Homer for the increased costs of construction.

Question 6

Bill agrees to build a huge three-story house for Homer for on a lot by the sea according to plans. Before Bill starts construction the Coastal Commission declares Homer's lot a natural wetland, all residences built there must meet stringent new rules that restrict them to small one story homes, and all plans must be approved by the Commission before construction can be started.

6) Is Bill still bound by the contract?

(A) No, the contract is void because of mutual mistake.
(B) No, and he can recover his lost profits in an action against Homer.
(C) No, Bill is discharged from his obligation because of supervening illegality.
(D) Yes, if Homer supplies him with new plans approved by the Coastal Commission.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 7

Bill agrees to build a house for Homer for on a lot by the sea according to plans. Before Bill can start work a Carpenter's Union strike stops him.

7) Is Bill still bound by the contract?

(A) No, Bill is discharged from his obligation because of impossibility of performance.
(B) No, Bill is discharged from his obligation because of impracticability of performance.
(C) Yes, but any increase in costs resulting from the strike must be paid for by Homer.
(D) Yes.

Question 8

Owen hired Bill on June 1 under a written contract to build a house according to plans for $500,000. They agreed the house must be completed by October 1 or else Bill would be subject to liquidated damages of $2,000 a day for every day after that it was not finished. After Bill started work a union strike caused him substantial delays.

8) Is he still bound by the contract?

(A) No, Bill is excused from performance because of frustration of purpose.
(B) No, Bill is excused from performance because of impossibility.
(C) Yes, Bill must perform as agreed or he will be liable for breach.
(D) Yes, Bill must perform but Owen must pay him a surcharge for increased expenses caused by the strike.

Questions 9-10

Owen hired Bill to build an addition to his house on June 1. They executed a detailed contract that described the work to be done. Owen agreed to pay $50,000 for the work, $25,000 by August 1 when the work was to be half complete, and the balance by October 1 when the job was to be completed. When the work was one-third completed a fire destroyed the structure on July 20 and made it impossible to complete construction by October 1. Bill was contractually committed to build a house for another customer in November so he told Owen he could not finish the work and quit. Owen was forced to hire Carl to do the work at a cost of $60,000.

9) If Owen sues Bill for breach:

(A) The Court should find for Bill because he has not received any compensation from Owen.
(B) The Court should find for Bill because the fire made timely completion impossible.
(C) The Court should find for Owen because Bill could have kept working until November.
(D) The Court should find for Owen because the work was only partially done when the fire occurred.

10) If Bill was committed to build another house in November as a volunteer for the Habitats for Humanity program:

(A) The Court should find for Bill because he has a moral commitment to fulfill his pledge to Habitats for Humanity.
(B) The Court should find for Bill because the public interest favors him.
(C) The Court should find for Owen because Bill can start the work over and finish performance under his contract with Owen.
(D) The Court should find for Owen because he detrimentally relied on Bill's promise.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 11-12

Hal and Wanda granted Anadarko Oil Company a 20-year oil-lease under which Anadarko could drill oil wells on and extract oil from under their land. The lease was recorded and it required Anadarko to plug all wells, remove all oil equipment, and restore the surface of the land to its natural condition, including restoration of vegetation, at the end of the lease.

11) If Anadarko does not remove the equipment and restore the surface of the land at the end of the lease, which of the following, if true, is Anadarko's best defense?

(A) Hal and Wanda died before the 20-year period ended.
(B) The State of Texas seized the land and everything on it by eminent domain to be part of the Texas Oil Reserve.
(C) Hal and Wanda had given Anadarko a license to enter their land.
(D) Anadarko declared bankruptcy before the lease expired.

12) For this question only suppose Hal and Wanda granted Bubba a lease to graze his cattle on their land, and Bubba changed the locks on the gate preventing Anadarko employees from entering the land. If Hal and Wanda take no action against Bubba, and Anadarko stops paying Hal and Wanda the monthly royalties:

(A) Bubba is liable to Hal, Wanda and Anadarko.
(B) Bubba, only, is liable to Anadarko.
(C) Hal and Wanda are only liable to Anadarko.
(D) Anadarko is only liable to Hal and Wanda.

Question 13

Farmer has 2,000 acres of almond trees. He enters into a contract with Gonsanto for $15,000 to buy 2,000 gallons of Killzitol, a treatment for almond tree wilt, otherwise known as almond toxizoa, a devastating parasite spread by the frilly-winged leaf hopper, *Insectus Absurda*. After Gonsanto delivered 1,000 gallons of Killzitol to Farmer, Congress enacted a law prohibiting the sale of FYB, the main ingredient in Killzitol. Gonsanto breaches the contract and refuses to deliver the remaining 1,000 gallons of Killzitol. Farmer's only alternative is to use Omnicide to treat his remaining 1,000 acres. That will cost him $22,000 more. But Omnicide is applied with a tractor and spreader, while Killzitol is applied by aerial application, which costs $500 more an acre to treat.

13) What damages can Farmer recover?

(A) Nothing. He owes Gonsanto $7,500.
(B) $14,500.
(C) $19,500.
(D) $22,000.

Questions 14-15

Bill entered into a written contract with Owen to build a pool-house for him for $25,000. The contract was subject to an express condition that Owen had to obtain a $25,000 line of credit at 5% from Countrywide Mortgage to pay for the work.

14) If Bill refuses to perform, which of the following, if true, is his best argument?

(A) The price of building materials increased dramatically after the contract was signed.
(B) The local lumber yard burned down.
(C) Owen got a line of credit from Bank of America instead of Countrywide.
(D) Owen decided to pay for the construction out of his retirement account instead of getting a line of credit.

Copyright © Practical Step Press, 2014. All rights reserved.

15) Suppose Bill refuses to perform because Owen got a $25,000 line of credit from Countrywide at 6% instead of 5%:

(A) Bill is not in breach because Owen breached an express condition of the contract by failing to get a line of credit at 5%.
(B) Bill is not in breach because the higher interest rate increases the risk Owen will default on the contract payments.
(C) Bill is not in breach because a constructive condition of the contract was that Owen had to get a line of credit at 5%.
(D) Bill is in breach because Owen had a legal right to waive the condition that he was not bound to the contract unless he got a line of credit at 5%.

Questions 16-17

Larry agreed to sell his law practice to Ann for $50,000. He drew up a detailed written contract to sell her the practice. Ann had just taken the Bar Exam and had not yet been notified that she had passed. So when they signed the contract Larry agreed Ann would not be bound if she failed the exam.

16) If Ann refuses to pay Larry for his practice, which of the following would be Ann's best defense argument?

(A) It is illegal for a person who is not an attorney to own and operate a law firm, and she did not pass the Bar Exam.
(B) She did not pass the Bar Exam.
(C) She detrimentally relied on Larry's promise she would not be bound if she failed to pass the exam, and she did not pass.
(D) The Statute of Frauds does not require their oral agreement to be in writing, and she did not pass the Bar Exam.

17) Suppose Larry and Ann expressly stated in their written contract, "This contract will only take effect if Ann passes the Bar Exam." If Ann passes the Bar Exam but is denied a license to practice law because she is a convicted felon, which of the following is Ann's best argument if she refuses to pay Larry for his practice?

(A) The express contract condition that Ann must pass the Bar Exam meant she was not bound unless she became licensed to practice law.
(B) A constructive condition precedent of the contract was that Ann must become a licensed attorney.
(C) The Bar's rejection of Ann constituted an implied novation of the contract.
(D) Ann should be excused because it is impossible for her to perform as an attorney if she is not licensed.

Question 18

Daddy told Nancy if she went to law school he would pay her tuition and expenses along with a bonus of $1,000 for every "A" she got as a final grade in each class. Nancy went to law school, Daddy paid for her tuition and expenses, and she earned A's on her final exams in three classes. But Daddy died suddenly and the executor of his estate refused to pay Nancy the $3,000 bonus she had been promised for the A's.

18) If Nancy sues Daddy's estate for failure to pay the $3,000 bonus:

(A) She will succeed because there was a bargained for exchange between her and Daddy.
(B) She will succeed because Daddy clearly would have paid her if he were still alive.
(C) She will fail because Daddy's promise was personal to him and extinguished by his death.
(D) She will fail because Daddy's promise was oral and it would be impossible for Nancy to prove its terms after he died.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 19

19) Wayne agreed to do a brake job on Garth's classic 1975 Pacer. As part of his estimate Wayne anticipated it would cost him at least $100 to have the brake drums milled at Mack's Machine Shop so he added $150 to his estimate for that. Wayne's total estimate was $300. It turned out Mack's wanted to charge Wayne $160 to turn (mill) the drums so he took the drums to Quality Milling instead. They did the work for $150. Wayne told Garth he owed him $210 for having the drums milled because Mack's prices had gone up by $60. Garth got mad and refused to pay. How much does Garth owe Wayne for having the brake drums machined?

(A) $210 based on detrimental reliance because Wayne's quote was just an estimate.
(B) $210 based on quasi-contract because Wayne's quote was just an estimate.
(C) $150 because that was what the original estimate said.
(D) $300 because that was the contract price.

Question 20

Daddy was so proud of Nancy for passing the Bar exam that he announced he was going to pay for an entirely new office remodeled and furnished just for her to start her practice. He leased space in the Forum Building for $2,000 a month and entered into a contract with Interior Design to design Nancy's new office for $10,000. Nancy worked for days and days with Interior Design as they drew up plans for an exciting new office with cutting edge design. Daddy contracted with Bill to gut the existing space and install new walls, lighting, and floor coverings for $35,000. When Bill gutted the existing space he discovered a supporting pier in the center of one of the walls prevented him from implementing Interior Design's plans unless he installed an engineered beam that would cost him $4,500 he had not anticipated and had not provided for in his bid. He told Daddy he would have to pay him $4,500 more (a total of $39,500) or he would have to stop work.

20) If Daddy refused to pay more, which of the following would be his best argument against Bill?

(A) Neither he nor Bill had any idea there was a supporting pier inside the wall when they signed the contract.
(B) He never made any representations to Bill about supporting piers in the existing space.
(C) Bill agreed to do the work according to the plans prepared by Interior Designs.
(D) Nancy had spent days working with Interior Design in reasonable reliance on Bill's assurance he would remodel the office.

Question 21

Sam offered to sell Bob his farm for $200,000. Bob said he would give Sam $100 if he would give him two weeks to think it over. They signed a written agreement that stated, "Sam hereby offers to sell his farm [which was adequately described] to Bob in exchange for $200,000. Bob will pay Sam $100 and in exchange Sam will not revoke his offer before 5:00 p.m. on Sunday, September 3." When Bob started to write Sam the $100 check he discovered he was out of checks. He told Sam he would come by the next day with the $100. That night Sam changed his mind about selling his farm. Then next day when Bob was approaching his door with a check for $100 Sam said, "I changed my mind. I am revoking my offer to sell."

21) Which of the following are true?

I. Sam cannot revoke because he stated in a signed writing that Bob had given him $100.
II. Sam cannot revoke because Bob tendered the $100.
III. The option contract failed for lack of consideration.

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

Copyright © Practical Step Press, 2014. All rights reserved.

Question 22

Sam offered to sell Bob his farm for $200,000. Bob said he would give Sam $100 if he would give him two weeks to think it over. They signed a written agreement that stated, "Sam hereby offers to sell his farm to Bob in exchange for $200,000. Sam agrees, in exchange for $100 from Bob, receipt of which is hereby acknowledged, that he will not revoke his offer before 5:00 p.m. on Sunday, September 3." When Bob started to write Sam the $100 check he discovered he was out of checks. He told Sam he would come by the next day with the $100, and Sam orally agreed. That night Sam changed his mind about selling his farm. Then next day when Bob was approaching his door with a check for $100 Sam said, "I changed my mind. I am revoking my offer to sell."

22) What is Bob's best argument why Sam cannot revoke his offer?

(A) The option contract did not specify exactly when he was to pay the $100.
(B) Sam is barred by the Parol Evidence Rule from giving evidence he did not pay the $100 at the time the option contract was executed.
(C) He tendered payment of the $100.
(D) The option contract was effectively modified when Sam agreed Bob could pay him the next day.

Question 23

Connie bought a new XP microwave oven from Smears, an authorized XP dealer, on September 1, and Smears delivered it the same day. The warranty in the owner's manual said:

> "XP, Inc. microwave ovens are warranted to be free from defects in material and workmanship for 90 days from the date of delivery by an authorized dealer. XP's liability, if any, arising under this warranty shall be strictly limited to the cost of repair or replacement of defective parts."

Connie used the oven properly until October 1 when she sold it to Betty for $200, a fair price. Connie gave Betty the owner's manual. Betty used the oven properly until November 1 when it caught on fire because it had bad wiring. Betty spent $200 to repair the oven and $4,500 to repair her home because of damages caused by the fire. Betty demanded that XP compensate her for her losses. XP refused, and Betty got a written statement from Connie assigning her all of Connie's rights against XP under the original purchase contract. Assume the only relevant section of the UCC dealing expressly with rights of third parties provides:

> "A seller's warranty, whether express or implied, extends to any natural person who may reasonable be expected to use the goods, and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section."

23) If Betty recovers from XP for breach of express warranty, what damages will she probably recover?

(A) $200 only, the cost of materials and labor to repair the microwave oven, because the warranty effectively excluded consequential damages.
(B) $200, the cost of materials and labor to repair the microwave oven, plus $4500 for damages to Betty's home because under the Uniform Commercial Code the remedy for a breach of warranty as to property damage may not be limited to the cost of repair and replacement.
(C) The difference, if any, between the fair market value of the microwave oven in its defective and damaged condition before repairs and the price that Connie paid for it.
(D) The difference, if any between the fair market value of the microwave oven in its defective and damaged condition before repairs and the resale purchase price that Betty paid for it.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 24

Vendor Able had a contract with County to sell it computers of a certain type. Bob agreed to sell him 10 of the computers for $2,000 each. Under the terms of the contract Able is to pay Bob $10,000 in advance, $5,000 upon delivery, and $5,000 when County completes payment to Able. County defaults and does not pay Able.

24) Is Able liable for the last payment of $5,000 to Bob?

(A) Yes, because the contract terms only define a "reasonable time for payment" by Able.
(B) Yes, because Bob should not have to bear the risks Able might not be able to collect from County.
(C) No, because payment by County was an express condition of the contract, and until that occurs Able's duty to pay Bob never ripens.
(D) No, because Able has not received sufficient funds to pay Bob.

Questions 25-26

Sid offered to sell his horse to Bob for $15,000 on Tuesday. Bob asked for a week to think about it and gave Sid $100 to hold the offer open. Sid took the $100 and gave Bob a written offer that said he would sell Bob the horse for $15,000 and would not revoke his offer for a week. On Wednesday Sid sold his horse to Charley for $19,000 and did not tell Bob. Charley had no idea Bob's option on the horse existed. On Thursday Bob called Sid and said he could not pay more than $10,000 for the horse. On Monday Bob told Sid he had changed his mind and agreed to buy the horse for $15,000.

25) If Bob sues Sid, a court would most likely find:

(A) No contract formed because Bob's statement on Thursday terminated Sid's offer.
(B) No contract formed because Sid had already sold the horse to Charley, effectively revoking his offer.
(C) A contract formed because Bob accepted Sid's offer on Monday.
(D) A contract formed because Sid had no right to sell the horse to Charley.

26) If Sid sold the horse to Charley on Friday after Bob said he would not pay more than $10,000, and not on Wednesday, and Bob heard about that sale on Saturday, a court would most likely find Bob's power to accept Sid's offer:

(A) Terminated on Thursday when Bob told Sid he would not pay more than $10,000.
(B) Terminated on Friday when Sid sold the horse to Charley for $19,000.
(C) Terminated on Saturday when Bob learned the horse had been sold to Charley.
(D) Continued to Monday because Bob had paid $100 for an option.

Question 27

Bob entered into a valid, written contract to buy Sam's home for $200,000 and gave Sam an "earnest money" deposit of $5,000. Bob had the home inspected and was informed that there was substantial termite damage that was going to cost him $10,000 to repair. Further, an appraisal indicated the house was worth only $175,000 even without the termite damage. Bob repudiated the contract and demanded return of his deposit. Sam refused to give Bob his money back.

27) If Sam sues Bob and requests an order of specific performance:

(A) Sam has a right to specific performance if Bob has breached the contract because it is a contract for the sale of land.
(B) Bob will lose his $10,000 deposit if he has breached the contract but will not be required to buy the house.
(C) Sam will be granted an order of specific performance subject to abatement for the cost of termite repairs, $190,000.
(D) Sam will be granted an order of specific performance for $200,000.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 28

Col went to Art's Gallery and saw an unsigned impressionist painting that intrigued him. He talked with Art about the painting for a while and then paid him $100 for it. Soon afterward Col appeared on the "Antique Road Show" where the painting was identified by experts as being by Van Gogh and worth millions.

28) If Art petitions the Court to recover the painting from Col:

(A) He will succeed if he told Art he thought the painting was done by a total unknown.
(B) He will succeed if Art knew the painting was worth much more than $100.
(C) He will lose if he and Col both agreed the painting was by another artist.
(D) He will lose because title irrevocably transferred to Col when possession of the painting and payment changed hands.

Question 29

Bill entered into a written contract to paint Homer's house for $4,000. The contract form had a heading stating "Satisfaction Guaranteed!" Bill was tardy finishing the painting job, and he got a lot of paint on Homer's rose bushes. Homer said, "I am not satisfied, and I don't think anyone would be satisfied with this sloppy job. I am not going to pay you a cent!"

29) If Bill sues Homer for breach of contract:

(A) Bill will get nothing because the contract expressly provided that Homer had to be satisfied and he wasn't.
(B) Bill will get nothing because he breached the contract when he was tardy finishing.
(C) Bill will win a judgment for $4,000 less any damages Homer can prove.
(D) Bill will win unless a reasonable person would be unsatisfied with the quality of Bill's work.

Question 30

Romeo and Juliet were engaged to be married. Juliet went to Fabio's Bridal Shop and ordered a $900 wedding dress, specially fitted to her voluptuous figure. Juliet told Fabio she was getting married on June 5, and that it was absolutely critical that he have the dress delivered to her home no later than 5:00 pm on June 4. In late May Nigerian computer hackers attacked Fabio's computer system and he lost several days of production as a result. Also one of his most valuable employees got the Iraqi camel flue. As a result he got behind in his work and had to work on the dress all night on June 3. In the meantime Juliet picked up Romeo's cell phone and discovered he was frequently calling his old girlfriend, Donna Duckface. Suspicious, she began spying on Romeo and soon caught him *in flagrante delicto* with that snake, Donna, in the back seat of his classic 1966 front wheel drive Oldsmobile Toronado with a 425 cid (7 liter) Super Rocket V8 and Rochester Quadrajet 4-barrel carburetor. When Fabio knocked on Juliet's door at 5:10 pm on June 4 she told him Romeo was a rat, the wedding was off, and she was not going to pay him for the wedding dress that had been specially altered to her frame.

30) If Fabio sues Juliet for $900:

(A) He will lose because Juliet's purpose for buying the dress was frustrated.
(B) He will win if Juliet admits she always harbored some doubts about Romeo's fidelity.
(C) He will lose because timely performance was an express condition and he was 10 minutes late delivering the dress.
(D) He will win if Juliet waived her rights to void the contract.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 31

Slick was a used car salesman. One day he sold a used BMW to Rambo for $5,000, on credit, with a 30-day guarantee that if there was anything mechanically wrong with the car he could bring it back. Three weeks later Rambo brought the car back complaining that the brakes were faulty. Slick had his mechanic check the car, and he said the brakes were fine. Rambo and Slick got in an argument and in the end Slick agreed to take the car back. Rambo gave Slick the car and left. The next week Slick heard that Rambo was bragging in a bar about how he drove Slick's car 3,000 miles across the country on a 3-week vacation for free.

31) If Slick sues Rambo for breach of contract:

(A) He will win unless Rambo reasonably thought the brakes were faulty.
(B) He will win if the brakes were not faulty.
(C) He will lose because his settlement agreement with Rambo was a binding accord and satisfaction.
(D) He will lose because Rambo returned the car within the 30-day warranty period.

Questions 32-33

Bill agreed to build a house for Owen. The contract form provided by Bill stated, "Builder agrees to build a three-bedroom home on Buyer's lot according to the plans and specifications which have been attached hereto and are hereby incorporated by reference. Construction is to be completed no later than September 30. The total price of construction is agreed to be $200,000. All subsequent modifications and contract changes must be agreed to by the parties in writing." The attached specifications stated the exterior of the house was to be painted with "Standard Brands" paint. But before construction was completed the Standard Brands company went out of business, and Bill told Owen he could not get that paint. Owen orally agreed the house would be painted with Kelly-Moore paint instead.

32) If Bill did not finish painting the house until October 7, and Owen refused to pay him anything, which of the following is true?

(A) Owen is in major breach because he refused to pay Bill.
(B) Bill is in major breach because completion by September 30 was an express condition.
(C) The contract was modified by their agreement to use Kelly-Moore paint.
(D) The parties waived the condition that Standard Brands paint was to be used.

33) If Owen discovered Bill lied about not being able to get Standard Brands paint and refuses to pay him anything, which of the following is true?

(A) Owen owes Bill $200,000.
(B) Owen owes Bill less than $200,000 if Kelly-Moore paint is cheaper or of lower quality than Standard Brands.
(C) Owen is in breach because he agreed Bill could use a different paint.
(D) Owen is legally estopped from objecting to the brand of paint.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #2 Answer Sheet

Question	Answer
1	B
2	D
3	D
4	B
5	C
6	C
7	D
8	C
9	B
10	C
11	B
12	C
13	A
14	D
15	D
16	B
17	B
18	A
19	C
20	C
21	D
22	B
23	A
24	A
25	C
26	D
27	B
28	A
29	C
30	D
31	A
32	D
33	B
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #2 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Contracts & UCC Outline**".

1) **(B)** Note, the CALL is, "What is Paul's best defense?" When the exact words of a contract are quoted, pay close attention to them. This contract said timely performance was "of the essence". That made timely performance an "express condition", a material condition that if violated causes a major breach of the contract. (D) is clearly wrong because it says the opposite of the stated facts. [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43**.] Paul was bound by an implied covenant (a promise but not a material condition) that he would make reasonable efforts to obtain the necessary paint, so (A) is true, but it is the wrong answer because the CALL asks for Paul's best defense, and (A) actually hurts his position. Finally, (C) is wrong because Paul's notice to Thomas on 2/26 that he could not get the paint on time is clearly an anticipatory repudiation, a major breach. (B) is the best answer because the contract would fail, and Paul would not be liable, if it was impossible to get the specified paint no matter how soon Paul began to look for it.

2) **(D)** Thomas promised to have the house painted by September 1 and the parties agreed that was an express (material) condition. [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43.**] Thomas breached that condition so he is in major breach and (A) and (B) are wrong as a result. Contract duties cannot be escaped by "delegating them" to someone else, and there is no such thing as "deminimus breach" in the common law of contracts anyway. A breach is either major or minor but never "deminimus". (C) is wrong because Thomas is liable whether he was "negligent" or "diligent". He is liable because he promised to have the house ready by September 1 and did not. Therefore (D) is the only correct answer.

3) **(D)** All jurisdictions agree a party that enters into a contract because of a mistake that the other party is aware of or should have known of has a right to void the contract. But if other parties do not know of the mistake and have no way of knowing of it, jurisdictions are split. The majority holds the mistaken parties are bound to the contract and their only remedies are in equity. The minority holds the mistaken parties have a legal right to void the contracts by 1) giving prompt notice of the mistake, if 2) the other parties have not substantially changed position to their detriment because of the mistake and the mistaken parties 3) tender reimbursement to the other parties for the costs they have been caused. [See "**Simple Contracts & UCC Outline**", **rescission for unilateral mistake, p. 30**.] (D) is correct because all jurisdictions agree Bill has a right to void the contract if Owen "should have known" he made a mistake. (A), (B) and (C) might all be true in a "minority view" jurisdiction the facts don't say what the local rule is.

4) **(B)** An implied material condition of every contract is that contract duties must be possible to perform. [See "**Simple Contracts & UCC Outline**", **subsequent failure of implied condition, p. 27**.] If Homer's lot is under water it is impossible for Bill to build a house on it. Therefore the contract fails and both parties are excused. (A) is wrong because the "subject matter" of the contract was not the lot, and the lot was not "destroyed". It was just flooded. (C) is wrong because Bill is not obligated to build on any lot other than the lot he agreed to build on. (D) is wrong because the parties did not make any "mutual mistake". [Note: a "mutual mistake" would mean the contract was void from the beginning, not voided by the storm later that made performance impossible.] So (B) is the correct answer because it is impossible for Bill to build a house in water.

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(C)** Under modern contract law a party may be allowed to legally rescind a contract if events beyond the control of the party makes performance so exceedingly difficult and expensive that it would be unfair or inequitable to force the party to perform. This is often called "impracticability" as opposed to the older common law view of "impossibility". Some view this concept as a failure of an implied condition while others see it more as an equitable defense. [See "**Simple Contracts & UCC Outline**", **rescission for commercial impracticability, p. 32**.] (A) is wrong because it is not necessary for Bill to prove he would be "bankrupted" if he were required to build the house. (B) is wrong because no "mutual mistake" is involved. A "mutual mistake" would void a contract from the beginning, and here the contract has been voided by the storm that occurred later. (D) is wrong because Bill would be excused and the higher costs of construction are not his fault. (C) is the only correct answer.

6) **(C)** Under the common law of contracts an implied material condition of every contract is that performance of contract duties, as agreed upon, must be legal. If changes in law make agreed contract performance illegal or substantially increase the burden of performance, or if they substantially frustrate the purposes of the parties, the contract fails and both parties are excused from performance. This is often called "supervening illegality". [See "**Simple Contracts & UCC Outline**", **supervening illegality, p. 27**.] (C) is correct because Bill would be excused from performance as a result of the "stringent" new rules and the need to obtain government approvals would substantially change his contract duties, slow construction and increase his costs. (A) is wrong because no "mutual mistake" is involved. A "mutual mistake" would void a contract from the beginning, and here the contract was valid until it was rendered void by a change in the law. (B) is wrong because the contract fails, and since it has failed through no fault of Bill, so Bill has no liability for the result. (D) is wrong because even if "new plans" are approved, Bill has no obligation to perform in a manner different from his original agreement.

7) **(D)** Under contract law, labor strikes, materials shortages, and inclement weather do not make contract performance impossible, illegal, or impracticable. They simply slow performance. If timely performance is an express (material) condition, and these delays make timely performance impossible, they will cause the contract to be voided and the parties to be excused. But here timely performance is not an express condition, performance is not rendered impossible, illegal or impracticable, and Bill will not be excused from performing. Therefore (A) and (B) are wrong. If labor strikes, materials shortages, inclement weather and other factors beyond the control of the parties increase contract costs, that risk is assumed by the performing parties. Therefore (C) is wrong, and (D) is correct. [See "**Simple Contracts & UCC Outline**", **supervening illegality and supervening impossibility, p. 27**.]

8) **(C)** Delays are to be expected in construction contracts whether they are caused by inclement weather, material shortages, or labor disputes. [See "**Simple Contracts & UCC Outline**", **implied material conditions of timely performance, concerning construction contracts, p. 44**.] Contractors are not excused from performance unless that is provided for in the contract. (A) and (B) are wrong because performance is just delayed, not made impossible. (D) is wrong because Owen is not liable for Bill's problems. (C) is the only correct answer. Bill must perform as agreed. If that makes him liable for liquidated damages under the agreement that is his problem (Maybe he should have purchased construction insurance).

9) **(B)** If performance of a contract is impossible due to events beyond the control of both parties the contract fails because an implied material condition of every contract is that performance will be possible. But under the broadly adopted view construction contractors and other contract parties who agree to build or create structures or other products for others assume the risks that fires, theft or other calamities may destroy those works before they are completed and delivered in possession to the buyers. They can and should obtain "casualty insurance" to cover the possibility of accidental loss.

Copyright © Practical Step Press, 2014. All rights reserved.

After contract performance is complete works are delivered in possession to buyers the risk of loss transfers to the buyers. [See "**Simple Contracts & UCC Outline**", **supervening illegality, p. 27.**] (A) is wrong because Bill assumed the risk of accidental loss. (C) is wrong because it was "impossible" to complete construction on time whether Bill continued or not (that is a given fact so don't argue with it). (D) is wrong because no matter how much work Bill had completed the building would still have been destroyed. (B) is the best answer. The facts do not say "time was of the essence", or that Owen knew Bill was totally committed to another job after October. But if it is "impossible" for Bill to finish before November, and "impossible" for him to keep working after then, the contract fails and both parties are released from their obligations.

10) **(C)** If performance of a contract is impossible due to events beyond the control of both parties the contract fails because an implied material condition of every contract is that performance will be possible. But a person who makes a gratuitous promise has no legal duty to perform it. [See "**Simple Contracts & UCC Outline**", **gift offers and gifts, p. 7, and effect of gift promise acceptance and gift promise exchange, p. 19**.] (A) is wrong because Bill's promise to Habitats for Humanity is a gift promise and he can freely revoke it. (B) is wrong because even though charitable acts are in the public interest, the proper performance of contractual promises is even more in the public interest because it prevents the frustration of reasonable commercial expectations. (C) is correct because Bill can simply start work over and perform his contract duties as he promised. That is not impossible, illegal, or commercially impracticable. (D) is wrong because Owen's rights are based on contract law, not equitable considerations of detrimental reliance.

11) **(B)** Implied material conditions of every contract are that performance will be possible, performance will be legal, and that the parties will not be substantially frustrated from attaining the purposes for which they have entered into the contract. [See "**Simple Contracts & UCC Outline**", **subsequent failure of implied condition, p. 27**.] (A) is wrong because contractual duties and benefits do not terminate at the death of the parties. Rather, they become duties and assets of their estates. (C) is wrong because even though Hal and Wanda have given Anadarko a license to enter the land (that is what a lease does), that does not excuse Anadarko from performing its duties under the terms of that license. (D) is wrong because bankruptcy does not excuse Anadarko from its obligations. The oil-lease it has purchased from Hal and Wanda would be an asset of Anadarko and it will either sell or retain that asset in bankruptcy. In either case the duties and benefits of the lease will survive bankruptcy unless the asset becomes entirely worthless. (B) is the correct answer because if the government seizes the land Anadarko's performance becomes either illegal or impossible or both, the purposes for which the parties entered into the contract will be frustrated, the contract will fail (for failure of an implied material condition), and both parties will be excused from performance.

12) **(C)** An implied material condition of every contract is that the parties will act reasonably to assure that the other contract parties enjoy the expected benefits of the bargain, and to not act to cause other contract parties to be denied those benefits. [See "**Simple Contracts & UCC Outline**", **rescission for frustration of purpose, p. 32.**] (A) and (B) are wrong because Bubba is not liable to Anadarko. He is not a party to the contract between Anadarko and Hal and Wanda. Therefore, Anadarko has no contract cause of action against Bubba. (D) is wrong because Anadarko would have a right to stop paying royalties if it is denied the benefits of its contract with Hal and Wanda. Therefore (C) is correct because an implied material covenant of Hal and Wanda's contract with Anadarko is that they will take reasonably necessary legal action against Bubba to protect Anadarko's interests in the land.

13) **(A)** An implied material condition of every contract is that performance will be legal. If performance becomes illegal the contract fails and the parties are excused from performance. [See "**Simple Contracts & UCC Outline**", **supervening illegality, p. 27**.] (A) is correct because when the sale of Killzitol was made illegal the remaining portion of the contract became void. But Gonsanto had

Copyright © Practical Step Press, 2014. All rights reserved.

already performed on half the contract. (Note: You are forced to assume it was a UCC divisible contract but that does not affect the correct answer.) So Farmer owes $7,500 for delivery of the first installment under the contract. (B), (C) and (D) are all wrong because Gonsanto cannot be liable for failure to perform after the contract becomes void.

14) **(D)** Answer (A) is wrong because contract parties assume the risks that the costs and difficulties of performance may increase after a contract forms. This would only excuse Bill from performance if materials became impossible to obtain or the cost of performance increased so radically performance would be commercially impracticable. (B) is wrong because performance would not be made impossible by this. (C) is wrong because Bill's interest is not impaired as long as Owen obtains the specified line of credit from a trustworthy lender. (D) is correct because Owen breached an express condition of the contract. [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43**.] And Owen has no equitable argument either because his failure to get a line of credit increases the risks Bill might never be paid. If Owen has a line of credit from a trustworthy lender it assures Bill he will be paid upon completion of the work, but otherwise all Bill has is Owen's "promise" that he will pay. [You might also note that retirement accounts like IRAs are not subject to judgment liens.]

15) **(D)** Answer (C) is wrong because even though the contract had an express condition that Owen had to get a line of credit at 5%, the purpose of that condition was to protect Owen, not Bill. (D) is correct because Owen had a legal right to waive the condition if he wanted, as long as that did not deprive Bill from the benefit of the bargain. [See "**Simple Contracts & UCC Outline**", **waivers of condition, p. 50**.] (A) and (B) are wrong as a result of the foregoing considerations. The purpose of the condition was to protect Owen, not Bill, and Bill is not exposed to any increased risks if Owen waives the condition. Any increased risks that Owen will default on his payments is a risk to the lender, not to Bill.

16) **(B)** Answer (A) is wrong because even though "illegality" is an implied material condition of every contract, that means that the contract is for an illegal purpose at the time of execution, or else some event after formation makes the contract illegal and there is nothing illegal here about Larry and Ann entering into this contract as it is written. [See "**Simple Contracts & UCC Outline**", **supervening illegality, p. 27**.] (B) is correct unless another answer is better. (C) is wrong because "detrimental reliance" is an equitable theory that has no application if the movant has an adequate legal remedy. (D) is wrong because the reference to the Statute of Frauds does not defend Ann from a claim of breach. Therefore, (B) is the only correct answer.

17) **(B)** Answer (A) is wrong because express conditions mean what the expressly say. That is what makes them "express" rather than "implied". It is simply nonsense to say, "The express conditions implied that…" Implied conditions are simply implied by the purposes of the parties and the circumstances within which the contract forms, not the express provisions of the agreement. (B) is correct. The term "constructive condition" means a condition that is implied by the circumstances of the contract. Usually it means the circumstances imply one party has a duty to perform in some manner before the other party is bound, but it can also mean the circumstances imply some "order of performance" is necessary to bind a party. [See "**Simple Contracts & UCC Outline**", **constructive conditions, p. 46**.] Here the circumstances show the parties did not intend for Ann to be bound until after she was licensed to practice law. (C) is wrong because a contract novation requires the express agreement of the parties. No "implied novation" can be created by the actions of an outside force. (D) is wrong because "impossibility" is only a defense when the contract is objectively impossible. That means impossible for anyone to perform, not just for Ann to perform. Also, the contract only deals with Ann's purchase of the practice, not whether or not it will be possible for her or anyone else to practice law after the purchase. Therefore, B is the best answer.

Copyright © Practical Step Press, 2014. All rights reserved.

18) **(A)** Answer B) is wrong because Nancy's legal rights are determined by the rules of law, not by the sentiments of her deceased father and speculation about what he "would have done" if he were still alive. (C) is wrong because contract liabilities survive the death of parties. This is called "survival of claims". So any debt Daddy owed Nancy survived his death and is owed by his estate. (D) is wrong because her legal rights are at issue and not her ability to prove the evidence given in the fact pattern. [Note: Facts stated in fact patterns on law school exams should be accepted as though all parties have admitted them to be true. Never try to argue that the clear given facts might be disputed or challenged except to the extent they are stated in an ambiguous manner.] (A) is correct because Daddy offered to pay her if, in exchange, she would go to law school and obtain good grades. [See "**Simple Contracts & UCC Outline**", **death of a party usually does not void a contract, p. 28**.]

19) **(C)** Even though Wayne's quote is based on an "estimate" it is still a contract; it is a contract subject to the implied condition that if actual costs exceed the expected costs stated in the "estimate" the buyer will have an opportunity to agree to those extra amounts. (A) is wrong because detrimental reliance is an equitable theory that only applies when there is no legally enforceable contract and the party seeking a remedy (Wayne) has relied on what the other party (Garth) told him. Here the parties have a valid contract and Wayne only depended on his own belief about what Mack would charge. (B) is also wrong because it is an equitable theory that could only apply if they did not have a contract. (D) is wrong because $300 was Wayne's total estimate and the CALL is how much Garth owes for the machining of the brake drums alone. (C) is correct because Wayne's stated estimate for this part of the work was $150, that is what Garth agreed to, and that is the amount Quality charged Wayne. [See "**Simple Contracts & UCC Outline**", **implied conditions, p. 46**.]

20) **(C)** The CALL is "What is Daddy's best argument?" (A) and (B) are wrong because Daddy has not been accused of concealing the fact that there was a supporting member inside the wall. And (A) is somewhat self-defeating because it gives Bill an argument that they made a "mutual mistake" or that the pier in the wall "frustrates their purposes" or makes his performance either "impossible" or "impracticable". (D) is wrong as well because "reasonable reliance" is an equitable argument that only has application when there is no legally enforceable contract. [See "**Simple Contracts & UCC Outline**", **equitable jurisdiction, p. 94**.] Here there is a legally enforceable contract, and Bill agreed he would do the work according to the plans of Interior Designs. And since that is exactly what (C) says, that is the right answer.

21) **(D)** An option contract requires offerees to give offerors consideration in exchange for their promises not to revoke their offers for a stated period of time. If the offeree fails to pay the consideration promised, at the time it was agreed to be paid, the option contract fails for lack of consideration. [See "**Simple Contracts & UCC Outline**", **option contracts - irrevocable offers, p. 15**, and option contracts and contract options, p. 51.] (A) is wrong because the agreement they signed did not say that Bob "had paid" the $100. Rather it said he "will pay" the $100. (C) is wrong because Bob failed to pay it at the time it was due to be paid. (B) is wrong because both "I" and "II" are wrong. (D) is the right answer – the option contract failed for lack of consideration, meaning that Bob failed to give Sam the money he had promised at the time payment was due.

22) **(B)** If a written contract appears on its fact to be a fully integrated writing the parol evidence rule prevents the introduction of previous or contemporaneous oral agreements to vary the terms of the written contract. Here the contract states that Sam has received the $100 from Bob, and Sam signed the document to "acknowledge" that fact. Once he did that he cannot testify or introduce any other evidence to the contrary. Although evidence of "lack of consideration" is an exception to the parol evidence rule, by court decision it generally is held it does not justify admission of evidence under

Copyright © Practical Step Press, 2014. All rights reserved.

these facts. [See "**Simple Contracts & UCC Outline**", **parol evidence rule, p. 41**.] (A) is wrong because the signed document says Sam has already received the $100. (C) is wrong because it is irrelevant. (D) is wrong because the Statute of Frauds requires contracts for the sale of land, and modifications of them, to be in be in writing so if their "oral modification" could be considered by the Court, it must be rejected as ineffective.

23) **(A)** If XP is liable to Betty the measure of liability could be no more to Betty than it would have had to Connie if she were the injured party. [See "**Simple Contracts & UCC Outline**", **defenses of promisors, p. 65**.] Therefore, it is only liable for the cost of repair and replacement of defective parts on the oven, $200. Therefore (A) is right because it says $200, and (B), (C) and (D) are all wrong because they say other amounts.

24) **(A)** Note, you are supposed to assume a contract exists. Under contract law "express conditions" are expressly stated and material conditions. But express "promises" are only "express conditions" when the terms or circumstances of the contract make that unequivocally clear that was the intention of the parties. Otherwise promises or terms are only "covenants". [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43**.] Bob never would have intended to go unpaid forever if County failed to pay Able. So the intention of the contract was only defining when Bob would be paid and not if he would ever get paid at all. If Able had intended otherwise he should have insisted the contract make his intentions clear. Therefore (A) is the right answer and (C) and (D) are wrong. (B) is simply a silly statement because contract rights depend on the express and implied intentions of the parties, not subjective concepts of "fairness".

25) **(C)** Bob had an option for a week. That means that Sid could not say or do anything to revoke the offer for that time period, and that includes selling the horse, so (B) is wrong. [See "**Simple Contracts & UCC Outline**", **option contracts - irrevocable offers, p. 15**.] Bob's statement on Thursday may constitute a rejection of Sid's offer, but the only clear law on the effect of that is Restatement Second § 37. That says a rejection of an offer held open under an option contract does not terminate the offer and the offeree can later rescind the rejection and exercise the option. Since Bob's statement did not reject Sid's offer under that view, the offer remained open and Bob's acceptance of the offer on Monday formed a contract. Therefore, (A) is wrong and (C) is right. (D) is wrong because the contract formed because Bob exercised his option. Whether or not Sid had a "right to sell" the horse to Charley is beside the point.

26) **(D)** Bob had an option for a week. That means that Sid could not say or do anything to revoke the offer for that time period, and that includes selling the horse, so (A) is wrong. Nothing Sid does can terminate Bob's option under Restatement Second § 37, the only clear law on this, so (B) is wrong. Bob's discovery of what Sid has done also cannot terminate his option, so (C) is wrong. And the only possible answer left is (D). His option continued in effect to Monday because he paid for that. [See "**Simple Contracts & UCC Outline**", **option contracts - irrevocable offers, p. 15**.]

Copyright © Practical Step Press, 2014. All rights reserved.

27) **(B)** Specific performance is an equitable remedy a Court has discretion to grant or deny to a non-breaching buyer of unique property because in that situation award of a money judgment is not an adequate remedy. [See "**Simple Contracts & UCC Outline**", **specific performance, p. 99**.] Since specific performance is an equitable remedy and not a legal remedy, nobody has any "right" to be granted an order of specific performance. The word "right" means a right as a matter of law. Equitable remedies are never "rights" because the Court always has discretion to either grant or deny them. (A), (C) and (D) are all wrong because Sam is the seller here and not a "non-breaching buyer". (B) is the only possible answer, and it is correct as stated.

28) **(A)** If both Art and Col thought the painting was done by a totally unknown artist, they entered into the contract because of a mutual mistake. Under the holding in *Peerless* that means there was no "meeting of the minds" because of their mutual mistake and the contract was void ab initio. [See "**Simple Contracts & UCC Outline**", **void by mutual mistake, p. 25**.] On the other hand, if Art thought the painting was done by a totally unknown artist, but Col knew he was wrong, Art made a unilateral mistake, and Col knew it. That makes the contract voidable by Art. [See "**Simple Contracts & UCC Outline**", **rescission for unilateral mistake, p. 30**.] (A) is right in either case and Art gets the painting back. (B) is wrong because the legal concepts concerning mutual and unilateral mistakes concern only material facts other than value. (C) is wrong because this would be a mutual mistake situation. (D) is wrong because title will be returned to Art by the court if the contract is void or voidable.

29) **(C)** Contract guarantees of satisfaction and timely performance are considered to be contract covenants and not express material conditions unless the parties expressly agree they are material conditions or else the contract circumstances make it clear they were considered to be "express conditions". [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43**.] (A) is wrong because the term "Satisfaction Guaranteed!" does not make "personal satisfaction" an express material condition of the contract because neither that term nor the circumstances of the contract suggest that Bill ever intended to go unpaid if Homer was dissatisfied. Rather, it appears to be nothing more than an assurance Bill will perform in a manner that would satisfy a "reasonable person". (B) is wrong for the same reason. There is no evidence timely performance was a material condition. (D) is wrong because even if a "reasonable person" would be dissatisfied, Bill has substantially performed and has a right to legal restitution equal to the contract price less an offset for damages caused by his breach. [See "**Simple Contracts & UCC Outline**", **restitution to breaching party, p. 91**.] (C) is correct because if Bill has substantially performed Homer would be required to pay Bill the contract price less damages caused by Bill's breach.

30) **(D)** If a party enters into a contract for a purpose, and the other party is aware of that purpose, fulfillment of that purpose becomes an implied material condition of the contract. If events beyond the control of the parties makes attainment of that purpose unattainable, the party whose purposes have become frustrated may void the contract. [See "**Simple Contracts & UCC Outline**", **rescission for frustration of purpose, p. 32**.] Consequently (A) would normally be correct. But (D) is the better answer here because parties can expressly waive implied material conditions, and if Juliet waived her right to void the contract for frustration of purpose, Fabio will win. [See "**Simple Contracts & UCC Outline**", **waivers of condition, p. 50** and **waivers of condition, p. 56**.] (B) is wrong because any doubts Juliet might have do not negate her purpose for entering into the contract. And (C) is wrong because even if timely performance was a material condition Fabio's delivery 10 minutes late would not have deprived Juliet of the benefits of the bargain. As a result, even if he was in material breach a court of equity would still have required Juliet to pay the entire contract amount based on an implied-in-law contract theory.

Copyright © Practical Step Press, 2014. All rights reserved.

31) **(A)** If contract parties have a reasonable, good faith dispute over the contract and enter into an agreement to settle the dispute, performance by either party creates a binding accord and satisfaction that stops the parties from raising the same dispute. [See "**Simple Contracts & UCC Outline**", **accord and satisfaction, p. 56**.] (A) is correct because if Rambo reasonably believed the brakes were faulty, his act of giving back the car estops Slick from repudiating their settlement agreement. (B) is wrong because even if the brakes were not faulty the accord and satisfaction is binding as long as Rambo reasonably thought they were faulty. (C) is wrong because the accord and satisfaction would not be binding if Rambo did not reasonably believe the brakes were faulty. (D) is wrong because the effectiveness of the accord and satisfaction is independent from the length of the warranty period.

32) **(D)** Answer (A) is wrong because Owen's promise to pay Bill was subject to the constructive condition that Bill complete the house in a timely manner as promised. Since Bill breached that promise Owen's promise to pay did not ripen into a duty to pay. [See "**Simple Contracts & UCC Outline**", **effect of a failure of constructive condition, p. 47**.] (B) is wrong because contract promises of timely performance are contract covenants and not express material conditions unless the parties expressly agree they are material conditions or else the contract circumstances make it clear they were considered to be "express conditions". [See "**Simple Contracts & UCC Outline**", **distinguishing express conditions from covenants, p. 43.]** (C) is wrong because the contract here required modifications to be in writing, and here the oral modification would not be an effective modification. (D) is correct because the agreement to modify the contract would just be considered to be a "waiver of condition". [See "**Simple Contracts & UCC Outline**", waivers of condition, p. 50 and waivers of condition, p. 56.]

33) **(B)** Answer (C) is wrong because parties that waive contract conditions have a legal right to retract the waivers. [See "**Simple Contracts & UCC Outline**", **waivers of condition, p. 56**.] But a Court of equity may estop the waiver of a retraction if it would cause an injustice. [See "**Simple Contracts & UCC Outline**", **waivers of condition, p. 56** and **promissory estoppel, p. 9**6.] (D) is wrong because this is at the discretion of the court, and there is no such thing as "legal estoppel". Estoppel is always an equitable concept. (A) is wrong because if Owen retracts his waiver Bill would be in major breach because use of Standard Brands paint was an express contract condition. As a result Owen would have no legal obligation to Bill at all. Bill could plead in equity, but if he lied to get Owen to waive the condition he would have "unclean hands". [See "**Simple Contracts & UCC Outline**", **unclean hands, p. 100**.] (B) is the best answer because even though Bill has unclean hands a court of equity would probably order Owen to pay him something less than the contract amount, and that offset would probably be the amount Owen saved, if any, by substituting a cheaper brand of paint.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #3 – Contracts – Third Parties and Remedies

Test #3 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover contract **assignment**, **delegation** and **third-party beneficiary contracts** and **remedies**. Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Thomas entered into a written lease agreement to lease his house to Francois beginning September 1. The lease agreement said, "It is of the essence that Thomas's house be completely painted by September 1." Thomas then entered into a contract to have Paul completely paint his house. The painting contract said: "It is essential that painting of the house be completed no later than September 1, but Paul is not bound hereunder if he has been unable to obtain Kelly-Moore "Sunset Yellow" paint by August 28." Paul did not begin to look for the necessary paint until August 25, when he learned that, due to manufacturing shortages, the paint could not be obtained until September 20. Paul told Thomas this on August 26, and suggested amending the agreement to provide for a painting completion date of October 1. Thomas at once advised Francois by telephone of this development, and further advised that it was then impossible to find another painting company that could have the house ready by September 1. Francois there-upon cancelled the lease and immediately made other, more expensive, housing arrangements. Thomas then wrote Paul on September 3 that his services would not be needed or accepted, and that he was expressly reserving all legal rights and remedies against Paul for breach of contract.

1) If Francois sues Paul for breach of the Thomas-Paul agreement, which of the following facts, if proven, would most damage his standing to assert a claim?

(A) Francois was not named in the Thomas-Paul agreement.
(B) Francois cancelled his contract with Thomas on August 26.
(C) The "completely painted" condition in the Thomas-Francois lease was both a condition and a covenant.
(D) When Paul was retained by Thomas he was not aware of the Thomas-Francois lease.

2) Suppose Thomas told Francois on August 15 by telephone, "I hereby give and transfer to you my rights under my painting contract with Paul," and promptly mailed a copy of the painting contract to Francois and notice of the assignment to Paul. And suppose Francois was in default on a debt he owed to Pierre at the time, who sold and assigned his claim against Francois to Paul. If Francois subsequently sues Paul for breach of the Thomas-Paul contract, which of the following would give Paul a defense or counter-claim?

I. Paul acquired a money claim against Francois from Pierre.
II. Thomas' assignment of the painting contract to Francois was not in writing.
III. Thomas' assignment of the painting contract to Francois was gratuitous.

(A) I only.
(B) II only.
(C) I and III.
(D) II and III.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 3

Paul and Elwood entered into a valid, enforceable contract. Elwood breached the contract causing Paul $2,000 in damages Paul orally and effectively assigned his claim against Elwood to Frank, and Elwood was given notice of the assignment. After Elwood received notice Paul had assigned his claim to Frank, Paul stole $1,500 from Elwood.

3) If Frank sues Elwood for $2,000, and Elwood counterclaims for the $1,500 Paul owes him, will the court allow Elwood's counterclaim against Paul as a setoff?

(A) Yes, because Elwood had a valid claim against Paul, the assignor, and Frank is the assignee who stands in the shoes of the assignor.
(B) Yes, because the assignment by Elwood to Frank was not effected by a negotiable instrument.
(C) No, because in making the assignment to Frank, Paul impliedly warranted to Frank that it was free of all equities and defenses.
(D) No, because Elwood's counterclaim is collateral to Frank's claim, and it arose after the assignment.

Question 4

Paul and Elwood entered into a valid, enforceable contract. Elwood breached the contract and Paul hired Frank for $2,000 to finish the work Elwood failed to do. Paul then orally assigned his claim against Elwood to Frank saying, "I am assigning to you my claims against Elwood, up to $2,000, provided that you agree to apply anything you collect from Elwood, less your collection expenses, against what I owe you for the work you are doing." Frank accepted that offer. Later Paul changed his mind and gave Frank written notice that said, "I hereby revoke my oral assignment to you of the claims I have against Elwood".

4) Which of the following would most accurately state Frank's legal position?

(A) Frank acquired Paul's right to sue Elwood but then lost that right because the assignment from Paul was gratuitous and, therefore, revocable by Paul.
(B) Frank acquired an irrevocable right to sue Elwood for the amounts he owed Paul, up to $2,000.
(C) Frank acquired no legal rights under the assignment from Paul because it was oral and the Statute of Frauds required it to be in writing.
(D) Frank acquired no legal rights under the assignment from Paul because it was a conditional transfer.

Question 5

Able got a loan from Bob in exchange for a note secured by a Deed of Trust on his house. Bob recorded the Deed of Trust, and there were no other liens or encumbrances against the house. Then Able sold the house to Charley who bought subject to Bob's existing claim but without assuming Able's mortgage obligation. Charley borrowed from Don to improve the house in exchange for a note secured by second Deed of Trust on the house. Don recorded the assignment. Later Charley became insolvent and stopped making his payments to Bob and Don. Bob and Don started foreclosure proceedings against the house. Fearing his credit would be hurt, Able paid Bob off on his note in exchange for Bob assigning his first Deed of Trust to Able. The assignment was duly recorded.

5) Which of the following is the weakest argument Able could make claiming his interest in the house is superior to Don's?

(A) Able is subrogated to the rights of Bob to the extent of Able's payment to Bob.
(B) Able has the same rights to enforce the Deed of Trust that Bob had because he is an assignee.
(C) Charley and Don will reap an unjust enrichment if Able is denied first priority.
(D) Even though Able made the note to Bob, his payment to Bob did not discharge the note.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 6

Wayne agreed to do a brake job on Garth's classic 1975 Pacer. He gave an estimate of $300 and told Garth the car would be done by Friday. Instead of doing the work himself Wayne had City Garage do the work. He told City it was his own personal auto to get a discount, and that he needed it back by Friday. City said it would do the work for $250 and have the car done by Friday.

6) If City failed to get the car done by Friday:

(A) Wayne and City are liable to Garth as a third-party beneficiary of the contract assignment.
(B) City is the only party liable to Garth because it breached the contract.
(C) City is not liable to Garth.
(D) Wayne and City are both liable to Garth if he sues them both in the same action.

Questions 7-9

Zero contracted with Wilder to have him write the musical score for his a musical comedy, Springtime for Hitler. The agreement required Wilder to have the score finished by September 1. Zero would pay him her $15,000 for the score when it was delivered, an additional $25,000 if he obtained the necessary financing to open on Broadway. After that Wilder would get 5% of the gate receipts. Wilder wrote to Gilda, "You have been such an inspiration to me I intend to give you half my earnings from this play." Gilda sent a copy of this letter to Zero with a statement, "Wilder has assigned me half his rights in the play." Wilder devoted himself full time to writing the score and was unable to pay his rent. He orally told his landlord, Helmsley, that he would give her half his earnings from the play in lieu of rent. She agreed and wrote a letter to Zero saying, "Wilder has assigned me half his rights in the play." Wilder couldn't pay his credit card debts and Universal Collection (UC) got a judgment against him for $10,000 and served a lien on Zero. Wilder delivered the score to Zero.

7) If Zero petitions the Court for instructions concerning who gets the money he owes, the Court would probably decide:

(A) Gilda gets $7,500, Helmsley gets $7,500 and UC and Wilder get nothing because Gilda and Helmsley gave Zero notice of their assignments before UC filed its lien.
(B) Helmsley gets $7,500, UC gets $7,500 and Gilda and Wilder get nothing.
(C) UC gets $10,000, Helmsley gets $2,500, Wilder gets $2,500, and Gilda gets nothing because her claim of assignment was invalid.
(D) UC gets $10,000, Wilder gets $5,000, and Gilda and Helmsley get nothing because their assignments were valid.

8) If Gilda sues Wilder claiming to be his assignee, she would:

(A) Lose, because Wilder's message did not manifest present intent.
(B) Lose, because Gilda did not give Wilder notice of acceptance of the assignment.
(C) Lose, because Wilder's later assignments impliedly revoked the assignment to Gilda.
(D) Win, because Wilder's written assignment to Gilda was irrevocable.

9) Suppose that Gilda's claim fails but after Wilder promised Helmsley "half his earnings from the play" he borrowed $30,000 from Angel and promised him "all his earnings from the play". Between the claims of Helmsley and Angel, a Court would find:

(A) Helmsley's claim superior to Angel's because she was the first assignee.
(B) Helmsley's claim superior to Angel's if he failed to give Zero notice of the assignment.
(C) Angel's claim superior because a subsequent assignment of conflicting rights implies a revocation of prior assignments.
(D) Angel's claim fails because the Zero-Wilder contract was subject to a condition precedent.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 10

Daddy leased space in the Forum Building for his daughter Nancy to start her new law practice in a brand new office. He hired Interior Design to design the office, and contracted with Bill to gut the existing space and install new walls, lighting, and floor coverings according to the plans. Nancy was ecstatic. She gave up a lease she held on another office and worked for days with Interior Design on the plans for her exciting new office. Bill discovered a supporting pier in the center of one of the walls prevented him from implementing Interior Design's plans unless he installed an engineered beam that would cost him $4,500. Bill and Daddy decided to substantially change the plans so the supporting pier did not have to be removed. Nancy did not know of this until it was too late, and she felt the changes in the designs she had helped create made the office pedestrian and dated. She is furious.

10) Is Bill legally liable to Nancy because he did not install the engineered beam, remove the support pier and implement Interior Design's plans as they were originally drafted?

(A) No, because Nancy's rights against Bill are subject to the defenses Bill could asserted against Daddy.
(B) No, because Nancy is an incidental beneficiary.
(C) Yes, because Nancy abandoned the office lease she held and changed position in reliance.
(D) Yes, because the modification of the original contract was unsupported by new consideration.

Question 11

Attorney Anne agreed to prepare and file an appeal for her client, Cliff, who had been convicted of a crime. She hired Ron to do legal research to help her write the brief. Cliff changed his mind and decided not to appeal his conviction. Anne didn't need Ron's help anymore so she fired him. Ron got a new job working for Jones. Later Cliff changed his mind. Anne filed the appeal based on Ron's work and Cliff's appeal was denied.

11) Was Cliff a third-party beneficiary of Ron's work?

(A) Yes, if Anne and Cliff expressly agreed that Cliff would have enforceable rights under their agreement.
(B) Yes, because he was an intended third-party beneficiary of the agreement between Anne and Cliff.
(C) No, Cliff was not an intended third-party beneficiary of the original agreement between Anne and Cliff.
(D) No, because Anne and Ron did not expressly agree that Cliff would have enforceable rights under their agreement.

Questions 12-13

Tom owed Dick $3,000 and agreed to pay him $1,000 a month against the debt. Tom sold his car to Harry for $1,000, and they agreed that instead of Harry paying Tom, he would pay the $1,000 to Dick on Tom's behalf. Harry never paid Dick. Dick angrily called Tom and asked when he was going to get his payment for the month, Tom said, "What? Didn't Harry pay you? I sold him my car and he was supposed to pay you the $1,000 I owed this month!" Dick sues both Tom and Harry.

12) Which of the following are true?

I. Harry is liable to Tom.
II. Harry is liable to Dick.
III. Tom is liable to Dick.

(A) I, II, and III unless Tom turned back the odometer on the car.
(B) I only, because Dick is a creditor beneficiary.
(C) II only, because Harry only promised to pay Dick $1,000.
(D) III, but only if Dick detrimentally relied on the Tom-Harry agreement.

13) Which of the following, if true, would give Harry the best defense against Dick?

(A) Tom knew the car was only worth $500 when he sold it to Harry.
(B) Tom told Harry the car was "dependable" but it broke down soon after Harry bought it.
(C) The money Tom owed Dick was for illegal drugs.

Copyright © Practical Step Press, 2014. All rights reserved.

(D) None of the above.

Question 14

Carl was a low-paid roofing worker who dreamed of riding a Harley. He put a new roof on Owen's house. To pay him for his work Owen orally told Carl to go to any motorcycle dealer, pick out a motorcycle, and Owen would pay for it. Carl bought a Harley Ultraglide from Butch's Rides. After six months Owen defaulted on the payments. Butch could have repossessed the motorcycle and sued Carl on the balance, but if he did his judgment would be worthless (Can you collect on a judgment against a roofer?) But Carl told Butch about his agreement with Owen.

14) If Butch sues Owen:

(A) Butch will win because he was a donee beneficiary of the Carl-Owen agreement.
(B) Butch will win because Owen's promise created an implied-in-fact contract.
(C) Butch will win because he was an intended third-party beneficiary of the Carl-Owen agreement.
(D) Butch will lose because the Statute of Frauds required Owen's guarantee of Carl's debt for the motorcycle to be stated in writing.

Question 15

Orlando Resort and Spa had a contract with Disney World. It paid Disney World $5,000 a month and in return Resort guests could get tickets to Disney World at a discount price. Tom booked a room for his family at Resort by internet without knowledge of this arrangement. He only learned of it when he arrived and checked in. When Tom took his family to Disney World the next day he was denied entrance for the discount price and told he had to pay the regular admission price because Resort had defaulted on its monthly payments.

15) If Tom sues Resort:

(A) He will win because he was an intended third-party beneficiary of the Resort-Disney contract.
(B) He will lose because Resort had a right to rescind the Resort-Disney contract.
(C) He will lose because the hotel guests were donee beneficiaries of the Resort-Disney contract.
(D) He will lose because he did not detrimentally rely on the Resort-Disney contract when he booked his room.

Question 16

Bill entered into a contract to build a house for Owen, on Owen's lot, for $200,000. Bill estimated his labor and materials costs would be $170,000, and that he would make a profit of $30,000. But he did not have the funds to finance the project so he assigned his contract rights to Factor in exchange for $195,000. In the meantime Owen borrowed $200,000 from Bank in order to pay Bill when construction was complete. Bill finished construction and Owen sent him the $200,000 he had coming. Bill immediately fled the country after receiving Owen's check.

16) If Factor sues both Owen and Bill for the $200,000:

(A) Both Owen and Bill are legally liable to Factor.
(B) Owen is not liable to Factor if he was unaware of Bill's assignment.
(C) Owen is legally liable to Factor and Bill is not.
(D) Bill is liable to both Owen and Factor.

Question 17

Finley contracted with Printer to have 1,000 copies of his political tract, "Why the Federalist Papers Prove the Income Tax is an Illegal Conspiracy", printed for $6,000. The contract provided that Finley was to pay Printer within 30 days after production. Before the press-run began, an informer told Printer that Finley was about to file for bankruptcy protection.

17) Which of the following is the most accurate statement?

(A) Printer can leally refuse to print the book.
(B) The contract is void if Finley is insolvent.
(C) Printer can only ask Finley to provide him with reasonable assurances he will be paid.
(D) Printer can refuse to print the books until Finley provides him with reasonable assurances he will be paid.

Question 18

Contractor entered into a contract to build 10 houses for Developer for $2 million. Developer promised to pay Contractor $200,000 within 30

Copyright © Practical Step Press, 2014. All rights reserved.

days after Contractor finished each house. After Contractor completed the fifth house he realized Developer had been unable to sell any of the houses, and real estate sales in general were sharply declining.

18) Which of the following is the most accurate statement?

(A) Contractor has no legal right to ask for reasonable assurances under these facts.
(B) Developer is in prospective failure.
(C) Contractor must continue work if Developer gives him certified financial statements from his CPA.
(D) Contractor can stop work if Developer fails to provide him with reasonable assurances.

Question 19

Thresher agreed to harvest Farmer's wheat crop for $10,000. The contract expressly stated the crop had to be harvested no later than September 15, that "time was of the essence", and that Farmer was to pay Thresher upon conclusion of the work. Thresher called Farmer on September 9 and told him he was scheduled to start harvesting the crop on September 11 and would finish on September 13. Farmer responded, "The funds I planned to pay you with won't be available until September 15." At that Thresher said, "Then the deal is off! I am not going to harvest your crop."

19) Which of the following is the most accurate statement?

(A) Thresher must harvest the field if Farmer immediately offers to pay him $10,000 from other funds.
(B) Thresher must harvest the field if Farmer could pay him from other funds upon completion.
(C) Thresher does not have to harvest the field because Farmer has anticipatorily breached the contract.
(D) Thresher has a duty to harvest the field because Farmer has no duty to pay until the work is completed.

Question 20

Tom signed a contract to buy Blackacre from Dick for $400,000, on the condition that he must be able to obtain a loan for $320,000 at no more than 6% interest. They agreed escrow would close on September 1. On August 1 Tom called Dick and told him he was having some trouble qualifying for the loan. Dick offered to carry a second (to loan Tom part of the price as a subordinated claim against the property) for $30,000 at 7%. Tom agreed to that and succeeded in getting a loan for $290,000 at 5.5%. On September 1 Tom tendered payment of $370,000. Dick refused to accept the money. The next year Dick entered into a contract to sell Blackacre to Harry.

20) Which of the following is the most accurate statement?

(A) Dick was estopped from refusing to accept the $370,000 offered by Tom.
(B) Dick may raise the defense of laches against any action by Tom to stop the sale to Harry.
(C) Tom may raise a claim of promissory estoppel to block the sale to Harry.
(D) Dick breached the contract when he refused to accept $370,000 from Tom.

Question 21

Bill entered into a contract to renovate Owen's house for $30,000. After Bill had substantially gutted the house he told Owen he had underestimated the extent of the job and could not finish unless Owen agreed to pay him $40,000. Owen quickly agreed because he had gone to law school and knew if he agreed, and asked nothing in return, the modification agreement would not be legally enforceable. Bill finished the job in reliance on the agreement he would be paid $40,000. Then Owen refused to pay him more than $30,000.

Copyright © Practical Step Press, 2014. All rights reserved.

21) If Bill sues Owen for the remaining $10,000:

(A) Bill would win because of promissory estoppel.
(B) Bill would lose because his acceptance of the first $30,000 constituted an accord and satisfaction.
(C) Bill would lose because he had unclean hands.
(D) Bill would lose because he used duress to make Owen agree to the modification.

Question 22

Mowen agreed to mow Farmer's field on Friday for $200. Mowen's mower broke down and he was not able to finish mowing until Saturday.

22) If Farmer has suffered no damages as a result of the delay but refuses to pay Mowen anyway:

(A) Farmer is in major breach.
(B) Mowen has a right to $200 damages.
(C) Mowen has a right to $200 in legal restitution.
(D) Mowen may be awarded $200 in equitable restitution.

Question 23

Coats agreed to paint Homer's house by September 1 for $10,000. Their written contract stated "time is of the essence". Rain delayed completion of the painting and it was not finished until September 2.

23) If Homer has suffered no damages as a result of the delay but refuses to pay Coats anyway:

(A) Homer is in major breach.
(B) Coats has a right to a judgment for $10,000.
(C) Coats can be awarded $10,000 in legal restitution.
(D) Coats can be awarded $10,000 in equitable restitution.

Question 24

Tom submitted bids to build a house for Dick for $200,000 and a house for Harry for $300,000. He expected to make 10% profit on each project, but could not build both houses at the same time, and he stated that in his bid proposals. Dick accepted Tom's $200,000 bid first, and then Harry accepted Tom's $300,000 bid. Tom had to decline Harry's job, so Harry engaged the services of a different contractor. Tom spent $150,000 on labor and materials building Dick's house. Then Dick repudiated the contract and ordered Tom off his land. As a result Tom paid $1,000 in storage charges for his tools and unused building materials. Tom claims expectation damages of $20,000, consequential damages of $30,000, reliance damages of $150,000, and incidental damages of $1,000. At trial expert witnesses estimated that after Tom left Dick's property it would have cost Dick $25,000 to finish the construction job.

24) Tom has a right to be awarded:

(A) $171,000
(B) $175,000.
(C) $201,000.
(D) $231,000.

Questions 25-26

Papa John entered into a contract with Bill to remodel his new pizza parlor and install the oven. The restaurant was scheduled to open for business on June 1, so the contract said the construction was to be completed no later than May 15, and that "time is of the essence". Bill did not complete construction until June 3. As a result, the "Grand Opening" of the restaurant had to be delayed until July 15, and $2,000 worth of advertising materials had to be reprinted. Expert witnesses presented by Papa John estimate he lost $150,000 worth of business as a result of the delay, and based on experience at his other locations the delay cost him $30,000 in profits.

25) Papa John has a right to be awarded:

(A) Damages of $2,000.
(B) Damages of $32,000.
(C) Damages of $152,000.
(D) Nothing based on these facts.

Copyright © Practical Step Press, 2014. All rights reserved.

26) Linda was scheduled to start working at the Papa John pizza parlor on June 1, and she would have gotten paid $400 a week. She estimates she also would have received tips of $80 a week. Out of that amount she would have had to pay her babysitter $200 a week. Because of Bill's failure to finish construction on time she lost 6 weeks of work. She has a right to be awarded:

(A) Damages of $2,400.
(B) Damages of $2,720.
(C) Damages of $1,680.
(D) Nothing based on these facts.

Question 27

Bevis told Butthead, "I will pay you $3,000 to put a new roof on my cabin in the mountains. But it won't do me any good if you don't finish the job. So if you don't finish the job I ain't goin' to pay you nothing. Understood?" Butthead said, "Yes, I understand." When Butthead had the roof half finished Bevis called him and said, "I am revoking my offer to pay you for a new roof. I am going to have someone else do it."

27) Butthead has a right to be awarded:

(A) Nothing if Bevis was unaware he had started replacing the roof.
(B) $1,500
(C) $3,000 if he continues work and completes the roof.
(D) Quantum meruit reimbursement.

Question 28

Larry had just passed the Bar Exam and interviewed for a job with the big Wilshire Boulevard law firm of Dewey, Cheatam and Howe. They sent him a follow-up letter offering him a starting position at $175,000, 401k, 3 weeks paid vacation, cell phone, a personal secretary named Inga, and a BMW convertible for his personal use. Larry immediately accepted, quit his job at the pizza parlor, drove across the country in his old Rambler, rented an apartment in Sherman Oaks for $3,000 a month, bought an Armani suit for $1,400 and showed up for work. Trump, a senior partner, immediately met with Larry and told him without explanation or reason, "You're fired!" Larry was forced to take a job as a waiter, cannot afford his apartment and cannot pay for the suit he bought.

28) Larry has a right to be awarded:

(A) Nothing.
(B) The difference between the salary he was promised and the amount he earns as a waiter.
(C) Quantum meruit reimbursement.
(D) His moving expenses and the cost of the suit.

Question 29

Tammy was earning her teaching credential and interviewing for a job as a teacher. Superintendent Jones at Unified School District interviewed her in May and offered her a position teaching elementary school from September 1 through the following May 30 at $5,000 a month. Tammy immediately accepted. Two weeks later Tammy received her teaching credential on June 1. She started teaching on September 1, but the State Legislature was deadlocked on the budget. When the budget was finally adopted it cut funds to Unified School District and Tammy was told her position was being eliminated after December 31.

29) Tammy has a right to be awarded:

(A) $45,000, less amounts she has already been paid.
(B) $20,000, less amounts she has already been paid if the contract was not in writing.
(C) Nothing, except amounts she has already been paid, if the contract was not in writing.
(D) Nothing.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 30

Contractor entered into a contract to build 10 houses in a tract for Developer for $200,000 each. After Contractor completed the fifth house, and before he had been paid anything, the EPA discovered the rare Peruvian jumping cockroach lived in the tract area and a building moratorium was issued stopping all construction.

30) Which of the following is the most accurate statement?

(A) Developer has no legal duty to pay contractor because the contract was rendered void by supervening illegality.
(B) Contractor has a legal right to be paid $1,000,000 under the contract.
(C) Contractor can only plead for an equitable remedy based on implied-in-law contract theory.
(D) Developer is liable for $2 million because the EPA action is an inherent risk of the land, not of the construction.

Question 31

Bob owned land which was heavily timbered. It had been logged by Pacific since 2000, and that had left the land crisscrossed with logging roads that had seriously eroded the land, filling streams with silt and damaging the environment. In 2005 Pacific offered to pay Bob $30,000 to extend its timber lease on the land for another five years. At Bob's insistence, Pacific wrote the lease extension agreement to say, "Pacific agrees to reforest and return the land to its original condition at the conclusion of the lease." Another clause in the contract said, "This is the entire agreement between the parties." When the lease terminated in 2010 Pacific left the land crisscrossed with logging roads, erosion, and streams filled with silt the same as it had been before the 2005 lease extension. Bob asserts that Pacific breached the lease because it had promised to return the land to the "original condition" as it was in 2000. Pacific asserts that it did not breach the lease because the phrase "original condition" only meant the condition of the land in 2005 before it entered into the five-year lease extension.

31) Which of the following is the most accurate statement?

(A) The contract was void from the beginning because the term "original condition" is fatally ambiguous.
(B) If the meaning of "original condition" cannot be determined otherwise, Bob would win.
(C) The court would hold for Pacific if the cost of restoring the land to the 2000 condition would exceed the contract amount.
(D) The contract was void from the beginning because there was a mutual mistake about the meaning of the terms.

Question 32

White orally agreed to sell her house to Jose for $160,000. Jose was to pay $40,000 down, and the balance of $120,000 was to be paid off over 10 years at $1,000 a month. At the end of that time White promised to give Jose the Deed to the house. Jose paid White $40,000 and took possession of the house. After that Jose paid White $1,000 every month for 10 years, a total of $120,000. At the end of the 10 year period White claimed Jose was just a renter and refused to deliver the Deed to the house.

32) Which of the following is the most accurate statement?

(A) Jose has no legal right to title.
(B) A court of equity can enforce the oral agreement.
(C) Jose has a legal right to take title in many jurisdictions because a renter would not have made the $40,000 down payment.
(D) Jose has a right to a remedy if he detrimentally relied on White's promise.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 33

Max agreed to paint Sam's house with Dunn-Edwards paint for $3,000. When Max was almost done with the painting Sam noticed Max was using Kelly-Moore paint instead of Dunn-Edwards. Uncertain about what to do, Sam remained silent as Max finished the job and began packing up his tools. Finally Sam said, "Gee, Max, you were supposed to use Dunn-Edwards paint and used Kelly-Moore instead." Max responded, "Yeah. This Kelly-Moore is just as good and I got a better price on it." Sam refused to pay Max.

33) Which of the following is the most accurate statement?

(A) Sam must pay Max $3,000 if he cannot prove Kelly-Moore paint is not as good as Dunn-Edwards paint.
(B) Max breached an express condition of the contract and has no legal right to be paid.
(C) Max's only remedy is to seek equitable restitution.
(D) Sam has committed a major breach of contract by refusing to pay Max.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #3 Answer Sheet

Question	Answer
1	B
2	A
3	D
4	B
5	D
6	B
7	B
8	A
9	A
10	A
11	B
12	A
13	C
14	C
15	A
16	B
17	C
18	D
19	A
20	B
21	C
22	C
23	D
24	B
25	A
26	D
27	A
28	A
29	B
30	B
31	B
32	C
33	A
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #3 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Contracts & UCC Outline**".

1) **(B)** Francois could only sue Paul on a claim he was an intended third-party beneficiary of the Thomas-Paul (T-P) contract that Paul breached. For Francois to have "standing" he must prove the T-P contract was intended to benefit him, that Paul was aware the contract was intended to benefit "a third-party" when the T-P contract was created, and that Paul's breach of the T-P contract caused him (Francois) damages by preventing him from enjoying the benefits of his agreement with Thomas (the F-T lease). [See "**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58** and **standing, p. 59**.] (A) is wrong because Francois does not have to prove his "name" was actually mentioned on the T-P contract. (D) is wrong because Francois does not have to prove Paul knew he and Thomas had entered into a lease agreement at the time the T-P contract formed. Francois just has to prove Paul knew the T-P contract was intended to benefit "a third-party", and that he (Francois) is in fact that party. (C) is a true statement but a wrong answer because the terms of the lease (between Thomas and Francois) do not affect Francois standing under the painting contract (between Thomas and Paul). (B) is the only correct answer because Francois did not simply "object" that Thomas was in breach of the F-T lease. Rather he "cancelled" the lease and thereby abandoned all rights under it, including his standing to sue Paul.

2) **(A)** Paul can assert the claim against Francois that he acquired from Pierre as a counterclaim against Francois' suit against him for breach of the Thomas-Paul contract. [See "**Simple Contracts & UCC Outline**", **assignment of contract benefits, p. 61**.] Therefore "I" is true and it does give Paul a counterclaim against Francois. (B) and (D) are wrong therefore. Thomas did assign his claim to Francois orally because it was over the telephone so "II" is true. And that assignment was apparently gratuitous because there and there is no mention of any exchange of consideration by Francois in return, so "III" is also true. But neither "II" nor "III" give Paul any apparent defense claim against Francois. Therefore both (C) and (D) are wrong. (A) is the only right answer.

3) **(D)** Assignees only "stand in the shoes" of assignors as to setoff claims against the assignors that exist when notice of the assignment is given to the obligors (debtors). [See "**Simple Contracts & UCC Outline**", **defenses of promisors, p. 65**.] (A) and (B) are wrong because Elwood's $1,500 claim against Paul did not exist when he received notice of Paul's assignment of his claim against Elwood to Frank. However, Elwood can assert his claim against Paul. (C) is wrong because warranties Paul made to Frank may give Frank a cause of action against Paul, but they do not limit Frank's rights to proceed against Elwood. Therefore (D) is correct.

4) **(B)** Answer (A) is wrong because Paul's assignment of his litigation rights was not gratuitous because it was in exchange for Frank's promise to forgive Paul of the amounts he collected from Elwood. [See "**Simple Contracts & UCC Outline**", **gratuitous and contractual assignments, p. 63**.] (C) is wrong because the Statute of Frauds has no application to a contract assignment. (D) is wrong because there is no legal reason an assignment of rights cannot be conditional. (B) is correct because Paul's assignment to Frank was in exchange for Frank's agreement to reduce his claim against Paul to the extent he could collect from Elwood. That made the assignment irrevocable.

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(D)** Note the CALL here is for the weakest argument Able could make. Bob held a claim against the house before Don so his rights were superior to Don's. [See "**Simple Real Property Outline**", **priority of mortgage claims, p. 66**.] When Bob assigned his claim against the house to Able that gave Able the same claim that was superior to Don's. The phrase, "Able is subrogated to the rights of Bob" in (A) simply means that Bob assigned his rights under the Deed of Trust to Able. That gave Abel the same rights to enforce the Deed of Trust that Bob had, which is the same thing (B) says. Consequently, (A) and (B) say the same thing so neither could be the "weakest" argument. Bob's claim against the house had first priority, so if Able was denied the same priority Charley and Don would reap an unjust enrichment, and that makes (C) a good argument for Able. But when Abel paid off his note it should have discharged his debt, and even if it didn't that still doesn't support Able's argument his claim is superior to Don's. So (D) is the lamest argument Able could make, and it is the best answer given the CALL. [Note: This is a real property question but the Bar has done this on the FYLSX in the past.]

6) **(B)** First, "assignment" of a contract by a party that has a current duty to perform and has not yet performed, implies delegation of duties as well as assignment of benefits. [See "**Simple Contracts & UCC Outline**", **assignment and delegation, p. 61**.] Here Wayne has "assigned" the contract to City, but he has also delegated his duties to City as well. Therefore, this is both an assignment of benefits AND a delegation of duties. If both Wayne and City know Garth is an intended beneficiary of the assignment, it becomes a third-party beneficiary contract. [See "**Simple Contracts & UCC Outline**", **delegation of contract duties, p. 67**.] But here City does not know the Pacer belongs to Garth so he is not an intended third-party beneficiary. As a result, City is only liable to Wayne and is not liable to Garth. (A), (C) and (D) are wrong as a result, and (B) is the right answer.

7) **(B)** A basic requirement of any contract assignment is an express manifestation of present intent to assign contract benefits. [See "**Simple Contracts & UCC Outline**", **when assignment becomes effective, p. 62**.] (A) is wrong because Wilder did not manifest present intent to assign any rights to Gilda in his letter. His statement "I intend to give you half my earnings…" showed intent to act at some time the future, not the present. A manifestation of present intent requires some statement to that effect like, "I hereby give…" (D) is wrong because Wilder's manifested present intent to assign his rights to Helmsley in exchange for consideration, and she accepted that bargain. The assignment became effective when she gave notice to Zero (the promisor/obligor). (C) is wrong because Helmsley gave notice to Zero before UC obtained a judgment against Wilder and served a lien on Zero. That made her rights superior to UC's rights. (First in time = first in right). And Helmsley is a bone fide purchaser for value without notice because she obtained the rights in exchange for consideration before UC had any claim. (B) is correct because Helmsley gets half of the $15,000 that otherwise would have gone to Wilder, and UC gets the remaining amount, up to the amount of its lien.

8) **(A)** A basic requirement of any contract assignment is an express manifestation of present intent to assign contract benefits. [See "**Simple Contracts & UCC Outline**", **when assignment becomes effective, p. 62**.] Always pay close attention to quoted statements. (A) is correct because Wilder did not manifest present intent to assign any rights to Gilda in his letter. His statement only showed intent to act at some time the future, not the present. (B), (C) and (D) are wrong because (A) is right. (B) is also wrong because contract assignees do not have to give assignors notice of their "willingness to accept" the assignment. (C) is also wrong because if Gilda had been a gratuitous or donee assignee, the assignment to her would have been irrevocable because it was in writing. (D) is correct except Wilder did not manifest present intent to assign his rights to Gilda.

9) **(A)** The answer here is based on almost the same fact as the previous answer. Under common law gratuitous assignments are revocable until the rights of the assignee become vested, and a subsequent assignment of rights that conflicts with a previous revocable assignment implies a revocation. But

Copyright © Practical Step Press, 2014. All rights reserved.

assignments in exchange for consideration are irrevocable. [See "**Simple Contracts & UCC Outline**", **revocation of gratuitous assignments, p. 64**.] When irrevocable assignments conflict, the first in time prevails. (A) is correct because Helmsley received her assignment before Angel, and both assignments were in exchange for consideration. Therefore Helmsley's claim is superior. (B) is wrong because the order of priority is dependent on the order in which the rights were created, not the order in which notice of them was given to the promisor, Zero. (C) is wrong because the assignment to Helmsley was in exchange for consideration. If it had been gratuitous, and had not vested for other reasons (e.g. it was not stated by Wilder in writing) then the assignment to Angel would be an implied revocation of the assignment to Helmsley. (D) is wrong because contract conditions do not impair the power to assign contract rights.

10) **(A)** Nancy is a third-party beneficiary because she is the intended beneficiary of the contract between Daddy and Bill. [See "**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58**.] (B) is wrong because Nancy is an intended beneficiary, not an incidental beneficiary. When Daddy and Bill agreed to modify the construction it was effectively a modification of their contract so that Bill would do the work differently and in exchange Daddy would waive his rights to demand that the construction do as originally promised. (D) is wrong because that is an exchange of consideration. Nancy is a donee beneficiary, and donee beneficiaries have no legal rights to enforce third-party beneficiary contracts against promisees (Daddy is the promisee of Bill here). Donee beneficiaries can legally enforce contracts against breaching promisors (Bill here). But Bill performed the contract as it had been modified, so he was not in breach. Therefore (C) is wrong as Nancy has no legal cause of action against either Daddy or Bill. (A) is correct because if Daddy had sued Bill for building the space differently Bill could asserted the defense that he did not breach the contract as modified. And he can assert that same defense against Nancy. Nancy's only possible remedy would have to be in equity, not law, and that is not the CALL of the question.

11) **(B)** Occasionally multiple-choice questions posed by the Bar are accidentally (or perhaps deliberately) flawed, and that can cause students to become so perplexed that they waste an inordinate amount of time trying to decide which answer is "right", run out of time, and fly into an uncontrollable panic. You simply have to eliminate the worst answers, try to narrow your choices down to two possible answers and pick one of them. Here the question asks if Cliff was a third-party beneficiary of Ron's "work". That must mean "contract with Anne" because the only "work" Ron did that concerned Cliff was under that contract. (A) is wrong because Cliff's rights under the Anne-Ron agreement do not depend on the Anne-Cliff agreement referred to. And even if the writer of the question meant to say "under the agreement between Anne and Ron" this would still be a wrong answer. (B) is wrong because Cliff could not be a "third-party beneficiary" of the Anne-Cliff agreement because he is a party to that same contract. (C) is wrong because it does not respond to the CALL. (D) is wrong because Cliff is a third-party beneficiary of the Anne-Ron contract. So all 4 answers are wrong and are going to have to guess which of them was supposed to be the "right" answer before someone at the Bar screwed it up. (A) and (D) should be eliminated because they both say the rights of third-party beneficiaries depend on contract parties "expressly agreeing the beneficiaries will have enforceable rights". There is no such legal requirement. [See "**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58**.] That just leaves (B) and (C). You might suspect the question writer got "Cliff" and "Ron" mixed up and meant to say "agreement between Anne and Ron" for these two answers. If so, (B) was intended to be the right answer. So pick (B) and move on. If the Bar later realizes this question was faulty, it will be dropped from the scoring. But if you let it get you emotionally upset and you bomb the rest of the exam, they will not give you any compensation at all.

12) **(A)** Tom and Harry have a contract because Tom is selling Harry his car in exchange for Harry's promise to pay Dick. Dick is an intended third-party beneficiary of that Tom-Harry contract, and since Tom is intending to benefit Dick to extinguish his debt to him, Dick is also a creditor beneficiary. [See

Copyright © Practical Step Press, 2014. All rights reserved.

"**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58**.] (B) is wrong because Harry would be liable to Dick whether he was a creditor beneficiary or a donee beneficiary, and he would always be liable to Tom anyway. (C) is wrong because II is not the "only" true possibility. (D) is wrong because Tom is liable to Dick for the $3,000 he owes him whether Dick is aware of the Tom-Harry contract or not. (A) is correct because good faith and fair dealing are an implied material condition of every contract. If Tom turned back the odometer on the car to trick Harry into buying it, their contract was void ab initio (or voidable by Harry) and Harry is not liable to either Dick or Tom. That would leave only Dick liable to Tom for the original debt, and that is not an offered answer.

13) **(C)** A promisor can raise any defenses against a third-party beneficiary that could be raised by the promisor against the promisee. [See "**Simple Contracts & UCC Outline**", **defenses against beneficiaries, p. 60**.] Here Harry is the "promisor" because he promised to pay Dick $1,000, and Harry is the intended third-party beneficiary of the Tom-Harry contract. (A) is wrong because it suggests Harry might claim he entered into the Tom-Harry contract as a result of a "unilateral mistake" that Tom knew or should have known of. But a claim of "unilateral mistake" is not allowed as a defense when the parties' "mistake" is simply about what the properties bought or sold are worth. But for that, every dissatisfied buyer would claim they entered into contracts by "mistake". (B) is wrong because it suggests misrepresentation on the part of Tom. But claims that items for sale are "great", "dependable", "reliable", etc. are merely "puffery" and not misrepresentation of material facts. (C) is correct because Dick could claim Tom is trying to enforce an illegal contract, and illegal contracts are void ab initio as a matter of law. Therefore Harry can raise the same defense. In effect, a Court will not award Tom a judgment against Harry if it would allow him to benefit from illegal activities. (D) is wrong because (C) is a good defense for Harry.

14) **(C)** Owen and Carl had a contract. Under that contract Carl was to roof the house and Owen was to pay him for his work. They later agreed that what Owen was going to do to pay Carl was to pay for his motorcycle. That was a contract modification. Under that modification Owen promised to pay for the motorcycle, and in exchange Carl promised to accept that as payment in full for his work. So the modification was supported by consideration and binding. Under that modification some unspecified motorcycle dealer was going to benefit, so that unnamed dealer was an intended third-party beneficiary. [See "**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58**.] Butch ended up being that dealer, and this illustrates why the "intended third-party beneficiary" never has to be identified by name or even known with certainty when a third-party beneficiary contract forms. (A) is wrong because Butch is a creditor beneficiary, not a donee beneficiary (benefits to him are intended to extinguish a debt). (B) is wrong because Owen and Carl have an express agreement that Owen will pay Butch and it is not an implied agreement. (D) is wrong for two reasons. First, Owen is promising Carl he will pay Carl's debt, not promising Butch that he will pay Carl's debt. Second, even if Owen had promised Butch he would pay Carl's debt, his main purpose is to benefit himself (Owen) and not to benefit Carl, so under the Main Purpose Rule no writing is needed.

15) **(A)** Answer (A) is correct because Paul (and his family) were guests at Resort, and the guests were intended to benefit from the Resort-Disney contract. [See "**Simple Contracts & UCC Outline**", **third-party beneficiary contracts, p. 58**.] (B) is wrong because even though Resort had a right to rescind the contract, it did not. Instead it breached the contract. (C) is wrong because the hotel guests were creditor beneficiaries because the purpose of the contract was to extinguish a debt – the extra money the guests like Paul would otherwise have to pay to get into Disney World. (D) is wrong because the old common law requirement a third-party beneficiary must be "vested" can be satisfied by Paul becoming aware of the existence of the Resort-Disney contract and "agreeing" to it, by going to the gates at Disney World expecting to be admitted for a reduced rate in reliance on the existence of the contract, or even simply by suing Resort afterwards in reliance on the existence of the contract.

Copyright © Practical Step Press, 2014. All rights reserved.

16) **(B)** The rights and duties of promisors are not affected by a contract assignment until they have received notice of it. It does not matter how they receive notice or whom they receive it from. After promisors receive notice of assignments they are obligated to the assignee, and no longer have any obligation to the assignor. [See "**Simple Contracts & UCC Outline**", **promisee / assignor loses standing, p. 63**.] If a promisor mistakenly pays or otherwise delivers contract benefits to an assignor after receiving notice of the assignment, the promisor remains liable to the assignee and has the burden of recovering from the assignor. [See "**Simple Contracts & UCC Outline**", **payments by mistake to promisee / assignor after assignment, p. 67**.] Parties trying to recover lost property may prove an action for tort conversion if the property was wrongfully taken. But recovery of property may require an action for equitable restitution otherwise. [See **"Simple Remedies Outline"**, **recovery of property, p. 15**.]. (B) is correct because Owen is not liable to Factor if he did not receive notice of the assignment. (A) is wrong because Owen and Bill cannot both be liable to Factor. Owen can only be liable to Factor if he received notice of the assignment, but in that case the money Bill has taken belongs to Owen, not Factor, so Bill would not be liable to Factor. (C) is wrong because Owen is not liable to Factor if he did not get notice of the assignment. (D) is wrong because Bill can only be liable to Owen or Factor, but not to both.

17) **(C)** If contract parties have a reasonable suspicion other contract parties may not perform contract duties they have a right to request "reasonable assurances". There is no legal right to demand or receive reasonable assurances, but if parties fail to satisfy such a request it may be treated as a prospective failure of constructive condition or anticipatory breach, depending on jurisdiction. [See "**Simple Contracts & UCC Outline**", **request for reasonable assurances, p. 74**.] (A) is wrong because Printer does not have sufficient information to conclude Finley has anticipatorily breached the contract. (B) is wrong because the contract is not void even if Finley is insolvent. (C) is correct because Printer's only remedy under these facts is to ask for reasonable assurances. If Finley satisfies that request Printer remains bound to the contract. (D) is wrong because Printer cannot refuse to print the books until after Finley has been asked for reasonable assurances and has not satisfied that request.

18) **(D)** Answer (A) is wrong because Contractor has grounds for reasonable doubt Developer will pay, so Contractor has a legal right to ask for reasonable assurances. Contractor has no legal right to receive reasonable assurances, but he has a right to ask for them. (B) is wrong because Developer would not be deemed to be in prospective failure (in those jurisdictions that recognize that status) until he was asked for, and failed to provide, reasonable assurances. (C) is wrong because the term "reasonable assurances" means a financial guarantee from a reliable lender or a deposit of funds in an escrow account. (D) is correct because if Developer is asked for, and fails to provide, reasonable assurances, Contractor is justified in stopping work. See "**Simple Contracts & UCC Outline**", **request for reasonable assurances, p. 74**.]

19) **(A)** Contract parties that anticipatorily breach a contract are in major breach, but they can cure their breach if they immediately perform all contract duties. They can also retract an anticipatory breach if they act before the other contract parties have reacted to the breach. [See "**Simple Contracts & UCC Outline**", **cure and retraction of anticipatory repudiation, p. 76**.] (A) is correct because if Farmer immediately offers to pay Thresher the full contract amount he has cured his breach. (B) is wrong because even if Farmer "could pay" Thresher, that fact alone does not cure the breach created by his clear statement that he would not be able to pay him "as planned". (C) is wrong because once Farmer cures his breach Thresher is bound to the contract. (D) is wrong because Farmer's anticipatory repudiation excused the constructive condition that Thresher must first harvest the field and his duty to pay was accelerated to the present time.

Copyright © Practical Step Press, 2014. All rights reserved.

20) **(B)** The equitable defense of laches can be raised against both equitable and legal actions when the party seeking a remedy (the movant) has unreasonably delayed seeking a remedy, and as a result the defending party (the respondent) would suffer unjust prejudice or result. [See "**Simple Contracts & UCC Outline**", **laches, p. 100**.] (A) is wrong because even though Tom may have been able to have a Court equitably estop Dick from refusing to accept his payment on September 1, Tom took no action at that time. (B) is correct because Tom did not act to seek a remedy against Dick within a reasonable period of time, and for Tom to block the sale to Harry the "next year" would unjustly prejudice Dick's position. (C) is correct but it is not the best answer because even though Tom could plea for promissory estoppel, Dick would counter that plea with the defense of laches. (D) is wrong because the oral agreement between Tom and Dick, that Dick would accept less than $400,000, was not in writing, and this was a contract for the sale of land. As a result, the agreement (a modification of their contract) was not legally enforceable, and could only be considered a "waiver of condition". And waivers of conditions are always revocable at law. So when Dick refused to accept $370,000, he was merely revoking his waiver of the contract condition that Tom could pay $370,000 instead. Tom could have sought to equitably estop that retraction, but he did not. [See "**Simple Contracts & UCC Outline**", **waiver of condition, p. 50** and **waivers of condition, p. 56**.]

21) **(C)** The equitable defense of unclean hands can only be raised against equitable actions when parties seeking equitable remedies (movants) seek to benefit in equity from their own illegal or otherwise wrongful acts. [See "**Simple Contracts & UCC Outline**", **unclean hands, p. 100**.] (A) is wrong because Bill could plead for promissory estoppel but he has unclean hands and seeks to benefit from (Owen's promise to pay more) which was elicited from Owen by Bill's threat to breach the contract. Breaching a contract is illegal (that is why the law provides a remedy), and threatening to breach a contract is just as illegal. (B) is wrong because Bill did not raise a "good faith, reasonable contract dispute." (C) is the best answer because Bill cannot win at law in a breach of contract action since the modification was not supported by consideration. Therefore, he can only plead in equity, and he cannot obtain a remedy in equity because he has unclean hands. (D) is not the best answer because duress would only prevent Bill from winning at law, but it would not prevent Bill from pleading for a remedy in equity.

22) **(C)** Answer (A) is wrong because Farmer's promise to pay was subject to the constructive condition precedent that Mowen had to perform as promised. Mowen did not perform as promised because he was late finishing the job. As a result Mowen was in breach, and Farmer's promise did not become a duty to pay. Therefore, it is logically impossible for Farmer to be in breach, whether major or minor until and unless it is determined Mowen substantially performed. If he did, the constructive condition would be excused, and Farmer's promise to pay would ripen into a duty to pay. But that is a fact for the Court to decide, and until it is decided, Farmer cannot be in breach. (B) is wrong because Mowen is the breaching party and as such cannot have suffered any "damages". (C) is correct because the only possible remedy that can be awarded to a breaching party is restitution. If the breach was minor, the award of a money judgment is legal restitution. [See "**Simple Contracts & UCC Outline**", **restitution to breaching party, p. 91**.] If a money judgment is awarded to a party that has committed a major breach or for some other reason has no right to a remedy at law, the remedy is equitable restitution. [See "**Simple Contracts & UCC Outline**", **equitable restitution, p. 98**.] (D) is wrong because Mowen has only committed a minor breach (there is no reason to believe timely performance was an express material condition) so he has a right to be compensated (legal restitution) and does not have to plead for a remedy in equity (equitable restitution).

23) **(D)** Answer (A) is wrong because Homer's promise to pay was subject to the constructive condition that Coats had to perform as promised. Coats breached the contract when he failed to complete the job as promised, so Homer's promise to pay never ripened into a duty to pay. As a result, Homer has not breached the contract. (B) is wrong because the parties agreed timely performance was an express

Copyright © Practical Step Press, 2014. All rights reserved.

material condition. As a result, when Coats breached the contract, it was a major breach, and he no longer has any legal right to be paid at all. (C) is wrong because Coats has no right to legal restitution since he has committed a major breach. (D) is correct because Coats can plea for, and a Court of equity has discretion to award, up to $10,000, on an implied-in-law contract theory, to protect the public interest by preventing the frustration of Coat's reasonable commercial expectations. [See "**Simple Contracts & UCC Outline**", **equitable restitution, p. 98**.]

24) **(B)** Under contract law a non-breaching party has a right to award of a money judgment based on damages measured as the sum of expectation, reliance, consequential and incidental damages OR to an award of legal restitution, whichever the party requests. In either case the non-breaching party has a burden of proving the amounts claimed with reasonable certainty. [See "**Simple Contracts & UCC Outline**", **damages, p. 85**.] Here Tom had expectation damages of $20,000, reliance damages of $150,000, and incidental damages of $1,000. The fact that Tom did not make the profit he "expected" from entering into a contract with Harry was not caused by Dick's later breach, so it did not constitute either reliance or consequential damages. As a result, Tom's total damages caused by the breach were $171,000. But Tom has a right to an award measured by legal restitution, the amount of benefit his efforts conveyed upon Dick. Since the contract amount was $200,000 and Dick only had to spend $25,000 more to complete the house, Tom has conveyed $175,000 in benefits on Dick. (A) is wrong because even though Tom's damages were $171,000, he has a right to be paid $175,000 in legal restitution. (B) is correct because Tom has a right to be awarded a money judgment in the amount of $175,000. (C) and (D) are wrong because Tom simply has no right to be awarded more than $175,000.

25) **(A)** Non-breaching parties have a right to be awarded a money judgment based on damages or legal restitution, whichever they request. But in either case they must be able to prove the amounts claimed with reasonable certainty. [See "**Simple Contracts & UCC Outline**", **damage amounts must be proven with certainty, p. 88**.] (B) and (C) are wrong because no matter how much sales or profits might have been at other locations, profits always vary from one location to another, and it is not possible to prove with reasonable certainty what the sales or profits would have been at a new location. Consequently, the opinions expressed by "expert witnesses" about profit potential are still simply speculation, no matter how "expert" they may be. (D) is wrong because Papa John can prove with certainly one loss caused by Bill's breach – that $2,000 worth of advertising materials was printed in reliance on Bill's promise to be done on time (reliance damages) and it had to be reprinted. (A) is correct because the breach caused Papa John to incur $2,000 in extra expenses to reprint advertising materials.

26) **(D)** You can waste a lot of time adding up all the numbers and trying to multiply everything out if you don't immediately realize Linda is not a party to this contract and it was not intended to benefit her either. The only people with standing to seek contract remedies are the parties to the contract, intended third-party beneficiaries, assignees, and people in privity with them such as executors, guardians and conservators. [See "**Simple Contracts & UCC Outline**", **enforceable contracts, p. 38**.] So if you see Linda has no standing to enforce this contract or seek any remedies as a result of its breach, (D) is the obvious answer. (A), (B) and (C) are all wrong as a result, no matter how the numbers add up.

27) **(A)** This is clearly a unilateral contract offer because Bevis (the offeror and "king of the offer") unequivocally states he will pay nothing to Butthead unless he completely replaces the roof. (A) is correct and (B), (C) and (D) are wrong because most jurisdictions agree that if an offeree begins performance in response to a unilateral contract offer, and the offeror is unaware that they have begun performance, the offeror is free to revoke the offer at any time, and the offeree is left without recourse. [See "**Simple Contracts & UCC Outline**", **unilateral offer revocation, p. 13**.]

Copyright © Practical Step Press, 2014. All rights reserved.

28) **(A)** Unless the parties to an employment contract expressly agree otherwise, it is presumed to be an at-will contract. That means that both parties have a legal right to rescind the contract at any time, and the other parties have no legal recourse. [See "**Simple Contracts & UCC Outline**", **rescission at will, p. 29**.] However, they may be able to obtain a remedy at equity based on a plea of detrimental reliance and/or promissory estoppel. Here the CALL concerns Larry's "right" and that means at law, not in equity. (A) is correct because nothing said in the law firm's offer guaranteed any minimum employment duration. (B), (C) and (D) are all wrong because even though Larry might be able to obtain a money judgment against the firm to compensate him for some of his expenses, it would be at the Court's discretion, and not a matter of "right".

29) **(B)** Under the Statute of Frauds a contract that, by its own terms, cannot be completely performed within a year from the date of creation must be in writing or else it is not legally enforceable. [See "**Simple Contracts & UCC Outline**", **contracts requiring more than a year to perform, p. 35**.] In many cases contracts that violate the Statute of Frauds give rise to pleas in equity based on implied-in-law contract. But the CALL here asks about Tammy's "rights", and that concerns the remedies she would have at law, not in equity. The contract here cannot be performed within a year from the date of execution because it was created in May, and Tammy was to perform contract duties until the end of May of the next year. So it is not legally enforceable for the entire period specified. But that does not mean it is void entirely. It would not be unenforceable for the period that Tammy has already performed. (A) is not clearly correct because the facts don't state the contract was in writing. If not, Tammy cannot enforce it or recover damages for the period between the date of termination, December 31, and the end of the promised pay period, May 30. (D) is not clearly correct because Tammy fully performed under the contract terms for the four month period from September 1 through December 31. So the contract could be enforced as an at-will employment contract at a pay rate of $5,000 per month, and Tammy would have a right to some compensation. (C) is wrong because Tammy might not have been paid everything she has coming. For example, she might have been promised $5,000 a month for 9 months ($45,000) to be paid out over the next 12 months. In that case she would not yet have been fully paid for her work, and she would have a right to be paid the extra amounts she had not yet been paid. (B) is the best answer because she worked for 4 months and had been promised to be paid $20,000 for that work.

30) **(B)** Supervening illegality will void a contract, but it does not make the contract void from the beginning (ab initio). [See "**Simple Contracts & UCC Outline**", **supervening illegality, p. 27**.] (A) and (C) are wrong and (B) is correct because the contract is a valid, enforceable contract as to the work done prior to the EPA announcement. Contractor finished 5 houses, and there was nothing illegal about that during the performance of the work. So Contractor has a right to be paid $1,000,000 for that work. (D) is just mumbo jumbo.

31) **(B)** Answer (C) is wrong because contract terms are interpreted according to intentions of the parties and the "rules of construction" and not by whether enforcement would be "fair" or "profitable" for each party. Under the rules of construction written contracts with "merger clauses" will be determined by the plain meaning of the contract words themselves unless the contracts are clearly incomplete on their faces or the merger clauses were incorporated by fraud or mistake. [See "**Simple Contracts & UCC Outline**", **four corners doctrine, p. 40**.] However, evidence of the past course of dealing between the parties and terms of the trade are always admissible to establish the meaning of contract terms. [See "**Simple Contracts & UCC Outline**", course of dealing and terms of trade, p. 41.] And contracts should be interpreted to give effect to all provisions, if possible. [See "**Simple Contracts & UCC Outline**", **resolving contradicting provisions, p. 42**.] (D) is wrong because interpretation disputes are not "mutual mistakes" that would void all contracts. If it were so, every contract could be voided after the fact by simply disputing the meanings of the words used. (A) is wrong because the term "original condition" has a plain meaning and is not ambiguous in and of itself. (B) is correct because if

Copyright © Practical Step Press, 2014. All rights reserved.

ambiguous terms in contracts cannot be resolved by extrinsic evidence or other rules of interpretation, they will generally be interpreted against the drafter of the document. Pacific could have written the contract to say "original condition at the beginning of the 2005 lease extension" and it did not. Its failure to expressly state what "original condition" meant created the ambiguity, and it would bear the burden of the result. [See "**Simple Contracts & UCC Outline**", **resolution of ambiguity against drafter, p. 42**.]

32) **(C)** The Part Performance Doctrine is broadly adopted law, but States vary widely in their implementation of the concept. It allows a Court to legally enforce an oral agreement for the sale of land in certain circumstances even though the Statute of Frauds has not been satisfied, if the buyer has taken exclusive possession of the land, paid all or almost all of the purchase price or otherwise has made valuable improvements, and the acts of the parties can only be explained by the conclusion that the land was sold under an oral agreement. [See "**Simple Contracts & UCC Outline**", **contracts conveying interests in land / part performance doctrine, p. 35**.] (A) and (B) are wrong because Jose took exclusive possession, paid the entire sale price, and a mere "renter" would not have paid White $40,000 at the beginning of the transaction. Under these circumstances the Part Performance Doctrine, at least in some States, would give Jose a legal right to the land, and he would not have to depend on an equitable argument. (D) is wrong for the same reason. Detrimental reliance is an equitable argument and the Part Performance Doctrine, at least when adopted by statute, provides legal rights. (C) is correct because the beginning payment of $40,000 cannot be explained by any conclusion except that Jose was buying and not just renting the land.

33) **(A)** If contract parties become aware other parties have committed major breaches and allow the breaching parties to continue performance they are deemed to have "waived the breach" by "electing" to treat them as minor, not major breaches. [See "**Simple Contracts & UCC Outline**", **waiver of major breach, p. 78**.] Consequently, if the performing parties otherwise are found to have substantially performed, constructive conditions will be excused and the non-breaching parties promise to pay for performance will ripen into a duty to pay, with an offset for damages caused by the breaches of the performing parties. [See "**Simple Contracts & UCC Outline**", **restitution to breaching party, p. 91**.] (B) and (C) are wrong because Sam allowed Max to continue performance after discovering he had violated an express condition of the contract. That "waived the breach" and left Max with a legal right to be paid. (D) is wrong because Sam's promise to pay Max was subject to the constructive condition that Max had to perform as promised. He did not, and because of that breach Sam's promise to pay him never ripened into a duty to pay. Consequently, it was logically impossible for Sam to breach the contract at all. (A) is correct because Max would be held to have substantially performed, and that will excuse the constructive conditions leaving Sam with a duty to pay him the contract price less any damages caused by the breach. If Sam cannot prove there is any difference in the quality of the two paints he must pay Max $3,000.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #4 – UCC

Test #4 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **UCC rules**. Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Connie bought a new XP microwave oven from Smears, an authorized XP dealer, on September 1, and Smears delivered it the same day. The owner's manual said:

> "XP, Inc. warrants each of its new microwave ovens to be free from defects in material and workmanship for a period of 90 days from the date of delivery by an authorized dealer. XP's liability, if any, arising out of this warranty shall be limited to the cost of repair or replacement of defective parts."

Connie used the oven properly to October 1 when she sold it to Betty for $200, a fair price. Connie gave Betty the owner's manual. Betty used the oven properly until November 1 when it caught on fire because it had bad wiring. Betty spent $200 to repair the oven and $4,500 to repair her home because of fire damage. Betty demanded that XP compensate her for her losses. XP refused, and Betty got a written statement from Connie assigning her all of Connie's rights against XP under the original purchase contract. Assume the only relevant section of the UCC dealing expressly with rights of third parties provides:

> "A seller's warranty, whether express or implied, extends to any natural person who may reasonable be expected to use the goods, and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section."

1) Which of the following arguments best supports Betty's breach of express warranty claim against XP?

   (A) When Connie bought the oven from Smears Betty was brought into privity of contract with the dealer.
   (B) Betty acquired a cause of action for breach of express warranty against XP by assignment from Connie.
   (C) By implication, Betty is an intended beneficiary of the warranty because it was only limited by its terms as to duration and not as to persons after the original purchase.
   (D) Betty is covered by the warranty because XP could reasonably foresee oven purchasers might resell them.

2) Which of the following is the strongest argument in XP's defense against Betty's claim for breach of an express warranty?

   (A) Warranties limited as to duration, remedy and coverage are permissible under the UCC.
   (B) The applicable UCC provision as to any "natural person…injured in person" precludes by implication actions by subsequent purchasers for only property damage.
   (C) Recovery by Betty is precluded by the express warranty terms because the oven was not "new" when she purchased it.
   (D) Only merchants can enforce their party rights under the UCC.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 3

Sam decided to buy a new car. His old Mustang was worth more than $10,000, but he wanted to do his friend, Bob a favor. So he sent Bob an email that said, "I am going to get a new car. I will sell my Mustang to you for $10,000. This is a special deal just because you are my friend." Bob emailed back, "Your car is a piece of junk. But it's a deal if you have it detailed and throw in a tank of gas. Deal?" Sam was hurt and replied, "Maybe I'll talk to you about it tomorrow." The next day Bob came to Sam with a check for $10,000 and said, "Hey man, I wasn't serious. I had a few beers and was just kidding."

3) If Sam refuses to take Bob's check:

(A) He is not in breach because Bob made a counteroffer.
(B) He is in breach because the UCC allows acceptance with varying terms.
(C) He is in breach because he never revoked his offer.
(D) He is in breach because Bob was joking.

Questions 4-6

Sam is a wholesale grocer and Bob is a retail grocer. Sam sent Bob a letter on February 1 that said,

> "Dear Bob – I just got a contract for 100 gross of jumbo artichokes. They will be ready to harvest on May 1. Can sell to you for $6 a dozen. If you want part of the shipment for delivery on or around May 1 I have to have your order stating quantity by March 1.

Bob didn't receive Sam's offer in the mail until February 6. He thought about it for a while and decided he didn't needed the artichokes so he sent Sam a letter on February 10 rejecting his offer. Later he changed his mind and thought he might advertise a special 3-day promotion. So he prepared an acceptance and sent it by mail to Sam on February 13 saying, "I've changed my mind. I will buy 20 gross. Sam got Bob's rejection of his offer first on February 14 and he didn't get Bob's acceptance until three days later.

4) There is:

(A) A binding contract if Sam did not change position in reliance on Bob's rejection.
(B) A binding contract, because Bob's acceptance was effective on dispatch because it was sent by the same means Sam sent the offer, even though it got to Sam after the rejection.
(C) No contract because Bob's rejection was both sent and received before Bob's acceptance.
(D) No contract.

5) Under the same facts, suppose Bob's rejection was sent by mail, but his acceptance was sent by fax and Sam got it first. If Sam later refuses to send Bob any artichokes, the Court should find that:

(A) Sam is in breach because Bob's acceptance was effective on dispatch and reached Sam before Bob's rejection.
(B) Sam is in breach because Bob, as an offeree, had the right to choose any means of dispatch he wanted.
(C) Sam is not in breach because he is the "king of his offer" and had the right to choose any medium of transmission he wanted.
(D) Sam is not in breach of contract.

6) For this question alone, suppose Bob mails his rejection first but Sam receives Bob's acceptance the day before he receives the rejection. There is:

(A) No contract under the mailbox rules.
(B) No contract until the offer is accepted.
(C) A contract, because the acceptance was effective upon dispatch and received before the rejection.
(D) A contract, because Sam has a right to decide whether or not to accept Bob's acceptance in this situation.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 7

On September 1 Widgco, a manufacturer of widgets, entered into a written contract with Computer Warehouse (CW) to sell it 1,000 widgets for $5,000. The contract contained all necessary details and had the provision, "This offer remains open for 60 days, until October 30." On October 1 Widgco notified CW that it was revoking its offer.

7) Did Widgco effectively revoke its offer?

(A) No, because the offer was a valid option contract.
(B) No, because Widgco was a merchant and the offer constituted a merchant's firm offer under the UCC.
(C) No, because they had a written contract.
(D) Yes, because CW paid no consideration to keep it open.

Question 8

On June 1 Farmer entered into a written sales agreement to sell Miller 100 tons of grain for $300 a ton. When the contract was executed Miller asked Farmer if he would give a cash discount. Farmer agreed that if Miller paid cash at the time of delivery he would give a 2% discount. When Farmer delivered the wheat on September 1 he demanded $300 a ton and refused to give the discount he had promised. Miller sues Farmer.

8) Should Miller be allowed to testify about the discount Farmer promised?

(A) No, because the June 1 written contract was a fully integrated agreement.
(B) Not if the written contract appears to be a fully integrated agreement on its face.
(C) Yes, because Miller detrimentally relied on Farmer's oral promise.
(D) Yes, because the UCC controls.

Questions 9-10

Sellco, Inc. manufactures transformers to standard industrial specifications. It keeps no stock on hand because of the limited demand. On January 30, Buyco telephoned Sellco and ordered 2 of Sellco's model X-32 transformers at a price of $35,000 each. The parties agreed that delivery of the first generator would be on October 15, and the second on November 30. Payment was to be made no more than 30 days after delivery. On October 12 Sellco delivered the first generator, which Buyco accepted. On November 22, Sellco completed the second generator, but did not notify Buyco. On November 23 Buyco, having made no payment to Sellco, cancelled the agreement.

9) In a contract action by Sellco against Buyco, in which Buyco, not admitting that any contract was made, raises the defense of the Statute of Frauds, Sellco will recover:

(A) Nothing.
(B) $35,000 only.
(C) Damages for total breach of contract for the sale of 2 transformers, because Buyco accepted part performance.
(D) Damages for total breach of contract for the sale of 2 transformers, because the goods were made for Buyco.

10) Suppose the transformers Buyco ordered from Sellco were manufactured according to Buyco's own unusual specifications, and the first was delivered and accepted on October 12. Buyco cancelled the agreement on November 23, and Sellco immediately notified Buyco that it was holding the second generator for Buyco's account. Sellco's cost of manufacturing each generator was $31,000. There is no market for the second generator and its scrap value is nominal. In a contract action by Sellco against Buyco, in which Buyco, not admitting that a contract was made, raises the defense of the Statute of Frauds, Sellco will recover:

(A) $62,000 only.
(B) $39,000 only, the contract price of one generator plus the loss of profits on the second.
(C) $66,000 only, the contract price of one generator plus the cost of manufacturing the second.
(D) $70,000.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 11-12

Honeywell received the following order from Dynamic on October 3: "We hereby order 1000 of your A-7 relays. Delivery must be by November 30." On October 15, Honeywell shipped 1000 A-4 relays, which were different in size and shape from A-7 relays. The A-4 relays arrived at Dynamic's place of business on October 20. Dynamic immediately faxed Honeywell, "We reject your shipment. We need A-7 relays. Cannot use A-4 relays." However Dynamic did not ship the A-4 relays back to Honeywell. Honeywell replied, "Will deliver A-7 relays to you by November 30." Dynamic received this fax on November 2, but did not reply. Honeywell delivered 1000 A-7 relays to Dynamic on November 29, but Dynamic refused to accept them.

11) Did Dynamic properly reject the A-4 relays delivered on October 20?

(A) Yes, because Honeywell did not notify Dynamic that the A-4 relays were shipped as an accommodation to Dynamic.
(B) Yes, because the A-4 relays were non-conforming goods.
(C) No, because Dynamic waived his right to reject the A-4 relays by not returning them promptly to Honeywell.
(D) No, because Honeywell could accept Dynamic's offer by prompt shipment of either conforming or non-conforming goods.

12) Did Dynamic properly reject the A-7 relays tendered on November 29?

(A) Yes, because Honeywell' shipping the A-4 relays on October 15 was an anticipatory repudiation.
(B) Yes, because Honeywell' shipping the A-4 relays on October 15 was a present breach of contract.
(C) No, because Honeywell cured the October 20 defective delivery by his tender of conforming goods on November 29.
(D) No, because a contract for the sale of goods can be modified without consideration.

Questions 13-15

Baker, a commercial baker, had been purchasing flour from the same distributor for many years. In November the distributor told Baker it intended to raise its prices. Baker decided to find another supplier. In December he wrote to Miller and asked, "How much would you charge to supply my flour needs for the next year? We used 10,000 pounds this last year. Miller wrote back saying, "We can supply all your needs for the next year for 80 cents a pound." Baker responded, "I accept your offer, provided that you agree to give me a 8% discount for payment within 10 days from invoice."

13) Baker's reply demanding a 8% discount would be considered:

(A) An acceptance with a proposal for an additional term if both parties are merchants.
(B) An acceptance with a proposal for an additional term whether they are both merchants or not.
(C) A counteroffer, but not a rejection.
(D) A rejection and counteroffer.

14) If a contract formed between Baker and Miller, what is the quantity term?

(A) Whatever amount, not unreasonably disproportionate to 10,000 pounds that Baker orders from time to time during the year.
(B) Whatever amount, not unreasonably disproportionate to 10,000 pounds that Baker needs in his business during the year.
(C) A reasonable quantity, not to exceed 10,000 pounds.
(D) 10,000 pounds.

Copyright © Practical Step Press, 2014. All rights reserved.

15) For this question only, assume the following: During the months of January, February and March Miller shipped enough flour to meet Baker's needs., but they never had any more discussions. Baker went out of business on April 1 and didn't order any more flour. If Miller sues Baker for any loss he experiences as a result, what is Baker's best defense?

(A) Baker was excused from the contract because of impossibility.
(B) Miller never accepted Baker's proposal for an 8% discount.
(C) Baker had no need for flour after April 1.
(D) No contract formed between Baker and Miller because the quantity of flour to be sold was indefinite.

Questions 16-17

Forge, a manufacturer, entered into a valid, written contract to sell Office Smart, a retailer, 10,000 clips at $0.25 each. On April 1 Forge assigned all of its rights under the contract to Fabio. On April 10 Fabio shipped the 10,000 clips to Office Smart as agreed via FedEx. Later that day the FedEx truck crashed and the clips were all destroyed. Office Smart never got the clips and refuses to pay for them.

16) If Fabio sues Office Smart it will recover:

(A) $2,500.
(B) The profits Forge expected to receive under the contract.
(C) The replacement cost for the clips.
(D) Nothing.

17) If Office Smart sues Forge for failure to perform it will recover:

(A) Specific performance.
(B) The excess of the amount Office Smart would have to pay to replace the shipment and the contract price.
(C) The full cost of replacing the destroyed shipment.
(D) Nothing.

Questions 18-19

Farmer contracted to sell 5,000 tons of Russian red wheat from his Oklahoma farm to Miller for $300 a ton for delivery on or before July 15th. The next week he contracted to sell Baker 3,000 tons of the same wheat for delivery at the same time. Bad weather destroyed half of Farmer's crop on July 10 and his harvest was reduced to 4,000 tons. Farmer immediately told Miller he could only deliver 2,500 tons of wheat and he told Baker he can only deliver 1,500 tons. Baker immediately arranged to buy an additional 1,500 tons of wheat from another grower, Deere, on July 11.

18) What are Miller's legal rights?

(A) If Miller gives Farmer immediate written notice of termination it has a right to refuse to accept the 2,500 tons Farmer has offered, but has no other cause of action against him.
(B) Miller must accept the 2,500 tons of wheat Farmer offered, cannot terminate the contract, and has no other cause of action against him.
(C) If Miller buys 2,500 tons of additional wheat from another grower, as Baker did, it has a right to recover damages from Farmer for the excess of cover price over contract price.
(D) Miller has a right to demand all 4,000 tons that Farmer has harvested because it entered into a contract with him before Baker did.

19) If Farmer's failure to deliver 3,000 tons to Baker was not excused by bad weather, what damages does Farmer owe Baker?

(A) The market price for 1,500 tons of wheat on July 11.
(B) The market price for 1,500 tons of wheat on July 15.
(C) The reasonable value of 1,500 tons of wheat on July 15.
(D) The excess amount Baker paid Deere.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 20

Sid, a horse breeder, offered to sell his horse to Bob, a horse trader, for $15,000 on Tuesday. Bob asked for a week to think about it and gave Sid $100 to hold the offer open. Sid took the $100 and gave Bob a written offer that said he would sell Bob the horse for $15,000 and would not revoke his offer for a week. On Monday Bob called Sid and said, "I have decided to buy the horse. Here is a check for $15,000. But I won't be able to pick the horse up for a month. I will pay you for boarding it in the meantime."

20) Bob's statement would be:

(A) A counter-offer because it changes the terms of Sid's offer.
(B) A counter-offer because it is contingent on Sid agreeing to board the horse.
(C) An acceptance but Sid must board the horse for a month with a right to reimbursement from Bob for expenses.
(D) An acceptance and Sid can refuse to board the horse.

Questions 21-25

Free Electronics (FE) buys and sells electronic components. On June 1 FE ordered a shipment of widgets from Nissei Electric Systems (NES) for $20,000, F.O.B. FedEx not later than July 25, payment in full due August 1. NES shipped the widgets by FedEx on July 15 and notified FE its order had been shipped.

21) If NES learns on July 17 that FE is in default on a government loan and may be forced into involuntary bankruptcy, does NES have the right to demand that FE immediately pay cash for the widgets?

(A) No, but NES can stop the goods in transit and refuse to let them be delivered.
(B) No, because the F.O.B. term passed title when FedEx gained possession.
(C) No, because the payment terms were expressly stated in the purchase order on June 1.
(D) Yes, if FE is in fact insolvent.

22) If NES learns FE is in default on a government loan two days after FE receives the widgets, and according to Dunn & Bradstreet FE is unable to pay its debts, does NES have a legal right to immediately reclaim the goods?

(A) No, unless the date specified for payment in the contract, August 1, has passed.
(B) Yes, unless FE assures NES that it will be able to pay for the goods by August 1.
(C) Yes, because NES relied on FE's implied representations that it was solvent.
(D) Yes, if FE is in fact insolvent.

23) If FE had NES deliver some of the widgets directly to Computer Warehouse (CW), a customer of FE, and NES learns FE is in default of a government loan after some widgets have been shipped to CW, can it stop the goods in transit and refuse to let CW take delivery?

(A) Yes, if CW will pay NES directly after accepting the goods.
(B) Yes, unless CW guarantees payment by FE to NEC for the goods.
(C) Yes, if FE is in fact insolvent.
(D) No, because NEC cannot stop goods in transit for delivery to a third-party.

24) If NEC recovers the widgets but quickly sells them for $10,000 because the bottom is dropping out of the widget market, does NEC have a right to a judgment against FE for its loss of $10,000?

(A) No, because sellers who reclaim goods waive all their other remedies.
(B) No, because the legal measure of damages is the market value of the goods at the time and place of delivery.
(C) No, because the legal measure of damages is the market value of goods on the date payment was originally to be made.
(D) Yes, because FE's insolvency was a breach of the purchase contract.

Copyright © Practical Step Press, 2014. All rights reserved.

25) If FE properly rejected the widgets on July 21 because they were non-conforming goods, but NES gives FedEx a conforming shipment of widgets on July 25 for delivery to FE, can FE refuse to accept the second shipment?

(A) No, because if NES notified FE of its intent to tender conforming goods, tender on or before the contract date cures its breach.
(B) Yes, because the right to cure a non-conforming shipment is waived when delivery is by common carrier rather than directly to buyer.
(C) Yes, if FE purchased conforming goods from another manufacturer before the date NES tendered conforming goods.
(D) Yes, because tender of the original nonconforming goods permitted FE to rescind the purchase contract.

Questions 26-28

On September 1 Imports, a cheese wholesaler, mailed Deli an advertisement describing wedges of various aged and mild gourmet cheeses it had available for sale in 500 pound lots for $2,000 per lot. The letter described its offering as a "firm offer" for the year to come. On December 15 Deli faxed Imports an acceptance of its offer ordering one 500 pound lot of one-pound, mild Edam cheese wedges and one 500 pound lot of one-pound, mild Gouda wedges to be delivered no later than January 1 for $4,000.

26) If Imports ships only the Edam but not the Gouda, in an action by Deli against Imports for breach of contract it will:

(A) Lose because it accepted Imports' offer by a different medium than it was transmitted.
(B) Lose because Imports' offer of September 1 was a "firm offer" that expired December 1.
(C) Lose because Deli's request that the cheese be in one-pound wedges materially altered the offer.
(D) Win because Imports sent Deli a non-conforming shipment.

27) If Imports ships both cheeses ordered by Deli, but it is aged, not mild cheese, and Deli rejects the entire shipment, in an action by Imports, Imports will:

(A) Prevail because it substantially performed the sales contract.
(B) Prevail, because Deli's request for mild cheese was not a material alteration of the offer.
(C) Lose, because no enforceable contract was formed because Import's offer lapsed before Deli tried to accept it.
(D) Lose because Imports sent Deli a non-conforming shipment.

28) If Imports ships a non-conforming shipment, which of the following options are available to Deli?

I. It could reject all the cheese.
II. It could accept all the cheese.
III. It could accept just one 500 pound lot of cheese.
IV. It must accept all the goods sent or be liable for breach.

(A) I and II only.
(B) II and III only.
(C) I, II and III only.
(D) IV only.

Questions 29-31

On September 1 Bob's Music sent Yamaha Exports a letter that said, "Please sign the enclosed order memo and return it along with your acceptance." Enclosed was a typed memo with the heading "Order Memo" that listed goods as "5 Model 20B acoustic guitars with mother of pearl inlays on the frets and shoulder straps in assorted colors, $195.00 each, F.O.B. Osaka, net 30. At the bottom of the form was a statement "THIS OFFER WILL BE HELD OPEN FOR FOUR MONTHS". On October 1 Yamaha faxed Bob's Music the following: "We will sell you the guitars you ordered on 9/1 except they will have to be model 20C guitars with abalone shell inlays on the frets instead of mother of pearl and black shoulder straps. Please notify you accept these terms by October 15." On November 1 Bob's Music faxed an acceptance to Yamaha stating, "Your terms of 10/1 are accepted."

Copyright © Practical Step Press, 2014. All rights reserved.

29) Do Yamaha and Bob's Music have a contract?

(A) No because Bob's 11/1 offer has not been accepted by Yamaha.
(B) No, because Yamaha's 10/1 fax stated additional or different terms.
(C) Yes, because Bob's accepted Yamaha's terms on 11/1.
(D) Yes, because Yamaha's offer was a firm offer between merchants.

30) If Yamaha had signed and returned the 9/1 "Order Memo" from Bob's Music and then sent five 20B acoustic guitars, four with black straps and one with a red strap, would there be a contract?

(A) No, because Yamaha's shipment would not have sufficiently "assorted" shoulder straps to be conforming.
(B) No, because the "Order Memo" from Bob's Music effectively made Yamaha the offeror, and offerors cannot accept their own offers.
(C) Yes, because Yamaha promptly signed and returned the "Order Memo" to Bob's Music as requested.
(D) Yes, because Yamaha's shipment constituted an acceptance of Bob's offer.

31) Suppose Bob's Music sent Yamaha a fax on October 5 stating, "We accept the terms of your 10/1 fax, but we want a 10% discount for immediate cash payment as you give your other customers. And suppose Yamaha ships in response, and the guitars are accepted. Bob's Music owes Yamaha $975 because:

(A) Bob's Music accepted the guitars, thereby binding them to a valid, enforceable contract.
(B) The parties had a valid, enforceable contract but the request by Bob's Music for a discount did not become a contract term.
(C) The 10/5 fax from Bob's Music constituted an acceptance of the guitars and Yamaha never revoked its 10/1 offer.
(D) Yamaha's shipment bound Bob's Music to a contract at $195 per guitar.

Question 32

Tom told Dick that Harry's Art Gallery was offering an oil painting called "Three Sisters" by Goldberg for $3,000 which was worth far more because Goldberg had recently died in very scandalous circumstances in a convent. Dick sent Harry a telegram saying, "I WILL BUY THREE SISTERS BY GOLDBERG FOR $3,000. PAYMENT ENCLOSED. SHIP IMMEDIATELY TO MY ADDRESS - Harry." Dick did not realize Harry was also offering a series of three water color prints by Goldberg featuring nuns in various states of undress for $1,000 each. Harry, acting in good faith, packed up a three-print set of the Goldberg prints and sent them to Dick. Then he sold the oil painting to another customer. In response to an action by Dick, Harry denies they had an enforceable contract.

32) Did Dick's telegram satisfy the Statute of Frauds?

(A) No, because Dick should have been more explicit in his telegram.
(B) Yes, but Dick's telegram to Harry would only bind Dick and will not bind Harry.
(C) Yes, because Harry sent the non-conforming shipment.
(D) No, because the paintings were special made by Goldberg.

Question 33

Tom told Dick that Harry's Art Gallery was offering an oil painting called "Three Sisters" by Goldberg for $3,000 which was worth far more because Goldberg had recently died in very scandalous circumstances in a convent. Dick sent Harry a telegram saying, "I WILL BUY THREE SISTERS BY GOLDBERG FOR $3,000. PAYMENT ENCLOSED. SHIP IMMEDIATELY TO MY ADDRESS - Harry." Dick did not realize Harry was also offering a series of three water color prints by Goldberg featuring nuns in various states of undress for $1,000 each. Harry, acting in good faith, packed up a three-print set of the Goldberg prints and sent them to Dick. Then he sold the oil painting to another customer. In response to an action by Dick Harry denies they had an enforceable contract.

Copyright © Practical Step Press, 2014. All rights reserved.

33) Did Dick's telegram satisfy the Statute of Frauds?

(A) No, because Dick should have been more explicit in his telegram.
(B) Yes, because Dick's telegram to Harry was in writing.
(C) Yes, because Harry made a mistake and should have realized he was wrong.
(D) No, because Harry did not sign the telegram.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #4 Answer Sheet

Question	Answer
1	D
2	B
3	A
4	D
5	D
6	B
7	C
8	B
9	B
10	D
11	B
12	C
13	D
14	B
15	C
16	A
17	D
18	A
19	D
20	D
21	D
22	D
23	D
24	A
25	A
26	D
27	D
28	C
29	A
30	D
31	B
32	C
33	D
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #4 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Contracts & UCC Outline**".

1) **(D)** First note that the CALL makes this a contract question, not a product liability (tort) question. Second, you are told the quoted statute is the only relevant law, so you are being tested on your ability to read, understand and apply that statute. The fact this says the statute is from the "UCC" is entirely irrelevant. (A) is wrong because the quoted statute says nothing about "privity of contract" extending warranty coverage. (B) is wrong because the quoted statute says nothing about "assignment" extending warranty coverage. And (C) is wrong because the quoted statute expressly says warranty limits on the extension of coverage to "persons" expected to use the goods are without effect. (D) is correct because it says Betty's best argument is that XP "could reasonably foresee" the oven might be resold to a plaintiff like her who would be "expected to use the good".

2) **(B)** As stated above, this is not a product liability question, and you are being tested on your ability to read, understand and apply that statute. (A) is wrong because it says warranty limits as to "coverage" are permissible but the statute you are given expressly prohibits that. (C) is wrong because the oven was new when Connie bought it, and that is when the "90 day" warranty began to run. (D) is wrong because the statute does not limit coverage to "merchants". (B) is right by the process of elimination. Betty is a "natural person" but she was not personally (physically) injured. The statute says "injured in person" and perhaps the legislature meant the seller's warranty only extends to people who are "physically injured" and not just "economically injured".

3) **(A)** Answer (B) is wrong because an acceptance with "varying terms" is only effective under the UCC 2-207 if it is not "expressly conditional" on the assent of the offeror to the additional or different terms. Otherwise it is considered a counteroffer and implied rejection. [See "**Simple Contracts & UCC Outline**", **implied rejections, p. 20**.] Here Bob said it would only be a deal IF Sam agreed to his terms, so it was a counteroffer and rejection, not an acceptance. (C) is wrong because once Bob impliedly rejected Sam's offer he no longer had the power to accept it. Sam did not need to revoke it. (D) is wrong because "joking" does not negate Bob's implied rejection of Sam's offer. (A) is right because Bob's response to the offer was an implied rejection and counteroffer, and Sam did not accept it.

4) **(D)** Under common law a contract offer is a manifestation of present contractual intent, communicated to an offeree, that is sufficiently certain in terms that an objective observer would reasonably believe assent would form a bargain. That means that if the offeree says, "Ok!" an observer would believe that both parties are legally bound to a clear and complete agreement. [See "**Simple Contracts & UCC Outline**", **the OK rule, p. 3**.] Under the UCC there are "gap fillers" that will allow a Court to impute many missing terms based on past dealings between the parties and standards in the trade. But there is no "gap filler" for quantity. [See "**Simple Contracts & UCC Outline**", **reasonable certainty of terms, p. 2**.] So ask yourself, if Bob had sent Sam a fax on 2/6 saying "Ok!" what would Sam have thought it meant? (A) is wrong because Sam's initial message did not say how many chokes he was offering to sell to Bob. In fact he asked Bob to tell him how many chokes he wanted to order. So Sam's letter on 2/1 was not an offer. Note the "facts" all say it was an "offer", and they say Bob "rejected" the offer, and then tried to "accept" the offer. All of that was nonsense intended to mislead you. (B) is wrong for the same reason, and it brings up the idea of "mailbox rules" to further mislead you. (C) is wrong for the same reason, and at this point you should be completely confused. (D) is the only right answer. If you have a professor who disagrees, find a better law school. The only real offer here is Bob's offer to buy 20 gross on February 13. If Sam accepts that offer there is a contract, but he can ignore it or reject it if he wants.

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(D)** See the explanation above. Sam did not send Bob a contract offer on February 1. (A) is wrong because Bob's "acceptance" is really an offer to buy 20 gross of chokes. (B) is wrong because Bob is not an offeree. (C) is wrong because Sam did not make an offer and is not an offeror. (D) is right because Sam has every right to reject or ignore Bob's order if he wants.

6) **(B)** See the explanations above. Sam did not send Bob a contract offer on February 1. (A) is wrong because it has nothing to do with "mailbox rules". (B) is right because there will be no contract unless Sam accepts Bob's offer to buy 20 gross of chokes. (C) is wrong because Sam did not make an offer so Bob has no offer to "accept". (D) is wrong for the same reason.

7) **(C)** If an offer can be revoked by an offeror, it can only be revoked before it has been accepted by an offeree. Once an offer has been accepted, a contract forms. And after that no "offer" exists and there is no "offer" to revoke. [See "**Simple Contracts & UCC Outline**", **acceptance must occur before revocation, p. 13**.] (A) is wrong because an "offer" cannot be a "contract". (B) is wrong because there is no longer any "offer" anyway. (C) is correct because if they had a "written contract" Widgco cannot "effectively revoke its offer". (D) is wrong for the same reasons.

8) **(B)** The UCC effectively adopts the common law parol evidence rule at UCC 2-202. Under that rule evidence of prior or contemporaneous oral agreements is not allowed to contradict the terms of a written contract that appears to have been intended by the parties to be a final and fully integrated expression of their agreement. [See "**Simple Contracts & UCC Outline**", **parol evidence rule, p. 41**.] (A) is wrong because there is no given evidence that the June 1 contract appeared to be "fully integrated". (B) is correct because IF the June 1 contract appears to be a fully integrated agreement Miller would not be allowed to testify about the contemporaneous oral agreement he had with Farmer. (C) is wrong because all evidence of Miller's detrimental reliance would be inadmissible if the June 1 agreement is fully integrated. (D) is wrong because the UCC adopts the common law rule.

9) **(B)** Under UCC 2-201 a contract for more than $500 worth of goods is not legally enforceable unless there are sufficient writings signed by the party to be bound to prove a contract existed. But no writings are generally needed to enforce a contract for specially made goods (goods made to the buyer's specifications), to bind a party to the extent they have accepted goods or payment for goods, or if both parties are merchants and one has sent a sales confirmation to the other citing the quantity of goods to be sold, and there is no prompt objection to that confirmation. [See "**Simple Contracts & UCC Outline**", **written evidence often needed, p. 106**.] Here there was no writing because B "telephoned" its order to S. And even though these appear to be merchants there was no evidence of a "sales confirmation". (D) is wrong because this was not a "special made" good. It was a type of transformer S often makes to "standard industrial specifications". (C) is wrong because "part performance" does not bind B to the entire contract. (A) is wrong because B did accept the first transformer and is bound to pay for it. (B) is right because the amount B is bound to pay is the price of one transformer.

10) **(D)** As stated in the previous answer, under UCC 2-201 a contract for special made goods (goods made to the buyer's specifications) requires no writings at all. [See "**Simple Contracts & UCC Outline**", **exception for special made goods, p. 107**.] Here the transformers are made to B's specifications so it is bound to the contract without any need for writings. It promised to pay $70,000 total and it is bound to that promise. S's costs are irrelevant so (A) and (C) are wrong. S's expected profits are irrelevant (no "expectation damages" under the UCC) so (B) and whether or not the transformers could be sold elsewhere are all red herrings, so (B) is wrong.

Copyright © Practical Step Press, 2014. All rights reserved.

11) **(B)** Under UCC 2-601 a buyer always has a right to reject a non-conforming shipment. [See "**Simple Contracts & UCC Outline**", **buyer's right to reject goods, p. 111**.] This shipment was non-conforming because D asked for "A-7" relays and was sent "A-4" relays. Therefore D had an absolute right to reject them. That makes answers (C) and (D) wrong. (A) is wrong because D still would have a right to reject the goods whether H said they were sent as an express accommodation or not. That answer suggests the CALL might be whether or not H breached by sending the A-4 relays, but that is not the CALL.

12) **(C)** Under UCC 2-508 a seller who promptly announces intent to cure a non-conforming shipment has an absolute right to cure the breach within the contract period, and if sellers send non-conforming shipments with a reasonable belief they are suitable for the buyer's needs they have a right to reasonable extra reasonable time beyond the contract period to cure the breach. [See "**Simple Contracts & UCC Outline", right of seller to cure breach, p. 111**.] Here H promptly announced intent to cure and did exactly that. So H cured its breach and D had no right to reject the second shipment. Therefore (A) and (B) are clearly wrong, and (D) is wrong because nothing here concerns an agreement to modify the contract. (C) is the only correct answer.

13) **(D)** Under UCC 2-207 an acceptance with varying terms that is not expressly conditional upon acceptance of those terms is an effective acceptance and the varying terms do not become part of the contract unless the contract is between two merchants, the varying terms do not materially alter the contract, and the parties do not promptly object to the terms stated. But if an acceptance is expressly conditional on acceptance of the additional terms it is actually a counteroffer, and a counteroffer always implies rejection of the original offer. [See "**Simple Contracts & UCC Outline", acceptance of offer with varying terms, p. 105**.] (B) is wrong because varying terms never become part of a contract unless both parties are merchants. (C) is wrong because a counteroffer always implies a rejection. And (A) is wrong because Baker's acceptance said, "provided that you agree…" and that made it expressly conditional on Miller agreeing to the 8% discount. Therefore this was a rejection and counteroffer and only (D) is correct.

14) **(B)** UCC provisions provide for many unstated contract terms to be imputed or implied by industry standards and the past dealings between the parties. But no provision provides for quantity to be imputed. So it generally must be stated in offers. But if an offer provides for supply of amounts "needed" or "produced" UCC 2-306 governs. [See "**Simple Contracts & UCC Outline**", **requirements contracts and output contracts, p. 104**.] Here Miller offered to supply all flour that Baker "needed" so UCC 2-306 would control. Under that section Miller must provide all the flour Baker needs, and not the amount he "orders" or 10,000 pounds or anything else. So (B) is right and (A), (C), and (D) are wrong.

15) **(C)** Answer (C) is correct because under UCC 2-306 Baker had no obligation to buy more than he needed, and he didn't need any more since he was out of business. [See "**Simple Contracts & UCC Outline**", **requirements contracts, p. 104**.]

16) **(A)** Forge assigned all its rights (and responsibilities) under the contract to Fabio. So Fabio simply stands in the shoes of Forge. [See "**Simple Contracts & UCC Outline**", **defenses of promisors, p. 6**5.] Under the common law destruction of the subject matter of a contract excuses both parties. But under UCC 2-509, if a seller has to ship goods to a buyer, and the contract does not expressly require delivery to a particular place, the risk of loss passes to the buyer when the goods are delivered to the carrier. So the risk of loss passed to Office Smart when Fabio delivered to FedEx as nothing in the facts says Forge or Fabio were required to get the clips to any particular destination. [See "**Simple Contracts & UCC Outline**", **risk of loss and loss in transit, p. 109**.] Office Smart was liable for the

Copyright © Practical Step Press, 2014. All rights reserved.

goods after they were delivered to FedEx, and it is liable for the contract price, $2,500. So the right answer is obviously (A), and the other answers are obviously wrong.

17) **(D)** As explained above, Office Smart was liable for the loss of the clips so the right answer is (D). [See "**Simple Contracts & UCC Outline**", **risk of loss and loss in transit, p. 109**.] As for answer (A), you should reject that out of hand because there is nothing "unique" about these "clips" and specific performance cannot be ordered against a supplier unless the goods in dispute are "unique".

18) **(A)** Under UCC 2-615 sellers are excused from partial or complete performance if basic assumptions fail and cause performance to become impracticable. If partial performance is possible they must give existing customers notice, allocate production between existing customers in a fair manner, and can also allocate a portion of production for the expected needs of "regular" customers. Under UCC 2-616 buyers receiving notice must agree to take the available quota offered or terminate the contract as to undelivered portions. (B) is wrong because Miller clearly can terminate the contract and does not have to accept a short shipment.(C) is wrong because Farmer is excused from further performance. (D) is wrong because Miller has no right to demand anything more than what he is offered. (A) is the only right answer.

19) **(D)** If Farmer is not excused, he is in breach because he promised to deliver 3,000 tons to Baker and can only delivered 1,500 tons. Under the UCC Baker can demand damages for the excess "market price" over contract price or "cover" by buying the additional 1,500 tons of wheat elsewhere and claim damages to the extent the cover price exceeds the contract price. [See "**Simple Contracts & UCC Outline**", **non-breaching buyer's right to damages, p. 112**.] (C) is wrong because damages under the UCC are never determined by "reasonable value". (D) is right because Baker covered and his damages are determined by the cover price, not market price. That makes (A) and (B) wrong answers.

20) **(D)** The UCC controls here because the contract is for the sale of a horse, a moveable thing. And Bob exercises his option (accepts Sid's offer) with a varying term, saying Sid must board the horse. Sid and Bob are both merchants because Sid is a "horse breeder" and Bob is a "horse trader". Under UCC 2-207 an acceptance with varying terms is effective, so (A) is wrong. (B) is wrong because Bob's acceptance was not expressly conditioned on Sid's agreement to the additional terms. (C) is wrong because Sid can always object and refuse to board the horse. So (D) is correct; Bob has accepted Sid's offer, and Sid can refuse to board the horse. [See "**Simple Contracts & UCC Outline**", **acceptance of offer with varying terms, p. 105**.]

21) **(D)** Under UCC 2-702 sellers who discover buyers are insolvent may refuse delivery unless they are paid in cash for both goods to be delivered and for previous deliveries. [See "**Simple Contracts & UCC Outline**", **insolvent buyers, p. 112**.] Therefore (A), (B) and (C) are wrong if FE is insolvent. That makes (D) correct.

22) **(D)** Under UCC 2-702 sellers who discover buyers received goods while insolvent have a right to retake possession of the goods delivered in the prior 10 days, and if the buyers misrepresented they were solvent in writing in the prior 3 months before goods were delivered the 10-day limit does not apply and all goods delivered in that three month period can be reclaimed. [See "**Simple Contracts & UCC Outline**", **insolvent buyers, p. 112**.] This does not require contract payment dates to have passed so (A) is wrong. And assurances by the buyer make no difference so (B) is wrong. Only reliance on written representations of solvency are required to reclaim goods delivered more than 10 days before the discovery, so (C) is wrong under these facts. As a result only (D) is correct.

Copyright © Practical Step Press, 2014. All rights reserved.

23) **(D)** Under UCC 2-705 sellers who discover a buyer of goods is insolvent may stop delivery of goods to the insolvent buyer as long as the goods are still in the possession of the seller, a carrier, or a bailee that has not taken possession as an agent of the insolvent buyer. But the UCC, as currently interpreted, does not allow sellers to stop delivery to sub-purchasers such as CW. [See "**Simple Contracts & UCC Outline**", **insolvent buyers, p. 112**.] So the only correct answer is (D).

24) **(A)** Under UCC 2-702 sellers who reclaim goods from buyers upon discovery they are insolvent have no other remedies against the buyers. [See "**Simple Contracts & UCC Outline**", **insolvent buyers, p. 112**.]Therefore (A) is the correct answer and (B), (C) and (D) are wrong.

25) **(A)** Under UCC 2-508 a seller that delivers a non-conforming shipment has a right to "cure" the breach by giving notice of intent to cure and delivering a conforming shipment within the contract period. Further, if the non-conforming shipment was sent with a reasonable belief it was suitable for the buyer's purposes the seller has a right to a reasonable amount of extra time beyond the contract period to deliver a conforming shipment. [See "**Simple Contracts & UCC Outline**", **right of seller to cure breach, p. 111**.] Therefore (D) is wrong. There is no waiver of the right to cure simply because goods are sent on a common carrier so (B) is wrong. And there is no requirement that conforming goods must be bought from "another manufacturer" so (C) is wrong. That leaves (A) as the only correct choice.

26) **(D)** Under contract law an "offer" is a manifestation of present contractual intent communicated to an offeree that is so specific in terms that an objective observer would reasonably believe consent would form a bargain. But under the UCC that would only be reasonable if the communication specified quantity, because the UCC does not have any provision for imputing that from extrinsic evidence. [See "**Simple Contracts & UCC Outline"**, **article 2 contract formation, p. 103**.] Here Imports' September 1 advertisement did not specify a total quantity it was willing to sell so it was not an offer. Deli's December 15 fax specified the quantity of each cheese it was willing to buy, so that was an offer. Under UCC 2-206 an offer that does not require acceptance in any particular manner can be accepted in any reasonable manner including a promise to ship or shipment of conforming or non-conforming goods. Here Imports shipped the Gouda, so it accepted Deli's offer by implication. And it simultaneously breached the contract by failing to send everything Deli ordered. Therefore Imports accepted Deli's offer, breached the contract, and Deli will win. Therefore (D) is correct, and (A), (B) and (C) which all say Deli would lose because it was accepting an offer from Imports are wrong.

27) **(D)** Under the UCC a buyer has an absolute right to reject all or part of a non-conforming shipment. [See "**Simple Contracts & UCC Outline**", **buyer's right to reject goods, p. 111**.] Deli ordered mild cheese so if Imports ships aged cheese it is a non-conforming shipment and Deli has a right to reject it. Therefore (D) is the correct answer. (A) and (B) are wrong simply because they say Imports would prevail. The reasons stated are nonsense because there is no such thing as "substantial performance" or "minor alterations" under the UCC. (C) is wrong because it says Deli was accepting an offer by Imports. As explained in the answer to the prior question that is wrong. Imports was accepting an offer from Deli.

Copyright © Practical Step Press, 2014. All rights reserved.

28) **(C)** Under the UCC a non-breaching buyer (who receives a non-conforming shipment) can rescind (cancel) or affirm the contract. They can accept or reject the shipment in whole or part (in "commercial units"). They can cover and demand damages measured by the cost of cover in excess of contract price or not cover and demand damages measured by the excess of market over contract price. [See "**Simple Contracts & UCC Outline**", **non-breaching buyer's right to damages, p. 112**.] Here (under the facts of both 24 and 25) Deli did not get the cheese it ordered. So "I" is correct – it can reject all the cheese it received. And "II" is correct – it can accept all the cheese it received. And "III" is correct, it can accept one 500 pound lot (a "commercial unit") and reject the rest. But "IV" is clearly wrong because Deli does not have to accept the non-conforming shipment. Therefore (C) is right and (A), (B) and (D) are all wrong.

29) **(A)** Answer (B) is wrong because UCC 2-207 allows an acceptance to be effective even if it states additional or different terms. The reason Yamaha's 10/1 fax did not create a contract is that it expressly required Bob's Music's assent to the varying terms. (C) is wrong because Yamaha's 10/1 offer lapsed on 10/15 pursuant to the terms of the offer. The use of a fax to transmit an offer implies a need for promptness, and a statement as to the date acceptance should be made by clearly establishes the "reasonable period of time" in which the offer must be accepted. Bob's Music simply could not wait another two weeks to accept the offer. (D) is wrong because Yamaha never signed the form that Bob's Music had sent it. Even if it had, under UCC 2-205 a firm offer stated on a form provided to an offeror by an offeree must be separately signed by the offeror, and that never happened here either. (A) is correct because the fax from Bob's Music is too late to be an acceptance, so it would be interpreted as a new offer to enter into a bargain with the terms the parties have already mutually agreed upon. If Yamaha assents to that fax or promises to ship or ships conforming or non-conforming goods it will be an acceptance under UCC 2-206 and a contract will form. [See "**Simple Contracts & UCC Outline**", **merchant's firm offers, p. 104** and **acceptance of offer with varying terms, p. 105**.]

30) **(D)** Answer (A) is wrong because under UCC 2-206 a shipment of goods constitutes an acceptance whether it is conforming or not. [See "**Simple Contracts & UCC Outline**", **offer acceptance indicated by shipment, p. 105**.] (B) is wrong because the "Order Memo" from Bob's Music states the merchandise it wants to buy, the price it wants to pay and the terms. That is a sufficient manifestation of present contractual intent to constitute an offer by Bob's Music even if it is drafted to suggest Yamaha is the offeror. (C) is not as good as (D) because if Yamaha had simply signed and returned the form from Bob's Music without further action Yamaha would appear to the offeror and then there would be no contract unless Bob's Music accepted the offer. (D) is correct because a Court would probably find that the "Order Memo" from Bob's Music displayed enough present contractual intent to be an offer, and Yamaha's shipment of goods in response was an acceptance of that offer under UCC 2-206.

31) **(B)** Answer (A) is wrong because Bob's Music was bound to the contract when it accepted Yamaha's offer and not just because they accepted the guitars. (C) is wrong because the 10/5 fax from Bob's Music was an acceptance of the offer and not an acceptance of the guitars. (D) is wrong because Yamaha's shipment did not bind Bob's Music. It was bound by its 10/5 acceptance of Yamaha's offer of 10/1. (B) is correct because a contract formed on 10/5 when Bob's Music accepted Yamaha's offer of 10/1 and under UCC 2-207 the acceptance was effective and the additional term asked for, the 10% discount, did not become part of the agreement because it materially changed the terms of the offer. [See "**Simple Contracts & UCC Outline**", **acceptance of offer with varying terms, p. 105**.]

Copyright © Practical Step Press, 2014. All rights reserved.

32) **(C)** This is a deliberately garbled question to teach you how to deal with these situations when they confront you. If someone tells you that the Statute of Frauds requires contracts for the sale of goods over $500 to be in writing, or that the mnemonic for the Statute of Frauds is "MY LEGS" with "G" or "S" standing for "sales of goods", you are dealing with a person who does not really understand the current state of contract law. Contracts for the sale of goods have been governed by UCC 2-201 and not by the "Statute of Frauds" under the broadly adopted law in the United States since the last century (Louisiana is the only State that has not adopted UCC Article 2). People who say "Statute of Frauds" to mean "the need for a writing" merely cause confusion. So when the CALL of the question asks if the telegram satisfies "the Statute of Frauds" you have to ask yourself, "Do they mean UCC 2-201?" Consider the question writer might be saying "Statute of Frauds" to mean "need for a writing". If ALL the possible answers are wrong otherwise, you must assume the writer of the question was blind to the fact they wrote a UCC question or else expects you to apply UCC 2-201 as if that were "the Statute of Frauds". Here, if you assume the term "Statute of Frauds" is used to mean "need for a writing as set forth in UCC 2-201", that UCC section requires "sufficient writings" to prove a contract formed and it must be signed by the party to be bound UNLESS the contract was for "special made goods", or its existence is legally admitted by the party to be bound (in pleadings - an answer to a complaint or a motion or in court or deposition testimony), or to the extent goods or payment for them is accepted, or between merchants when there is a "sales confirmation" stating quantity. Here Harry accepted $3,000 in cash, so he is bound to a contract for that amount, $3,000, under UCC 2-201. That $3,000 was the price of the painting he wanted to buy anyway, so no writing is needed. That makes (C) the correct answer and (A), (B) and (D) all wrong answers. (D) is also wrong because the paintings were not "special made" by Goldberg to specifications provided by Dick. Even if they had been that still would be a wrong answer because then no writing would be needed either. [See "**Simple Contracts & UCC Outline**", **written evidence often needed, p. 106**.]

33) **(D)** This question is as garbled as the previous one but in a different way. This is deliberate so you have some exposure to this sort of problem. If you assume the question writer means the phrase "Statute of Frauds" to mean "the need for a writing" as set forth in the Statute of Frauds before UCC 2-201 was adopted only (D) is remotely correct. (A) and (B) are not correct because the telegram is in writing and it clearly shows an offer was made by Dick, but that alone does not provide written proof Harry accepted that offer. (C) is wrong because mistakes by Harry do not eliminate the old Statute of Frauds requirement of sufficient writings to prove there was a contract. (D) becomes the only plausible answer because if UCC 2-201 did not exist, the shipment by Harry would not create the exception to the rule that exists today and Harry would not be bound to a contract under the old Statute of Frauds unless he somehow "signed the telegram" to create a written acceptance which turned the telegram into a written contract signed by both parties. [See "**Simple Contracts & UCC Outline**", **written evidence often needed, p. 106**.]

Copyright © Practical Step Press, 2014. All rights reserved.

Test #5 – Torts – Intentional Torts and Defenses

Test #5 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **intentional torts** (assault, battery, false imprisonment, intentional infliction of emotional distress (IIED), trespass to land, trespass to chattel, and conversion), **intentional tort defenses**, and **causality**. Insert your own time marks! The Answers and Explanations follow.

Question 1

Lucy and Ethel lived next to each other. Lucy knew Ethel was allergic to roses but planted rose bushes along the property line anyway. Ethel suffered severe allergies from the roses.

1) If Ethel filed a complaint against Lucy for battery:

(A) Ethel should win because Lucy knew she was allergic to roses.
(B) Ethel should win if Lucy planted the roses with a reckless disregard for the effect they would have on her.
(C) Ethel should win if there is a statute prohibiting roses near property lines.
(D) Ethel should lose.

Question 2

Hunter was hunting for deer in the National Forest. He thought he saw a deer in the trees. After shooting he discovers he has shot Farmer's $500 cow.

2) If the cow was on Farmer's land:

(A) Hunter is liable for $500 whether he really saw a deer or not.
(B) Hunter is liable for $500 for conversion.
(C) Hunter is liable for $500 for negligence.
(D) Hunter is strictly liable for $500 because hunting is an abnormally dangerous activity.

Question 3

Homer promised to look after Ned's house while he was on vacation. While Ned was gone Homer took his lawn edger without permission. He intended to return it but accidentally dropped it into his pool when Bart shot him with a slingshot. The lawn edger was ruined.

3) Ned can recover from Homer:

(A) Actual and punitive damages.
(B) Nothing because by asking Homer to watch his house while he was away he gave Homer an implied license to use his belongings.
(C) Nothing because Ned was contributorily negligent for letting Homer watch his house.
(D) The value of a used lawn edger like the one Homer took.

Question 4

California grows almost all of the nation's almond crop. Gonsanto produces Killzitol, a treatment for almond tree wilt, otherwise known as almond toxizoa, a devastating parasite spread by the frilly-winged leaf hopper, *Insectus Absurda*. Gonsanto produces Killzitol at a plant in the Mojave Desert. Its plant emits a mist of extremely small particles that drift across the valley and settle on the jalapeños at Juan's pepper farm, causing them to be discolored and unsellable.

Copyright © Practical Step Press, 2014. All rights reserved.

4) What is Juan's best cause of action against Gonsanto?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Questions 5-7

Dan created a bobby trap triggered by a trip wire as a prank. When someone stepped on the trip wire the device would produce an extremely loud noise. The noise was not loud enough to harm an average person and Dan did not intend to harm anyone. The device went off when Paul stepped on the wire. The noise it created caused Paul permanent hearing loss because his ears were unusually susceptible to injury by loud noises.

5) Is Dan liable to Paul for assault?

(A) Yes, if Dan could foresee the device could cause serious injury.
(B) Yes, because Dan intended to startle people.
(C) No, because the noise was not loud enough to harm an average person.
(D) No, if Dan did not intend to cause Paul serious harm.

6) Suppose Dan's "booby trap" was a burglar alarm on his own property intended to scare away burglars, but Paul was not a burglar. Is Dan liable to Paul for assault?

(A) Yes, if Dan could foresee the device could cause serious injury.
(B) Yes, unless Dan's use of the device was reasonable.
(C) No, because the noise was not loud enough to harm an average person.
(D) No, if Dan did not intend to cause Paul serious harm.

7) Suppose Dan's "booby trap" was a burglar alarm on his own land intended to scare away burglars, and Paul was a burglar. Is Dan liable to Paul for assault?

(A) No, because Paul was committing a crime.
(B) No, because the noise was not loud enough to harm an average person.
(C) Yes, even though Dan could not foresee the device could cause serious injury.
(D) Yes, because Dan could reasonably foresee the device would startle people.

Question 8

Doctor Abby was a physician who performed abortions. She was targeted by an anti-abortion group called the So Righteous Majority which posted her picture, phone number, address and a map showing how to get to her house on the internet with a banner headline that said, "Wanted Dead or Alive! Doctor Abby, baby killer." Doctor Abby was frightened, embarrassed and humiliated.

8) If Dr. Abby brings an action for Intentional Infliction of Emotional Distress against the So Righteous Majority:

(A) She will lose unless she can prove the defendant group intended to cause her severe emotional distress.
(B) She will win because she suffered fear, embarrassment, and humiliation.
(C) She will win if the actions of the So Righteous Majority are determined to be outrageous.
(D) She will lose unless she proves she suffered more severe distress than fear, embarrassment, and humiliation.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 9

Gomer was speeding down the street lost in a daydream when little Opie ran into the street in front of him chasing a ball. Gomer jerked the wheel at the last second, missed miss Opie and skidded into Aunt Bea's yard, smashing her bird bath.

9) If Aunt Bea sues Gomer for her damages:

(A) She will lose because Gomer turned the wheel to miss Opie.
(B) She will lose because Gomer was not negligent.
(C) She will win because Gomer trespassed onto her land.
(D) She will win because Gomer was driving his car negligently.

Questions 10-13

I. Larry threw a banana cream pie.
II. Larry intended to hit Moe with the pie.
III. Moe was hit by the pie.

10) If Moe sues Larry:

(A) He can win if he proves only I.
(B) He can win if he proves only I and II.
(C) He can win if he proves I, II and III.
(D) He will lose even if he proves I, II and III.

11) If Moe sues Larry for battery and proves he suffered blindness because he has an allergy to bananas:

(A) He can win if he just proves I.
(B) He can win if he just proves I and III.
(C) He can only win if he proves I, II and III.
(D) He will lose even if he proves I, II and III.

12) If Moe sues Larry seeking punitive damages and proves he suffered blindness because he has an extremely rare allergy to bananas:

(A) He can win if he also proves I.
(B) He can win if he also proves I and III.
(C) He can win if he also proves I, II and III.
(D) He will lose even if he proves I, II and III.

13) If Moe sues Larry for assault:

(A) He can win if he proves only I.
(B) He can win if he proves only I and III.
(C) He can only win if he proves I, II and III.
(D) He will lose even if he proves I, II and III.

Questions 14-15

Mel approached his employee, Toad, at the end of the day and said he had discovered some money was missing from the cash register. Toad said he didn't know anything about the missing money and that he had to go home to care for his sick mother. Mel got mad and said, "You better stay here or else!" Toad wanted to leave but decided he better stay. Mel yelled at Toad for an hour accusing him of stealing the money. Toad denied taking the money and eventually Mel told him to leave and not ever come back.

14) If Toad sues Mel his best theory on these facts is:

(A) Defamation.
(B) Intentional Infliction of Emotional Distress.
(C) Assault.
(D) None of the above.

15) If Toad got so upset he failed his exam the next day his best theory is:

(A) Defamation.
(B) Assault.
(C) False imprisonment.
(D) None of the above.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 16-19

Tom and Dick were watching TV at Tom's apartment when they saw flames outside. They ran outside to find Tom's car engulfed in flames. Harry stood nearby watching the fire. They asked Harry who he was and what had happened. Harry responded, "That's for me to know and you to find out you $%$#@$%s!" Harry then turned and began to leave. Tom and Dick immediately said, "You aren't going anywhere; come with us." They took Harry to Tom's apartment and called the police.

16) If Harry sues Tom and Dick for false imprisonment he must prove:

(A) He did not start the fire.
(B) He was not arrested by the police.
(C) He was not free to leave Tom's apartment.
(D) He was harmed by his confinement.

17) If Harry sues Tom and Dick for battery he must prove.

(A) They intended to cause him to suffer harm or offense.
(B) They physically touched him.
(C) They were not justified by private necessity.
(D) They acted with malice.

18) If Harry sues Tom:

(A) Tom's best defense claim is defense of property.
(B) Tom will be absolutely privileged under a claim of public necessity.
(C) Tom can claim shopkeeper's privilege if he did not hold Harry too long.
(D) Tom can claim duress if Harry started the fire.

19) If Harry sues Dick:

(A) Dick's best defense is defense of property.
(B) Harry will lose if Dick used reasonable force.
(C) Dick can claim assumption of the risk.
(D) Harry will win.

Question 20

Peter was driving his car after having a few drinks. Suddenly he saw Paul crossing the street in front of him. He did not stop his car in time and badly injured Paul. Paul was a musician in a folk group with Mary. Paul was so badly injured he could no longer play the guitar, and that caused him to sink into a deep depression. Paul's partner, Mary, became despondent because of Paul's injury and she was diagnosed as having "Munchausen's syndrome by double proxy", a severe mental illness associated with law school exams.

20) IF Mary sues Peter for intentional infliction of emotional distress, she does not have to prove:

(A) Peter intentionally or recklessly caused Paul to be injured.
(B) Peter knew Mary was present.
(C) Peter intended to cause her severe emotional distress.
(D) The accident caused her severe emotional distress.

Questions 21-22

Bud and Lou were in the bleachers at Yankee field when Mantel hit a line drive into the stands. Lou tried to catch the ball and made Bud spill his beer. Bud picked up the ball and angrily threw it at Lou. The ball sailed past Lou's head but he didn't know it because he was looking at the Trinitron screen to see if he was on TV. When the screen showed Lou with the ball flying past his head everyone in the stands started laughing. Lou was embarrassed and furious. Suddenly the cops arrived and arrested Bud for criminal assault.

21) Lou's best cause of action against Bud is:

(A) Assault.
(B) Battery.
(C) Intentional infliction of emotional distress.
(D) None of the above.

Copyright © Practical Step Press, 2014. All rights reserved.

22) If Bud had hit Lou, Lou's best cause of action would be:

(A) Assault.
(B) Battery.
(C) Intentional infliction of emotional distress.
(D) None of the above.

Questions 23-24

Mean Mike takes Timmy's dog Lassie and refuses to give her back. Lassie is a mangy old dog but Timmy loves her.

23) What is Timmy's best cause of action?

(A) Conversion.
(B) Trespass to chattels.
(C) Intentional infliction of emotional distress.
(D) Negligence.

24) What is Timmy's most likely remedy?

(A) Money judgment for the dog and emotional distress.
(B) Specific performance and money judgment for emotional distress.
(C) Money judgment for the dog and emotional distress, plus punitive damages.
(D) Specific performance and punitive damages.

Question 25

Latrell Lester was a professional football player for the Omaha Dawgs with a $4 million contract. He tackled Jayvon Jones, star running back for the Topeka Cats. Jayvon was angry because he was about to set a league record. So after the play ended he approached Latrell from behind and kicked him in the knee so hard it shattered Latrell's leg. Latrell was never able to play football again and lost his contract. Jayvon went on to sign a $30 million contract with the Hayward Horses.

25) If Latrell sues Jayvon for battery:

(A) He will lose because he assumed the risks of playing professional football.
(B) He will lose because he became the aggressor when he tackled Jayvon.
(C) He will win because Jayvon intentionally hit him.
(D) He will win because he impliedly consented.

Question 26

Tex buys the C Street Saloon, a sleepy neighborhood bar, and begins booking some local bands to play on weekend nights. Soon it becomes very popular and draws large crowds. Mildred lives next door and soon starts finding beer bottles, condoms and syringes lying in her yard and in front of her house. She complains to Tex but he ignores her.

26) Suppose one night a patron from the C Street Saloon wanders into Mildred's yard looking for his car, breaking her garden gnome. What is her best cause of action against the drunk?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 27

Owen dresses up like a zombie for Halloween and sits immobile on his front porch. When children approach the door he suddenly jumps up brandishing a bloody meat cleaver and screams, frightening them. Pops approaches the door with his grandson, Bud. When Owen jumps up and screams Pops has a heart attack. Pops ends up owing the hospital $30,000.

27) If Pops sues Owen:

(A) Pops will lose because he was a trespasser on Owen's land.
(B) Pops will lose because he impliedly consented by approaching the porch.
(C) Pops will win because Owen intentionally acted to make him apprehensive of a battery.
(D) Pops will win because Owen's behavior was outrageous.

Questions 28-30

Tom and Dick are engaged in a water balloon fight during recess at their school. Tom hits Dick with a water balloon and runs away. Dick runs after him and throws his own water balloon at Tom. Dick's water balloon misses Tom and almost hits Harry, a painter painting the school. Harry is startled and drops a can of paint. The paint splashes on Miss Ballbreaker, the vice principal. Miss Ballbreaker grabs Tom and Dick by their ears, drags them to her office, and spanks them until they cry like girls.

I. Tom is liable to Dick for battery.
II. Dick is liable to Tom for assault.
III. Dick is liable to Harry for assault.
IV. Harry is liable to Miss Ballbreaker for battery.
V. Miss Ballbreaker is liable to Tom and Dick for battery.

28) Which of the following is true?

(A) All of the above.
(B) None of the above.
(C) III and V only.
(D) I, II, and III only.

29) If Dick accuses Tom of battery his best defense argument is:

(A) Dick assumed the risks.
(B) Dick impliedly consented.
(C) Dick was not injured.
(D) Dick was contributorily negligent.

30) If the school is owned by the Catholic Church Miss Ballbreaker's best defense is:

(A) Discipline.
(B) Authority.
(C) Implied consent.
(D) Self-defense

Questions 31-32

Linda bought a new house. Shortly after moving in the next door neighbor, Pervis, began harassing her. Linda told her boyfriend, Bob, and he was furious. Bob stomped next door and pounded on the door. Pervis was frightened. He went to the door with a gun and looked out through the little peephole. He didn't know who Bob was and asked him what he wanted. Bob said, "I want you to come out here and I am going to kick your ass!" Pervis yelled, "Go away!" Bob yelled, "I ain't goin' nowhere, you pervert!" Suddenly the gun went off. The bullet went through the door and hit Bob.

31) Pervis' best defense is:

(A) Self defense.
(B) Defense of property.
(C) Contributory negligence.
(D) Assumption of the risk.

32) If Bob sues Pervis for battery he must prove:

(A) Pervis intentionally shot the gun.
(B) Pervis knew the gun was loaded.
(C) Pervis shot the gun intending to hit him.
(D) Pervis shot the gun intending to either hit or frighten him.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 33

Hal and Wanda split up and Wanda filed for a divorce. The divorce court awarded them joint custody over their child, Junior, who was 12 years old. Wanda had custody over Junior during the weekdays and Hal had custody during the weekends. Wanda took Junior to her parent's home in another State and hid him there. Hal asked Wanda's parents if they knew where Junior was and they lied that they did not. Hal eventually found Junior when he was 17 years old. Junior said he was never confined against his will.

33) If Hal sues Wanda's parents on behalf of Junior for false imprisonment:

(A) He will lose because Junior was never confined against his will.
(B) He will lose because Junior was hidden by Wanda, not by her parents.
(C) He will lose because he cannot sue on behalf of Junior without the consent of Wanda, Junior's other guardian.
(D) He will win because Junior knew where he was.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #5 Answer Sheet

Question	Answer
1	A
2	A
3	D
4	A
5	B
6	B
7	D
8	D
9	A
10	D
11	C
12	D
13	D
14	D
15	D
16	C
17	B
18	A
19	B
20	C
21	D
22	B
23	B
24	B
25	C
26	A
27	C
28	B
29	B
30	C
31	A
32	D
33	D
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #5 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Torts Outline**".

1) **(A)** Tort plaintiffs claiming battery must prove the defendants acted to intentionally cause them to be "touched" by something that caused them injury OR that the defendants acted with knowledge with reasonable certainty such a touching would occur. Plaintiffs usually must prove "reasonable people" would have been injured by the touching that occurred. But when defendants **act with knowledge the plaintiffs suffer from particular vulnerabilities** plaintiffs only have to prove "reasonable people with the same vulnerabilities" would have suffered injury. These "vulnerabilities" include peculiar medical conditions and phobias. [See "**Simple Torts Outline**", **unusually sensitive plaintiffs, p. 25**.] This is somewhat different from the "eggshell plaintiff" rule that applies to negligence causes of action. (A) is correct and (D) is wrong because Lucy knew Ethel was allergic to roses, and the "touching" was caused when Lucy put the roses where the rose pollen would "touch" Ethel. (B) is wrong because reckless disregard is sufficient but not necessary. (C) is wrong because no statute is needed.

2) **(A)** Any intentional act that causes a person, object, dust, or any other particulate matter to enter onto the land of another is a trespass to land. [See "**Simple Torts Outline**", **trespass to land, p. 28**.] (A) is correct because if the cow is on farmer's land Hunter's bullet entered Farmer's land to strike the cow. So Hunter intentionally caused the bullet to enter Farmer's land, and that is a trespass to land. (B) is wrong because Hunter might actually have seen a real deer, shot at it and missed, and the bullet could have gone past the deer onto Farmer's land where it killed the cow. In that case Hunter did not intentionally interfere with Farmer's cow, and is not liable for conversion. (C) is wrong because Hunter might have actually seen Farmer's cow and shot and killed it. That would be trespass to land and conversion, not negligence. (D) is wrong because hunting is not an "abnormally dangerous activity".

3) **(D)** Answer (A) is wrong because Homer is not liable for punitive damages since he did not act with malice, oppression or fraud. [See "**Simple Torts Outline**", **punitive awards, p. 11**.] (B) is wrong because Homer did not have implied consent to take the tool. (C) is wrong because contributory negligence is never a defense to intentional torts. (D) is correct because Homer intentionally took chattel without consent (trespassorily) and Ned has been substantially denied useful possession. That supports a claim for conversion. [See "**Simple Torts Outline**", **conversion, p. 30**.

4) **(A)** Answer (A) is correct because Gonsanto is emitting "a mist of particles" that is landing on Juan's land. (B), (C) and (D) are all inferior causes of action because they require Juan to prove Gonsanto's action is "unreasonable". That might be very difficult. But since he can prove Gonsanto is actually causing "visible matter" to land on his property, no matter how "extremely small" it is, he avoids having to prove that it is "unreasonable". [See "**Simple Torts Outline**", **trespass to land, p. 28**.]

5) **(B)** Tort plaintiffs usually must prove "reasonable people" would have been injured by the defendant's acts. But if any injury is foreseeable, the degree and type of injury actually suffered does not have to be foreseeable. The defendant is expected to "take plaintiffs as they find them". These are called "egg-shell" plaintiffs. It was foreseeable Dan's device would startle and frighten people so he is liable for the injury he caused. (A) is wrong because he did not have to foresee "serious" injury. (C) is wrong because liability is not limited to the injury an "average" person

Copyright © Practical Step Press, 2014. All rights reserved.

would experience. (D) is wrong because "intent to cause harm" is not a required legal element. (B) is correct because if Dan intended to "startle people", he intended to make them frightened they would suffer harm. That is equivalent to "apprehension of a battery" and Dan is liable for the harm he caused. [See "**Simple Torts Outline**", **assault, p. 26**.]

6) **(B)** A person is allowed to use reasonable force to protect their property from trespassing and theft. But it is never considered "reasonable" to use deadly force just to protect property. [See "**Simple Torts Outline**", **defense of property, p. 41**.] (B) is correct because Dan is not liable if his use of the device was reasonable. This is a common scenario: the "given facts" strongly suggest one conclusion but the suggested answer is conditioned on a different conclusion. (A) and (D) are wrong because Dan did cause injury, and he would be liable for that whether he could foresee or intended to cause "serious" injury or not, unless his actions were reasonable. (C) is wrong because his use of the device might be "unreasonable" whether an "average" person would be harmed or not.

7) **(D)** If Dan used unreasonable force that could produce foreseeable injury he will generally be liable for the harm actually caused whether it resulted from peculiar vulnerabilities of the plaintiff or not. (A) is wrong because there is no lower legal standard for criminals. (B) is wrong because liability is not limited to the injury an "average" person might suffer. (C) is wrong because it is irrelevant whether the defendant can "foresee serious injury" or not. (D) is the best answer because he acted to cause people to be startled, that constitutes assault, and that makes him liable for the results. [See "**Simple Torts Outline**", **defense of property, p. 41**.]

8) **(D)** Answer (B) is wrong because plaintiffs bringing actions for intentional infliction of emotional distress (IIED) must prove outrageous acts by the defendants caused them to suffer more severe emotional distress than mere fear, embarrassment and humiliation. (A) is wrong because they do not have to prove the defendants intended for them to suffer that distress. (C) is wrong because no matter how "outrageous" an act is, the plaintiff must prove severe distress resulted. (D) is correct. [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.]

9) **(A)** If Gomer deliberately steered the car into Aunt Bea's lawn it was a trespass to land. But it was a public necessity to keep Opie from being injured. That gives Gomer a complete defense, so (A) is correct. It could be argued that Gomer entered by yard by accident, which would make his tort negligence instead of trespass to land. Then Aunt Bea would still lose because any "reasonable person" would have done the same thing (jerk the wheel) in the same circumstance. Acts done as a public necessity to prevent harm to people can also be called **defense of others** or **self defense**. Acts done as a public necessity to prevent property damage can also be called **defense of property**. Generally the terms "public necessity" and "private necessity" are used in tort law while "defense of others" and "self defense" are more often used in criminal law analysis. [See "**Simple Torts Outline**", **necessity, public necessity and private necessity, pp. 37-38**.] (B) and (C) are wrong because public necessity gives Gomer a complete defense to a claim of trespass. (D) is wrong because even if he was driving negligently to begin with, any reasonable person would have turned to miss the child anyway.

10) **(D)** Regardless of whether Moe sues for battery, assault, negligence or any other crime he must prove he has a right to be awarded a remedy. Usually that means they must prove they have suffered "damages" but that is not entirely correct. In some cases they can ask for legal restitution if they prove the defendants would reap an unjust enrichment from their tortious acts. [See "**Simple Torts Outline**", **remedies in tort p. 7**.] The problem with the facts listed as I, II and III is that they

Copyright © Practical Step Press, 2014. All rights reserved.

don't support any claim that Moe has suffered any damages or that Larry would enjoy an unjust enrichment. Therefore (D) is correct and (A), (B) and (C) are wrong.

11) **(C)** To prevail in a cause of action for battery the plaintiff must prove the defendant intentionally acted to cause and did cause a touching of the plaintiff that caused a harmful or offensive result. The four things the plaintiff must prove are 1) the defendant **acted**, 2) the act was done for the **purpose**, or with knowledge with reasonable certainty, of **causing the plaintiff to be touched** (in a way that could cause foreseeable harm), 3) the act did cause the plaintiff to be **touched**, and 4) the touching caused the plaintiff **harm or offense**. [See "**Simple Torts Outline**", **battery, p. 26**.] (A) and (B) are wrong because Moe must also prove fact II – that Larry acted with intent to cause a touching. (D) is wrong because injury is a given fact and some injury was foreseeable, if not the severe injury that actually occurred. So if Moe proves everything else he will win, and (C) is correct.

12) **(D)** To win punitive damages Moe must prove Larry acted with oppression, fraud or malice. [See "**Simple Torts Outline**", **punitive awards, p. 11**.] "Malice" means evil intent such as intent to cause serious injury. No facts are presented to prove that. Therefore (D) is correct and (A), (B) and (C) are wrong.

13) **(D)** To prevail in an assault action plaintiffs must prove they suffered "reasonable apprehension of a battery". [See "**Simple Torts Outline**", **assault, p. 26**.] The given facts do not establish that Moe saw the pie being thrown at him, so there is no evidence he suffered any "apprehension of a battery". Therefore (D) is correct, and (A), (B) and (C) are all wrong.

14) **(D)** The facts suggest Toad might have a cause of action for false imprisonment but that is not an offered choice. (A) is wrong because there is no evidence anyone was present except for Mel and Toad. Therefore Mel's accusations were not "published" and Toad's reputation could not be damaged by them. [See "**Simple Torts Outline**", **publication, p. 78**.] (B) is wrong because there is no evidence Toad suffered any "severe emotional distress". [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.] (C) is wrong because Mel never intentionally acted to cause Toad to be apprehensive of a battery, and there is no evidence any such apprehension occurred. [See "**Simple Torts Outline**", **assault, p. 26**.] Therefore (D) is right.

15) **(D)** The original facts appeared that Toad might have a cause of action for false imprisonment, but it was very weak because Toad obviously could have left at any time and was just staying to appease Mel in order to avoid losing his job. But the new facts suggest he has a good cause of action for intentional infliction of emotional distress because he was so "upset" he failed his exam, giving him a basis to claim additional damages but that is not an offered choice. [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.] (A) is wrong because there is no evidence anyone else was present when Mel yelled at him, (B) is wrong because there is no evidence Mel threatened him with a battery, and false imprisonment would be a worse cause of action than IIED. But IIED is not listed as a cause of action, so (D) is correct.

16) **(C)** To prevail in a false imprisonment claims plaintiffs must prove they were confined without any "reasonable means" of escape. That means there was no way for them to leave without exposing themselves to the risk of battery or public ridicule. [See "**Simple Torts Outline**", **false imprisonment, p. 27**.] (A) is wrong because Harry does not have to prove he did not start the fire, and (B) is wrong because he does not have to prove he was not arrested. (D) is wrong because Harry only has to prove he was "confined" and does not have to prove it "harmed" him otherwise. If Harry meets his burden of proof, and Tom and Dick raise defense claims that they acted

Copyright © Practical Step Press, 2014. All rights reserved.

reasonably for purposes of public or private necessity, the burden is on them, not Harry to prove those claims.

17) **(B)** To prevail in a battery action Harry must prove he was intentionally "touched" in a manner that was harmful or offensive so (B) is correct. [See "**Simple Torts Outline**", **battery, p. 26**.] (A) is wrong because he does not have to prove the defendants actually intended him to be harmed or offended. (C) is wrong because if Tom and Dick claim this defense the burden is on them to prove it, not on Harry. (D) is wrong because Harry does not have to prove "malice" on the party of Tom and Dick.

18) **(A)** People are privileged to use reasonable force to protect their property from trespass and harm. [See "**Simple Torts Outline**", **defense of property, pp. 41-42**.] Tom was not acting to protect his car because it was already destroyed. But it is highly likely someone deliberately or accidentally caused Tom's car to catch on fire, and his potential litigation rights against that unknown person are intangible personal property. And Tom has a right to use reasonable force to protect that personal property right by detaining Harry for a reasonable period of time and in a reasonable manner, and questioning him to ascertain his identity, his address (so he can be served with a subpoena if necessary), and to find out what Harry saw happen. This is the same principal that underlies the "Shopkeeper's Privilege". [See "**Simple Torts Outline**", **shopkeeper's privilege, p. 42**.] Therefore, (A) is correct. (B) is wrong because this is not a matter of "public" necessity as Tom is trying to protect his own interests. (C) is close to being correct but Tom is not a "shopkeeper". (D) is wrong because "duress" is an entirely different defense argument.

19) **(B)** Harry's only clear claim against Dick would be for false imprisonment. Dick's only defense would be to claim he was helping defend Tom's property, his litigation rights, which is effectively the same claim as one of **public necessity**. So (A) is potentially correct. To prove that defense the burden would be on Dick to prove he used reasonable force, so (B) is also potentially correct. (D) is wrong because it is not clear that Harry would win. And (C) is wrong because "assumption of the risk" is a negligence defense, not an intentional tort defense. [See "**Simple Torts Outline**", **defenses to negligence causes of action, p. 64**.] So you are forced to choose between (A) and (B). (A) is not clearly correct because Dick has another potential defense claim that Harry was never "confined" in the first place. The facts only say Harry was taken to Tom's apartment. They don't say Harry was forced to remain there against his will. But (B) is absolutely correct. So (B) is the better choice.

20) **(C)** This question asks which fact Mary does NOT have to prove, so if any answer is something Mary MUST prove, it is the wrong answer. To prevail in an action for IIED Mary must prove Peter intentionally committed an outrageous act that caused her severe emotional distress, but she does not have to prove that Peter intended for her to suffer that distress. [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.] (A) is the wrong answer because Mary must prove Peter intentionally committed an "outrageous act" when he injured Paul. (D) is wrong answer because Mary must prove Peter caused her severe distress. (C) is the right answer because Mary does NOT have to prove Peter intended for her to suffer severe distress. (B) is the wrong answer because most courts do not apply the concept of "transferred intent" to actions for IIED. Therefore, Mary must prove Peter intended to expose her to his "outrageous act", and to do that she must prove he knew she was present at the time. If Peter did not know Mary was present when he hit Paul her cause of action would have to be negligent infliction of emotional distress (NIED) in most courts.

Copyright © Practical Step Press, 2014. All rights reserved.

21) **(D)** Answer (A) is wrong because Lou did not see the ball coming and could not have suffered any "apprehension of a battery". (B) is wrong because the ball missed Lou. (C) is wrong because there is no evidence Lou suffered "severe emotional distress". Mere embarrassment and anger are insufficient. . [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.] Therefore (D) is correct.

22) **(B)** Answer (A) is wrong because Lou did not see the ball coming and could not have suffered any "apprehension of a battery". (B) is correct because if the ball had hit him he would have suffered a battery. Even if Bud had not intended to hit Lou and only wanted to frighten him it would still be battery by transferred intent. [See "**Simple Torts Outline**", **battery, p. 26** and **transferred intent, p. 32**.] (C) is wrong because any emotional distress Lou might have suffered from being hit by the ball would simply be part of his damages and would not constitute a separate cause of action. (D) is wrong because (B) is correct.

23) **(B)** Trespass to chattels is an intentional interference (taking, using, or damaging) the personal property of the plaintiff. [See "**Simple Torts Outline**", **trespass to chattels, p. 29**.] (A) is a possible claim but it is not Timmy's best cause of action because he "loves" the dog. If he brings a cause of action for conversion the remedy is usually forced sale and then he would lose his dog. [See "**Simple Torts Outline**", **conversion, p. 30**.] (C) is wrong because there is no evidence Timmy has suffered "severe emotional distress". (D) is wrong because Mike deliberately (intentionally) took the dog. It was not an "accident". So (B) is correct by the process of elimination.

24) **(B)** The standard legal remedy for tort plaintiffs is an award of a money judgment based on the damages suffered as a result of the tort or an award in legal restitution to prevent the tortfeasor from reaping an unjust enrichment as a result of the tort. But if award of a money judgment is an inadequate legal remedy the Court, in equity, has discretion to order specific performance in addition to or in lieu of a money judgment. Here (A) is wrong because Timmy would continue to be deprived of his dog. (B) is right because Timmy would most likely be awarded specific performance (a court order forcing Mike to return Lassie to Timmy) PLUS a money judgment to compensate him for the distress Mike's act has caused him. (C) is not the most likely remedy because Timmy would still be deprived of his dog. (D) is wrong because even though Timmy clearly was caused mental anguish by being deprived of his dog, the facts do not clearly establish that Mike acted with fraud, oppression or malice (after all, maybe Mike found Lassie and adopted her).

25) **(C)** Voluntary participation in activities such as professional sports implies consent to "touchings" that may prove to be harmful. Consent is usually an affirmative defense the defendant has the burden to prove. [See "**Simple Torts Outline**", **consent, p. 38**.] (A) is wrong because the term "assumed the risks" is a negligence defense rather than an intentional tort defense. (B) is wrong because the term "aggressor" applies to a claim of self-defense and Jayvon was not defending himself. (D) is wrong because jayvon did not hit Latrell during play or in a way that remotely related to the game of football. (C) is correct because even though the parties had been playing football, Jayvon's attack came at a time when they were not playing football and it was unrelated to that game.

Copyright © Practical Step Press, 2014. All rights reserved.

26) **(A)** A trespass to land is an intentional entry onto the land of the plaintiff. [See "**Simple Torts Outline**", **trespass to land, p. 28**.] The defendant is liable for all damages caused, even if the entry is by mistake. But if the entry is the result of an accident the proper tort is negligence and not trespass to land. (A) is correct because the drunk wandered into Mildred's yard. (B) and (C) are wrong because the drunk did not interfere with Mildred's ability to use her land. (D) is wrong because the drunk's entry onto the land was volitional, not involuntary, even though he may have had impaired faculties.

27) **(C)** Consent to enter stores and approach the front door of houses is generally implied. To revoke implied consent actual notice of the revocation must be given to others. [See "**Simple Torts Outline**", **revocation of consent, p. 39**.] (A) is wrong because Pops had implied consent to enter Owen's land to approach the front door. (B) is wrong because Pops did not consent to be assaulted simply by approaching the door. (D) is wrong because the term "outrageous" only applies to an action for IIED, and Pops did not suffer severe emotional distress. (C) is correct because Owen intentionally acted to frighten Pops into believing he was about to be physically attacked, and that is what caused Pops' injury.

28) **(B)** Questions of this type can often be answered quickly by using some logic. If "Fact III" is false, answers (A), (C) and (D) all have to be false also, because all three of those answers say "Fact III" is true. Then (B) would be correct. Fact III says Dick is liable to Harry for assault, but Dick was not trying to frighten Harry. He was trying to hit Tom. So he could only be liable to Harry by transferred intent if it would have caused a tortious result if he had hit Tom as he intended. [See "**Simple Torts Outline**", **transferred intent, p. 32**.] But if Dick had hit Tom with the water balloon it would not have been battery because Tom had impliedly consented to be hit by engaging in the water balloon fight in the first place. So Dick would not have been liable to Tom for battery. As a result he cannot be liable to Harry for assault either. Rather he would be liable to Harry for negligence. So Fact III fails, (A), (C) and (D) fail, and (B) is correct.

29) **(B)** As explained in the prior question, both Tom and Dick consented to be hit by each other with water balloons when they "engaged" in the water balloon fight. (A) and (D) are wrong because "assumption of the risks" and "contributory negligence" are negligence defenses, not intentional tort defenses. (B) is correct because they both impliedly consented to be pelted by the other. (C) is wrong because battery can be based on either "harm" or "offense", and since Tom "hit" Dick, he could reasonably argue he suffered an "offensive touching".

30) **(C)** Answer (B) is not the best answer because "Authority" generally means only the privilege to use reasonable force to prevent crimes. [See "**Simple Torts Outline**", **authority of Law, p. 35**] (D) is clearly wrong because Miss Ballbreaker was certainly not acting to defend herself when she "spanked" Tom and Dick. (A) would be the best answer in a public school, but not in a private school. Parents who send their children to private schools impliedly consent to the school rules. Here, if "spanking" is allowed by the school rules and Miss Ballbreaker used reasonable force, implied consent is a complete defense and (C) is correct. [See "**Simple Torts Outline**", **consent, p. 38**.] But if this had been a public school implied consent would not be a defense at all because parents are required to send their children to public schools. Then the best answer would be (A) because public school officials are privileged to use reasonable force to maintain discipline in the schools. [See "**Simple Torts Outline**", **discipline, p. 34**.]

Copyright © Practical Step Press, 2014. All rights reserved.

31) **(A)** Answer (A) is correct because if Pervis can prove he used reasonable force to defend himself from physical attack it is a complete defense. [See "**Simple Torts Outline**", **self defense, p. 43**.] (B) is wrong because Pervis is not privileged to use deadly force (shooting a gun) just to protect property. [See "**Simple Torts Outline**", **defense of property, p. 41**.] (C) is wrong for two reasons. If Bob accuses him of battery it is no defense because it is a negligence defense, not an intentional tort defense. And if Bob accuses Pervis of negligence it will fail as a defense because Bob did nothing to cause Pervis to shoot at him, unless Pervis was shooting to protect himself, and that argument just leads back to (A) as the best answer.

32) **(D)** For Bob to prevail on a claim of battery he must prove that Pervis intentionally acted for the purpose of causing him to be "touched" in a way that caused harm or offense, OR that he intentionally acted to cause some other tortious result which resulting in him suffering a harmful or offensive touching. [See "**Simple Torts Outline**", **battery, p. 26** and **transferred intent, p. 32**.] (A) is wrong because intent to "shoot the gun" is insufficient. Bob must prove Pervis intended to shoot him, or to cause him or someone else a tortious injury of some type. (B) is wrong because Pervis would be liable, even if he thought the gun was empty, if he was using the gun to make Bob apprehensive of a battery. (C) is not the best answer because Pervis would be liable even if he shot the gun intending to just scare Bob. [See "**Simple Torts Outline**", **transferred intent, p. 32**.] (D) is correct because if Pervis shot the gun intending to hit Bob OR to frighten him, he is liable for battery.

33) **(D)** As with all legal actions, actions for intentional tort may be brought on behalf of minors by **guardians ad litem**. A guardian ad litem is an adult that has been approved by the Court to act on behalf of a minor in litigation. Typically parents will be appointed to be guardians ad litem for their children. To prevail in a false imprisonment action plaintiffs must prove they were confined against their will by the defendants with no apparent, reasonable means of escape, and that they were aware of their confinement. [See "**Simple Torts Outline**", **false imprisonment, p. 27**.] (A) is wrong because Junior was a minor and lacked legal capacity to consent to be taken out of the state in violation of the Court's custody order. [See "**Simple Torts Outline**", **consent by minors and incompetents, p. 38**.] (B) is wrong because the parents were co-conspirators with Wanda because they helped her conceal him. (C) is wrong because the Court (judge) decides who can sue on Junior's behalf. Courts can appoint anyone they want to be a guardian ad litem. [See "**Simple Torts Outline**", **liability of parents to children for their injury, p. 15**.] (D) is correct because Junior had no capacity to consent to being taken away in violation of the Court's custody decree, so as long as he knew where he was being kept he will win.

Copyright © Practical Step Press, 2014. All rights reserved.

Test # 6 –Torts – Negligence and Defenses

Test #6 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **negligence**, **strict liability in negligence**, **causality** and **negligence defenses**. Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Linda bought a new house. Shortly after moving in the next door neighbor, Pervis, began harassing her. Linda told her boyfriend, Bob, and he was furious. Bob stomped next door and pounded on the door. Pervis was frightened. He went to the door with a gun and looked out through the little peephole. He didn't know who Bob was and asked him what he wanted. Bob said, "I want you to come out here and I am going to kick your ass!" Pervis yelled, "Go away!" Bob yelled, "I ain't goin' nowhere, you pervert!" Suddenly the gun went off. The bullet went through the door and hit Bob.

1) Bob's causes of action against Pervis are:

I. Battery.
II. Negligence.
III. Assault.
IV. Nuisance.

(A) I.
(B) I and II.
(C) I, II, and III.
(D) All of the above.

2) If Bob sues Pervis for negligence he must prove:

(A) Pervis knew the gun was loaded.
(B) Pervis intentionally shot the gun.
(C) Pervis became the aggressor because his use of a gun escalated the level of violence.
(D) None of the above.

Question 3

Hunter was hunting for deer in the National Forest. He thought he saw a deer in the trees. After shooting he discovered he has shot Farmer's $500 cow.

3) If the cow had wandered into the National Forest from Farmer's farm.

(A) Hunter is liable for $500 for conversion.
(B) Hunter is liable for $500 for negligence.
(C) Hunter is liable for $500 if he thought the cow was a deer.
(D) Hunter is not liable if contributory negligence applies.

Question 4

Tom and Dick have a water balloon fight during recess. Tom hits Dick with a water balloon and runs away. Dick throws at Tom, misses, and almost hits Harry, a workman painting the school. Startled, Harry drops a can of paint. Paint splashes on Miss Ballbreaker, the vice principal. She grabs Tom and Dick by the ear, drags them to her office and spanks them until they cry like girls.

4) Harry's best cause of action against Dick is:

(A) Assault.
(B) Battery.
(C) Negligence.
(D) Conversion.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 5

I. Larry threw a banana cream pie.
II. Larry intended to hit Moe with the pie.
III. Moe was hit by the pie.

5) If Moe sues Larry and proves he went blind because he has an allergy to bananas:

(A) He can win if he also proves Fact I.
(B) He can win if he also proves I and III.
(C) He can win if he also proves I and II.
(D) He will lose even if he proves all of the above.

Questions 6-7

Dick was driving his car when he accidentally struck and injured a pedestrian, Paul. Paul was taken to the hospital by ambulance for treatment of a broken leg. While in the hospital Paul was given an antibiotic he was allergic to, and he died as a result.

6) If Dick is sued by Paul's family for wrongful death:

(A) He is liable because Paul would not have died but for the fact that Dick hit him with his car.
(B) He is liable because negligence by the hospital is conclusively presumed to be foreseeable at law.
(C) He is not liable if Paul told a member of hospital staff he was allergic to the antibiotic when he was admitted.
(D) None of the above.

7) If the hospital is sued by Paul's family for wrongful death:

(A) It is liable, because Paul would not have died but for the negligence of hospital staff.
(B) It is not liable, if a hospital employee illegally gave Paul the antibiotic, knowing he was allergic to it.
(C) It is not liable, because Dick was the actual cause of Paul being in the hospital.
(D) It is not liable, if it administered the antibiotic in accordance with the accepted standards in the medical profession.

Question 8

Pollute, Gouge and Extort (PG&E) owns a hydroelectric dam operated by an independent contractor, Dams-R-Us. The dam collapses, washes away Farmer's farm, kills his family, and injures his dog.

8) Under which of the following might Farmer recover from PG&E for injury to his dog?

I. Intentional tort.
II. Negligence.
III. Strict liability.

(A) I, II and III.
(B) II and III only.
(C) II only.
(D) None of the above if PG&E because Dams-R-Us is an independent contractor.

Questions 9-10

Duke Power operates a nuclear power plant on Three Mile Island. Andy owns a tract of land nearby. A fire started on Andy's land spread out of control and burned a shed where Duke stores nuclear waste. The shed exploded and the nuclear waste ruined Barney's car.

9) If Duke Power sues Andy:

(A) It can only win on a negligence claim.
(B) It can win on a negligence claim or a trespass to land claim.
(C) It can win on a negligence claim or a conversion claim, but not on a strict liability claim.
(D) It cannot win if it cannot prove how the fire started.

Copyright © Practical Step Press, 2014. All rights reserved.

10) If Barney sues Andy and Duke:

(A) He will win against one, the other or both, but not if vandals intentionally started the fire.
(B) He must plead res ipsa loquitur.
(C) He cannot win against Duke unless he proves it negligently stored nuclear waste in the shed.
(D) He can win on a claim of strict liability against both defendants.

Questions 11-12

Lucy and Ethel lived next to each other. Lucy knew Ethel was allergic to roses but planted rose bushes along the property line anyway. Ethel suffered severe allergies from the roses. Ethel hired contractor Carl to build a swimming pool near the same property line. Carl dug a large hole for the swimming pool and that night it unexpectedly rained. The excavation collapsed and an unimproved portion of Lucy's land slid into the hole. Lucy sued Ethel and Carl for negligence, and Ethel cross-complained against Lucy for trespassing and battery.

11) Concerning Lucy's claim against Ethel:

(A) Ethel should win because Carl was an independent contractor.
(B) Ethel should win because the rain that caused Lucy's land to subside was an unforeseeable intervening act of nature.
(C) Ethel should lose because she is strictly liable.
(D) Ethel should lose because she was negligent in hiring Carl under a finding of res ipsa loquitur.

12) Concerning Lucy's claim against Carl:

(A) Carl should win if he was not negligent.
(B) Carl should win if he met all applicable ordinances and building codes.
(C) Carl should lose unless Ethel is found liable.
(D) Carl should lose.

Questions 13-14

Owen hired Bill to work on his house while he went on holiday. Bill was using a ladder. Bill noticed the rail on the ladder cracked, making it unsafe. Bill quit for the day, leaving the broken ladder against the side of the house. That night a burglar climbed up the ladder, went in a second floor window, and stole Owen's TV. As the burglar was climbing down the ladder shattered, the burglar was badly injured and Owen's TV was destroyed.

13) Is Bill liable to Owen for negligence?

(A) No, because Bill created a risk someone might be hurt climbing the ladder but did not create a risk of burglary.
(B) No, because the burglary was an unforeseeable intervening event.
(C) Yes, because leaving the ladder was negligent.
(D) Yes, because leaving the ladder increased the risk of a burglary.

14) Is Bill liable to the burglar for negligence?

(A) No, because the burglar was an unknown trespasser.
(B) No, because the burglary was an unforeseeable intervening event.
(C) Yes, if the burglar was a child, too young to appreciate the dangers posed by the ladder.
(D) Yes because Bill negligently created reasonably foreseeable peril to others.

Questions 15-16

Cheech and Chong were flying to Paris on Agony Air. Before the plane left San Francisco the flight attendants announced FAA regulations prohibited smoking, including smoking in the restrooms, and that it was illegal to disable or tamper with the smoke detectors in the restrooms. Chong went into the restroom during the flight and smoked a joint (i.e. a marijuana cigarette). To keep the smoke alarm from going off he put plastic wrap over it. When he was done he flushed the joint and the plastic wrap down the toilet despite a warning sign that said "Do not put any foreign objects in the toilets". The plastic

Copyright © Practical Step Press, 2014. All rights reserved.

wrap clogged up the toilet system and none of the toilets would work. The plane had to make an unscheduled stop in Bangor, Maine to unclog the toilet system, and it skidded off the icy runway, badly injuring Cheech.

15) If Cheech sues Chong:

(A) Chong is liable if Cheech was in the class FAA rules were intended to protect.
(B) Chong is not liable if FAA rules were not intended to prevent airplane accidents.
(C) Chong is not liable if he could not reasonably foresee his behavior put anyone in danger.
(D) Chong is liable if a reasonable person would not have flushed the plastic wrap down the toilet.

16) Suppose that instead of flushing his joint down the toilet, Chong put it in the waste basket, it started a fire, and the plane had to make an emergency landing injuring Cheech. If Cheech sues Chong:

(A) Chong is liable, if Cheech was in the class FAA rules were intended to protect.
(B) Chong is not liable, if FAA rules were not intended to prevent airplane accident injuries.
(C) Chong is liable because a reasonable person would not put a burning joint in the waste basket.
(D) Chong is not liable, if the FAA rules did not provide for a criminal penalty.

Questions 17-18

Alan and Bob accidentally collided at an intersection. Alan was driving an old Ford with bad brakes when he ran a red light and ended up stopped in the middle of the intersection. His car was worth $1,000. Bob was speeding in a new Jaguar worth $70,000. He was going too fast to avoid hitting Alan. Neither driver was injured but both cars were totally destroyed. At trial the jury determined Alan was 20% at fault and Bob was 80% at fault.

17) If the jurisdiction recognizes contributory negligence as a strict bar to recovery:

(A) Neither party will recover anything.
(B) Alan will recover $1,000 if Bob could have avoided the accident.
(C) Alan will recover nothing if there would have been no accident but for his failure to maintain his brakes.
(D) The given facts are insufficient to completely support any of the above answers.

18) If the jurisdiction has adopted "pure comparative negligence":

(A) Alan will recover $800, and Bob will recover $14,000.
(B) Alan will recover $800, and Bob will recover nothing.
(C) Bob will recover $14,000, and Alan will recover nothing.
(D) Bob will be awarded a money judgment for $13,200.

Questions 19-20

Roberto's pit bulldog, Assassin, had a bad habit of chasing cars. One day Juan was riding his bike past Roberto's house when Assassin began to chase him. Juan was afraid he might be bitten by Assassin so he peddled away in a panic, accidentally ran over Hector, a small boy crossing the street.

19) Roberto is:

(A) Liable to Hector if he proximately caused his injuries.
(B) Liable to Hector, because he was negligent for letting Assassin loose on the streets.
(C) Liable to Hector, but only if Assassin had previously bitten someone.
(D) Not liable to Hector if Juan's actions were negligent.

Copyright © Practical Step Press, 2014. All rights reserved.

20) Juan is:

(A) Not liable to Hector if he was reasonably frightened by the dog.
(B) Not liable to Hector if he is under the age of seven.
(C) Not liable to Hector because he acted under duress.
(D) Not liable to Hector because he acted out of private necessity.

Question 21

Paul parked his car with the rear wheel 14" from the curb. A statute required the wheel to be within 12" of the curb. Dan drove down the street drunk and hit Paul's car.

21) If Paul sues Dan for negligence can Dan assert Paul's parking violation as a defense?

(A) No, because negligence per se can only be claimed by a plaintiff against a defendant.
(B) No, because negligence per se can only be raised by defendants when plaintiffs are claiming last clear chance.
(C) Yes, because negligence per se may prove a claim of contributory negligence.
(D) Yes, but only if Paul is claiming negligence per se.

Questions 22-23

Bevis forgot to put gas in his car and it suddenly stopped. He put on his "hazard lights" and got out of his car waving his tee-shirt at the oncoming traffic to warn them of the dangers. Butthead was driving toward the stalled car when he dropped a burning cigarette between his legs. As he scrambled to get the hot cigarette out from under his crotch, he never saw Bevis' car, collided with it, and both were badly injured.

22) If Bevis sues Butthead for negligence:

(A) Bevis cannot claim "last clear chance" if he is in a comparative negligence jurisdiction.
(B) Bevis will lose because Butthead acted the way reasonable people do when they have burning cigarettes under them.
(C) Butthead can raise the defense of "last clear chance".
(D) Butthead cannot raise the defense of "last clear chance" because he never saw Bevis' car before he hit it.

23) Which of the following arguments, if true, best support's Bevis' position?

(A) Butthead had the "last clear chance" to avoid the accident.
(B) Bevis' car was parked off the roadway when Butthead hit it.
(C) Bevis reasonably believed his car had sufficient fuel.
(D) Butthead was driving while intoxicated.

Question 24

Pablo was an internationally famous movie star. He flew all over the world to act in movies, appear at debuts, appear on talk shows and rub elbows with the rich and famous. He booked a flight on Agony Airlines to fly to an appearance in New York City. When he arrived at the airport he found out that he had been booked to a coach seat when his agent had expressly requested a first-class seat in the first three rows.

Pablo was reluctant to be seen in coach because it would hurt his image to be seen with common people. And he wanted to be in the first three rows of first-class because it gave him a buzz to see the looks he got from the coach passengers as they filed down the aisle past him to their decidedly inferior locations. He called his agent and had his agent negotiate with Agony to get him a first-class seat in the first three rows. His agent told him he was only able to get him a seat in row 5. Pablo reluctantly agreed because he really needed to get to New York to push his latest film, "Escape from Arizona".

Copyright © Practical Step Press, 2014. All rights reserved.

After Pablo was seated the remaining passengers filed past him. One of them was Wesley Snipes, passenger 57.

There were no problems with the flight until it approached La Guardia. A mutant strain of killer geese had invaded Long Island Sound from Canada and there was a danger they might attack the plane's jet engines as they landed. For passenger safety the plane was diverted to JFK. As the plane landed an alarm went off indicating that one of the landing gear devices had malfunctioned and the plane might crash on landing. The plane circled until there was no choice but to land.

The captain told the passengers and crew about the problem and everyone was warned to assume the normal position for a crash landing. When the plane touched down the landing gear collapsed and several passengers in first-class were injured, but Snipes and the rest of the passengers in coach were not injured.

After the crash Agony Airlines admitted flying an airplane is an abnormally dangerous activity. Then it filed for bankruptcy.

24) If Pablo was injured, Agony admits airline travel is an abnormally dangerous activity, and there is no statutory provision governing his claim against Agony, Pablo will most likely:

(A) Be granted a judgment because the airline would be strictly liable.
(B) Be granted a judgment because flying in an airplane is an abnormally dangerous activity.
(C) Not be granted a judgment unless the airline was negligent.
(D) Not recover because he voluntarily assumed the risks of air travel.

Questions 25-26

Andy, age 7, had permission to play in neighbor Farmer's backyard. But he caught him twice playing in his fruit shed and he told him to stay out of his shed. One day the Parentis, Andy's parents, hired Barbara to be their baby-sitter for the day. The Parentis had never met Barbara before, and they didn't check any of her references. Barbara got drunk and fell asleep. Andy went out the back door, into Farmer's shed, started a fire and accidentally burned it down.

25) In an action by Farmer against the Parentis for negligence:

(A) He will lose because Barbara was an independent contractor.
(B) He will lose because the children had gone into his fruit shed before.
(C) He will win because parents are responsible for their children.
(D) He will win because the Parentis owed him a duty.

26) In an action by Farmer against Barbara for negligence:

(A) He will win because she assumed a duty to watch the children.
(B) He will win because the children would not have gone into the shed but for her failure to act.
(C) He will lose because Barbara fell asleep and did nothing.
(D) He will lose if the Parentis normally let the children play outside.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 27-29

Tom and Dick entered an intersection at the same time and had an auto accident. Their cars spun out of control and hit Harry, a pedestrian. Tom sued Dick and Dick counter-claimed. The jury concluded Tom was 60% at fault and had suffered $100,000 in damages and that Dick was 40% at fault and had suffered $50,000 in damages.

27) In a contributory negligence jurisdiction:

(A) Both would get nothing.
(B) Tom would be awarded $10,000 and Dick would receive nothing.
(C) Tom would be awarded $40,000 and Dick would be awarded $30,000.
(D) Tom would be awarded $60,000 and Dick would be awarded $20,000

28) In a "pure" comparative negligence jurisdiction:

(A) Both would get nothing.
(B) Tom would be awarded $10,000 and Dick would receive nothing.
(C) Tom would be awarded $40,000 and Dick would be awarded $30,000.
(D) Tom would be awarded $60,000 and Dick would be awarded $20,000

29) In a "modified" comparative negligence jurisdiction:

(A) Both would get nothing.
(B) Tom would be awarded $10,000 and Dick would receive nothing.
(C) Tom would be awarded nothing and Dick would be awarded $30,000.
(D) Tom would be awarded $60,000 and Dick would be awarded $20,000

Question 30

Fred and Ethel were pleasantly driving slowly through open countryside one Sunday on a little used road. Suddenly Beamer came up behind them in a big hurry. Beamer was angry Fred was going slow, so he swerved around him, honked and waved an insulting hand gesture. Beamer did not notice Juan entering the roadway on his tractor until it was too late. Beamer jerked the steering wheel to avoid hitting Juan's tractor and careened into a drainage ditch upside down. Fred, Ethel and Juan stopped to help and found Beamer was trapped in the car begging for help as it slowly sank into the water. Fred refused to help because he was angry at being insulted. Ethel did not want to get her shoes muddy. And Juan did not want to get involved because he had some problems with "la migra".

30) Who had a duty to help Beamer?

(A) Nobody.
(B) Everybody.
(C) Fred because it was his slow driving that caused the accident.
(D) Juan because he entered the highway on his tractor in front of Beamer.

Question 31

Tucker, a driver for Commercial Blasting, drives into Midvale with a load of dynamite. A box of dynamite falls out of the back of his truck because someone unlatched the tailgate as a prank while he was stopped for lunch. Paul, a pedestrian, is hit by the box and injured.

31) Are Commercial Blasting and Tucker strictly liable to Paul?

(A) Yes, because Tucker was negligent.
(B) Yes, because the truck was in Tucker's exclusive control.
(C) No, unless transporting dynamite is an inherently dangerous activity.
(D) No, because Paul's injury was caused by the unlatched tailgate.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 32

Tex buys the C Street Saloon, a sleepy neighborhood bar, and begins booking some local bands to play on weekend nights. Soon it becomes very popular and draws large crowds. Mildred lives next door and soon starts finding beer bottles, condoms and syringes lying in her yard and in front of her house. She complains to Tex but he ignores her.

32) Suppose one night a patron from the C Street Saloon passes out and falls into Mildred's yard, crushing her prize dahlias. What is her best cause of action against the drunk?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Question 33

Mean Mike takes Timmy's dog Lassie and refuses to give her back. Lassie is a mangy old dog but Timmy loves her.

33) If Lassie had a habit of biting children and it severely bites Mean Mike what is Timmy's best defense?

(A) Mike had it coming.
(B) Mike was contributorily negligent.
(C) Mike assumed the risks of being bitten.
(D) Timmy did not cause Mike's injury.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #6 Answer Sheet

Question	Answer
1	B
2	D
3	C
4	C
5	B
6	C
7	D
8	B
9	B
10	A
11	C
12	D
13	B
14	A
15	C
16	C
17	D
18	D
19	B
20	A
21	C
22	A
23	B
24	D
25	B
26	D
27	A
28	B
29	C
30	A
31	D
32	D
33	D
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #6 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Torts Outline**".

1) **(B)** The quick way to get the best answer here is to see that Bob would not have any reason to charge Pervis with assault. The reason is that he was actually hit by the bullet. So even if Pervis did not intend to hit him (to simply frighten him) that "assault" would become a battery by transferred intent anyway, and Bob is going to sue Pervis for battery instead of assault. [See "**Simple Torts Outline**", **battery, p. 26** and **transferred intent, p. 32**.] So (C) and (D) are wrong because they both include Assault (item III). That narrows the problem down to a choice between (A) and (B). Since the facts don't say if Pervis intentionally shot the gun or if it went off by accident, Bob would be wise to accuse Pervis of BOTH battery and negligence. [See "**Simple Torts Outline**", **negligence, p. 44**.] Therefore (B) is a better answer than (A).

2) **(D)** Negligence is a failure to exercise the degree of care that a reasonable person would use in the same situation. [See "**Simple Torts Outline**", **negligence, p. 44**.] When people handle guns it creates reasonably foreseeable risks to others, so they have a duty to act with caution. [See "**Simple Torts Outline**", **duties based on peril, p. 49**.] Reasonable people take care to not hurt anyone. [See "**Simple Torts Outline**", Standards of Due Care, p. 59.] (A) is wrong because Pervis had a duty to be careful whether he knew the gun was loaded or not. In fact, he had a duty to find out IF the gun was loaded. (B) is wrong because if Pervis intentionally shot the gun Bob's cause of action would be for battery, not just negligence. (C) is wrong because the term "aggressor" only applies to issues of self-defense and defense of others, not negligence. (D) is the only correct answer.

3) **(C)** The key to this question is to realize that the facts do not say whether Hunter saw Farmer's cow and thought it was a deer, or if he saw something else that he thought was a deer. Maybe he actually saw a real deer and shot the cow by accident. Conversion is an intentional interference with chattel of plaintiffs that substantially deprives the plaintiffs of the use of their property. [See "**Simple Torts Outline**", **conversion, p. 30**.] Here if Hunter deliberately shot Farmer's cow, thinking it was a deer, it would amount to conversion and (A) would be true. But if Hunter was shooting at something else, whether it was a real deer or not, missed and hit Farmer's cow by accident it would not be an intentional tort. In that case it would be negligence and (B) would be true. [See "**Simple Torts Outline**", **negligence, p. 44**.] Since both (A) and (B) could be true, neither is the best answer and you have to choose between (C) and (D). Answer (D) is bad for several reasons. First, it would not be true if Hunter deliberately shot the cow (whether he thought it was a deer or not). Second, it would not be true if the National Forest was a "free range" area where cows are legally allowed to roam. And it would not be a good answer if the jurisdiction had adopted the "last clear chance" doctrine, because even if Farmer was negligent, Hunter had the last clear chance to avoid shooting it. Therefore (C) is the best answer. If Hunter thought the cow was a deer he deliberately shot it he is liable to Farmer for conversion and owes him $500.

4) **(C)** The key to a quick solution here is to see that Dick had implied consent to throw the balloon at Tom since they were engaged in mutual mischief. [See "**Simple Torts Outline**", **consent, p. 38**.] Therefore, Dick's act would not be an intentional tort with respect to Tom, and it would not be converted into an intentional tort against Harry by transferred intent. [See "**Simple Torts Outline**", **transferred intent, p. 32**.] That eliminates the intentional tort answers (A), (B) and (D) and Harry's only possible claim against Dick must be negligence, Answer (C).

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(B)** All tort plaintiffs must prove the defendants did something wrong that caused a tortuous result. [See "**Simple Torts Outline**", **causation in tort, p. 3**.] (A) and (C) are wrong because neither one of them proves causation. The mere fact that Larry threw a pie intending to hit Moe does not establish that Moe actually was hit. (D) is wrong because if Moe can prove he actually was hit by the banana crème pie it establishes a reasonable presumption that he was blinded by the pie, given his allergy to bananas. So if Larry just proves I and III he can establish a claim for negligence and (B) is correct.

6) **(C)** Answer (A) alludes to actual causation and (B) and (C) allude to proximate causation. (A) is wrong because both actual and proximate causation must be proven. [See "**Simple Torts Outline**", **causation in tort, p. 3**.] Proximate causation can be cut off by an unforeseeable intervening event, and intentional torts by third parties are generally unforeseeable intervening events that terminate proximate causation. [See "**Simple Torts Outline**", **unforeseeable intervening events, p. 4**. and **crimes and intentional torts are usually unforeseeable, p. 5**.] On the other hand, negligent acts are usually considered to be foreseeable, and they do not terminate proximate causation. [See "**Simple Torts Outline**", **negligence is usually considered to be foreseeable, p. 5**.] So when the hospital gave Paul the antibiotic, was that act simple negligence or was it battery? Remember, acts that otherwise would not be intentional torts become intentional torts if the defendants act with knowledge that the plaintiffs are unusually susceptible to injury from those types of acts. [See "**Simple Torts Outline**", **unusually sensitive plaintiffs, p. 25**.] (B) presumes the hospital was simply negligent, but if Paul had put it on notice of his allergy and it gave it to him anyway as stated in (C) it would be a battery and not mere negligence. As a result (B) is not as good an answer as (C), and (C) would be a better answer than (D).

7) **(D)** Answers (A) and (C) are wrong because the hospital was an actual cause of Paul's death, but the plaintiffs also have to prove proximate causation. [See "**Simple Torts Outline**", **causation in tort, p. 3**.] (B) is wrong because if a hospital employee caused Paul's death the hospital would be liable because of respondeat superior, regardless of whether the employee was acting illegally or deliberately. Answer (D) is correct because the hospital is only liable for Paul's death if it was "wrongful", and it is not "wrongful" if the hospital acted in accordance with accepted medical standards. [See "**Simple Torts Outline**", **medical standard of care, p. 60**.]

8) **(B)** The key to a fast answer here is to know that operating a hydroelectric dam is an "abnormally dangerous" or "ultra-hazardous" activity that imposes strict liability on owners and operators. [See "**Simple Torts Outline**", **strict liability causes of action, p. 22**.] That makes (C) wrong. And (D) is wrong because that liability cannot be escaped by delegated to an independent contractor. [See "**Simple Torts Outline**", **vicarious liability for acts of independent contractors, p. 21**.] (A) is wrong because nobody deliberately caused the dam to collapse. (B) is correct because an action claiming strict liability for engaging in ultra-hazardous activities is also a negligence cause of action.

9) **(B)** Answer (A) is not as good as (B) because it assumes the fire spread accidentally, and it is possible Andy deliberately started the fire intending for it to spread to someone else's land. (D) is wrong because Duke can plead res ipsa loquitur to shift the burden to Andy to prove the fire was not his fault. [See "**Simple Torts Outline**", **shifting burden of proof with res ipsa loquitur, p. 61**.] Fires don't just "start themselves" so if the fire started on Andy's land (where Duke had no control over the events starting the fire) res ipsa loquitur establishes a rebuttable presumption Andy or someone on his land was responsible for the fire. (C) is wrong because conversion is the tort of interfering with chattel, and the shed was real property. (B) is the correct answer because "particulate matter" (embers) from the fire on Andy's land must have fallen on Duke's land. If that was an accident Andy was negligent and if it was intentional Andy committed trespass to land. [See "**Simple Torts Outline**", **trespass to land, p. 28**.]

Copyright © Practical Step Press, 2014. All rights reserved.

10) **(A)** Answer (B) is not the best answer because the cause of the fire and how it spread to Duke's shed may be known. (C) is wrong because operating a "nuclear power plant" and storing "nuclear waste" is an "abnormally dangerous" or "ultra-hazardous" activity so Barney does not have to prove breach of duty. He only has to prove causality and damages. [See "**Simple Torts Outline**", **abnormally dangerous and ultra-hazardous activities, p. 23**.] (D) is wrong because Andy did not do anything that suggests strict liability. (A) is the correct answer because Barney certainly will win against Duke, and may win against Andy. But he still has to prove causation. And he cannot win against either of them if third parties intentionally started the fire, because that would be an unforeseeable intervening force that cuts off proximate causation as to both defendants. [See "**Simple Torts Outline**", **unforeseeable intervening events, p. 4**.]

11) **(C)** Large excavations, such as for swimming pools, are abnormally dangerous activities just like a rock quarry. [See "**Simple Torts Outline**", **abnormally dangerous and ultra-hazardous activities, p. 23**.] But no matter how large an excavation is, it is a settled matter of real property law that anyone who causes a "subsidence" of unimproved adjacent land by removing "lateral support" is strictly liable for the damages caused. This is something that might only be taught in Real Property classes, but it "sounds in tort" and should be taught in tort classes. But if subsidence causes damage to improved real property (e.g. structures) the plaintiff must prove ordinary negligence. [See "**Simple Real Property Outline**", **removal of lateral support, p. 103**.] (A) is wrong because the duties created by abnormally dangerous activities are non-delegable. [See "**Simple Torts Outline**", **vicarious liability for acts of independent contractors, p. 21**.] (B) is wrong because "rain" is not only foreseeable, it is certain to occur at some time. For an "act of God or nature" to be an intervening event, it has to be a very rare event such as a tornado, earthquake or hurricane. (D) is wrong because Ethel would be liable whether she was negligent in hiring Carl or not. And the reference to res ipsa loquitur makes no sense. (C) is correct because Ethel (and Carl) are strictly liable, by law.

12) **(D)** Anyone who causes a subsidence of unimproved land by removing lateral support is strictly liable. [See "Simple Real Property Outline", removal of lateral support, p. 103.] Therefore, (A), (B) and (C) are wrong, whether Carl was negligent or not, and (D) is the correct answer.

13) **(B)** Crimes are unforeseeable intervening events that cut off proximate causation unless the defendant has knowledge that the crime is likely (not just possible) at the time the defendant acts. [See "**Simple Torts Outline**", **crimes and intentional torts are usually unforeseeable, p. 5**.] Here (B) is correct because there are no facts to suggest that Bill had any idea a burglary was likely to occur. (A), (C) and (D) are all wrong because although Bill was negligent, and may have created or increased the risks of a burglary, his liability was terminated by the burglary itself.

14) **(A)** Answer (A) is the best answer because the ladder was a "hidden danger on the land of Owen". Owen was gone, so Bill was temporarily the "occupier" of the land. Under the common law he had no duty to "unforeseeable, unknown trespassers". [See "**Simple Torts Outline**", **duty to unknown trespassers, p. 54**.] (B) is wrong because the question is whether Bill is liable to the burglar, so the burglar is not a "third party" whose acts could be an unforeseeable intervening event. (C) is wrong because even if the burglar was a child, too young to realize the dangers posed by their actions, no facts suggest Bill knew or should have known that children were likely to trespass onto the land. [See "**Simple Torts Outline**", **duty to trespassing children: attractive nuisance doctrine, p. 54**.] (D) is not the best answer because it assumes Bill created reasonably foreseeable peril to others. No facts to suggest there was anyone else in the "zone of danger" posed by the ladder or that Bill could foresee anyone using it without his permission. Also if Bill simply left the ladder in place he did not act to "create" the peril. Instead he failed to act to eliminate the danger he discovered. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.]

Copyright © Practical Step Press, 2014. All rights reserved.

15) **(C)** Answers (A) and (B) are wrong because the accident was not caused by Chong smoking in violation of the FAA rule. Rather it was caused by him flushing the plastic wrap down the toilet after he finished smoking. If Chong had done the same thing (flushing the plastic) without ever smoking at all, Cheech still would have been injured. Therefore, Chong's breach of the FAA rule was not the actual cause of Cheech's injury. [See "**Simple Torts Outline**", **actual cause, p. 3**.] (C) is correct because if he could not reasonably foresee his actions were putting anyone in danger he had no duty based on peril. . [See "**Simple Torts Outline**", **duties created by peril, p. 49**.] It could be argued that he assumed a duty to obey Agony Air rules when he bought his ticket. But even so, that would only make him liable to Agony Air, not to Cheech, under the generally accepted view. [See "**Simple Torts Outline**", **duties created by assumption, p. 49** and **the foreseeable plaintiff, p. 51**.] (D) is wrong because it assumes Chong had a "general duty to act reasonably". That is wrong. He had no "general duty to be reasonable" and can only be liable if a duty was created based on peril, statute or some other legally recognized reason. [See "**Simple Torts Outline**", **no general duty to act!, p. 44**.]

16) **(C)** Answers (A), (B) and (C) are wrong because they all assume the only reason Chong could possibly be liable is because of negligence per se basis (breach of the FAA rule) while he is obviously going to also be liable because he created peril to Cheech and everyone else on the airplane. (C) is correct because putting burning materials into the waste basket on the airplane created reasonably foreseeable perils to others, and that would be true whether there was an FAA rule against it or not. [Note: A few courts have limited "negligence per se" to only those statutes that establish "criminal penalties", but courts vary widely on this and it does not seem to be a broadly adopted idea. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.]

17) **(D)** Answer (A) is wrong because Alan might win since Bob had the "last clear chance" to avoid the accident. [See "**Simple Torts Outline**", **last clear chance doctrine, p. 67**.] (B) is wrong because even though it recognizes Bob had the "last clear chance", that just means Alan is not totally barred from recovery. It does not mean that Alan would be absolved of all fault. (C) is wrong because even though it recognizes Alan could have avoided the accident, that does not mean he would be totally barred from recovery if the jurisdiction recognizes the "last clear chance" concept. (D) is the correct answer because the facts simply don't tell you if or how this particular jurisdiction handles a "last clear chance" situation.

18) **(D)** If this is a "pure comparative negligence" jurisdiction the damages will be totaled and allocated to each defendant according to percent of fault. The total damages are $71,000, and Alan is 20% at fault. Therefore Alan would be responsible for $14,200 of the damages and Bob would be responsible for $56,800. Since Alan's liability ($14,200) exceeds his actual damages ($1,000) by $13,200, the court would award Bob a judgment against Alan in that amount. [See "**Simple Torts Outline**", **pure comparative negligence, p. 69**.]

19) **(B)** Roberto was negligent for letting his dog run loose on the street because it had a "bad habit" of chasing cars. That made it foreseeable he would also chase people on bicycles and otherwise cause a traffic hazard. That created reasonably foreseeable peril to others. So he had a duty to act to protect people from the dog running in the streets. He breached that duty by letting the dog run loose. And that was the actual and proximate cause of Hector being injured. (A) and (D) are wrong because negligence by Juan would not cut off Roberto's liability. Negligent acts by others, by law, are reasonably foreseeable. [See "**Simple Torts Outline**", **negligence is usually considered foreseeable, p. 5**.] (C) is wrong because it suggests this is a "strict liability" question. It is not. This is a regular negligence situation, not a "biting dog" situation. (B) is correct because Roberto was negligent, and that was the actual and proximate cause of Hector to be hurt, whether Juan was also negligent or not.

Copyright © Practical Step Press, 2014. All rights reserved.

20) **(A)** Answer (B) is wrong because there is no "defense of infancy" in tort law. [See "**Simple Torts Outline**", **defenses to intentional tort causes of action, p. 33**.] If Juan is a child the reasonableness of his acts would be judged according to the "child standard of care". [See "**Simple Torts Outline**", The Average Child Standard of Care, p. 59.] (C) and (D) are wrong because "duress" and "private necessity" are not defenses to negligence. Those are intentional tort defenses, but Juan did not intentionally hurt Hector. [See "**Simple Torts Outline**", **defenses to intentional tort causes of action, p. 33** and **defenses to negligence causes of action, p. 64**.] (A) is correct because if Juan was "reasonably frightened" by the dog he merely acted the way any reasonable person would, and did not breach his duty to act reasonably.

21) **(C)** The affirmative negligence defenses are contributory / comparative negligence and assumption of the risk. [See "**Simple Torts Outline**", **defenses to negligence causes of action, p. 64**.] (A), (B) and (D) are all wrong because contributory / comparative negligence is proven the same as any other negligence claim, and one obvious possibility is to prove a plaintiff was negligent per se by violating a statute. (C) is correct for the same reason.

22) **(A)** Answer (A) is correct and (C) and (D) are wrong because the "last clear chance" doctrine was developed by court decision in jurisdictions that applied contributory negligence as a complete bar to recovery. The purpose of the rule was to ameliorate the unjust results that occasionally occurred. Several other rules such as the "avoidable injury" rule and the "both-ways" rule were developed in those jurisdictions for the same reasons. [See "**Simple Torts Outline**", **defenses to negligence causes of action, p. 64**.] When jurisdictions adopted the "comparative negligence" approach they eliminated the need for the "last clear chance" rule and the various other complicated rules that had been developed. As a result those rules do not apply in comparative negligence jurisdictions. (B) is wrong because "reasonable people" are careful to not drop burning cigarettes in their laps while they are driving.

23) **(B)** It was negligent for Bevis to be driving his car without enough gasoline because it was foreseeable he might run out of gas on the roadway, causing a traffic hazard. (C) is wrong because what Bevis thought is irrelevant to whether or not his actions were negligent. (A) and (D) both may tend to reduce Bevis' liability, if his negligence caused the accident. But (B) is the best answer because it absolves Bevis of all liability. If his car was pulled off the roadway and parked it no longer created any foreseeable peril to anyone. That was what reasonable people would do. As a result Bevis was no longer in breach of his duty to act with care at the time of the accident, and he cannot be liable for negligence. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.]

24) **(D)** The lesson to be learned here is that multiple-choice exams may present single questions based on exceedingly long fact patterns. These use up a lot of your time, yet you can only score "one point" if you get it right. So if you are running behind on time or even running out of time mark these long questions with a big "X" and simply select one of the possible answers at random. You have a 25% chance of getting the answer right anyway. And there is no penalty for wrong answers. Then if you have some extra time after you have completed the rest of the exam come back to these few questions and reconsider them. The same strategy can be used when you are stumped between two possible answers for a question. Simply mark the question (e.g. if you can't decide between (A) and (B) mark it "A-B???"), select one of the possible answers on the answer sheet, and move on! DO NOT WASTE TIME AGONIZING OVER A DECISION BETWEEN TWO POSSIBLE ANSWERS. Here (C) is wrong because the defendant admits it was engaged in an abnormally dangerous activity. That means strict liability applies, Pablo only has to prove causality and damages, and he does not have to prove "negligence". (A) and (B) are wrong because they assume the airline will be liable simply because

Copyright © Practical Step Press, 2014. All rights reserved.

strict liability applies. (D) is correct because the only affirmative defense in a strict liability situation is assumption of the risks and one of the (obvious) risks of air travel is that the plane might crash. Pablo voluntarily assumed that risk when he got on the plane. [See "**Simple Torts Outline**", **defenses to strict liability causes of action, p. 23**.]

25) **(B)** Answer (A) is wrong because even though Barbara is an independent contractor, the Parentis were negligent in hiring her without checking any of her references. That is called "negligent contracting" and it is simply a form of "negligent entrustment". [See "**Simple Torts Outline**", **negligent entrustment, p. 62** and **negligent contracting, p. 63**.] (C) is wrong because parents are not responsible for the acts of their children. While some States may have statutes that make parents responsible for tortious acts of their minor children (e.g. California does), that is not the common law or a broadly adopted modern rule that you should apply on law school and Bar exams. (D) is wrong because there is no basis on which to find the Parentis owed Farmer a duty. They did not create "reasonably foreseeable perils" to anyone (except themselves and their children) by hiring Barbara. There is no evidence they knew the children had trespassed into Farmer's shed, or that it posed any danger to Farmer, even if they did. (B) is correct because the children had gone into his shed before, so there is no basis to conclude they would not have gone into the shed again even if the Parentis had not hired Barbara. That means Farmer could not prove he would not have been injured "but for" the parents hiring the baby-sitter. In other words, he cannot prove actual causation. [See "**Simple Torts Outline**", **actual causation, p. 3**.]

26) **(D)** Answer (A) is wrong because when Barbara assumed the duty of watching the children, she only owed that duty to the Parentis and the children. She did not owe that duty to Farmer. When duty is not based on peril the liability of defendants is generally restricted to only those plaintiffs that were owed the duty. [See "**Simple Torts Outline**", **the foreseeable plaintiff, p. 51**.] There are exceptions to this rule such as wrongful death actions, Rescuer Doctrine, and negligent infliction of emotional distress (NIED). In those situations liability extends to plaintiffs who were not owed a duty by the defendant. [See "**Simple Torts Outline**", **liability for wrongful death, p. 14**, **the rescuer doctrine, p. 50**, and **negligent infliction of emotional distress, p. 70**.] (D) is correct, and (B) and (C) are wrong because if the children were allowed to go outside to play, and no facts suggest they were not, the children would have gone into the shed anyway, whether Barbara was dead drunk or not. That means Farmer could not prove Barbara's drunkenness was the actual cause of his loss and he will lose. [See "**Simple Torts Outline**", **actual causation, p. 3**.]

27) **(A)** Since Tom and Dick both were negligent, both would be barred from recovering in an action against each other unless the Last Clear Chance Doctrine applied. [See "**Simple Torts Outline**", **contributory negligence, p. 66** and **last clear chance doctrine, p. 67**.] But (A) is correct and (B), (C) and (D) are wrong because both arrived at the intersection "at the same time" so neither had a "last clear chance" to avoid the accident.

28) **(B)** In a pure comparative negligence jurisdiction the damages of all parties are aggregated and allocated to each based on degree of fault. Here the total damages are $150,000. Of that amount Tom is liable for 60% ($90,000) and Dick is liable for 40% ($60,000). But Dick has only suffered $50,000 in damages, so he is liable to Tom for an additional $10,000. [See "**Simple Torts Outline**", **pure comparative negligence, p. 69**.] Therefore, (B) is correct, and (A), (C) and (D) are wrong.

29) **(C)** Modified comparative negligence approaches vary by State, so there is no "broadly adopted rule". Generally plaintiffs are barred from any recovery against another party if they were more responsible for the accident than that party. [See "**Simple Torts Outline**", **modified comparative negligence, p. 69**.] (A), (B) and (D) are wrong because Tom was more at fault than Dick. That leaves (C) as the only possible correct answer because Dick suffered $50,000 in damages and Tom was 60% at fault.

Copyright © Practical Step Press, 2014. All rights reserved.

30) **(A)** Answer (A) is correct and (B) is wrong because there is no "general duty to act" to help or protect others. A duty to act only exists in certain situations. [See "**Simple Torts Outline**", **no general duty to act!, p. 44**.] (C) and (D) are both wrong because even though "driving" creates foreseeable perils to others, there are no facts indicating Fred and Juan breached their duties to drive in a safe and reasonable manner.

31) **(D)** Strict liability (in negligence) only applies when the defendant is keeping exotic animals, animals likely to roam, animals known to be dangerous, or engaged in an abnormally dangerous activity, AND the inherent dangers of those acts cause the plaintiff injury. [See "**Simple Torts Outline**", **strict liability causes of action, p. 22**.] Using and transporting high explosives is an inherently dangerous activity, and the danger posed is that the explosives can detonate. (A), (B) and (C) are wrong because the CALL is whether they are "strictly liable" and the risk a box of explosives may fall off a truck is no more an "inherent" danger of that activity than the danger onions might fall off the back of a farm truck. (D) is the correct answer because Paul was injured because the tailgate was unlatched and the dynamite fell out, not because the dynamite exploded. Commercial Blasting and Tucker may be liable, but they are not strictly liable.

32) **(D)** Answer (A) is wrong because the drunk "passed out" before he fell into Mildred's yard, so he did not intentionally enter the yard. [See "**Simple Torts Outline**", **intentional acts, p. 24**.] (B) and (C) are wrong because even though the fact pattern suggests Tex and the C Street Saloon are a nuisance, the CALL is about Mildred's cause of action against the drunk for crushing her flowers. The drunk is not preventing Mildred from using and enjoying her yard. Rather the cause of action here is for the damages to the flowers. (D) is correct. The drunk created reasonably foreseeable peril by simply walking along, so he had a duty to walk cautiously. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.] Reasonable people do not get so drunk they pass out on other people's property, so her best cause of action is for negligence.

33) **(D)** Answer (A) is wrong because it is just a flippant remark. Based on concepts of karma, perhaps, but unrelated to any legal concept. (B) is wrong because contributory negligence is not a defense to strict liability. If Timmy is liable because he was keeping a known dangerous animal, he would be strictly liable and contributory negligence is not a defense. [See "**Simple Torts Outline**", **keeping known dangerous pets, p. 22**.] (C) would be a possible defense for Timmy if Lassie had bitten Mike while she was in Timmy's possession, because assumption of the risks is one of the few valid defenses available to Timmy. [See "**Simple Torts Outline**", **defenses to strict liability causes of action, p. 23**.] (D) is the best answer because Timmy was not keeping a dangerous animal. Once Mike took Lassie and refused to give her back, Mike was the person keeping the dangerous animal, not Timmy! So Mike caused his own injury, not Timmy.

Copyright © Practical Step Press, 2014. All rights reserved.

Test # 7 – Torts – Defamation / Product Liability / Miscellaneous

Test #7 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **negligent infliction of emotional distress (NIED), attractive nuisance, product liability**, **defamation, nuisance, invasion of privacy** (false pretenses, appropriation of likeness, intrusion, disclosure), **abuse of process**, **malicious prosecution**, **interference**, **vicarious liability**, **joint liability**, **indemnity** and **contribution**. Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Peter was driving his car after having a few drinks. Suddenly he saw Paul crossing the street in front of him. He did not stop his car in time and badly injured Paul. Paul was a musician in a folk group with Mary. Paul was so badly injured he could no longer play the guitar, and that caused him to sink into a deep depression. Paul's partner, Mary, became despondent because of Paul's injury and she was diagnosed as having "Munchausen's syndrome by proxy", a mental illness associated with law school exams.

1) Mary's chances of recovering from Peter are best if:

   (A) She and Paul were married.
   (B) She saw Paul hit by the car.
   (C) A drop of Paul's blood sprayed on her when he was hit.
   (D) Peter' car hit her at the same time it hit Paul.

2) Paul can recover from Peter for:

   (A) Negligence.
   (B) Negligence for his physical injuries and negligent infliction of emotional distress for his other injuries.
   (C) Negligence for his physical injuries and lost wages and negligent infliction of emotional distress for his emotional damage.
   (D) Negligence for his physical injuries and lost wages and intentional infliction of emotional distress for his emotional damage.

Questions 3-5

Andy, age 5, and Sandy, age 6, had permission to play in Farmer's backyard. But he caught them twice playing in his fruit shed and he told them to stay out of his shed. One day they tried to sneak into Farmer's shed to steal some apples. The door was locked but they were able to crawl on their bellies under the door to get into the shed. Inside they found a barbeque grill and some matches. They decided to play "Iron Chef" to see who could make the best tasting meal with apples as the "secret ingredient". The shed caught on fire and they were badly burned.

3) If Farmer is sued for negligence under the Attractive Nuisance Doctrine which of the following is true?

   (A) A child's age establishes a legal presumption of inability to appreciate dangerous conditions.
   (B) Under the age of seven children are legally presumed to be unable to fully appreciate the dangers posed by conditions on the land.
   (C) Farmer would have to prove the children could appreciate and assumed the dangers of their behavior.
   (D) Andy and Sandy would have to prove Farmer could foresee they would crawl under the door.

Copyright © Practical Step Press, 2014. All rights reserved.

4) If Farmer is sued for negligence under the Attractive Nuisance Doctrine which of the following is his best defense argument?

(A) Andy and Sandy assumed the risks of injury.
(B) Andy and Sandy were not attracted to his property by a dangerous condition of the land.
(C) The actions of Andy and Sandy were an unforeseeable intervening event.
(D) Andy and Sandy were contributorily negligent.

5) If Farmer is sued for negligence under the Attractive Nuisance Doctrine which of the following is his worst defense argument?

(A) Andy and Sandy assumed the risks of their injury.
(B) Farmer had no way to know the children would trespass into the barn.
(C) Farmer did not breach his legal duty to Andy and Sandy.
(D) Andy and Sandy were contributorily negligent.

Questions 6-7

Clyde buys a used car at the Hy-Town auction "as is". While driving the car Clyde's brakes fail and he crashes into a ditch. When the car is being repaired he is told it has defective brakes.

6) If Clyde sues Hy-Town based on strict liability:

(A) He will win because the car had defective brakes.
(B) He will win because all goods are sold subject to an implied warranty they are suitable for intended use.
(C) He will lose because he bought the car "as is".
(D) He will lose if Hy-Town doesn't often sell cars.

7) If Clyde sues the manufacturer because he is told the car has defective brake pads:

(A) He will win because the car had defective brakes.
(B) He will win because the defective brakes made the car unreasonably dangerous.
(C) He will lose if the car's brake pads failed from normal wear.
(D) He will lose because no privity of contract existed between Clyde and the manufacturer.

Questions 8-10

Torus Equipment manufactured lawnmowers with safety shields on the discharge chutes to stop rocks and other debris from shooting out of the chutes at high speed. The discharge chutes were easy to remove. Jack Hardware stocked the lawnmowers in its retail outlet, but removed the safety shields before selling the lawnmowers to retail customers because of numerous complaints the shields clogged discharge chutes when cutting wet grass. Jack gave customers the safety shields and told every customer to follow the instructions in the user manuals that were distributed with the mowers by Torus. The user manuals said the lawnmowers should not be operated without the safety shields in place. Owen bought a Torus mower and used it without the safety shield. As he was mowing his lawn he saw a bone his dog had left on the lawn. Owen pushed the mower over the bone thinking the blade would clear it. But the blade hit the bone and it flew into the street where it hit Peter in the eye as he drove by on a motorcycle owed by Chuck without any goggles or other eye protection. Peter was not hurt but the motorcycle was damaged. As a result he was late for work and got fired.

8) If Peter sues Owen, Torus and Jack in strict liability he:

(A) Will lose.
(B) May recover against Owen.
(C) May recover against Torus.
(D) May recover against Jack.

Copyright © Practical Step Press, 2014. All rights reserved.

9) If Chuck sues Owen, Torus, Jack and Peter in strict liability he could only:

(A) Recover against Owen.
(B) Recover against Jack.
(C) Recover against Torus.
(D) Recover against Peter.

10) If Chuck sues Owen, Torus, Jack and Peter he could:

(A) Not recover against Peter if a person wearing eye protection would not have crashed.
(B) Not recover against Torus.
(C) Not recover against Owen if a person wearing eye protection would not have crashed.
(D) Not recover against Jack because it told Owen to reinstall the shield.

Questions 11-13

California grows almost all of the nation's almond crop. Gonsanto produces Killzitol, a treatment for almond tree wilt, otherwise known as almond toxizoa, a devastating parasite spread by the frilly-winged leaf hopper, *Insectus Absurda*. Gonsanto produces Killzitol at a plant in the Mojave Desert. Its plant emits a mist of extremely small particles that drift across the valley. Juan believes the mist is causing the peppers to be discolored at his jalapeño farm.

11) If Juan sues Gonsanto for public nuisance:

(A) Juan wins if he can prove the mist discolored his peppers.
(B) Juan loses if other pepper farms are adjacent to his own.
(C) Juan wins if he proves Gonsanto could prevent the plant from emitting the mist.
(D) Juan loses if he established his farm after the Gonsanto plant was built.

12) Assuming each of the following are true, which would be Gonsanto's best defense arguments against a claim of nuisance?

I. Killzitol is the only pesticide that can stop *Insectus Absurda*.
II. The California Department of Agriculture recommends the use of Killzitol to prevent almond toxizoa.
III. Gonsanto's factory in the Mojave Desert was established before Juan or anyone else was in the area.
IV. Gonsanto's factory uses the best available technology.

(A) I.
(B) I and II
(C) I, II, and III.
(D) III and IV.

13) What is Juan's best cause of action against Gonsanto?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Questions 14-16

Dr. Sergio, a spinal surgeon at Our Lady of Perpetual Sorrows Hospital, was operating on patient Pat's spine when the blade of his scalpel, made by CutCo and provided to him by the hospital for his use, broke off between a couple of Pat's vertebrae. Sergio decided to leave the blade in Pat's spine because extracting it could be more dangerous than leaving it in place.

14) If Pat sues Sergio based on a strict products liability theory:

(A) Pat loses because he assumed the risks of surgery.
(B) Pat loses because the real party in interest is Our Lady of Perpetual Sorrows Hospital if it provided Sergio with the scalpel.
(C) Pat will win if the scalpel was defective.
(D) Pat will win because the scalpel was unreasonably dangerous.

Copyright © Practical Step Press, 2014. All rights reserved.

15) If Pat sues Our Lady of Perpetual Sorrows Hospital based on a products liability theory:

(A) Pat loses if he assumed the risks of surgery.
(B) Pat loses if Sergio was not negligent.
(C) Pat will win if the scalpel was defective.
(D) Pat must prove the scalpel was unreasonably dangerous.

16) If Pat sues CutCo based on a strict products liability theory:

(A) Pat loses because he did not purchase the defective scalpel.
(B) Pat loses because he assumed the risks of surgery.
(C) Pat wins because any breach of implied warranty chargeable to Our Lady of Perpetual Sorrows is imputed to the manufacturer of the scalpel.
(D) Pat wins if the scalpel was unreasonably dangerous.

Question 17

Mel approached his employee, Toad, at the end of the day and said he had discovered some money was missing from the cash register. Toad said he didn't know anything about the missing money and that he had to go home to care for his sick mother. Mel got mad and said, "You better stay here or else!" Toad wanted to leave but stayed decided he better stay. Mel yelled at Toad for an hour accusing him of stealing the money. Toad denied taking the money and eventually Mel told him to leave and not ever come back.

17) If Betty Sue heard Mel and asked Toad why he took the money his best cause of action is:

(A) Intentional Infliction of Emotional Distress.
(B) Assault.
(C) False imprisonment.
(D) None of the above.

Question 18

Tom and Dick were watching TV at Tom's apartment when they saw flames outside. They ran outside to find Tom's car engulfed in flames. Harry stood nearby watching the fire. They asked Harry who he was and what had happened. Harry responded, "That's for me to know and you to find out you $%$#@$%s!" Harry then turned and began to leave. Tom and Dick immediately said, "You aren't going anywhere; come with us." They took Harry to Tom's apartment and called the police.

18) If Harry sues Tom and Dick for malicious prosecution:

(A) He must prove they acted without probable cause.
(B) He must prove they acted without an honest belief probable cause existed.
(C) He must prove there was a final determination of their charges against him.
(D) He must prove he did not start the fire.

Question 19

Doctor Abby was an outspoken advocate for the pro-choice movement and a physician who performed abortions. She was targeted by an anti-abortion group called the So Righteous Majority which posted her picture, phone number, address with a map showing how to get to her house below a headline that said, "Doctor Abby - Wanted Dead or Alive for Murdering Babies!"

19) If Dr. Abby brings an action for defamation against The So Righteous Majority:

(A) She must prove the So Righteous knew its statement was false or spoke with a reckless disregard for the truth.
(B) She will lose because the group's statement was true.
(C) She will win if she proves special damages.
(D) She will lose because the statement was privileged political metaphor rather than a statement of actual fact.

Question 20

Copyright © Practical Step Press, 2014. All rights reserved.

Gow Chemical has operated a chemical plant in the Mojave Desert for 30 years that emits toxic fumes and ash. Houses in the area are discolored by the emissions. Homer built a new home downwind from the plant and he has repainted it several times because the plant emissions discolor it.

20) If Homer sues Gow:

(A) He will lose if he knew or should have known what the emissions would do to his house at the time he built.
(B) He will lose if his house is no more discolored than other houses in the same area.
(C) He will win because "chemical plants" are subject to strict liability.
(D) He will win because Gow is unreasonably interfering with his right to enjoy and use his property.

Question 21

Tom listened to heavy metal rock and roll music on his headphones from the time he was 14 until he was 18. He often turned the music up loud to enjoy it more. Nobody realized it might cause him deafness, so there were no warnings given. By the age of 18 Tom suffered irreversible hearing loss and could not be a highly paid airline pilot as he had dreamed.

21) If Tom sues the manufacturer of the headphones for his lost future income, what is his best product liability theory?

(A) Strict liability.
(B) Negligence.
(C) Breach of implied warranty.
(D) Breach of express warranty.

Question 22

Tex buys the C Street Saloon, a sleepy neighborhood bar, and begins booking some local bands to play on weekend nights. Soon it becomes very popular and draws large crowds. Mildred lives next door and soon starts finding beer bottles, condoms and syringes lying in her yard. She complains to Tex but he ignores her.

22) What is Mildred's best cause of action against Tex?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Questions 23-25

Mary was secretary for the Laborer's Union. It was engaged in a bitter strike against Dee Construction. Management and labor representatives had been engaged in widely reported settlement discussions for weeks. During a break in the negotiations one of the negotiators, Mary, had a hushed conversation in a deserted corner of a local coffee shop with another board member. They didn't know Jimmy Olsen, cub reporter for the Daily Planet, was sitting on the toilet in the men's room immediately behind them and could hear what they were saying. Mary whispered, "I think our president Hoffa must be taking bribes from Dee Construction! That is why he has betrayed our position in these negotiations." The next day the Daily Planet ran a headline, "Union Secretary Accuses Union President Hoffa of Taking Bribes!" The article named Mary and accurately reported what she had said. Mary was embarrassed and lost her position on the board.

23) In an action by Mary against the Daily Planet:

(A) Her best cause of action is intrusion.
(B) She cannot win if she is a public figure.
(C) She will win because she reasonably expected privacy.
(D) She cannot win because her statement was accurately reported by the news media.

Copyright © Practical Step Press, 2014. All rights reserved.

24) In an action by Hoffa against Mary:

(A) He can claim both defamation and false light.
(B) He will win if he is not a public figure.
(C) He will lose if Mary really thought he was taking bribes whether he was or not.
(D) He will lose if Mary claims she was only expressing an opinion, not stating a fact.

25) In an action by Hoffa against the Daily Planet:

(A) He will lose because the paper factually reported what Mary had said without taking a position, whether she was right or wrong.
(B) He will lose if he is a public figure.
(C) If he is not a public figure he can be awarded punitive damages.
(D) He has no burden to prove he was not taking bribes.

Questions 26-28

Linda bought a new house. Shortly after moving in she noticed the next door neighbor, Pervis, was frequently staring at her. Soon he asked her out on a date and she declined. After that he kept pestering her to go out with him. If she sunbathed in her yard he would make "wolf whistles" and say things like, "My, my, my you sure are looking good, Sweet-Cheeks!" She asked him to leave her alone. After that he stopped making remarks but kept looking at her sunbathing in the backyard through cracks between the boards in the fence.

26) If Linda brings an action against Pervis:

(A) She will lose if his only motive was to become her friend.
(B) She will lose because his actions are not unreasonable.
(C) She will win because she can no longer go into her back yard.
(D) She will win if she can no longer enjoy the use of her yard in a normal manner.

27) Linda might be able to recover against Pervis for:

I. Intentional infliction of emotional distress.
II. Interference.
III. Private nuisance.
IV. Trespass.
V. Intrusion.

(A) All of the above.
(B) I, II, III and V.
(C) I, II, and III.
(D) III and V.

28) Linda's best cause of action against Pervis is:

(A) Trespass.
(B) Private nuisance.
(C) Intrusion.
(D) Malicious interference.

Question 29

Zonker got an eviction notice from his landlord. He was able to find a new pad across town. DB had a truck and offered to help him move. Zonker and DB loaded his waterbed, hookah, futon and bean-bag chair onto DB's truck. On the way to Zonker's new crib DB collided with Sue. DB has no auto insurance.

29) Can Sue recover from Zonker?

(A) Yes, because there was an employee/employer relationship between Zonker and DB.
(B) Yes, because Zonker and DB were engaged in a joint enterprise.
(C) Yes, because Zonker assumed both a risk and a duty when he agreed to let DB move his stuff.
(D) Yes, if DB was acting under the control and supervision of Zonker.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 30-32

Tom and Dick had an auto accident and their cars spun out of control, hitting Harry. Tom sued Dick, Dick counter-claimed, and Harry joined in the suit, suing both of them. The jury concluded Tom was 60% at fault and had suffered $100,000 in damages, Dick was 40% at fault and had suffered $50,000 in damages, and that Harry suffered damages of $100,000 and was not at fault.

30) If Harry received a judgment of $100,000 for his injuries:

(A) Both Tom and Dick are liable to Harry for $100,000.
(B) Tom is liable for $100,000 but Dick is not liable because he was less at fault.
(C) Tom is liable to Harry for $60,000 and Dick is liable for $40,000.
(D) Dick is not liable to Harry for anything if Harry legally releases Tom from liability.

31) If Harry receives a judgment against Tom and Dick for $100,000 and collects it all from Tom:

(A) Harry can still pursue recovery from Dick in subrogation.
(B) Tom has a right to collect $100,000 from Dick under the collateral source rule.
(C) Dick is liable to Tom for $40,000 in contribution.
(D) Dick is liable to Tom for $40,000 in indemnification.

32) If Harry releases his claim against Tom in exchange for $50,000:

(A) Harry is barred from an action against Dick.
(B) Dick is barred from seeking contribution from Tom later.
(C) Dick is not barred from seeking contribution from Tom later.
(D) Tom has no right to contribution from Dick.

Question 33

Joe Sixpack got a notice from the IRS that he owed them a large sum plus interest and penalties for unpaid taxes. Joe had a right to file an appeal so he hired Ronnie Butch, an attorney who advertised herself on TV nationwide as "The IRS' Worst Enemy". Ronnie assured Joe she would file the appeal for him and "kick the IRS in the butt". Ronnie failed to file the appeal, Joe's rights to file an appeal lapsed, and the IRS started to foreclose on his house. Joe was furious at Ronnie and discovered she actually was a very bad attorney who had been sued by at least two State attorneys general for fraudulent advertising and repeated failure to adequately represent clients. Joe made a "sandwich board" that said "Warning! Ronnie Butch is a terrible lawyer!" and wore in as he walked up and down in front of the Law Offices of Ronnie Butch day after day.

33) If Ronnie sues Joe:

(A) She will win on a claim of trade slander.
(B) She will lose because Joe is exercising his 1st Amendment right to free speech.
(C) She will lose if Joe's statements are true.
(D) She must prove Joe's actions have caused her to suffer monetary losses.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #7 Answer Sheet

Question	Answer
1	D
2	A
3	D
4	A
5	D
6	D
7	C
8	A
9	B
10	B
11	B
12	D
13	A
14	B
15	A
16	D
17	D
18	B
19	A
20	D
21	C
22	B
23	C
24	C
25	B
26	D
27	D
28	C
29	D
30	A
31	C
32	D
33	A
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #7 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Torts Outline**".

---

1) **(D)** The key to this question is to realize it is far easier to win a case claiming negligence than a case claiming Negligent Infliction of Emotional Distress. (NIED). NIED is a cause of action for bystanders who were never owed any duty by negligent defendants and only suffered emotional distress because the defendants breached their duties to some third party. NIED rules vary considerably between States. [See "**Simple Torts Outline**", **negligent infliction of emotional distress, p. 70**] This is one of the exceptions to the general rule that negligence defendants are only liable to plaintiffs to whom they owed a duty. (D) is the best answer and (A), (B) and (C) are poor answers because if the car actually hit Mary she was "in the zone of danger" and Peter owed her a duty of due care as a result. That makes him liable for ALL injury to her based on negligence, a cause of action recognized in all States, and not just based on NIED, which is much harder to prove. And this is true even if the amount, type and extent of injury suffered by plaintiffs is totally unforeseeable. [See "**Simple Torts Outline**", **egg-shell plaintiffs, p. 9**.]

2) **(A)** Negligent defendants are liable for all injury they cause plaintiffs, including physical and emotional distress, lost wages and profits, and property losses. [See "**Simple Torts Outline**", **damages, p. 8** and **mental stress alone, p. 10**] (A) is correct because Paul was actually hit by Peter's car so he would recover for all of his damages under a negligence theory. (B) and (C) are all wrong because Paul was not a "bystander" and would have no cause of action for NIED. [See "**Simple Torts Outline**", **negligent infliction of emotional distress, p. 70**] (D) is wrong because no facts suggest Peter hit Paul intentionally. And if he had, Paul would have a cause of action for battery, and none for either negligence or IIED.

3) **(D)** Under the attractive nuisance doctrine occupiers of land who know that children are likely to trespass onto the land have a duty to take reasonable steps to protect them from all serious dangerous conditions and activities on the land that the children might not be able to appreciate because of their young age and lack of experience. [See "**Simple Torts Outline**", **duty to trespassing children: attractive nuisance doctrine, p. 54**] (A) and (B) are wrong because the child's age, alone, does not prove they are unable to appreciate dangers. (C) is wrong because the burden of proof is on the plaintiff children, not on the defendant. (D) is correct because the plaintiffs have the burden of proving the defendant knew or should have known that children were likely to trespass into the shed even though the door was locked.

4) **(A)** Answer (D) is wrong and (A) is correct because the only affirmative defense to an attractive nuisance action is assumption of the risk. Contributory or comparative negligence cannot be raised as a defense. [See "**Simple Torts Outline**", **duty to trespassing children: attractive nuisance doctrine, p. 54**] (B) is wrong because there is no requirement in an attractive nuisance action for the children to actually be "attracted onto the land" by the dangerous condition. (C) is wrong because unforeseeable intervening events require unforeseeable intentional acts by third parties (or unforeseeable acts of God or nature), and the plaintiffs are not third parties to their own action.

5) **(D)** Answer (D) is correct because the only affirmative defense to an attractive nuisance action is assumption of the risk. Contributory or comparative negligence cannot be raised as a defense. [See "**Simple Torts Outline**", **duty to trespassing children: attractive nuisance doctrine, p. 54**] (A), (B) and (C) are wrong because these are Farmer's better arguments.

Copyright © Practical Step Press, 2014. All rights reserved.

6) **(D)** Answer (D) is correct because strict product liability only applies to commercial suppliers that are regularly engaged in supplying goods that have caused personal injury and / or property damage. It does not apply when the plaintiffs have suffered purely economic damages (i.e. lost wages and profits). [See "**Simple Torts Outline**", **strict product liability, p. 76**] (A) is wrong because it assumes the brakes were defective when Clyde bought the car (they may have become defective later). (B) and (C) are wrong because the CALL is whether Hy-Town is strictly liable, and the existence or absence of "implied warranties" is irrelevant to that issue.

7) **(C)** Answer (D) is wrong because "privity of contract" between Clyde and the manufacturer is not a required element under any of the four product liability theories. [See "**Simple Torts Outline**", proper plaintiffs for each type of PL action, **p. 74**, **p. 75**, **p. 76**, and **p. 77**.] (C) is correct and (A) and (B) are wrong because Clyde has the burden of proving the car had unreasonably dangerous brakes when the defendant "released the car into the stream of commerce". [See "**Simple Torts Outline**", **unreasonably dangerous products, p. 71**]

8) **(A)** This question plays on confusion between strict liability in negligence and strict product liability. Strict liability in negligence concerns injuries caused by the keeping of exotic animals, roaming animals, and known dangerous animals or "abnormally dangerous" or "ultra-hazardous" activities such as blasting and excavating. [See "**Simple Torts Outline**", **strict liability causes of action, p. 22**.] (B) is wrong because Peter's injury was not caused by Owen doing any of those things. Strict product liability concerns injuries caused by products that were unreasonably dangerous at the time they were put into the stream of commerce. [See "**Simple Torts Outline**", **unreasonably dangerous products, p. 71**] Liability only extends to claims of personal injury or property damage, but does not cover purely economic losses. (C) and (D) are wrong because Peter's injury was the loss of his job, purely economic loss. He was not hurt and he did not own the damaged motorcycle. Therefore, he would lose and (A) is correct.

9) **(B)** Answers (A) and (D) are wrong because Owen and Peter were not engaged in "abnormally dangerous" activities, and they did not release the mower into the stream of commerce. [See "**Simple Torts Outline**", **strict liability causes of action, p. 22** and **unreasonably dangerous products, p. 71**] (C) is wrong because the product was not unreasonably dangerous when Torus sold it. (B) is correct because Jack was a commercial supplier, and it removed the safety shields from the mower before it sold it, making the mower unreasonably dangerous.

10) **(B)** Chuck's injury is that his motorcycle was damaged when Peter crashed. (B) is the correct answer because Chuck's only cause of action against Torus would be for product liability, and the mower was not unreasonably dangerous when Torus sold it. [See "**Simple Torts Outline**", **unreasonably dangerous products, p. 71**] (A), (B) and (C) are all is wrong because the acts of Peter, Owen and Jack were all substantial factors in causing Chuck's injury. Chuck was injured because Peter crashed, and Peter crashed because he was negligently driving without goggles, because Owen negligently ran over the bone, and because Jack negligently sold the mower without the safety shield. [See "**Simple Torts Outline**", **substantial factors, p. 3**.] The negligence of Peter did not cut off the liability of Owen and Jack, and the negligence of Owen did not cut off the liability of Jack because negligence by others is not an unforeseeable intervening event. [See "**Simple Torts Outline**", **negligence is usually considered foreseeable, p. 5**.]

Copyright © Practical Step Press, 2014. All rights reserved.

11) **(B)** In order for plaintiffs to prevail in a public nuisance actions they must prove the defendants unreasonably and substantially interfered with their ability to use and enjoy public rights or resources in a different way or to a greater extent than other private individuals. [See "**Simple Torts Outline**", **nuisance, p. 88**] (A) and (C) are wrong and (B) is correct because Juan must prove the injury he suffered was different or more extensive from the effect the actions of Gonsanto had on other people in the same area. (D) is wrong because "coming to the nuisance" is seldom a complete bar to recovery in a nuisance action.

12) **(D)** Nuisance plaintiffs have the burden of proving the defendants unreasonably and substantially interfered with their ability to use and enjoy either their land (for private nuisance) or public rights or resources (public nuisance). The fast way to solve this problem is to note that (A), (B) and (C) all include Fact I. That "fact" that the pesticide is the only effective means of controlling the insect is totally unrelated to the real question of whether Gonsanto has located and operated its plant in a reasonable manner. [See "**Simple Torts Outline**", **nuisance, p. 88**] Consequently all of those answers are inferior and (D) is the only good answer. Fact IV proves that Gonsanto is operating its plant in a reasonable manner (there is no better way) and Fact III proves it located its plant in a reasonable location. It may be that the plant is no longer in a reasonable location because of later development in the area, but a court would consider whether or not Juan and others who have "come to the nuisance" deserve a remedy.

13) **(A)** Answer (A) is clearly the best answer. To prevail in a trespass to land action Juan only has to prove Gonsanto has caused "particulate matter" to enter his land. [See "**Simple Torts Outline**", **trespass to land, p. 28**] If he does that he has a legal right to a remedy for all damages caused. The facts state that a "mist" is emitted by the defendant's plant and drift across the valley. If he proves that mist settles on his land and discolors his peppers he will win. Juan does not have to prove Gonsanto acted unreasonably in an action for trespass to land. In comparison, (B), (C) and (D) all are inferior causes of action because for those causes of action Juan has to prove Gonsanto acted unreasonably. That is often a difficult fact to prove.

14) **(B)** A products liability action can only be brought against a person who has released an unreasonably dangerous product into the stream of commerce. [See "**Simple Torts Outline**", **products liability, p. 71**] (A), (C) and (D) are all wrong because Sergio has not "released" the scalpel in dispute "into the stream of commerce". He has not "sold" or "given' the scalpel to Pat or anyone else. Therefore (B) is correct.

15) **(A)** Answer (B) is wrong because negligence by others is generally, by law, considered foreseeable, so negligence by Sergio would not be a defense for Hospital as to its own strict liability. [See "**Simple Torts Outline**", **negligence is usually considered foreseeable, p. 5**.] (C) is wrong because even if the scalpel was "defective" in some way, that does not prove it was either unreasonably dangerous or that the "defect" caused Pat's injury. For example, the "defect" might simply have been a discoloration. [See "**Simple Torts Outline**", **products liability, p. 71** and Proof of "Defect" is Irrelevant, p. 72.] (D) is correct because Pat must prove the scalpel was unreasonably dangerous if he is to win, and (A) is also correct because Pat will lose if he assumed the risks of surgery. So here you actually have two "correct" answers and you must choose which is best. This is a situation you frequently are faced with on Bar exams! Consider which answer is the more dispositive. Pat must prove the scalpel was unreasonably dangerous as stated in (D), but he is still going to lose if he assumed the risks as stated in (A). So (A) is the better answer.

16) **(D)** Answer (A) is wrong because "privity of contract" is not a required element under any of the four product liability theories. [See "**Simple Torts Outline**", proper plaintiffs for each type of PL action, **p.**

Copyright © Practical Step Press, 2014. All rights reserved.

74, **p. 75**, **p. 76**, and **p. 77**.] Liability extends to all plaintiffs who could foreseeably be injured by the product. (B) is wrong because even if Pat assumed the risks of "surgery" he did not assume the risks that medical products used during surgery would be manufactured in a defective manner. [Note: The prior question posited "if he assumed the risks" while this one posits "because he assumed the risks". That semantic difference is very important.] (C) is wrong because the CALL concerns strict product liability, and that does not require any breach of implied warranty. (D) is the best answer because Pat must prove the scalpel was unreasonably dangerous when CutCo sold it to Hospital or otherwise "released it into the stream of commerce".

17) **(D)** An action for defamation requires plaintiffs to prove defendants published false, unprivileged, defamatory statements of fact about them, causing damage to their standing and reputation in the community. [See "**Simple Torts Outline**", **defamation, p. 78**.] A defamation per se is a clearly libelous (written) statement or one that alleges the plaintiff has a "loathsome disease", has committed a serious crime, or has engaged in sexual, business or professional misconduct. [See "**Simple Torts Outline**", **clear defamations of the plaintiff, p. 81**.] If a defamation is "per se" general damages can be presumed. But general damages can also be proven by factual evidence. [See "**Simple Torts Outline**", **burden of proving damages, p. 81**] (A) is wrong because no facts suggest Toad has suffered "severe emotional distress". (B) is wrong because Mel did not do anything to cause Toad to be apprehensive of a battery. (C) is somewhat suggested by the facts but it is not clear that Toad was actually prevented from leaving. (D) is the best answer because Mel accused Toad of theft in front of Betty Sue, thereby "publishing" a defamation per se, and since Betty Sue asked Toad "why he took the money" Toad's reputation (for honesty) was clearly damaged. That makes defamation Toad's best cause of action, and since that is not listed as a choice in (A), (B) or (C) the best answer is "none of the above".

18) **(B)** Plaintiffs in actions for malicious prosecution must prove defendants started or continued criminal proceedings without any honest, reasonable belief probable cause existed. [See "**Simple Torts Outline**", **malicious prosecution, p. 94**.] (A) is wrong because Harry does not have to prove they acted without probable cause. Rather, he must prove they acted without any honest, reasonable belief probable cause existed. (C) is wrong because no "final determination" is necessary. The charges may be dropped by the prosecution, the case may be dismissed by the court, the police may terminate their investigation or Harry may be acquitted after trial. (D) is wrong because Harry does not have to "prove" he did not start the fire. (B) is correct.

19) **(A)** Defamation plaintiffs who are public figures must prove the defendants published defamatory statements about them with actual malice. [See "**Simple Torts Outline**", **public figures and actual malice, p. 83**.] "Actual malice" means making false statements about the plaintiff with either knowledge they are false or else without an honest, reasonable belief they are true. This is often called "reckless disregard" for the truth. (A) is correct because it is a clear and correct statement of the law because Abby is a public figure. (B) is obviously wrong because Doctor Abby has not "murdered any babies". (C) is wrong because "murder" is a serious crime, so a false accusation someone is a "murderer" is a defamation per se, and the plaintiff can win general damages without proving special damages. (D) is wrong because the statement Doctor Abby has "murdered babies" is not a privileged statement. Statements have a qualified privileged if they are made without malice and reasonably necessary to protect a personal, private or common interest. But that is not the case here. [See "**Simple Torts Outline**", **privileged statements, p. 79**.]

20) **(D)** Homer's only possible remedy would have to be from a private nuisance action because no facts suggest he has suffered different or worse injury than other people in the area. To prevail in a private nuisance action Homer must prove Gow has unreasonably interfered with his ability to use and enjoy his land. [See "**Simple Torts Outline**", **nuisance, p. 88**.] (A) is wrong because "coming to the

Copyright © Practical Step Press, 2014. All rights reserved.

nuisance" is not an absolute bar to recovery. [See "**Simple Torts Outline**", **defenses to nuisance, p. 89**.] (B) is wrong because in a private nuisance action plaintiffs do not have to prove the injury they have suffered is different from other land owners in the area. (C) is wrong because there is no "strict liability" in a nuisance action, and the injury Homer has suffered, pain discoloration, is not one of the "inherent dangers" that would make chemical manufacturing a strict liability activity. (D) is correct because Gow unreasonably interfered with his ability to enjoy his land.

21) **(C)** Answer (A) is wrong because Tom cannot recover lost future income on a strict liability theory. [See "**Simple Torts Outline**", strict product liability **damages, p. 77**.] (B) is not the best choice because if "nobody realized" there was any danger it would be impossible to prove the manufacturer was negligent. (D) is wrong because no facts suggest there was ever an express warranty concerning the ear phones. (C) is the best choice by default because the earphones were unreasonably dangerous when used as intended.

22) **(B)** Answer (A) is wrong because the beer bottles and other debris was being put in Mildred's yard by Tex's customers, and not by Tex. (B) is the best answer because Tex's activities are unreasonably interfering with Mildred's ability to use and enjoy her land. [See "**Simple Torts Outline**", **nuisance, p. 88**.] (C) is not the best answer because Tex's behavior is not interfering with Mildred's ability to use and enjoy "public rights and resources". (D) is wrong because Tex is not creating "reasonably foreseeable perils" to Mildred nor does he owe her a duty of due care based on any other recognized negligence criteria.

23) **(C)** Plaintiffs bring an action for public disclosure of private facts ("disclosure") must prove the defendants unreasonably revealed embarrassing, private facts about plaintiffs in violation of reasonable expectations of privacy. [See "**Simple Torts Outline**", **disclosure of private facts, pp. 85-86**.] (A) is wrong because Olsen, the Daily Planet reporter, did not unreasonably intrude into Mary's privacy. He overheard her conversation from a place he had every right to be. [See "**Simple Torts Outline**", intrusion, p. 85.] (B) is wrong because the "public figure" holding in *New York Times v. Sullivan* concerns only defamation actions, not invasion of privacy actions. (C) is correct because Mary had a reasonable expectation her comments to the other board member would remain private. (D) is wrong because the "news media" has no right to unreasonably reveal private facts about people. [For example: Information about medical patients is private. Tabloids and other "news media" can report that people have been hospitalized, but cannot reveal any further details, even if they are in possession of the information.] If Mary sued the paper for false light instead of disclosure, this would be an effective defense for the paper. But it is not a defense against a disclosure action.

24) **(C)** People are privileged to make statements, even if the statements prove to be false and defamatory, as long as they speak without malice and as reasonably necessary to protect their own interests, the interests of groups, and the public interest. [See "**Simple Torts Outline**", **privileged statements, p. 79**]. (A) is wrong because Mary's statement was clearly defamatory (damaging to reputation) and did not simply portray Hoffa in a "false light" (causing only embarrassment and inconvenience). [See "**Simple Torts Outline**" **false light, p. 86**]. (B) is wrong because the "public figure" holding in *New York Times v. Sullivan* concerns only defamation actions, not invasion of privacy actions. (C) is correct because if Mary spoke with an honest belief her statement was true it was privileged because she was clearly speaking to protect the interests of the Union. (D) is wrong because even though Mary was "expressing her opinion" her statement implied a factual assertion that "Hoffa is taking bribes".

25) **(B)** Answer (A) is wrong because a repetition of a defamatory statement "republishes" it and makes the repeating party as liable for the defamatory statement as the first person to publish it. (C) is wrong because punitive damages cannot be awarded in defamation actions (against anyone) unless plaintiffs

Copyright © Practical Step Press, 2014. All rights reserved.

prove the defendants spoke with actual malice, and Hoffa could not do that here. [See "**Simple Torts Outline**", **punitive damages, p. 84**.] (D) is wrong because Hoffa is the plaintiff and he would have the burden in a defamation action of proving Mary's statement was false. (This is almost always done by the plaintiff testifying that what the defendant said was false.) (B) is correct because Hoffa is a public figure and would have to prove actual malice because he is the "Union President". [See "**Simple Torts Outline**", **public figures and actual malice, p. 83**.] Since he could not prove the Daily Planet knew the statement Mary made about him was false or printed without an honest, reasonable belief that it was true, he would lose.

26) **(D)** Answer (A) is wrong because if Pervis' actions are unreasonable his motive is irrelevant. (B) is wrong because Pervis' actions are obviously "unreasonable". (C) is wrong because Pervis is not preventing Linda from "going into her back yard" despite her statement. (D) is somewhat better than (C) because if she can no longer enjoy the use of her yard in a normal manner it implies his behavior is unreasonable, and that would support an action for either intrusion or nuisance. [See "**Simple Torts Outline**", **nuisance, p. 88**.]

27) **(D)** The quick way to answer this question is just to note that (A), (B) and (C) all include an action for IIED (Fact I). But Linda can't recover against Pervis for IIED because she has not suffered any "extreme emotional distress". Mere anger and irritation are not enough. [See "**Simple Torts Outline**", **intentional infliction of emotional distress, p. 31**.] So Fact I is wrong, and that makes (A), (B) and (C) all wrong. (D) is correct because Pervis has intruded on Linda's privacy and made a nuisance of himself. [See "**Simple Torts Outline**", **intrusion, p. 85** and **nuisance, p. 88**.]

28) **(C)** Answer (A) is wrong because Pervis has not entered onto Linda's land. (D) is wrong because an action for "malicious interference" concerns unreasonable interference with the plaintiff's economic activities. [See "**Simple Torts Outline**", **malicious interference, p. 92**] (C) is a better answer than (B) because the given facts substantially prove Pervis unreasonably violated her right to be left alone in a place where she had a reasonable expectation of privacy. [See "**Simple Torts Outline**", **intrusion, p. 85**,] But the facts do not show as clearly that Pervis prevented Linda from being able to use and enjoy her land.

29) **(D)** Generally defendants are vicariously liable for the tortuous acts of others only if the acts are committed within the express or implied course and scope of their special relationship, AND the person who actually commits the tort (the tortfeasor) has less or equal control. [See "**Simple Torts Outline**", Vicariously Liable Co-Defendants, p. 19] (A) is wrong because DB is not Zonker's employee. (B) is wrong because Zonker and DB were not clearly engaged in a joint enterprise. DB was not helping Zonker to enjoy any "mutual benefit", and Zonker did not have equal control of the truck. [See "**Simple Torts Outline**", **vicarious joint enterprise liability, p. 20**] (C) is wrong because "assumption of the risk" is a negligence defense, not a basis for vicarious liability. (D) is correct because IF Zonker was "controlling and supervising" DB THEN he would be liable for the resulting accident.

30) **(A)** Answer (A) is correct because Tom and Dick are concurrent tortfeasors who breached a common duty of due care, causing an indivisible harm to Harry. That causes them to have joint and several liability. [See "**Simple Torts Outline**", **liability of joint and concurrent tortfeasors, p. 17**.] (B) is wrong because Dick is liable to Harry, even if he might not be liable to Tom in a jurisdiction that recognizes contributory negligence or modified comparative negligence. (C) is wrong because Tom and Dick have joint and several liability. (D) would be true under the older common law views but it is wrong under the modern view. [See "**Simple Torts Outline**", **effect of release of one co-defendant alone, p. 17**.]

Copyright © Practical Step Press, 2014. All rights reserved.

31) **(C)** Answer (A) is wrong because Harry only has a right to collect $100,000, and if he gets it from Tom he has no right to collect anything from Dick. [See "**Simple Torts Outline**", **liability of joint and concurrent tortfeasors, p. 17**.] (B) is wrong because the "collateral source rule" has an entirely different meaning. It just means the parties could not introduce evidence at trial that other parties were covered by insurance or that the damages they suffered were otherwise compensated for. [See "**Simple Torts Outline**", Collateral Source Rule, p. 12.] (D) is wrong because "indemnification" means the right of defendants who are only vicariously liable to fully recover reimbursement from defendants who are directly liable. [See "**Simple Torts Outline**", **liability of joint and concurrent tortfeasors, p. 17**.] (C) is correct because Dick would be liable to Tom for $40,000 of the $100,000 Harry collected from him.

32) **(D)** Answer (A) would be true under the older common law vies but it is wrong under the modern view. [See "**Simple Torts Outline**", **effect of release of one co-defendant alone, p. 17**.] (B) and (C) are both less than correct because jurisdictions are split on whether or not a co-defendant can seek contribution from other co-defendants who enter into pre-trial settlement agreements with plaintiffs. [See "**Simple Torts Outline**", **right to contribution from settling co-defendant, p. 18**.] (D) is the better answer because even though Tom would have a right to seek contribution from Dick under the modern view for paying damages caused by Dick, Tom paid Harry less than the damage he caused himself (Harry suffered $100,000 in damages and Tom caused $60,000 of that.) [See "**Simple Torts Outline**", **right of co-defendant to seek contribution, p. 18**.] So Tom did not pay Harry for any of the damages that were caused by Dick, and he would not have any basis for claiming Dick owed him anything.

33) **(A)** Malicious interference (trade slander) is a general term for the unreasonable interference with the plaintiff's economic activities. [See "**Simple Torts Outline**", **malicious interference, p. 92**.] It may also be called injurious falsehood, interference with contract, trade slander and interference with prospective economic advantage. (A) is correct because Joe's behavior, picketing Ronnie's offices, is unreasonable. He should seek compensation in court, not seek revenge on the streets. (B) is wrong because defamation and malicious interference are not forms of expression protected by the 1st Amendment. (C) is wrong because an action for "trade slander" is totally unrelated to actions for defamation, so the "truthfulness" of Joe's statements is irrelevant. (D) is wrong because Ronnie can seek and obtain an injunction regardless of whether she can prove actual damages.

Copyright © Practical Step Press, 2014. All rights reserved.

Test # 8 – Criminal Law Fundamentals and Crimes Against Property

Test #8 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **criminal law fundamentals** (strict liability crimes, coincidence of mens rea and actus reus, standard of proof), **crimes against property** (larceny, false pretenses, embezzlement, burglary, arson), and **causality**. Insert your own time marks! The Answers and Explanations follow.

Question 1

Dee borrowed her boyfriend's car to go to the City. On the way she was pulled over for speeding. The officer asked to see the car registration, and as she looked for it in the glove compartment a film canister fell out. The officer asked her if he could look inside it and she consented. Inside the film container was some cocaine. Dee was arrested for felony possession of cocaine under a State statute.

1) Dee is:

(A) Not guilty, if she did not know there was cocaine in the car.
(B) Not guilty, if she lacked criminal intent.
(C) Guilty, because she was in possession of cocaine.
(D) Guilty, if she knew her boyfriend used cocaine.

Question 2

Dagwood was always borrowing tools from his neighbor, Herb Woodley, and forgetting to take them back. One day he was cleaning the gutters on his house. He needed to borrow Herb's ladder but Herb wasn't home. So he broke into Herb's garage and took his ladder. Later Dagwood forgot to return the ladder.

2) What crimes is Dagwood guilty of committing?

(A) No crime.
(B) Burglary and larceny.
(C) Larceny but not burglary.
(D) Robbery.

Question 3

O'Reilly was drinking heavily at Flannigan's as usual. After the "last call" he put on his hat and coat and staggered home. The next morning an officer knocked on his door. When O'Reilly opened the door he was arrested for stealing Patrick Hare's hat.

3) If O'Reilly took Hare's hat by mistake because he was drunk, he is:

(A) Guilty of larceny, if he discovered the hat was not his own after he got home that night.
(B) Guilty of larceny, because voluntary intoxication is not a defense to larceny.
(C) Not guilty of larceny, if he thought the hat was his own.
(D) Not guilty of larceny, if he intended to bring the hat back.

Question 4

4) Lori went to Walmart intending to steal a blouse but changed her mind when she saw her friend Frieda arrested in the parking lot. Lori can be charged with:

(A) No crime.
(B) Attempted burglary.
(C) Attempted theft.
(D) Attempted theft and attempted burglary.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 5-6

Dr. Frankenstein gave his servant, Igor, a $20 bill and sent him to the local morgue to buy a brain for his monster.

5) If Igor later decides to use the $20 to drink in the local bar instead of buying the brain he has committed the common law crime of:

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

6) If Igor buys the brain on sale for $17 but then decides to pocket the change he has committed the common law crime of:

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

Questions 7-8

Tony was a shipping clerk for Sears. He told Vic he could get him a new TV for only $100. Vic agreed and Tony gave him a dock receipt in exchange for $100. Vic took the receipt to the loading dock behind Sears and took possession of a TV that normally costs $1200.

7) Tony can be charged with:

(A) Embezzlement.
(B) False pretenses.
(C) Larceny by trick.
(D) Embezzlement and conspiracy.

8) Vic can be charged with:

(A) Larceny by trick.
(B) Receiving stolen property.
(C) False pretenses.
(D) Accessory to embezzlement.

Questions 9-10

Gina was the bookkeeper for Reliable Construction Co. At 5:00 p.m. on Friday she slipped $1,000 out of the company vault. That weekend she parleyed the $1,000 into $5,000 at Big Chief Indian Casino. On Monday she slipped the $1,000 back into the vault. She was promptly arrested because she had been under surveillance by the company's security firm.

9) Gina can be charged with:

(A) Embezzlement.
(B) False pretenses.
(C) Larceny by trick.
(D) No crime if she intended to replace the money at the time she took it.

10) If Gina failed to return the money she can be charged with:

(A) Larceny by trick.
(B) Receiving stolen property.
(C) False pretenses.
(D) Embezzlement.

Questions 11-13

Wanda liked her liquor, but she didn't have any money. She was caught stealing whiskey from the store so often she was told to stay out. So she taught her 6 year-old son, Sonny, to recognize her favorite brand of whiskey. Then she told him to go into the store, put a bottle of her favorite whiskey in his backpack, run out of the store and meet her in the alley.

11) If Sonny does as Wanda tells him, what crimes has he committing?

(A) No crime.
(B) Burglary and larceny.
(C) Larceny but not burglary.
(D) Burglary, larceny and conspiracy to commit burglary and larceny.

Copyright © Practical Step Press, 2014. All rights reserved.

12) If Sonny does as Wanda tells him, what crimes has Wanda committed?

(A) No crime.
(B) Burglary and larceny.
(C) Larceny but not burglary.
(D) Burglary, larceny and conspiracy to commit burglary and larceny.

13) If Sonny comes out of the store empty-handed and tells Wanda they didn't have her favorite brand, what crimes have Wanda committing?

(A) No crime.
(B) Attempted burglary and attempted larceny.
(C) Burglary alone.
(D) Burglary and attempted larceny.

Questions 14-15

Timothy, a Harvard law student, was dating Professor Kingsley's daughter, Nancy. One night when the Professor was away at a seminar she invited Timothy to her father's home. While Nancy was asleep Timothy went into Professor Kingsley's home office and looked through his files.

14) Timothy can be charged with what crime?

(A) No burglary, unless he intended to commit a felony in the office.
(B) No burglary, because Nancy invited him into her father's home.
(C) Burglary, if he entered the room looking for the professor's credit card number to charge against it later.
(D) Burglary, if he was looking for the questions the professor was asking on his next final exam.

15) If Timothy went into the professor's office looking for the questions the professor was going to ask on the next exam but Nancy found him writing down her father's credit card number:

(A) He can be charged with burglary.
(B) He can be charged with larceny.
(C) He can be charged with attempted burglary.
(D) He can be charged with attempted false pretenses.

Question 16

16) Lori went to Walmart to buy a blouse. She found some lipstick she liked and decided to steal it. But then she realized she was being watched. So she put the lipstick back on the shelf and left. Lori can be charged with:

(A) No crime.
(B) Burglary.
(C) Theft.
(D) Attempted theft.

Question 17

17) Lori went to Walmart to steal a blouse she had seen, but someone else had already bought it. Lori could be charged with:

(A) No crime.
(B) Burglary.
(C) Theft.
(D) Attempted theft.

Question 18

18) Lori went to Walmart intending to steal a blouse. She put the blouse on in the dressing room but realized she was being watched. So she took off the blouse and left the store. Lori could be charged with:

(A) No crime.
(B) Burglary and theft.
(C) Theft.
(D) Burglary.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 19-21

Bevis decided to break into Butthead's house and steal his TV. Bevis left his apartment on his way to Butthead's.

19) If Bevis ran into Peggy Sue as he walked out his door and decided to buy her a beer instead of taking Butthead's TV, he can be charged with:

(A) Attempted burglary.
(B) Attempted larceny.
(C) Attempted burglary and attempted larceny.
(D) No crime, unless Butthead's house is near Bevis' apartment.

20) If Bevis got to Butthead's house, threw a rock through the window, but then got scared and ran away, he can be charged with:

(A) Attempted burglary and attempted larceny.
(B) Burglary and attempted larceny, if the rock went into Butthead's house after it broke the window.
(C) No crime if the rock did not penetrate the plane of the window.
(D) Malicious mischief.

21) If Bevis got to Butthead's house but gave up and ran away after breaking the window, he can be charged with:

(A) Burglary and attempted larceny.
(B) Burglary and attempted larceny if he reached in to unlatch the window and Butthead's dog bit his hand.
(C) Attempted burglary and attempted larceny.
(D) No crime if he gave up because he changed his mind.

Questions 22-23

Hansel and Gretel were walking through the forest when they came upon Witch's cottage made of gingerbread and candy.

22) If they began eating the outside of the cottage, they are guilty of:

(A) Burglary and larceny.
(B) Burglary.
(C) Larceny.
(D) Malicious mischief.

23) If they broke into the cottage and began eating the furniture (also made of candy), they are guilty of:

(A) Burglary.
(B) Malicious mischief.
(C) Burglary and larceny.
(D) No crime if they were lost and hungry.

Question 24

Swifty bought an expensive diamond ring from Robert's Jewelry. After Swifty left the store the credit card company called Robert and reported the credit card Swifty had used was stolen.

24) Robert knew where he lived. Robert went to Swifty's house the next morning to get the ring back, but nobody was home. Robert could see the ring on the kitchen counter through an open window. Swifty went into the house through the open window and took the ring. If charged with burglary and larceny, Robert's best defense argument would be:

(A) He had a right to repossess the ring because it had not been paid for.
(B) Defense of property.
(C) Recapture of chattel.
(D) He entered the house in the daytime through an open window.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 25

Tom asked Dick where he could buy a stolen car radio, cheap. Dick told him, "Go to Harry's Second-Hand Store. He sells a lot of stolen stuff." Tom went to Harry and said, "I'm looking for a top-quality radio at a bargain price. I hear you are the man to see." Harry told him he had an "almost new" $700 radio that Tom could have for just $100. Tom agreed and Harry gave him a sealed box. As Tom walked to his car with the box he was stopped and arrested by the police. Inside the box was a cheap tape deck.

25) If the tape deck Tom got was stolen, can he be found guilty of receiving stolen property?

(A) Not if Dick was an undercover police officer because then he was entrapped.
(B) Yes, because he thought the stolen tape deck was a stolen radio.
(C) No, because he did not receive a stolen radio as he was promised.
(D) No, because the crime he actually committed was attempted receipt of stolen property.

Question 26

Don was driving his father's car and carefully making sure he was driving below the 65 mph speed limit when he was pulled over by a policeman and cited for speeding at 70 mph. Don had the speedometer of the car checked and it was discovered to be faulty. At a speed of 70 mph the gauge displayed a speed of 64 mph.

26) Based on this evidence Don is:

(A) Guilty of speeding.
(B) Not guilty because the speedometer was faulty.
(C) Guilty if he knew the speedometer was faulty.
(D) Not guilty of speeding if he lacked criminal intent.

Question 27

Bob started a bonfire in violation of a local ordinance. The wind accidentally whipped the fire out of control and it swept across the land, burning down fences and a barn, despite Bob's best efforts to stop it.

27) Under common law Bob can be:

(A) Charged with arson if he started the fire maliciously.
(B) Charged with arson if he knew he was violating the local ordinance.
(C) Charged with arson unless the fences and barn belonged to Bob.
(D) None of the above.

Question 28

Bauer sold a used car to Suzie telling her, "This is a great car. It has low mileage, good tires, and gets good gas mileage."

28) Bauer can be charged with criminal fraud if:

(A) He knew the tires were worn.
(B) He knew the car used a lot of gas.
(C) The odometer of the car had been turned back.
(D) He knew the odometer of the car had been turned back.

Question 29

Tom worked in the office at Sears. He used the company computer system to generate a phony bill of sale. He sold it to Dick for $50. Dick went to the loading dock in the back of the Sears store and handed the ticket to the dock workers. They loaded a wide-screen TV into the back of Dick's truck, and he drove away with it.

29) Dick can be charged with and convicted of:

(A) Embezzlement.
(B) Forgery.
(C) Larceny by trick and uttering.
(D) Larceny by trick.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 30

Tom worked in the office at Sears. He used the company computer system to generate a phony bill of sale. Tom's boss, Pablo, discovered what he was doing but the police asked Pablo to let Tom continue with his criminal plan so they could catch everyone involved. Tom sold the phony bill of sale to Dick for $50. Dick went to the loading dock in the back of the Sears store and handed the ticket to the dock workers. They loaded a wide-screen TV into the back of Dick's truck. Then Dick sold the TV to Harry for $150. The police arrested Tom, Dick and Harry.

30) Dick and Harry can both be charged with:

(A) Attempted larceny by trick
(B) Attempted receipt of stolen property.
(C) Larceny by trick.
(D) Receiving stolen property.

Question 31

John decided to break into Walmart in the night to steal cigarettes and whiskey. He got in his car with a crowbar and a gunny sack and left for Walmart. Then his car broke down. Since he could not use the car to escape the scene of the crime he abandoned his criminal plan.

31) John can be charged with:

(A) Attempted burglary.
(B) Attempted burglary and attempted larceny.
(C) No crime unless his car broke down near the Walmart.
(D) No crime.

Question 32

Bud and Lou were in prison together. After they got out Bud suggested that they rob a Brinks car together. Lou refused to help, saying he did not want to go to prison again. Bud robbed the Brinks car all by himself. Then Lou made Bud give him a share of the loot under threat that otherwise he would turn him in to the police.

32) Lou can be charged with:

(A) Bank robbery.
(B) Aiding and abetting.
(C) Compounding a felony.
(D) Misprision of a felony.

Question 33

Bernie was visiting his friend, Victor, on Friday. Victor told him was going to the movies on Saturday night. Bernie decided to break into Victor's house while he was at the movies and steal his TV. So while Victor was in the bathroom, Bernie unlocked Victor's downstairs window. He planned on returning on Saturday night when Victor was gone, to sneak in through the window and take the TV. But on Saturday morning Victor called him and said someone had broken into his house on Friday night and stole his TV.

33) Bernie can be charged with:

(A) Burglary.
(B) Attempted burglary.
(C) Attempted larceny.
(D) No crime.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #8 Answer Sheet

Question	Answer
1	B
2	A
3	C
4	C
5	B
6	A
7	C
8	A
9	A
10	D
11	A
12	B
13	D
14	C
15	D
16	C
17	D
18	C
19	D
20	A
21	B
22	A
23	D
24	B
25	B
26	A
27	D
28	D
29	D
30	B
31	C
32	C
33	D
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #8 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Crimes Outline**".

1) **(B)** For all crimes except the "strict liability crimes" the prosecution must prove the defendant acted with "criminal intent" which is also called the "mens rea". [See "**Simple Crimes Outline**", **the strict liability crimes, p. 6** and **criminal intent – mens rea, p. 7**.] To be guilty of felony drug possession the prosecution must prove two things. First, that the defendant possessed illegal drugs, and second that the defendant intentionally acted to possess them. For criminal law an "intentional act" is exactly the same thing it is for tort law. It requires that the defendant act for the purpose of causing an illegal result. (C) and (D) are wrong because they fails to recognize the prosecution must prove Dee acted with criminal intent. (A) could be correct if answer (B) was not offered because a finder of fact might conclude she intended to possess the drugs if she took the car knowing the drugs were in it. But (B) is the better answer because it is exactly on point.

2) **(A)** Answer (D) is wrong because Dagwood did not take anything from Herb by using force or fear to overcome his will to resist. [See "**Simple Crimes Outline**", **robbery, p. 48**.] (B) and (C) are wrong because larceny is a trespassory taking and carrying away of the personal property of another with intent to permanently deprive, and Dagwood did not intend to keep the ladder permanently. [See "**Simple Crimes Outline**", **larceny, p. 29**.] He simply "forgot to return" it. So there is no crime here and (A) is correct.

3) **(C)** To prove a larceny occurred, the prosecution must prove the defendant acted with intent to permanently deprive some other person of his/her property. [See "**Simple Crimes Outline**", **intent to permanently deprive, p. 37**.] That intent may be implied by the defendant's behavior. So if the defendant takes someone else's property, that act may imply intent to permanently deprive. But that implication may be overcome by evidence the defendant's behavior was simply the result of an "innocent mistake". [See "**Simple Crimes Outline**", **implied intent and mistake of fact, p. 10**.] (B) is wrong because voluntary intoxication can be a defense to a larceny charge. Larceny is a specific intent crime. Evidence of intoxication may convince the jury the defendant did not act with intent to permanently deprive someone else of their property. [See "**Simple Crimes Outline**", **defense of intoxication, p. 93**.] (A) is wrong because the defendant must have criminal intent at the same time of the act of "taking and carrying away". (D) is wrong because even if O'Reilly intended to take the hat back the next day, that fact does not negate the possibility he intended to permanently deprive Hare of his hat the night before. (C) is correct because if O'Reilly thought he was taking his own hat he did not have intent to permanently deprive someone else of their property.

4) **(C)** Under common law a burglary was the trespassory breaking and entering of the dwelling of another person in the night with intent to commit a felony. Here there could be no attempted common law burglary because the defendant intended to enter a store, not a dwelling. Modernly burglary still requires proof of a trespassory entry, and if that is proven it generally supports a finding of "constructive breaking". A "trespassory entry" is an entry without consent or permission. Some States have "commercial burglary" statutes that make any entry to any structure with intent to commit a felony or larceny a burglary, but that is not clearly a broadly adopted view. The Model Penal Code, for example, expressly provides the opposite – entry to a building that is open to the public is not a burglary. [See "**Simple Crimes Outline**", **entry for a criminal purpose – statutory "commercial burglary", p. 54**.] (B) and (D) are not clearly correct because the store was open for business, and would not have been "trespassory" for Lori to enter it. The common law crime of larceny is modernly codified, generally, as the crime of "theft", and an attempted theft is the act of taking a substantial step

Copyright © Practical Step Press, 2014. All rights reserved.

toward committing the crime of theft. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.] (C) is correct because Lori intended to steal and took a substantial step toward commission of her crime, far beyond mere planning or preparation, when she left her home and went to the store. (D) is wrong because Lori committed a substantial step by going to the store.

5) **(B)** Answers (A) and (D) are wrong because under common law a "servant" who was given property by a "master" to be carried to a third party was considered to only have been given "custody" and not "entrusted" with "lawful possession", so any theft of the master's property by the servant before reaching the third party was a larceny and not an embezzlement. [See "**Simple Crimes Outline**", **thefts by servants and low-level employees, p. 34**.] (C) is wrong because Igor did not intend to steal the money at the time he received it from Dr. Frankenstein. (B) is correct because the given facts only support a claim of larceny.

6) **(A)** Answer (A) is correct and (B) and (C) are wrong because under the common law a "servant" given property by a third party to be taken to the "master" was considered to have been "entrusted" with "lawful possession", as long as they have no intent to steal at the time they receive possession, so any theft of the master's property by the servant after leaving the third party and before reaching the master was an embezzlement and not a larceny. [See "**Simple Crimes Outline**", **thefts by servants and low-level employees, p. 34**.] (D) is wrong because Igor did not use any false representation to obtain title to the brain from the morgue.

7) **(C)** Answers (A) and (D) are wrong because under the common law embezzlement was the trespassory conversion of personal property of another by a defendant who had been "entrusted with lawful possession". Some employees such as "managers" and "bookkeepers" were deemed to have "lawful possession" of property of an employer that was entrusted to them. But Tony is just a "shipping clerk" and would not have been deemed to have been given "lawful possession" by Sears. [See "**Simple Crimes Outline**", **lawful possession, p. 40**.] (B) is wrong because under common law false pretenses is the crime of obtaining title (ownership) to property from another by using a misrepresentation of fact, and here Sears has not given title (ownership) to Tony. [See "**Simple Crimes Outline**", **false pretenses, p. 42**.] (C) is correct because Tony solicited (urged) Vic to commit the crime of larceny by trick, and Vic did commit that crime. That made Tony an accomplice. And Tony agreed to help Vic commit that same crime, so he was also a co-conspirator. Therefore Tony can be charged with that crime on both accomplice and conspiracy theory. [See "**Simple Crimes Outline**", **vicarious liability of accomplices and conspirators, p. 14**.]

8) **(A)** Answer (B) is wrong because Vic is helping steal the TV and not simply "receiving" it from someone else who has stolen it. [See "**Simple Crimes Outline**", **receiving stolen property, p. 45**.] (C) is wrong because under common law false pretenses is the crime of obtaining title (ownership) to property from another by using a misrepresentation of fact, and here Sears has been tricked into giving only possession, not title (ownership), to Vic. [See "**Simple Crimes Outline**", **transfer of title, p. 42**.] (D) is wrong because Tony is only a "shipping clerk" and not a "manager" so under the common law he would not have been deemed to have received "lawful possession" of the TV. [See "**Simple Crimes Outline**", **lawful possession, p. 40**.] (A) is correct because Vic used a "trick" to take possession of the TV, intending to steal it.

Copyright © Practical Step Press, 2014. All rights reserved.

9) **(A)** Answer (A) is correct because under the common law "bookkeepers" were deemed to have been given lawful possession of the employer's money, and embezzlement was a trespassory (nonconsensual) conversion of that money. [See "**Simple Crimes Outline**", **thefts by servants and low-level employees, p. 34**.] (B) and (C) are wrong because both false pretenses and larceny by trick require the use of some sort of "misrepresentation of fact" or "trick" to obtain the property of another and here Gina just took the money without using any sort of trick or misrepresentation. [See "**Simple Crimes Outline**", **false pretenses vs. larceny by trick, p. 44**.] (D) is wrong because embezzlement does not require intent to permanently deprive if the conversion creates substantial risk of deprivation. [See "**Simple Crimes Outline**", **wrongful intent, p. 40**.]

10) **(D)** Answer (A) is wrong because Gina did not use any "trick" to obtain possession of the money, and she did not have an intent to permanently deprive since she replaced the amount she took. [See "**Simple Crimes Outline**", **taking possession by trick, p. 33**.] (B) is wrong because took the money and did not just "receive" it from someone else. [See "**Simple Crimes Outline**", **receiving stolen property, p. 45**.] (C) is wrong because Gina did not use any misrepresentation of fact to get the money and she did not receive title (ownership) to it either. (D) is correct because Gina was "entrusted" with the money as a "bookkeeper" and she converted it to her own use (took and used it) without permission. [See "**Simple Crimes Outline**", **wrongful intent, p. 40**.]

11) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because under the common law a child under the age of 7 was conclusively presumed to lack criminal intent. [See "**Simple Crimes Outline**", **defense of infancy, p. 86**.]

12) **(B)** Answer (D) is wrong because a conspiracy requires an agreement between two or more people to pursue an illegal goal or crime, but under the common law Sonny is too young to have criminal intent. [See "**Simple Crimes Outline**", **defense of infancy, p. 86**.] Without Sonny participating in a criminal agreement there can be no "conspiracy" at all. (A) is wrong because "if Sonny does as Wanda tells him" there is a trespassory taking and carrying away of the personal property of another with intent to deprive, a larceny. [See "**Simple Crimes Outline**", **larceny, p. 29**.]So the correct answer must be either (B) or (C). The distinction between them is whether or not there was a burglary. For there to be a "burglary" under the common law there must be an entry of a dwelling in the night. That did not happen here, so this could only be a "modern law burglary". A modern law burglary still requires a "trespassory entry" and here the store is open for business. That means Sonny has permission to enter the store. But Wanda does NOT have permission to enter the store. So she is using Sonny as the "instrument" of her criminal plan to trespassorily enter the store for her to steal the liquor, in much the same way a burglar might use a trained dog or monkey to effect a burglary. [See "**Simple Crimes Outline**", **legal impossibility and attempt, example with Alfalfa and Spanky, p. 17**] That creates a trespassory entry for the intent of larceny, and that is a burglary under the modern law. So (B) is the correct answer.

13) **(D)** Answers (A) and (C) are wrong because when Wanda sent Sonny into the store it was a substantial step toward committing larceny, and that constitutes an attempted larceny. So the correct answer must be either (B) or (D) and the choice depends on whether there was an actual burglary or only an attempted burglary. Sonny actually entered the store, and Wanda sent him there as the "instrument" of her criminal plan to commit larceny inside, much the same as if she had used a trained dog or monkey to effect her burglary. [See "**Simple Crimes Outline**", **legal impossibility and attempt, example with Alfalfa and Spanky, p. 17**and **implied consent and revocation, p. 54**.] So there was an actual burglary and attempted larceny as soon as Sonny entered the store, and that makes (D) the correct answer.

Copyright © Practical Step Press, 2014. All rights reserved.

14) **(C)** Answer (A) is wrong because burglary does not require proof of intent to commit a "felony" after entry, and it does not always require proof of intent to commit a crime "within" the structure or room entered. [See "**Simple Crimes Outline**", **with intent to commit a felony, p. 56**.] At common law burglary required entry with intent to commit a felony at the time of entry, and larceny was a felony at common law. Modernly burglary requires intent to commit a felony or larceny at the time of entry, even if the larceny intended would not be a felony. At both common law and modernly trespassory entry of an interior room or compartment large enough for a person to enter is sufficient to support a charge of burglary. [See "**Simple Crimes Outline**", **interior compartments, p. 55**.] (B) is wrong because even if Nancy invited Timothy into the home, she did not consent for him to enter her father's office. (C) is correct because if Timothy was attempting to steal a credit card number, he entered the office with intent to commit a felony or larceny, even if he planned to commit those crimes at a later time. (D) is wrong because cheating on a law school exam is neither a felony nor a larceny (smile).

15) **(D)** Answers (A) and (C) are wrong because burglary requires proof the defendant intended to commit a felony or larceny at the time of trespassory entry (or attempted trespassory entry) into a "protected place". [See "**Simple Crimes Outline**", **with intent to commit a felony, p. 56**.] Cheating on a law school exam is not a felony or larceny (smile), so Timothy did not commit (or attempt to commit) burglary because he did not decide to steal the credit card number until after he had entered the office. (B) is wrong because stealing a credit card number is not larceny. Larceny is a taking and carrying away of personal property of another, so it only applies to the theft of tangible things that can be "carried". [See "**Simple Crimes Outline**", **carrying away, p. 35**.] A credit card number is an intangible thing. If written on paper, the paper itself is tangible, but the number remains an intangible thing no different from an "idea" or "concept". (D) is correct because Timothy intended to use the stolen credit card number later to charge against it so he was attempting to commit the crime of false pretenses.

16) **(C)** Answer (B) is wrong for two reasons. First, Lori had permission to enter the store, so her entry was not trespassory. Second, she did not enter the store with intent to commit a felony or larceny. So whether (A), (C) or (D) are right depends on what "theft" means. At common law there was no crime of "theft". Rather there was first the felony of larceny. That was later supplemented with the felonies of embezzlement and false pretenses to apply to situations in which the rules for larceny did not apply. Modernly these three crimes have generally been consolidated and codified as "theft" and divided into the felony of "grand theft" and the misdemeanor of "petty theft". Even though these crimes have been codified as "theft", many of the original common law concepts still apply. (A) and (D) are wrong, and (C) is correct, because one of those common law concepts is that as soon as a defendant takes possession and moves the personal property of another or otherwise takes title to property with intent to permanently deprive the rightful owner, the crime of theft has been committed, not "attempted" theft. Returning the property to the rightful owner does not "undo" the crime.

17) **(D)** "Theft" is the modern term for the codification of common law larceny, embezzlement and false pretenses. (B) is wrong under the common law and generally adopted modern view a "burglary" requires a "trespassory entry". And there is implied consent to enter stores that are "open for business". So there is no trespassory entry here. Although some States have "commercial burglary' statutes that make this a burglary, that does not seem to be the "broadly adopted" law. For example, the "Model Penal Code" specifically states that this is not a burglary. That is not conclusive as to the matter, but it is persuasive. [See "**Simple Crimes Outline**", **entry for a criminal purpose – statutory "commercial burglary", p. 54**.] (C) is wrong because the blouse Lori intended to steal was gone, so she could not "take and carry it away" or otherwise take title to it. (D) is right and (A) is wrong because Lori took a substantial step toward stealing the blouse when she went to the store with that intent. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.]

Copyright © Practical Step Press, 2014. All rights reserved.

18) **(C)** Answers (B) and (D) are wrong because Lori had permission to enter the store. So her entry was not trespassory. Although some States have "commercial burglary' statutes that make this a burglary, that does not seem to be the "broadly adopted" law. For example, the "Model Penal Code" specifically states that this is not a burglary. That is not conclusive as to the matter, but it is persuasive. [See "**Simple Crimes Outline**", **entry for a criminal purpose – statutory "commercial burglary", p. 54**.] So whether (A) or (C) is right depends on what "theft" means. At common law there was no crime of "theft". Rather there was first the felony of larceny. That was later supplemented with the felonies of embezzlement and false pretenses to apply to situations in which the rules for larceny did not apply. Modernly these three crimes have generally been consolidated and codified as "theft" and divided into the felony of "grand theft" and the misdemeanor of "petty theft". Even though these crimes have been codified as "theft", many of the original common law concepts still apply. (A) is wrong and (C) is correct because one of those common law concepts is that as soon as a defendant takes possession and moves the personal property of another with intent to permanently deprive the rightful owner, the crime of theft has been committed. Returning the property to the rightful owner does not "undo" the crime.

19) **(D)** Answers (A), (B) and (C) are all wrong and (D) is correct because Bevis cannot be charged with "attempting" to commit either larceny or burglary unless he took a "substantial step" toward committing those crimes. A "substantial step" means the defendant has come "dangerously close" to completing the intended crime. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.] If Butthead's house is close to Bevis' apartment, Bevis came "dangerously close" to completing his crime the moment he left his apartment. But if Butthead lives far away, he did not.

20) **(A)** Answers (C) and (D) are wrong because Bevis was trying to steal Butthead's TV. That means he is attempting a larceny. (A) or (B) have to be the correct answer because they both include "attempted larceny". Answers like (D) are always going to be wrong on law school exams because "malicious mischief" is simply not a crime of law school or Bar exam interest. (A) is correct and (B) is wrong because the "trespassory entry" required for a burglary must be for some purpose other than completing the breaking itself. [See "**Simple Crimes Outline**", **trespassory entry, p. 53**.] Here, if the rock went into Butthead's house it would not turn the "attempted burglary" into a "completed burglary" because the "entry of the rock" would be for the purpose of "breaking".

21) **(B)** Answer (A) is wrong because the facts don't say whether or not Bevis "entered" Butthead's apartment before he gave up and left. If there was no "entry" there can be no "burglary". [See "**Simple Crimes Outline**", **trespassory entry, p. 53**.] (D) is wrong because Bevis clearly took a substantial step toward committing both burglary and larceny when he broke the window. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.] (C) is wrong because it implies Bevis could not be charged with burglary, yet the facts are unclear whether Bevis "entered" or not. It would be clearer (and fairer) if answer (C) was stated as, "Attempted burglary and attempted larceny, only", but the word "only" is often omitted to make the question more difficult. (B) is correct because if Bevis "reached in" the window, he "entered" the apartment to steal the TV, and entry, no matter how slight, is sufficient to complete the crime of burglary.

22) **(A)** Answer (D) is clearly wrong because "malicious mischief" is simply not a crime of interest on law school exams. (B) is also clearly wrong because if they are guilty of burglary, they also must be guilty of some other, additional felony or larceny. [See "**Simple Crimes Outline**", **burglary, p. 50**.] And they are apparently stealing the gingerbread and/or candy they are eating, so if they are guilty of burglary, they would also be guilty of larceny and the correct answer would be (A). But is eating the "outside" of the building a burglary? Yes, it is, and (C) is wrong, because eating the building is a larceny (theft) and they are obviously within the curtilage of the dwelling! [See "**Simple Crimes Outline**", **dwelling of another, p. 55**.] One could argue that there is no larceny here at all (and then

Copyright © Practical Step Press, 2014. All rights reserved.

there would be no burglary, either) because Hansel and Gretel are not stealing "personal property". The "cottage" is actually real property and not personal property. And that idea was debated long ago in common law courts. But in the broadly adopted modern view once anything is removed from real property by a defendant it has been converted from real property to personal property, and then the theft of that personal property is larceny. [See "**Simple Crimes Outline**", **personal property for larceny, p. 35**.] And if there was no larceny, there would be no burglary, and then none of the answers would work at all.

23) **(D)** Answer (B) is clearly wrong because "malicious mischief" is simply not a crime of interest on law school exams. (A) is also clearly wrong because if they are guilty of burglary, they also must be guilty of some other, additional felony or larceny. [See "**Simple Crimes Outline**", **burglary, p. 50**.]And they are apparently stealing the gingerbread and/or candy they are eating, so if they are guilty of burglary, they would also be guilty of larceny and the correct answer would be (C). But (C) is wrong and (D) is correct because if they are lost and hungry, they are privileged to take reasonable steps to protect themselves (from cold, hunger, etc.). That is the "defense of self-defense", which may also be called "defense of private necessity". [See "**Simple Crimes Outline**", **self defense, p. 91**.] That excuses them from criminal liability and they are "not guilty" as a result. [Note: the lesson to learn here is to always pay close attention to additional facts presented in an answer choice because those are put there to twist everything around.]

24) **(B)** Answer (A) is wrong because "repossession" is simply not a criminal law exam issue, nor is "right of repossession" a recognized criminal defense. (D) is wrong because saying, "I took it in the daytime," is simply no defense to a larceny charge at all, and it is no defense to a burglary charge under the modern view. That just leaves you with (B), defense of property, and (C), recapture of chattel. (C) is wrong because "recapture of chattel" is a tort defense, and Robert has been "charged" with burglary and larceny (crimes) so he needs a criminal defense. (B) is the correct answer because "defense of property" is both a criminal defense and a tort defense. [See "**Simple Crimes Outline**", **defense of property, p. 92**.] Robert is protecting his legal right to recover the money he is owed for the ring. The ring is owned by Swifty (he bought it) but the legal right to recover the money Swifty owes him is an intangible legal right (personal property) owned by Robert. If Swifty disappears with the ring, Robert may be unable to ever recover what he is owed. So his best "defense argument" is that he was privileged to use reasonable force to protect his legal rights by taking the ring into custody. [See "**Simple Crimes Outline**", **no larceny if trying to recover a legal debt, p. 38**.]

25) **(B)** Answer (A) is wrong because even if Dick was a police officer Tom was predisposed to commit the crime. (B) is correct because the only two necessary legal elements for proving commission of the crime of receiving stolen property are 1) the defendant conveyed (gave or received) property that was stolen, and 2) the defendant knew it was stolen at the time of the conveyance. (C) is wrong because defendants do not have to know the type of property they are conveying. [See "**Simple Crimes Outline**", **receiving stolen property, p. 45**.] (D) is wrong because Tom actually received the tape deck and expected what he received to be stolen. So if it was actually stolen, he committed the crime of receiving and did not merely "attempt" to commit the crime.

26) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because traffic offenses are strict liability crimes. No proof of criminal intent is necessary. [See "**Simple Crimes Outline**", **the strict liability crimes, p. 6**.]

27) **(D)** Answer (D) is correct and (A), (B) and (C) are wrong because under the common law arson was the malicious burning of the dwelling of another and no dwellings were burned in this fact pattern. [See "**Simple Crimes Outline**", **arson, p. 27**.]

Copyright © Practical Step Press, 2014. All rights reserved.

28) **(D)** Answer (A) and (B) are wrong because his statements about the tires and gas mileage were merely "sales pitches". Clearly the car's tires might be "good" and the gas mileage "low" compared to other cars. (C) is wrong and (D) is correct because the prosecution must prove knew the odometer had been turned back when he sold the car. [See "**Simple Crimes Outline**", **fraud, p. 83**.]

29) **(D)** Answer (A) is wrong because Dick does not work for Sears and has not been "entrusted" by Sears with lawful possession of the TV. (B) is wrong because Tom is the one who forged the sales ticket, not Dick. (C) is wrong and (D) is correct because even though Dick can be charged with both larceny by trick and uttering he cannot be convicted of both crimes because the act of "uttering" here was the "trick" that supported the finding of larceny by trick. That makes it lesser included offense of the larceny by trick charge. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15** and **taking possession by trick, p. 33**.]

30) **(B)** Answers (A) and (C) are wrong because Harry did not steal or attempt to steal the TV. He bought it from Dick for $150. Whether he knew Tom stole the TV is irrelevant to that fact. His purchase of the TV does not make him an "accessory after the fact." (B) is correct and (D) is wrong because the TV was not stolen when Harry bought it. Larceny requires a "trespassory taking" of personal property from another. That means the property must be taken without consent of the person who possesses it. [See "**Simple Crimes Outline**", **trespassory taking of possession, p. 29**.] Here Pablo let Dick take the TV, so there was no trespassory taking, no larceny, and the TV was not stolen goods at the time Harry received it. Rather Harry attempted to receive , and Dick attempted to sell, stolen goods, and their crime is attempted receiving of stolen property. [See "**Simple Crimes Outline**", **attempted receipt and legal impossibility, p. 46**.]

31) **(C)** Answer (A) is obviously wrong because if John got close enough to attempt burglary, he also got close enough to attempt larceny. So if he can be charged with burglary he can be charged with the other crime he intended to commit at the time of entry. [See "**Simple Crimes Outline**", **burglary, p. 50**.] (D) is wrong and (B) is correct if John took a "substantial step" toward completion of his intended crimes, and (B) is wrong and (D) is correct otherwise. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.] But you cannot tell which is correct from these facts and (C) is always correct so it is the better answer.

32) **(C)** Answer (A) and (B) are wrong because Lou did not help Bud rob the Brinks car, and his act of taking part of the loot afterward did not make him an "accessory after the fact". [See "**Simple Crimes Outline**", **distinction between accomplice and receiver, p. 45**.] Lou did receive stolen property, but that is not an offered choice. (D) is wrong and "misprision of a felony" will always be wrong on every exam. Under the very, very old common law in England this was the crime of "failing to prevent or report a felony". Modernly (for several hundred years) there has been no "general legal duty" to prevent or report crimes by others. [See "**Simple Crimes Outline**", **misprision of a felony, p. 85**.] (C) is correct because the crime of compounding means taking money or something else of value in exchange for concealing evidence or not prosecuting a crime. [See "**Simple Crimes Outline**", **compounding, p. 82**]

Copyright © Practical Step Press, 2014. All rights reserved.

33) **(D)** Answers (A) and (B) are wrong because burglary requires a breaking "in" or an attempt to break "in" to the structure. Here Bernie was already inside Victor's house, with consent to be inside, when he unlocked the window. And he never opened the window after that. So that act was not a burglary, and taken alone it was not a substantial step toward committing burglary. [See "**Simple Crimes Outline**", **acts constituting a breaking for common law burglary, p. 51**.] For the same reason that act was not a substantial step toward larceny either. It was merely "planning and preparation" for committing the crimes of burglary and larceny at a later time. [See "**Simple Crimes Outline**", **preparation is not a step, p. 61**.] (D) is correct because Bernie's acts constituted mere planning and preparation for a crime, but not a substantial step toward their actual commission.

Copyright © Practical Step Press, 2014. All rights reserved.

Test # 9 – Crimes Against the Person / Vicarious Liability / Defenses

Test #9 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **crimes against people** (assault, battery, rape, robbery, murder, manslaughter), **vicarious liability** (conspiracy, accomplice liability), **attempted crimes**, **criminal defenses** (self-defense, defense of others, duress, insanity, mistake). Insert your own time marks! The Answers and Explanations follow.

Questions 1-2

Romeo was having an affair with Morticia, a chemist, and he decided to kill his wife, Juliet, so he could marry her. Romeo told Morticia his plan and asked her to get him a rare and untraceable poison he had read about in a murder mystery. Morticia had no intention of marrying Romeo or killing Juliet. But she acted like she did so Romeo would be happy. She gave Romeo some candy pills and told him it was the rare poison he wanted. Romeo put the candy pills in Juliet's bread pudding that night expecting her to die. Juliet ate the pudding, got a candy stuck in her throat, choked and died from asphyxiation.

1) Romeo can be charged with:

(A) Involuntary manslaughter.
(B) Attempted murder.
(C) Murder and conspiracy to commit murder.
(D) Murder.

2) Morticia can be charged with:

(A) Nothing.
(B) Conspiracy to commit murder.
(C) Conspiracy and attempted murder.
(D) Murder.

Questions 3-7

Bud and Lou were in prison together. After they got out Bud suggested that they rob a Brinks car together. Lou refused to help, saying he did not want to go to prison again. Bud vowed to rob a Brinks car all by himself.

3) If Lou then offered to let Bud hide in his house after the robbery in exchange for a share of the loot, Lou is:

(A) An accomplice.
(B) An accessory before the fact.
(C) An accessory after the fact.
(D) A conspirator.

4) Suppose Bud came to Lou's house asking to be hidden after he robbed the Brinks car. If Lou let him hide from the police in his home he is:

(A) An accomplice.
(B) An accessory before the fact.
(C) A conspirator.
(D) Aiding and abetting.

5) If Lou agreed before the robbery he would let Bud hide in his house after the robbery in exchange for a share of the loot, he can be charged with:

(A) Bank robbery.
(B) Aiding and abetting.
(C) Compounding a felony.
(D) Misprision of a felony.

Copyright © Practical Step Press, 2014. All rights reserved.

6) If a Brinks guard had a heart attack and died when Bud robbed the Brinks car he can be charged with:

(A) Murder if it was foreseeable someone could die in the robbery.
(B) Involuntary manslaughter.
(C) First degree murder.
(D) No homicide crime because it was not foreseeable the guard would die from a heart attack.

7) If Lou agreed to help Bud rob the bank, and then Bud was shot and killed by a Brinks guard during the robbery, Lou can be charged with:

(A) Murder if it was foreseeable Bud could die in the robbery.
(B) Involuntary manslaughter.
(C) First degree murder.
(D) No homicide crime.

Questions 8-10

Bud and Lou were in the bleachers at Yankee field when Mantel hit a line drive into the stands. Lou tried to catch the ball and made Bud spill his beer. Bud picked up the ball and angrily threw it at Lou. The ball sailed past Lou's head but he didn't know it because he was looking at the Trinitron screen to see if he was on TV. When the screen showed Lou with the ball flying past his head everyone in the stands started laughing. Lou was embarrassed and furious. Suddenly the cops arrived and arrested Bud.

8) Bud can be charged with:

(A) Assault and battery.
(B) Assault.
(C) Attempted battery.
(D) Assault and attempted battery.

9) If Bud had hit Lou he could be charged with:

(A) Assault and battery.
(B) Battery.
(C) Battery and attempted assault.
(D) Battery, if he intended to hit Lou when he threw the ball.

10) If Bud is found guilty of both assault and battery he could be sentenced for:

(A) Both assault and battery.
(B) Assault or battery, but not both.
(C) Battery, if he intended to injure Lou when he threw the ball.
(D) Battery.

Question 11

Wilson was staggering home in the wee hours from Ye Olde Tavern when Brutus, an intimidating brute, confronted him in the dark and said, "Loan me five bucks. I'll pay you back." Wilson gave Brutus $5. When he got home he called the police and they arrested Brutus.

11) Brutus can be guilty of:

(A) Robbery, if Brutus would have injured Wilson if he refused to loan him the money.
(B) Robbery, if Wilson actually believed Brutus was robbing him.
(C) Robbery, if a reasonable person in Wilson's position would be afraid to refuse.
(D) Robbery, unless Brutus intended to repay Wilson.

Question 12

Jones loaned Smith $100. Smith promised to pay the money back at the end of the week. Smith never paid Jones back, despite several requests by Jones. After several weeks Jones went to Smith's house, opened the gate to the back yard and took Smith's dog. Jones then called Smith and said, "If you ever want to see your dog again you better cough up that $100 you owe me."

12) Jones is guilty of:

(A) Extortion.
(B) Larceny.
(C) Burglary and larceny.
(D) None of the above.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 13-14

Swifty bought an expensive diamond ring from Robert's Jewelry. After Swifty walked out the door the credit card company called Robert and reported the credit card Swifty had used was stolen. Robert ran out the door and saw Swifty walk around the corner. Robert ran after Swifty and demanded the ring back. Swifty refused and started to run.

13) Robert chased Swifty, attacked him, knocked him to the ground, and forcefully removed the ring from Swifty's finger. He is guilty of:

(A) No crime.
(B) Robbery.
(C) Assault and battery.
(D) Battery, assault, larceny and robbery.

14) Swifty ran away, but Robert found him the next day. Robert attacked him, knocked him to the ground, and forcefully removed the ring from Swifty's finger, he would be guilty of:

(A) No crime.
(B) Robbery.
(C) Assault and battery.
(D) Battery, assault, larceny and robbery.

Question 15

Alan secretly spiked Paris' drink with ecstasy because she is really uptight about a pending court hearing and he wants her to mellow out. Paris starts acting strange, and Alan suddenly realizes he spiked her drink with roofies, not ecstasy, because his regular drug dealer gave him the wrong bag of drugs. He knows Paris could very likely die from an overdose, but he is reluctant to tell her what he did. So Alan does nothing, and Paris falls into a coma.

15) If Paris dies and her estate brings an action against Alan, which of the following would be the most likely finding?

(A) First-degree murder.
(B) Second degree murder.
(C) Involuntary manslaughter.
(D) None of the above.

Questions 16-18

Romeo was 18 years old when he met Juliet. She told Romeo she was 18, but she was really only 14. He wined her and dined her and had sexual intercourse with her. Juliet became pregnant and confessed to Romeo that she was only 14. Romeo was furious and he abandoned her. She applied for the WIN program (Women, Infants and Children) and AFDC (Aid for Dependent Children) with the County welfare office, and reported that Romeo was the father of her child.

16) If Romeo is charged with statutory rape, in most States he is:

(A) Guilty.
(B) Guilty, unless he actually thought she was an adult.
(C) Not guilty, if he reasonably believed Juliet was an adult.
(D) Not guilty, because Juliet consented to have sex with him.

17) Romeo was infected with the AIDS virus, but Juliet was unaware of it. She contracted AIDS from having sexual intercourse with Romeo and died from the disease two years later when she was 16. Romeo could be found guilty of:

(A) Voluntary manslaughter, if he knew he was infected with the virus.
(B) Involuntary manslaughter, whether he knew he was infected with the virus or not.
(C) First degree murder because her death was caused by rape.
(D) No homicide crime because Romeo lacked the mens rea.

Copyright © Practical Step Press, 2014. All rights reserved.

18) Assume that when Romeo told Juliet he was leaving her she became so angry she tied him up and said, "I am going to make you so ugly no other woman will ever want you!" Then she cut off his nose. Unfortunately, his mutilated nose became infected and he died. If a jury convicted Juliet of first degree murder it was probably because:

(A) Juliet's killing of Romeo was found to be deliberate, willful and premeditated.
(B) Juliet's killing of Romeo was found to be the result of battery.
(C) Juliet's killing of Romeo was found to be the result of mayhem.
(D) Juliet's killing of Romeo was found to be the result of torture.

Questions 19-20

Huey decided to kill Louie, so he bought some poison, went into Louie's house while he was gone, and mixed the poison into the sugar in Louie's sugar bowl. The next day Dewey came to visit Louie, and he stirred a spoonful of the poisoned sugar into his coffee.

19) If Dewey dies, Huey can be convicted of:

(A) First-degree murder.
(B) Attempted murder of Louie and murder of Dewey.
(C) Attempted murder of Louie and involuntary manslaughter of Dewey.
(D) Burglary, attempted murder of Louie, and murder of Dewey.

20) If Dewey lives, Huey can be convicted of:

(A) Attempted murder of Louie and battery of Dewey.
(B) Burglary and attempted murder.
(C) Burglary, attempted murder of Louie, and battery of Dewey.
(D) Attempted first-degree murder.

Questions 21-22

Tom called Dick at O'Malley's Bar one night and told him Dick's wife was at Harry's house having sex with Harry. Dick rushed to Harry's house to see if there was any truth to what Tom had said. Through the window he could see his wife in bed with Harry engaged in sexual intercourse. Overcome with emotion, he decided to kill Harry, pulled out his gun, and spontaneously shot at Harry through the window.

21) If Harry dies, Dick can be convicted of:

(A) Burglary, because he shot the bullet into the house, and first-degree murder because Harry was killed because he intentionally killed Harry during the commission of the burglary.
(B) Burglary, because he shot the bullet into the house, and second degree murder because he intended to kill Harry.
(C) Burglary, because he shot the bullet into the house, and voluntary manslaughter because he intended to kill Harry.
(D) Burglary, because he shot the bullet into the house, and involuntary manslaughter because he acted with "adequate provocation".

22) If the bullet missed Harry, Dick can be convicted of:

(A) Burglary, because he shot the bullet into the house, and attempted murder.
(B) Burglary, because he shot the bullet into the house, and attempted first-degree murder because he intended to kill Harry during the commission of the burglary.
(C) Burglary, because he shot the bullet into the house, and attempted voluntary manslaughter because he intended to kill Harry.
(D) Burglary, because he shot the bullet into the house, but not attempted murder if he did not act with premeditation.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 23

Tom held up the First Insolvent Bank of Los Angeles while his co-conspirator, Dick, waited outside in their get-away car. There were twenty people in the bank. Tom ordered seventeen of them into the vault, and he forced the other three hostages outside and into the waiting car. Dick started driving to Las Vegas but the freeway was backed up and he turned toward San Francisco. One of the hostages was let go in Bakersfield, another was let go in Fresno, and the remaining hostage was released in San Francisco.

23) Under common law what crimes have Tom and Dick committed?

(A) 20 counts of robbery and 20 counts of kidnapping.
(B) 1 count of robbery and 3 counts of kidnapping.
(C) 1 count of robbery and 1 count of kidnapping.
(D) 1 count of robbery but no kidnappings.

Question 24

Tom and Dick kidnapped Vickie, intending to hold her for ransom. They blindfolded Vickie and locked her in a closet in their house. During the night Vickie was able to escape from the closet and ran out the front door of their house. Unfortunately she ran straight into the path of an oncoming truck and was killed.

24) What crimes can Tom and Dick be charged with under common law?

(A) Kidnapping and first-degree murder under the felony-murder rule.
(B) Kidnapping and murder under the felony-murder rule.
(C) Kidnapping and involuntary manslaughter.
(D) Kidnapping alone.

Question 25

Dean and Jerry were drinking in a bar. Jerry said, "See that black leather coat on the coat rack? Man, I would love to have a coat like that." Dean replied, "Why don't you steal it? I'll create a distraction and when everybody is looking at me all you have to do is take the coat and walk out with it." Jerry agreed. So Dean went toward the restrooms, yelled "FIRE!", and pulled the fire alarm. Panic ensued. Jerry ran out the door with the coat right into the arms of a cop.

25) What crimes can Jerry be convicted of if it was really Dean's coat and he was just pulling a trick on Jerry?

(A) No crime.
(B) Larceny but not conspiracy.
(C) Conspiracy to commit larceny but not larceny.
(D) Conspiracy to commit larceny and larceny.

Questions 26-27

Debbie vowed to kill Vickie. So she walked up to Vickie, pulled out her pistol, and shot it at Vickie's head. But Vickie ducked in fear and the bullet hit Bob instead.

26) If Bob dies, for what crimes could Debbie be convicted and sentenced?

(A) Murder only.
(B) Murder and battery of Bob, assault of Vickie, and attempted murder of Vickie.
(C) Involuntary manslaughter of Bob and attempted murder of Vickie.
(D) Attempted murder of Vickie but not murder of Bob because he died by accident.

Copyright © Practical Step Press, 2014. All rights reserved.

27) If Bob is just injured, for what crimes could Debbie be convicted and sentenced?

(A) Attempted murder of Vickie, assault of Vickie, battery of Bob, and attempted murder of Bob.
(B) Attempted murder of Vickie and attempted murder of Bob.
(C) Attempted murder only.
(D) Attempted murder of Vickie and battery of Bob.

Questions 28-29

Debbie vowed to kill Vickie and Bob. So she walked up to Vickie, pulled out her pistol, and shot it at Vickie's head. But Vickie ducked in fear and the bullet missed.

28) If the bullet missed Vickie and killed Bob instead, for what crimes could Debbie be convicted and sentenced?

(A) Attempted murder of Vickie, and murder of Bob.
(B) Murder only.
(C) Attempted murder of Vickie and attempted murder of Bob.
(D) Attempted murder of Vickie and involuntary manslaughter of Bob.

29) If Debbie shot at Vickie once and missed, and then shot a second time, missed Vickie and killed Bob, for what crimes could Debbie be convicted and sentenced?

(A) Murder only.
(B) Attempted murder of Vickie and attempted murder of Bob.
(C) Attempted murder of Vickie and voluntary manslaughter of Bob.
(D) Attempted murder of Vickie, and murder of Bob.

Question 30

Don was jealous of Vic, a college soccer star. One night Don saw Vic in a bar talking to a cute coed. Don's anger got the best of him. He approached Vic, pulled out a gun and said, "Try playing soccer with this!" Then Don shot Vic in the foot with his pistol. Vic went to the hospital emergency room and died because he was allergic to the antibiotic they gave him.

30) With what crimes could Don be convicted?

(A) Murder or voluntary manslaughter.
(B) Murder or involuntary manslaughter.
(C) First degree murder under the deadly weapon doctrine.
(D) First degree murder or voluntary manslaughter.

Question 31

Cain decided to kill Abel so he put deadly poison mushrooms in Abel's omelet. Abel ate the omelet and began to writhe in pain. At the hospital expert toxicologists determined that Abel's condition was hopeless and he would die in wretched agony within 24 hours. Dr. Casey, a staff physician, decided to put Abel out of his misery, so he gave him a fatal dose of morphine. Abel died with a smile on his face.

31) Cain can be charged with:

(A) Murder by transferred intent.
(B) Attempted murder.
(C) Voluntary manslaughter.
(D) No crime because Casey's act was an unforeseeable intervening force.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 32

Bud and Lou decided to rob a bank. But as they drove into the bank parking lot they saw a car in the lot had caught on fire, firemen were putting out the fire, and the police were present watching. Frustrated and intimidated by the police presence, Bud angrily drove to the parking lot exit. Unfortunately he accidentally ran over Granny and killed her. The police ran to the accident scene and saw Bud and Lou's guns, masks and their "stick-up" note.

32) Bud and Lou can be charged with:

(A) Murder.
(B) First degree murder.
(C) Involuntary manslaughter.
(D) None of the above.

Question 33

Ang circled the parking lot looking for a place to park. Suddenly a spot opened up right in front of him. As he started to pull into the parking spot, Xian zipped into the spot on his motorcycle. Ang was furious and yelled, "Hey that's my spot." Xian replied, "Tough tarts, loser." Ang jumped out of his car and started hitting Xian. About then Xian's brother, Yan, saw Ang beating Xian so he pulled out a large knife and ran toward them. Just then Ang's brother, Bao, saw Yan running toward Ang with a knife, so he pulled out his gun and killed Yan.

33) Bao:

(A) May claim of defense of others because he acted in defense of Ang.
(B) Escalated the level of violence by using a gun.
(C) Must prove Yan did not appear to be using reasonable force.
(D) Cannot claim defense of others because Ang started the fight.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #9 Answer Sheet

Question	Answer
1	D
2	A
3	D
4	A
5	A
6	C
7	D
8	B
9	A
10	D
11	D
12	D
13	A
14	C
15	D
16	A
17	C
18	D
19	A
20	B
21	C
22	A
23	D
24	C
25	A
26	A
27	C
28	B
29	D
30	B
31	B
32	D
33	C
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #9 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Crimes Outline**".

1) **(D)** Answer (A) is wrong because involuntary manslaughter applies to unintentional homicides and Romeo acted with intent to kill. [See "**Simple Crimes Outline**", **involuntary manslaughter, p. 79**.] (B) is wrong because Romeo acted with intent to kill and a death resulted from those acts. So there is nothing "attempted" about this. (C) is wrong because a conspiracy requires actual agreement between two or more people. Morticia did not actually agree to help kill Juliet. She only feigned agreement, and feigned agreement is not actual agreement. [See "**Simple Crimes Outline**", **actual agreement is necessary, p. 18**.] (D) is correct because Romeo acted with malice aforethought because he intended to kill a person (Juliet). He acted with that intention (put the candy pills in the pudding) and that caused a person to die. (Juliet). The fact that she did not die exactly the way he planned is totally irrelevant. There is no "forgiveness" in the law for ineptitude. [See "**Simple Crimes Outline**", **intended results doctrine, p. 68**.]

2) **(A)** Answers (B) and (C) are wrong because Morticia was not part of a conspiracy since she was only "feigning" agreement. [See "**Simple Crimes Outline**", **actual agreement is necessary, p. 18**.] As a result she cannot be vicariously liable on a conspiracy theory. And Morticia did not commit any crimes that caused Romeo to kill Juliet, so she cannot be vicariously liable on an accomplice theory either. [See "**Simple Crimes Outline**", **accomplice liability, p. 14**.] Therefore Morticia cannot be vicariously liable and could only be directly liable. (A) is wrong because Morticia did not act with malice aforethought to kill Juliet. [See "**Simple Crimes Outline**", **homicide with malice aforethought, p. 68**.] (A) is correct because Morticia never acted with intent to kill Juliet, to cause her great bodily harm, or to create extreme risks to her or anyone else.

3) **(D)** Answer (D) is the best answer because even though "Lou refused to help", he apparently changed his mind and "then" agreed to help by hiding Bud. Bud had not yet committed the robbery, so Lou entered into a conspiracy with Bud (before the robbery) and has not yet helped Bud afterwards. Note that under the common law Lou could be convicted of conspiracy on these facts, but under the modern view many jurisdictions require commission of some "over act in furtherance" of the conspiracy. [See "**Simple Crimes Outline**", **conspiracy, p. 17**.] (A), (B) and (C) are wrong because for Lou to be an accomplice, accessory before the fact, or accessory after the fact, the robbery has to actually take place. [See "**Simple Crimes Outline**", **accomplice liability, p. 14**.] Here Lou just agreed to help Bud avoid capture, but he never did anything to help commit the robbery or any evidence the robbery ever occurred.

4) **(A)** Answer (B) is wrong because there is no evidence Lou urged Bud to commit the robbery or helped him plan for it. (C) is wrong because the evidence shows Lou refused to help Bud before the robbery occurred. [See "**Simple Crimes Outline**", **vicarious liability of accomplices and conspirators, p. 14**.] (A) and (D) are both correct, but (A) is the better answer because it is a legal concept you were to learn in your studies. (D) is just a fact that anyone would know. Lou is an accomplice because he is an accessory after the fact, and that makes him liable for the crime that he is knowingly helping Bud profit from.

Copyright © Practical Step Press, 2014. All rights reserved.

5) **(A)** Since Lou agreed to help Bud with his plan to rob the bank before the robbery, he is a conspirator. Answer (A) is correct because Lou is liable for all crimes committed by Bud within the scope of the conspiracy agreement, and the bank robbery was the central goal of that agreement. [See "**Simple Crimes Outline**", **conspiracy liability, p. 14**.] (B) is wrong because "aiding and abetting" is not a crime per se. (C) is wrong because Lou is taking the loot for helping Bud, not for agreeing to "not report him to the police". [See "**Simple Crimes Outline**", **compounding, p. 82**.] (D) is wrong because "misprision" has not been a crime for hundreds of years and is almost never a correct answer on a multiple-choice question. [See "**Simple Crimes Outline**", **misprision of a felony, p. 85**.]

6) **(C)** Answers (A) and (D) are wrong because it is always foreseeable someone could die during a "robbery". (B) is wrong and (C) is correct because the Felony Murder Rule makes any death caused by the "inherent dangers" of a robbery chargeable as a murder, whether the criminals acted with actual intent to kill or not. [See "**Simple Crimes Outline**", **the felony-murder rule, p. 70**.] In addition, virtually all States list murders committed during robberies as "first degree murders". [See "**Simple Crimes Outline**", **homicides caused by committing enumerated felonies, p. 74**.]

7) **(D)** Answers (A), (B) and (C) are wrong and (D) is correct because the vast majority of States (all except California and Massachusetts it seems) follow the "Redline Rule" under which a co-criminal (Lou) cannot be charged with a crime simply because another co-criminal (Bud) is killed by police, victims or bystanders during the commission of a crime. [See "**Simple Crimes Outline**", **the redline rule, p. 72**.] Note that on the Multi-State Bar Exam you are to use broadly adopted law (the Redline Rule) to answer criminal law questions. And this is also true on all parts of the California Bar Exam..

8) **(B)** Answers (C) and (D) are wrong because there is no such crime as "attempted battery". An attempted criminal battery is a criminal assault. [See "**Simple Crimes Outline**", **specific intent, p. 59**.] (A) is wrong because the ball never hit Lou so there was no criminal battery. [See "**Simple Crimes Outline**", **criminal battery, p. 21**.] (B) is correct because Bud's attempt to hit Lou constitutes the crime of criminal assault even if Lou was not hurt. [See "**Simple Crimes Outline**", **criminal assault, p. 23**.]

9) **(A)** Answer (C) is wrong because there is no such crime as "attempted assault". In criminal law any attempt to cause apprehension of a battery is an assault whether or not apprehension occurs. [See "**Simple Crimes Outline**", **specific intent, p. 59**.] (A) is the better answer and (B) and (D) are inferior because the question asks what crimes Bud can be charged with, and not what he is "guilty" of. Since Bud deliberately threw the ball "at Lou" and it actually hit Lou, he can be charged with both assault and battery. Whether he is found guilty of both crimes or only battery is up to the jury (finder of fact) to decide. But the evidence supports both charges being brought against Bud. Note that he could not be convicted of both crimes because the assault would merge into the battery. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.]

10) **(D)** Answer (C) is wrong because the question says Bud has already been found "guilty" of both crimes, so his "intent" has already been decided by the jury (finder of fact), and that cannot be further questioned by the judge (who pronounces the sentence). (A) is wrong because Bud only acted one time in throwing the ball, so the "assault" has to be an "attempted battery" based on the same criminal act as the "battery". As a result, the "assault" is a lesser included offense that will merge into the "battery" here, and Bud cannot be sentenced (convicted) for both crimes. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.] (B) is wrong and (D) is correct because the "assault" merges into the "battery".

Copyright © Practical Step Press, 2014. All rights reserved.

11) **(D)** Answer (A) is wrong because the crime of robbery only requires that the victim's will to resist is overcome, and does not require proof that the victim "actually" would have been injured if they had resisted further. [See "**Simple Crimes Outline**", **force or fear used to overcome victim, p. 48**.] (B) is wrong because the crime of robbery requires the use of fear or force to overcome the will of the victim to resist, but that fact alone is not sufficient to prove guilt. (C) is wrong because the crime of robbery does not depend on whether the will of a "reasonable person" to resist would have been overcome. (D) is correct because a robbery is a larceny effected by means of force or fear, and a larceny requires criminal intent to permanently deprive the victim. [See "**Simple Crimes Outline**", **no larceny if no intent to permanently deprive, p. 37**.] So if Brutus actually did intend to repay Wilson (a question for the jury to decide) he did not rob Wilson at all, regardless of how intimidated Wilson may have felt.

12) **(D)** Answers (B) and (C) are wrong because there was no larceny. Jones did not take the dog with the intent of permanently depriving Smith of the dog, and there was no substantial risk that Smith would never get the dog back. He just took it to use it as leverage to force Smith to repay the debt he owed. Clearly he was willing to give the dog back to Smith. Therefore, Jones did not commit a larceny. [See "**Simple Crimes Outline**", **no larceny if no intent to permanently deprive, p. 37** and **no larceny if trying to recover a legal debt, p. 38**.] That narrows things down to either (A) or (D). Under the old common law extortion was the misdemeanor of a public official using his office to collect unlawful fees (e.g. bribes). Modernly extortion is the "unlawful use of intimidation to obtain something of value" from another, and usually classified as a felony. [See "**Simple Crimes Outline**", **extortion and blackmail, p. 84**.] (A) is wrong because Jones was trying to recover a debt that Smith owed him, not "taking something of value from another". He might be guilty of "disturbing the peace" or "trespassing', but not a felony. (D) is correct because Jones committed neither larceny nor extortion.

13) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because Robert was privileged to use reasonable force in "hot pursuit" to recover the ring immediately after Swifty took it from him by false pretenses. [See "**Simple Crimes Outline**", **defense of property, p. 92**.] He used "reasonable force" because he first asked Swifty for the ring, Swifty refused, and was trying to flee with it. If Robert had not used force to recover the ring, he probably would have been permanently deprived of his property. This is simply common sense, and no jury would ever convict Robert of a crime under these facts.

14) **(C)** Answers (B) and (D) are wrong because a robbery is a larceny, and a larceny requires intent to permanently deprive a person of something that they "legally own". [See "**Simple Crimes Outline**", **personal property of another, p. 35**.] Since Swifty gained possession of the ring by false pretenses, he did not "legally own" it. Robert was just trying to recover his own property from Swifty. (C) is correct, and (A) is wrong because even though Robert was acting to recover his own property, it was not reasonable for him to use violence to recover it since he was not in "hot pursuit". He simply should have called the police and let them recover the ring for him without violence. [See "**Simple Crimes Outline**", **defense of property, p. 92**.]

15) **(D)** Answer (D) is correct and (A), (B) and (C) are wrong because crimes are wrongs against the "State" or "people". Individuals can file a "criminal complaint" with the police or a grand jury, but they cannot file "criminal charges" or prosecute "criminal actions". [See "**Simple Crimes Outline**", **criminal prosecutions distinguished from tort actions, p. 3**.]

Copyright © Practical Step Press, 2014. All rights reserved.

16) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because statutory rape is a strict liability crime in most states, a minor cannot give "legal consent", and mistakes of fact, no matter how reasonable they are, are generally not a valid defense. [See "**Simple Crimes Outline**", **the strict liability crimes, p. 6** and **rape, p. 24**.]

17) **(C)** Answer (D) is wrong because statutory rape is a strict liability crime, and the prosecution does not have to prove mens rea (evil intent). [See "**Simple Crimes Outline**", **the strict liability crimes, p. 6** and **rape, p. 24**.] The crime is considered to be rape the same as if the defendant used force, drugs or factual misrepresentations to make the victim submit to sexual intercourse. (A) is wrong because voluntary manslaughter requires proof of intent to kill, and that would not be proven by the mere fact that Romeo knew he was infected. [See "**Simple Crimes Outline**", **voluntary manslaughter, p. 76**.] (B) is wrong because if Romeo did not know he was infected with the virus, he did not clearly act "recklessly". And if he did act recklessly, (C) is the better answer because rape is one of the four felonies that support a finding of murder under the Felony-Murder Rule if it causes a death (the other three qualifying crimes are robbery, burglary and arson). Further, rape is almost always an "enumerated felony" for first-degree murder. [See "**Simple Crimes Outline**", **the felony-murder rule, p. 70** and **degrees of murder, p. 74**.]

18) **(D)** Answer (A) is wrong because there is no evidence Juliet intended to kill Romeo. (B) is wrong because the finding of "battery" may support a finding of murder, but statutes almost never list it as one of the "enumerated felonies" for first-degree murder. (C) is wrong because "mayhem" is also seldom one of the "enumerated felonies" or "enumerated means" for first-degree murder. (D) is correct because torture is frequently one of the "enumerated means" of causing death for first-degree murder. [See "**Simple Crimes Outline**", **homicide caused by enumerated means, p. 75**.]

19) **(A)** Answers (B), (C) and (D) are wrong because even though Huey could be charged with the attempted murder of Louie, if he is convicted of killing anyone, the attempted murder (of Louie) merges into the crime of murder (of Dewey) as a lesser included offense. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.] He only committed a single criminal act (poisoning the sugar) and he did that with the intent of killing someone (Louie). By that act he actually did kill someone (Dewey). So there is only a single crime, and that is murder (of Dewey) without distinction between who he intended to kill and who he did kill. [See "**Simple Crimes Outline**", **intended results doctrine, p. 68**.] (A) is also correct because Huey's attempt to kill Louie was premeditated, willful and deliberate. [See "**Simple Crimes Outline**", **willful, deliberate and premeditated homicide, p. 74**.] Further, a death caused by poisoning is frequently one of the "enumerated means" for first-degree murder. [See "**Simple Crimes Outline**", **homicide caused by enumerated means, p. 75**.]

20) **(B)** Answers (A) and (C) are wrong because if Huey is convicted of attempted murder, the battery he committed during that attempt is the "substantial step" necessary to support the finding, and it merges into the attempted murder conviction as a "lesser included offense". [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.] (D) is wrong because there is no "degrees" of attempted murder, and no such thing as "attempted first-degree murder". [See "**Simple Crimes Outline**", **specific intent, p. 59**.] (B) is correct because Huey went into Louie's house while he was gone, and that was a "trespassory entry". And he did it with intent to commit a felony, murder. So that entry constituted a burglary under the modern view, and it was a substantial step done with intent to commit murder. [See "**Simple Crimes Outline**", **specific intent, p. 59**, and **burglary, p. 50**.]

21) **(C)** Answer (A) is wrong because the purpose of the Felony Murder Rule is to deter the commission of burglaries, but Harry's death was not caused by the inherent dangers of the crime of burglary. [See

Copyright © Practical Step Press, 2014. All rights reserved.

"**Simple Crimes Outline**", **the purpose of the rule, p. 71** and **death must be caused by the inherent dangers, p. 71**.] (D) is wrong because Dick "decided to kill Harry, and that means he willfully intended to kill. Involuntary manslaughter only applies to an unintentional homicide. [See "**Simple Crimes Outline**", **involuntary manslaughter, p. 79**.] And (B) is wrong because Tom "spontaneously shot" and all murders require malice aforethought. Malice aforethought means the defendant did not act spontaneously. [See "**Simple Crimes Outline**", **homicide with malice aforethought, p. 68** and **aforethought distinguished from premeditation, p. 69**.] (C) is correct because Tom intended to kill but acted spontaneously. And that supports a conviction for voluntary manslaughter. [See "**Simple Crimes Outline**", **voluntary manslaughter, p. 76**.]

22) **(A)** Answers (B) and (C) are wrong because there is no such thing as "attempted first-degree murder" or "attempted manslaughter". [See "**Simple Crimes Outline**", **specific intent, p. 59**.] (D) is wrong because premeditation is not an element the prosecution must prove for attempted murder. All the prosecution has to prove is the defendant took a substantial step toward commission of a homicide with intent to kill. (A) is correct because Dick took a substantial step toward commission of a homicide when he shot the bullet at Harry with intent to kill, and the entry of the bullet into the house was a trespassory entry into the structure, done with that intent. [See "**Simple Crimes Outline**", **trespassory entry, p. 53**.]

23) **(D)** The way to answer this one quickly is to know what "kidnapping" meant under the common law. Answers (A), (B) and (C) are wrong, and (D) is correct because under English common law the crime of kidnapping required the victim to be transported out of the country, and under early American law it required them to be transported across State lines. [See "**Simple Crimes Outline**", **kidnapping, p. 84**.]

24) **(C)** Answers (A) and (B) are wrong because kidnapping is not one of the "inherently dangerous felonies" required for application of the Felony-Murder Rule under the common law. [See "**Simple Crimes Outline**", **the felony-murder rule, p. 70** and **kidnapping, p. 84**.] (C) is correct and (D) is wrong because Tom and Dick caused Vickie's death. They were the actual cause because she would not have died but for their act of kidnapping her. And they were the proximate cause because her death was the direct and natural result of their crime. They created extreme risks to Vickie when they kidnapped her, and that caused her death even if that is not their actual intention. [See "**Simple Crimes Outline**", **criminal causation, p. 12**.] Therefore, they would be charged with both kidnapping and involuntary manslaughter.

25) **(A)** Answer (B) is wrong because a larceny requires proof of a "trespassory taking", and Jerry did not "trespassorily take" coat since it was actually Dean's coat and Dean impliedly consented to let Jerry take it when he suggested that he "steal" it. [See "**Simple Crimes Outline**", **taking without consent, p. 30**.] And (C) and (D) are wrong because a conspiracy requires actual agreement to pursue an illegal goal. [See "**Simple Crimes Outline**", **actual agreement is necessary, p. 18**.] Here Dean was only "feigning" agreement to pursue an illegal goal. (A) is correct because even though Jerry acted with intent to commit a larceny, it was legally impossible for him to commit larceny after Dean consented to his taking of the coat. [See "**Simple Crimes Outline**", **legal impossibility and attempt, p. 17**.]

26) **(A)** Answers (C) and (D) are wrong because Debbie acted with premeditated intent to kill someone (Vickie). And she did kill someone (Bob). So she murdered Bob and can be convicted of that crime. The fact that she didn't kill the person she intended to kill is totally irrelevant. Criminal law does not favor the clumsy criminals over the adept ones. [See "**Simple Crimes Outline**", **intended results doctrine, p. 68**.] (B) is wrong because even though Debbie could be charged with assault, battery, attempted murder and murder, the assault, battery and attempted murder are all lesser included offenses of the murder charge, and they would merge into that charge so that she cannot be convicted of the

Copyright © Practical Step Press, 2014. All rights reserved.

separate crimes. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.] (A) is correct because Debbie would be convicted and sentenced only for the crime of murder.

27) **(C)** Answers (A) and (B) are wrong because attempted murder requires intent to kill, and Debbie intended to kill Vickie. So when she acted with that intent she attempted to murder Vickie and did not attempt to murder Bob. [See "**Simple Crimes Outline**", **specific intent, p. 59**.] (D) is wrong because when Debbie attempted to shoot Vickie that was the "substantial step" the prosecution must prove to convict Vickie of attempted murder. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.] It was assault on Vickie, and a battery on Bob. And each of those crimes can be charged as a separate offense. But those crimes would be lesser included offenses within the charge of attempted murder of Vickie. (C) is correct because if Debbie is convicted of attempted murder of Vickie, the battery of Bob (and assault on Vickie) will "merge" into the larger offense. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.]

28) **(B)** Answer (A) is wrong and (B) is correct because Debbie's attempt to murder Vickie is a lesser included offense within the actual murder of Bob. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.] Debbie could be charged with both attempted murder of Vickie and murder of Bob, but it was a single criminal act. So if she is convicted of murder for that act, she cannot also be convicted of attempted murder for the same criminal act. (C) is wrong because Debbie actually killed Bob and did not merely "attempt" to kill him. (D) is wrong because Debbie acted with a willful and premeditated intent to kill, so her crime cannot be "involuntary manslaughter", which requires an unintentional killing. [See "**Simple Crimes Outline**", **involuntary manslaughter, p. 79**.]

29) **(D)** Answer (B) is wrong because Debbie actually killed Bob and did not merely "attempt" to kill him. (C) is wrong because Debbie acted with malice aforethought, since she "vowed to kill" before she ever approached Vickie. There is no evidence she acted spontaneously as a result of "adequate provocation". [See "**Simple Crimes Outline**", **homicide with malice aforethought, p. 68** and **voluntary manslaughter, p. 76**.] (A) is wrong and (D) is correct because Debbie committed two separate criminal acts, not just one. The first act of attempt to murder Vickie is a separate crime from the second attempt to murder Vickie that ended up killing Bob. Vickie could be charged with two counts of attempted murder (of Vickie) and one count of murder (of Bob). But if she were found guilty of all three charges, the second count of attempted murder (of Vickie) would merge into the count of murder (of Bob). The first count of attempted murder would stand alone and not "merge" into the murder of Bob. [See "**Simple Crimes Outline**", **lesser included offenses and merger, p. 15**.]

30) **(B)** Answer (B) is correct and (A), (C) and (D) are all wrong for the same reason – there is no evidence Don intended to kill Vic. (A) and (D) are wrong because voluntary manslaughter requires intent to kill and there is no evidence Don intended to kill Vic. [See "**Simple Crimes Outline**", **voluntary manslaughter, p. 76**.] (C) is wrong for the same reason as well. One of the stupidest falsehoods ever foisted on law students is the so-called "Deadly Weapon Doctrine". A "deadly weapon" is simply any object used in a manner calculated to cause a homicide. It does not have to be a gun or knife, and guns and knives are NOT "deadly weapons" if they are used in a manner that is not "calculated to cause death". The term "calculated to cause death" means used in a manner that is intended to kill. [See "**Simple Crimes Outline**", **intent to kill, p. 69**.] (B) is correct because Don's use of the gun to shoot Vic in the foot supports a finding of "intent to cause great bodily injury", and it caused a death, and those two facts support either a murder conviction or a finding of involuntary manslaughter. [See "**Simple Crimes Outline**", **intent to cause great bodily injury, p. 70**.] The fact Vic died because of an allergic reaction is irrelevant because Don's act was the actual and proximate cause of Vic's death. Negligence by hospital staff, if any, is not an unforeseeable intervening cause of

Copyright © Practical Step Press, 2014. All rights reserved.

Vic's death because negligence by others is conclusively presumed by law to be foreseeable. [See "**Simple Crimes Outline**", **criminal causation, p. 12**.]

31) **(B)** The easy way to answer this question is to see that the act of Dr. Casey was an actual cause of Abel's death, and an unforeseeable criminal act as suggested by answer (D). Therefore (A) and (C) are wrong because the act of Dr. Casey cut off the liability of Cain for the resulting death of Abel. [See "**Simple Crimes Outline**", **criminal causation, p. 12**.]. In addition, (A) is wrong simply because there is no such thing as "transferred intent" in criminal law. [See "**Simple Crimes Outline**", **no transferred intent in criminal law, p. 9**.] But (D) is otherwise wrong and (B) is correct because Cain still is guilty of attempted murder since he poisoned Abel's omelet. That was a "substantial step" taken with intent to kill, so he can be charged with attempted murder. [See "**Simple Crimes Outline**", **substantial steps, p. 60**.]

32) **(D)** Answers (A) and (B) are wrong because Bud did not kill Granny with malice aforethought. He did not intend to kill Granny, did not intend to cause Granny great bodily injury, and did not deliberately create extreme risks to others with an awareness and conscious disregard of those risks. [See "**Simple Crimes Outline**", **homicide with malice aforethought, p. 68**.] The only remaining basis for finding that Bud acted with malice aforethought is application of the Felony-Murder Rule because Lou and Bud were going to commit a robbery, and that is one of the "inherently dangerous felonies" under that rule. [See "**Simple Crimes Outline**", **the felony-murder rule, p. 70**.] But the Felony-Murder Rule does not apply here because Granny's death was not caused by the inherent dangers of robbery. [See "**Simple Crimes Outline**", **death must be caused by the inherent dangers, p. 71**.] (C) is wrong because there is no evidence, at all, that Bud deliberately acted to create extreme risks to Granny or anyone else. (D) is the correct answer simply because the other answers are wrong. Lou and Bud could be arrested for attempted robbery, but that is not one of the answers offered.

33) **(C)** Initially Ang was the aggressor because he attacked Xian. Then Yan became the aggressor by running toward Ang with a "large knife" to defend Xian, unless that was reasonable force. That fact is not clear. Then Bao became the aggressor by shooting Yan to defend Ang, unless that was reasonable force. That fact is not clear. (A) is wrong because the facts do not show whether Bao was the aggressor or if he can claim defense of others. [See "**Simple Crimes Outline**", **defense of others, p. 92**.] (B) is wrong because the facts do not show if Bao escalated the level of violence or not. (D) is wrong because the facts do not show if Ang was still the aggressor or if Yan had become the aggressor. (C) is the best answer because in a "reasonable appearances" jurisdiction Bao can raise a claim of defense of others if Yan did not seem to be using reasonable force. And in a "step into the shoes" jurisdiction he still may be able to get the charge against him reduced from murder to involuntary manslaughter if he can show that it reasonably appeared Yan was the aggressor and that his use of force seemed necessary to defend Ang. [See "**Simple Crimes Outline**", **imperfect defenses, p. 78** .]

Copyright © Practical Step Press, 2014. All rights reserved.

Test # 10 – Criminal Procedure

Test #10 Questions

Take this multiple-choice exam of 33 questions in a **one-hour timed setting**! You have one hour to answer 33 questions. You should complete about 6 questions every 10 minutes (12 questions every 20 minutes) and that will give you ample time to review. The questions cover **criminal procedure**. Insert your own time marks! The Answers and Explanations follow.

Question 1

The police received an anonymous tip that confirmed their suspicions Dan was selling crystal meth, an illegal drug. They obtained a search warrant and went to Dan's house. Nobody was home. They broke into the house and found a number of marijuana plants being grown. Dan suddenly drove up to the house and discovered the police. He said, "I've been gone and let my friends stay here. I had no idea anyone was growing marijuana here." He was then arrested and searched. In his pocket was a sealed, but unstamped, letter addressed to "Susie Khan". The police opened the letter and it said, "Dear Susie – Wow, I am so loaded. Dan's new crop is 100% dynamite!" The letter was signed by Dan's girlfriend, Kate. Dan objects to admission of Kate's letter at his trial.

1) The letter should be ruled:

(A) Admissible because it was found as a result of a search incident to a lawful arrest.
(B) Admissible because the search was conducted using a valid warrant.
(C) Inadmissible because the warrant did not authorize police to open mail addressed to other people.
(D) Inadmissible unless the prior suspicions of the police would have supported a finding of probable cause before the anonymous tip was received.

Question 2

Bobby, 8 years old, was abducted from the parking lot of the Walmart store. Surveillance video showed him being lured into an early model Chevrolet Nova with a distinctive racing stripe painted along the side. Police showed the video of the car on TV, and it was featured on the "America's Most Wanted" TV show. Lucile watched the TV show and phoned the police with a "tip" that the car on the video was identical to one owned by a neighbor, Chester Childs. Police went to Chester's house and were met at the door by his brother, Darryl, a convicted felon on probation. Darryl said Chester was out of town and he was just there to feed Chester's cat. The police told Darryl they wanted to come into the house to look around. Darryl was afraid to refuse because if the police got a warrant and found something inside he would appear culpable. Inside the house a police search dog "alerted" to something under Chester's bed. Under the bed the police found a locked suitcase. Darryl said it belonged to Chester, and he didn't know what was in it. He gave the police permission to open the suitcase, and inside they discovered clothing Bobby was wearing when he was abducted.

2) At trial, Chester's best argument is:

(A) Darryl's consent was not voluntary because he was coerced by the police.
(B) Darryl did not have authority to let the police into the house with a dog.
(C) Darryl did not have authority to let the police open the suitcase.
(D) A warrantless search is unreasonable when police have time and opportunity to obtain one.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 3

The police received a reliable tip that Don was growing marijuana on his land in a rugged mountain area. The police then posed as real estate investors and hired a commercial pilot to fly a small plane over the mountainous area so they could take aerial photos. They used a special film that made the leaves of marijuana plants appear purple against the leaves of other foliage. The photos showed marijuana was being grown in several places on Don's land. Based on that evidence the police obtained a search warrant, went to Don's land, cut the lock off his gate, drove onto his land, and went to the areas where the marijuana was being grown. Camouflaged irrigation pipes led from those areas to a farmhouse that was also on Don's land. Inside the farmhouse the police seized a large amount of harvested marijuana. Don moves to suppress the evidence based on the 4th Amendment.

3) The motion should be:

(A) Denied because the warrant was lawfully obtained.
(B) Granted because no warrant was obtained to search the land by air.
(C) Granted because the use of the special film violated reasonable expectations of privacy.
(D) Denied if the police relied on the validity of the warrant in good faith.

Question 4

Bill and Stan were arrested for killing the clerk at the Sac-o-Suds store. Bill's cousin, Vinnie, agreed to represent both defendants, and the judge allowed him to represent both. But halfway through trial a conflict arose between the defenses of Bill and Stan. At Stan's request Vinnie moves that another attorney be appointed to represent Stan and that a mistrial be declared. The trial judge granted the motion. Stan's new attorney, public defender Gibbons, immediately moved to dismiss the case against Stan on the grounds that jeopardy attached during Stan's first trial so a second trial would violate his constitutional rights.

4) The motion should be:

(A) Granted because jeopardy attached as soon as the jury began to hear evidence in the first trial.
(B) Granted because the judge should not have allowed Vinnie to represent both defendants in the first place.
(C) Denied because dismissal based on double jeopardy cannot be granted until the defendant is convicted.
(D) Denied because Stan was the one who requested the mistrial.

Question 5

Police were told by a reliable informant that two men named Cheech and Chong were selling drugs out of a red 1991 Ford Econoline van. After that the police saw Cheech driving in a red 1991 Ford Econoline van alone. The police stopped him without a warrant and found what appeared to be drugs in his shirt pocket. Then they looked in the console between the front passenger seats and found some cocaine. Then they forced open a locked suitcase in the van and found marijuana.

5) At Cheech's trial what can be properly introduced into evidence?

(A) Everything.
(B) Nothing.
(C) Just the cocaine.
(D) Just the marijuana.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 6

The police suspected drugs were being sold in Clancy's Bar. They obtained a valid search warrant and entered the tavern. Dick was sitting at the bar drinking a beer when the police arrived. The police had him stand with his hands on the counter while they searched him. He had a pack of cigarettes in his shirt pocket. Inside the pack of cigarettes the police found some drugs. Dick was then arrested.

6) Dick's motion to suppress the evidence: The motion should be:

(A) Denied because the police had a valid search warrant.
(B) Denied if a State statute authorized the police to search individuals under these circumstances.
(C) Granted if the police lacked a reasonable suspicion Dick was armed.
(D) Granted if the police had no basis to reasonably suspect Dick had drugs in his possession.

Question 7

The police stopped Bob's car because he was driving erratically. He was given a roadside test and did not appear to be intoxicated. But his car was similar to a car reported fleeing from a fatal hit-and-run accident two days earlier and a front fender was damaged. Based on that, Bob was arrested and taken to a police station. His car was impounded and searched without a warrant. In the trunk of the car police found a locked suitcase. Inside the suitcase they found a sealed container, and inside it they found some cocaine.

7) If Bob is later exonerated for the hit-and-run but prosecuted for cocaine possession, can the cocaine be admitted into evidence against him?

(A) Yes, because the search of Bob's car was legal under the "inventory" exception.
(B) Yes, because Bob was searched subject to arrest.
(C) Not if Bob's car is like a lot of other people's cars.
(D) No, because the search of Bob's car was illegal.

Question 8

The police stopped Jim driving a green 1957 Chevrolet Impala with Sue because he ran a red light. The car had been reported stolen so Jim and Sue were arrested. They were taken to the police station and read their *Miranda* rights. Officer Otto asked them if they would answer some questions about the stolen car. Jim refused but Sue agreed. Sue was questioned in an interrogation room for an hour and then placed in a holding cell. After interrogation Otto learned a car of a matching description was used in a liquor store robbery two days earlier. Sue was brought to the interrogation room again and questioned about the robbery without being given a second *Miranda* warning. Sue confessed that she and Jim had robbed the liquor store.

8) At Sue's trial for robbery her confession:

(A) Should not be admitted because Otto questioned her about a different crime the second time.
(B) Should not be admitted because Otto did not give her a second *Miranda* warning when he began the second interrogation.
(C) Should be admitted because police are not restricted in the scope of their interrogation.
(D) Should be admitted because Sue was not released from police custody after the first interrogation.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 9

John and Mary went to a New Year's Eve party. When the party ended John insisted on driving, even though he had had several drinks. Mary had not had anything to drink. On the way home a deer ran in front of their car. John swerved to avoid hitting the deer and the car skidded on the icy road, ending up stuck in the mud on the shoulder of the highway. Mary got behind the wheel as John pushed the car in an effort to get it out of the mud and back onto the roadway. Suddenly a Highway Patrol officer pulled up to investigate. The officer approached John as he stood behind the car and smelled alcohol on his breath. He asked, "What happened?" John told him, "I was driving and a deer ran in front of me. I skidded on black ice and ended up in the ditch." The police officer then arrested John for drunk driving.

9) If John's attorney moves to exclude John's statement that he had been driving the car:

(A) The motion should be denied because John impliedly waived his right to remain silent by answering the officer's question.
(B) The motion should be denied because John was not in police custody when the officer asked the question.
(C) The motion should be granted if John subjectively felt he was not free to leave.
(D) The motion should be granted because John was not read his *Miranda* rights.

Question 10

Gertrude approached patrolman Paul and said, "I have a complaint. The hippies in the apartment below me area always smoking pot. It comes up into my apartment through the floor register and smells like Hell. Isn't that illegal?" Paul had Gertrude take him back to her apartment, and the hallway was full of the smell of burning marijuana. The smell obviously was coming from Apartment 102. Paul knocked on the door and a voice answered, "Who is it, man?" Paul said, "Police! Open up!" Behind the door Paul could hear shuffling noises, and then the door was slowly opened ajar. Zonker looked out through the crack in the door and said, "What's up dude?" Paul pushed the door open and said, "I want to talk to you. Can I come in?" Zonker was silent and just stepped back from the door. Paul entered the apartment and the smell of marijuana was obvious. Paul immediately arrested Zonker for possession of marijuana. Then he searched the nearby area and found marijuana and a bong (a pipe for smoking marijuana) stuffed under the cushions on the couch.

10) If Zonker objects to both the arrest and the search, which of the following would be the most likely result?

(A) Both the arrest and the search were illegal.
(B) The arrest was legal and the search was also legal because it was a search incident to a lawful arrest.
(C) The arrest was legal, but the search required a warrant.
(D) The search was legal because of exigent circumstances, even if the arrest was illegal.

Copyright © Practical Step Press, 2014. All rights reserved.

Questions 11-12

Lindsey was a student at Holy Names High School, a school operated by the Roman Catholic Church. The headmaster, Sister Teresa, began to hear rumors that Lindsey was selling illegal drugs to other students. The school's written promise to its students is that their lockers are their private domain and the school will never invade that privacy. One day while the student body was in Mass, Sister Teresa had the custodian, Mooney, break into Lindsey's school locker in violation of the stated school policy by taking the door off the hinges. Inside he found a large quantity of various illegal substances and prescription medications Lindsey had stolen from his grandparents. After Mass, Sister Teresa had Lindsey brought to her office and said she wanted to speak with her in confidence. In reality she was secretly tape recording their conversation. Sister Teresa soon was able to manipulate Lindsey into making several highly incriminating statements. She then expelled Lindsey from the school and turned the tape recording and drugs over to the District Attorney.

11) If Lindsey objects to admission of the tape recording at her trial for possession and distribution of illegal substances:

(A) The statements would be excluded because Lindsey was not read her *Miranda* rights.
(B) The statements would be excluded because it is illegal to tape record a person without their knowledge.
(C) The statements would be admitted because Lindsey made them voluntarily.
(D) The statements would be admitted because Lindsey was attending a private school.

12) If Lindsey moves the Court to exclude the drugs taken from her locker from evidence:

(A) The evidence will be excluded because it was obtained without a warrant.
(B) The Court would summarily dismiss her motion.
(C) The evidence will be excluded if it was obtained in violation of Lindsey's reasonable expectations of privacy.
(D) The evidence would be admitted if the Court found it was legally obtained

Question 13

Freddie was laughing jubilantly in front of a burning building late one night. Policeman Paul asked him how the fire started and he just kept laughing. Paul said, "Get into my squad car, laughing boy!" He then asked him again what he had seen. Paul stopped laughing and refused to answer questions. Because of that Paul arrested him for arson. At trial the prosecutor wants to use the fact he refused to tell Paul what happened as evidence of an "admission by silence" that he was the one who set the fire.

13) If Freddie moves to suppress evidence of his silence to implicate him in the arson:

(A) The evidence should be admitted because Freddie was free to leave until he was arrested.
(B) The evidence should be suppressed because Harry was effectively in custody.
(C) The evidence should be admitted because silence does not constitute compelled self-incrimination.
(D) The evidence should not be suppressed because even if his silence was an admission of guilt, it was voluntary.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 14

14) When charged with a crime, which of the following is protected by the 5th Amendment against compelled self-incrimination?

I. Illegal aliens.
II. Legal aliens.
III. U.S. Citizens.
IV. Corporations.
V. Labor unions.
VI. American Indians.

(A) III and VI, only.
(B) II, III and VI, only.
(C) All except IV and V.
(D) All of the above.

Questions 15-16

Dan was arrested for robbery on March 1. Detective Pat read him his *Miranda* rights and then began to question him. Dan immediately said, "I ain't talking until I have a lawyer." Dan was put in a holding cell with Snitch. Snitch began questioning Dan. Dan said, "I think I murdered someone." Snitch leaked this information to the police. On March 2 Dan was removed from the holding cell and returned to an interrogation room where he was questioned without an attorney present about the murder. During that second interrogation Dan claimed he was out of State when the murder occurred. The police confronted him with evidence he was lying, that he was actually in the area of the murder, and in response Dan made some incriminating statements.

15) Charged with murder, Dan moves to exclude the incriminating statements he made without an attorney present. The evidence will be:

(A) Admitted if Dan was given a *Miranda* warning at the beginning interrogation on March 2.
(B) Excluded because Dan's right to an attorney attached on March 1.
(C) Admitted if Dan was given a *Miranda* warning at the beginning interrogation on March 2 and did not ask for an attorney.
(D) Excluded if the murder was a result of the robbery Dan was arrested for on March 1.

16) If Dan moves to exclude the statement he made about being "out of State when the murder occurred". The evidence will be:

(A) Admissible if Dan testifies at his trial for murder.
(B) Excluded if Dan was not given a *Miranda* warning at the beginning of interrogation on March 2.
(C) Excluded because Dan's right to an attorney attached on March 1.
(D) Admissible if Dan was given a *Miranda* warning at the beginning of interrogation on March 2.

Question 17

Bob is arrested for causing a serious accident while drunk driving. He is arraigned in Superior Court. The judge has been a strong advocate for stricter laws against drunk drivers. He sets Bob's bail at $300,000. Bob cannot afford to post bail of such a large amount. Bob moves the Court to reduce the bail to an amount he can afford so he can get out of jail, go back to work, and support his family pending trial. The judge refuses. Bob appeals on the grounds the judge is prejudiced against him and has violated his 8th Amendment protections against excessive bail.

17) Bob will:

(A) Win.
(B) Lose.
(C) Win unless the judge proves setting bail at $300,000 is necessary to meet a compelling public need.
(D) Lose unless he proves setting bail at $300,000 not rationally related to any legitimate public purpose.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 18

Dan was convicted of a crime and sentenced to prison for 20 years based on evidence that was illegally obtained by police. The trial judge allowed the evidence to be introduced into evidence finding that excluding the evidence would not, on balance, deter police misconduct because the police had acted in good faith. Dan appealed, but the appeal was denied, and the Supreme Court rejected his request for certiorari. Then the United States Supreme Court issued a judgment in another case, based on exactly the same circumstances that held it was unconstitutional for a judge to admit illegally obtained evidence based on this rationale.

18) Because of this, Dan will be:

(A) Given a new trial with the illegal evidence excluded.
(B) Released from prison, but not retried because it would be double jeopardy.
(C) Denied a new trial and kept in prison.
(D) Denied because the Constitution prohibits ex post facto laws.

Question 19

Dan was convicted of a crime and sentenced to prison for 20 years. He filed a Writ of Habeas Corpus with the district Court of Appeals claiming evidence admitted against him at trial was obtained in violation of the 4th Amendment.

19) Dan:

(A) Has an absolute right to file a Writ of Habeas Corpus in federal court under the U.S. Constitution.
(B) Has no right to have his Writ of Habeas Corpus reviewed if he had an opportunity to fully and fairly litigate this same claim at the State level.
(C) Has no right to file a Writ of Habeas Corpus in federal court if the same claim was raised and rejected by a State court.
(D) Has no right to have his Writ of Habeas Corpus reviewed unless the claim was raised at trial.

Question 20

A woman was raped in 1980. At the time the State statute of limitations for charging rape was 10 years, and the maximum sentence was 20 years. In 1985 the State increased the statute of limitations to 20 years, and the maximum sentence to 25 years. In 1999 newly developed DNA technology identified a career criminal, Roy, to be the rapist on a "cold hit".

20) Roy:

(A) Cannot be charged with the crime because the 10 year statute of limitations has lapsed, and application of the 20 year statute of limitations would be an ex post facto law.
(B) Can be charged with the crime, but cannot be sentenced to more than 20 years.
(C) Can be charged with the crime, and can be sentenced to 25 years.
(D) Can be charged with the crime, and can be sentenced to 25 years, but only if the technology used to identify him was not available before 1990.

Question 21

Abdul was arrested and charged with fraud. His bail was posted at $300,000, an amount he could not afford to post. Abdul asked for an immediate trial. That request was denied. After Abdul had been in jail for three months his attorney asked again that the matter be set soon for trial. The District Attorney responded that because of budget cuts it would be impossible for his staff to be prepared for trial in less than twelve months.

21) Which of the following is most correct?

(A) Abdul may file a Writ of Habeas Corpus with a federal district Court seeking release pending trial.
(B) Abdul's right to a "speedy trial" is guaranteed by the 5th Amendment.
(C) Abdul's right to a "speedy trial" is determined by the federal Speedy Trial Act..
(D) Abdul's right to a trial is subject to available staffing because budget shortfalls are beyond the control of the prosecution.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 22

Charley was convicted of brutally murdering a child in State X and sentenced to death by firing squad. He appeals that the death sentence announced is unconstitutional because it is "cruel and unusual punishment".

22) Which of the following is most correct?

(A) The 8th Amendment prohibits both federal and State governments from exacting cruel and unusual punishment.
(B) The death penalty is not cruel and unusual punishment.
(C) Death by firing squad is cruel and unusual punishment.
(D) Charley cannot prove that death by firing squad is cruel and unusual punishment.

Question 23

Gallego kidnapped a girl in California, murdered her, and buried her body in Nevada. Nevada prosecuted Gallego for murdering the girl in Nevada. He was acquitted. California then charged Gallego will killing the girl in California.

23) Which of the following is most correct?

(A) Under the 6th Amendment Gallego cannot be tried twice for the same crime.
(B) Gallego can be tried again in Nevada for killing the girl if he is charged with manslaughter because it is a different crime.
(C) The 5th Amendment does not prohibit California from prosecuting Gallego for killing the girl if he is not charged with murder.
(D) Prosecution by Nevada does not prohibit prosecution by California.

Question 24

Dan was arrested for a crime that was recorded by a video camera. Using sophisticated "facial recognition software" a computer identified him as the perpetrator of the crime after matching the face in the video with an FBI data base of over 100,000 "mug photos" that had been "digitized" into a data base. Dan was convicted and sent to prison. After his conviction, the Federal District Appeals Court held in another case that the use of "facial recognition software" was a violation of the 4th Amendment prohibition of "unreasonable search and seizure". Based on that holding, and other argument based on the State Constitution, Dan's appeal to the State Appeals Court was granted, his conviction was overturned, and he was released from prison. Five years later the United States Supreme Court reversed the findings of the Federal District Appeals Court and held that the use of "facial recognition software" is not a violation of the 4th Amendment.

24) Because of this:

(A) The decision of the Appeals Court is reversed, Dan's conviction will be reinstated and he will be returned to prison.
(B) The decision of the Appeals Court is not reversed and Dan's conviction will not be reinstated if the State Constitution outlaws the use of the software.
(C) The decision of the Appeals Court is reversed and Dan has a right to a new trial.
(D) The decision of the Appeals Court is reversed, but Dan's conviction will not be reinstated and he will not be retried because of double jeopardy.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 25

Jose and his wife, Maria, had a violent marriage. One day in 1990 Maria disappeared. Her body was never found, but her blood was found spattered in their apartment. Jose stated that he and Maria had another violent fight, and that she walked out the door and disappeared. Jose was charged with murder, and the State prosecutor convinced the jury that Maria never would have abandoned her children. Jose was convicted of murder and sentenced to 15 years in State prison. Jose spent the next 15 years in prison, and his children were raised in foster homes. When Jose was released from prison in 2005 his children and family hated him, and he could only get menial work as a dishwasher. Five years later in 2010 Maria appeared at his door in the night, pointed her finger in his face and said, "You got what you deserved, you pig!" Jose flew into a rage and beat Maria to death on his doorstep.

25) Which of the following is most correct?

(A) The State cannot punish Jose again for killing Maria because it already punished him once for the same crime.
(B) Jose cannot be charged with murdering Maria again, but he can be charged with a different crime such as manslaughter.
(C) Jose can be tried a second time by the State for the same crime because it concerns a different criminal act.
(D) Jose can only be tried for murder in federal court because it is a different sovereign.

Questions 26-27

Bill and Stan held up the Sac-o-Suds store, and the clerk was killed. After they were arrested Stan told the police, "Bill and I went to the store to rob it. But Bill promised there would be no violence. Then he shot the clerk in cold blood anyway".

26) Which of the following is most correct?

(A) If Bill and Stan are tried together for murder, and Stan declines to testify, his statement about Bill cannot be entered into evidence.
(B) If Bill is tried for murder alone, and Stan declines to testify, his statement can be entered into evidence.
(C) If Bill is tried for murder alone Stan can be forced to testify against him.
(D) If Bill is tried for murder alone and the judge orders Stan to testify against him under a grant of immunity, nothing Stan says can be used against him at a separate trial for his participation in the murder.

27) If Bill and Stan are tried together for murder with a single jury, and Stan refuses to testify, which of the following is most correct?

(A) Stan's entire statement can be entered into evidence.
(B) Stan's statement, "Bill and I went to the store to rob it," can be entered into evidence.
(C) Only Stan's statement, "I went to the store to rob it," can be entered into evidence.
(D) Nothing Stan said can be entered into evidence.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 28

Bob pointed a gun at Carl and demanded his wallet. Carl told Bob, "Get lost!" Bob then shot Carl and took his wallet. Bob was charged with robbery and pled guilty. Carl died from his wounds a year later.

28) Which of the following is most correct?

(A) The State cannot try Bob for murder because Carl died as a result of the robbery and he has already pled guilty to that crime.
(B) Bob can be tried for murder but not for the criminal assault or battery of Carl.
(C) The robbery was a lesser included offense of the murder.
(D) The murder was a lesser included offense of the robbery.

Question 29

Police received an anonymous tip that Don was selling illegal narcotics. A police "stakeout" observed several known drug users entering and leaving Don's home. Then Nick, an undercover officer, then went to Don's door and said he had heard he could buy some "stuff" there. In response Don offered to sell him a stolen TV. The police then filed an affidavit for a search warrant that stated, "We received an anonymous tip Don is selling drugs. We observed known drug users entering and leaving Don's home. Then Don offered to sell an undercover officer a stolen TV at his home. Don also offered to sell the undercover officer illegal drugs." Based on Nick's affidavit a warrant was issued to search Don's house for drugs and stolen goods.

29) If the police search Don's house using the warrant and find illegal drugs in plain view, and Don challenges the warrant:

(A) The drug evidence is admissible because "Don sold the undercover officer a stolen TV at his home".
(B) The drug evidence is admissible because it was in plain view.
(C) The drug evidence is inadmissible because an anonymous tip never establishes probable cause.
(D) The drug evidence is inadmissible because the police lied to get the warrant.

Question 30

Police received a reliable tip that Don was selling stolen TVs from his home. The police then filed an affidavit for a search warrant that stated, "We received a reliable tip Don is selling stolen TVs from his home." The magistrate then issued a search warrant authorizing police to search Don's home.

30) Which of the following is least correct?

(A) The warrant is not valid unless the police stated in the affidavit why and how they believe the "tip" to be reliable.
(B) The warrant is not valid if the magistrate is paid a fee for each warrant he issues.
(C) The warrant is not valid if it did not state the police were only authorized to search Don's home for stolen TVs.
(D) The warrant is not valid because it was only based on a "tip".

Question 31

Craig the cop boarded a Greyhound bus parked at the bus station and started looking at the luggage in the overhead bins. He then sniffed a back pack and smelled the distinctive odor of hashish. He then pulled the bag out, squeezed it, and felt what seemed to be "bricks" of hashish. The name tag on the backpack indicated LeRoy was the owner. Craig then opened the backpack, found drugs, and arrested LeRoy.

31) Which of the following is most correct?

(A) The search was illegal if Greyhound did not give Craig permission to search the bus.
(B) The search was illegal if LeRoy did not give Craig permission to search his backpack.
(C) The search was illegal if Craig did not attempt to get a warrant.
(D) The search was illegal if Craig squeezed the backpack before he was sure it contained drugs.

Copyright © Practical Step Press, 2014. All rights reserved.

Question 32

Officers Otto and Oren go to Cheech's house dressed as Mormon missionaries. They walk across the front yard and knock on the door. The door is opened by Chong, who tells them Cheech is in the bathroom. They ask if they can come in to talk about Jesus. Chong agrees and lets them into the front room. After discussing religion for a few moments Otto asks if he can go into the kitchen to get a drink of water. Chong agrees, and on his way to the kitchen Otto sees some marijuana plants. Otto and Oren seize the marijuana and arrest Cheech when he comes out of the bathroom.

32) Which of the following is most correct?

(A) The search was illegal because Cheech did not consent to let the officers into his house.
(B) The search was illegal if Chong was just there to install a TV satellite dish.
(C) The search was illegal because the false pretenses were to get Chong's consent.
(D) The search was illegal because Cheech did not give the officers permission to enter his front yard.

Question 33

Hunter was hunting deer in a remote area of the National Forest. He discovered a shallow grave with a human foot sticking out of the ground, partially eaten by coyotes. Hunter immediately reported his finding to the police and they rushed to the crime scene to preserve the evidence. The body was exhumed and identified as Dan's wife, whom he reported missing weeks before. Dan is charged with her murder. The area where the body was found lacked clear landmarks and after the body was unearthed it turned out it had been buried on land owned by Dan rather than on National Forest land. His attorney moves the Court to suppress the evidence found at the grave, including the body, on the grounds the police entered Dan's land and conducted a search without a warrant.

33) Which of the following is most correct?

(A) The evidence was illegally obtained because the police entered onto and searched Dan's land without a warrant.
(B) The evidence was legally obtained because the body was first discovered by Hunter, not police.
(C) The evidence was legally obtained because Dan did not have a reasonable expectation of privacy.
(D) The evidence was illegally obtained if the police had time to obtain a warrant and there was little or no danger any evidence would be lost.

If you budgeted your time properly you should still have 5 minutes left to review especially difficult questions.

Copyright © Practical Step Press, 2014. All rights reserved.

Test #10 Answer Sheet

Question	Answer
1	D
2	C
3	A
4	D
5	A
6	D
7	C
8	D
9	B
10	A
11	D
12	B
13	B
14	C
15	D
16	A
17	B
18	C
19	B
20	B
21	A
22	A
23	D
24	B
25	C
26	D
27	C
28	B
29	A
30	D
31	A
32	B
33	C
Total	33
Wrong	
Right	
% Right	

Copyright © Practical Step Press, 2014. All rights reserved.

Test #10 Answers and Explanations

Use the **references** given below to obtain a more complete explanation of each legal concept being tested in Nailing the Bar's "**Simple Criminal Procedure Outline**".

1) **(D)** The key phrase here is "anonymous tip". If you miss that you will waste a lot of time agonizing over other issues. (D) is correct because an "anonymous tip" is never adequate evidence, by itself, to create probable cause. [See "**Simple Criminal Procedure Outline**", **the establishment of probable cause, p. 28**.] So unless the police already had enough evidence to show probable cause for a warrant, their warrant is invalid. In that case (A) and (B) would both be wrong because both the warrant would be invalid and the arrest based on any evidence discovered in a search using it would be unlawful. (C) is wrong because even if the warrant did not authorize opening the envelope, the arrest of Dan did (both as a search incident to a lawful arrest and as an inventory search).

2) **(C)** Answer (A) is wrong because there is no evidence the police threatened to do anything illegal to "coerce" Darryl. The fact that he was an ex-con on probation and afraid of appearing involved in his brother's activities is entirely irrelevant to that issue. [See "**Simple Criminal Procedure Outline**", **consensual entries, p. 37**.] (B) is wrong because there is no evidence whether Darryl was authorized to let anyone else into the house or not. If Chester gave Darryl permission to enter the house, Darryl might have had implied permission to let other people (e.g. a friend accompanying him to feed the cat) into the house as well. (D) is wrong because a search without a warrant is not unreasonable when police are given valid consent to enter the premises. (C) is correct because there is no evidence that Darryl had implied or express permission to open the suitcase.

3) **(A)** Answer (B) is wrong because the police have a right to fly over and observe evidence left in plain sight without a warrant in the same manner as any other citizen under the "open fields" doctrine. [See "**Simple Criminal Procedure Outline**", **open fields, p. 37**.] (C) is wrong because Don had no "reasonable expectation of privacy" when he is growing marijuana openly in a remote, rugged, mountainous setting. While it is often an unreasonable search for police to use scientific gadgets to "look through walls" or record conversations, it is not a violation of reasonable expectations of privacy for them to use binoculars, telescopes, etc. to see things that anyone else, such as hunters or hikers, would see simply walking through the same area. [See "**Simple Criminal Procedure Outline**", **evidence in plain view can be seized if there is legal access to it, p. 40**.] (D) is not the best answer because if the warrant itself was illegal a search by the same officers that illegally obtained it would be illegal.

4) **(D)** Answer (D) is correct, and (A), (B) and (C) are wrong because due process does not prevent a second trial by the same jurisdiction for the same the offense if the first trial ended in a mistrial at the request of the defendant. [See "**Simple Criminal Procedure Outline**", **when double jeopardy attaches, p. 14**.]

5) **(A)** First note that the information Cheech and Chong were selling drugs from the van was from a "reliable informant". That alone establishes probable cause for an arrest. [See "**Simple Criminal Procedure Outline**", **the establishment of probable cause - sufficiency of evidence, p. 28** and **probable cause necessary for arrest, p. 59**.] The informant's description of the van matches the van stopped, so both the stop and the arrest of Cheech without a warrant are supported by probable cause and legal. The search of the drugs in the pocket was legal without a warrant because it was a search incident to a lawful arrest and non-intrusive. [See "**Simple Criminal Procedure Outline**", **search incident to lawful arrest or impoundment, p. 51**.] (B) and (D) are wrong because the cocaine in the "console" was legally discovered under both the "lurch area" and "auto search" exceptions. [See

Copyright © Practical Step Press, 2014. All rights reserved.

"**Simple Criminal Procedure Outline**", **lurch area search incident to lawful arrest , p. 53** and **automobile and inventory search incident to arrest, p. 53**]. (C) is wrong because the arrest of Cheech in the automobile justified a search without a warrant under the "automobile and inventory search incident to arrest" exception. (A) is correct because all of the evidence was legally discovered.

6) **(D)** Answer (A) is wrong because the warrant only authorized the police to search the bar, not the persons of the patrons in the bar. (B) is wrong because state statutes cannot overrule constitutional guarantees. (C) is wrong because even if the police had a reasonable suspicion Dick was armed, that still would not have authorized them to look inside the pack of cigarettes (where no weapon could be hidden). [See "**Simple Criminal Procedure Outline**", **Police Safety – Terry Stops, Limited to Weapon Search Only, p. 50**.] (D) is correct because the police search could only be justified as a "search incident to a lawful arrest" and that required the police to have probable cause to arrest Dick first, before they searched him, based on reasonable suspicions he was in possession of drugs. [See "**Simple Criminal Procedure Outline**", **search incident to lawful arrest or impoundment, p. 51**.]

7) **(C)** Answer (A) would be correct if Bob was legally arrested. And (D) says he was not legally arrested. So that is the issue – was Bob legally arrested or not? If he was, (B) would also be true because even though the disputed evidence was not found on Bob's person, his car could be searched incident to a lawful arrest. [See "**Simple Criminal Procedure Outline**", **search incident to lawful arrest or impoundment, p. 51**.] (C) is correct because Bob could only be legally arrested based on probable cause. That means credible evidence that a crime has been committed and Bob is the one who committed it. [See "**Simple Criminal Procedure Outline**", **probable cause necessary for arrest, p. 59** and **the establishment of probable cause – sufficiency of evidence, p. 28**.] Even though Bob's car is "similar" to a car seen leaving the area of a fatal accident, how unusual is that? The fact that Bob's car is "similar" to the car leaving the accident would only establish probable cause if his car is particularly unusual in color, make, age, etc. so that it would be more likely than not that he was the perpetrator. Simply arresting everyone that has a car "similar" to the car involved in the crime is just an unconstitutional "dragnet" tactic. [See "**Simple Criminal Procedure Outline**", **dragnets, p. 29**.]

8) **(D)** Answers (A) and (B) are wrong because once defendants have been given *Miranda* warnings, and have knowingly waived their rights to silence and counsel, police may question them in subsequent interrogations without repeating the *Miranda* warning as long as they have been kept in custody. [See "**Simple Criminal Procedure Outline**", **waiver extends to all subsequent interrogations, p. 91**.] (C) is wrong because it is too broad a statement to say that "police are not restricted". Some restrictions always apply. (D) is correct because as long as the defendant remains in police custody questioning can resume without repetition of the *Miranda* warning, even if the questioning moves on to discussion of different or more serious crimes from the crime for which the defendant was arrested.

9) **(B)** Answer (C) is wrong because whether or not a defendant is being subjected to a "custodial interrogation" depends on whether "reasonable people" in the same situation would have felt they were not free to leave the presence of the police, and it does not matter if the defendant subjectively felt otherwise. [See "**Simple Criminal Procedure Outline**", **custodial interrogation depends on reasonable appearances, p. 80**.] (A) is wrong because a defendant cannot "waive his right to remain silent" until he has first been informed of those rights with the *Miranda* warning. [See "**Simple Criminal Procedure Outline**", **waiver of Miranda rights, p. 87**.] (B) is correct and (D) is wrong because John was not actually in police custody when he was questioned. Police may ask general questions in the process of investigating at the scene of an accident or crime. The *Miranda* warning is not necessary or required until questioning goes beyond "general questioning" and it becomes reasonably apparent the defendants are not free to leave. [See "**Simple Criminal Procedure Outline**", **crime scene investigation, p. 80**.]

Copyright © Practical Step Press, 2014. All rights reserved.

10) **(A)** Answer (D) is wrong because a search cannot be legal because of "exigent circumstances" if it results from an illegal arrest. For the evidence found as a result of an arrest to be legal, the arrest must be legal, based on probable cause. Exigent circumstances may justify a search without a warrant, but a warrant is needed to enter private property to conduct a search unless exigent circumstances justify immediate action. [See "**Simple Criminal Procedure Outline**", **search incident to lawful arrest or impoundment, p. 51** and **exigent circumstances that justify search without a warrant, p. 46**.] Here there was no "exigent circumstance" anyway because if Paul had probable cause he could have easily gotten a search warrant. (C) is wrong because if the arrest was legal it would have justified the search of the "lurch area" around the defendant without a warrant. [See "**Simple Criminal Procedure Outline**", **lurch area search incident to lawful arrest, p. 53** .] (A) is correct and (B) is wrong because Paul's arrest of Zonker was illegal. Paul actually had no real evidence that Zonker had been smoking marijuana at the time he arrested him. Even though the smell of burning marijuana was in the air, Paul did not actually see Zonker smoking it. The smell was in the hallway, and it was going through the "floor registers" of the building. So it could have gotten into Zonker's apartment the same way it got into Gertrude's apartment! Also, someone besides Zonker could have smoked marijuana in his apartment and then left the room. Paul simply assumed Zonker had been smoking marijuana. [For example, see *Johnson v. United States* (1948) 333 U.S. 10.]

11) **(D)** Answers (A) and (C) are wrong because Lindsey was not questioned by a government agent. Therefore Lindsey had no right to be given a *Miranda* warning, and whether she made her statements voluntarily or not is entirely irrelevant. (B) is wrong because even though some States prohibit secret recording of conversations federal law and the majority of States allow secret recording of conversations if at least one of the parties is aware of and consents to the recording. (D) is the better answer because Lindsey was not going to a public (government run) school so the statements recorded by Sister Teresa were not subject to the protections provided by the holding in *Miranda*. [See "**Simple Criminal Procedure Outline**", **criminal procedure concerns only governmental acts, p. 2**.]

12) **(B)** Answer (B) is correct and (A), (C) and (D) are wrong because the 4th Amendment only prohibits unreasonable searches by government agents. [See "**Simple Criminal Procedure Outline**", **criminal procedure concerns only governmental acts, p. 2**.] The only possible reason Lindsey could cite in her motion to exclude the evidence is that her 4th Amendment rights were violated by Sister Teresa, but the Sister is clearly not a government agent. As a result, Lindsey's motion would be summarily dismissed and the Court would never consider whether the evidence was legally obtained or not.

13) **(B)** Answer (A) is wrong because the evidence offered, Freddie's silence, occurred after he was put in the car and at that point he was not reasonably "free to leave". [See "**Simple Criminal Procedure Outline**", **custodial interrogation depends on reasonable appearances, p. 80**.] (B) is correct and (C) and (D) are wrong because once Freddie was not free to leave Paul should have given him a *Miranda* warning, and Freddie had a right to remain silent. [See "**Simple Criminal Procedure Outline**", **no custodial interrogation legal before Miranda warnings given, p. 82**.] Exercise of the right to remain silent is presumed unless evidence of waiver can be shown. [See "**Simple Criminal Procedure Outline**", **exercise of Miranda rights presumed unless waiver can be shown, p. 83**.] Freddie's exercise of his constitutional rights is not admissible as evidence against him.

Copyright © Practical Step Press, 2014. All rights reserved.

14) **(C)** The Supreme Court has held that the 5th Amendment only protects "natural persons". But it protects all natural persons equally. Therefore, (C) is correct and (A), (B) and (D) are wrong.

15) **(D)** When Dan asserted his right to an attorney after being arrested for robbery he could not be legally questioned by the police about that robbery until he was appointed an attorney. Here he was questioned by both Snitch and the police on March 2. Answer (A) is wrong if Snitch was a police agent, or if the robbery and murder are directly related, or if Dan asked for an attorney before making his statements on March 2. [See "**Simple Criminal Procedure Outline**", **police agents, p. 79** and **questioning may resume only with counsel if right to counsel exercised, p. 85**.] (B) is wrong if the murder is unrelated to the robbery, because Dan's request for an attorney on March 1 does not prevent him from being interrogated about a different, unrelated crime on March 2. [See "**Simple Criminal Procedure Outline**", **defendant can be questioned about different crimes after new Miranda, p. 85**.] (C) is wrong if Snitch was a police agent or the robbery and murder are directly related. (D) is correct in any event because the police cannot question Dan about the robbery without the presence of counsel, even if they are discussing a "murder" that directly resulted from that same robbery.

16) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because the statement might have been illegally obtained whether Dan was given a second *Miranda* warning on March 2 or not. And if the statement was illegally obtained it generally would be excluded at trial. But an exception to that general rule is that if Dan testifies at his own trial the statement can be used to impeach his credibility whether it was obtained legally or not. [See "**Simple Criminal Procedure Outline**", **impeachment exception, p. 102**.]

17) **(B)** Answer (B) is correct and (A), (C) and (D) are wrong because Bob is being held by a State, not the federal government, and the 8th Amendment prohibition against "excessive bail" has never been extended to regulate State behavior. [See "**Simple Criminal Procedure Outline**", **federal criminal rules that still do NOT bind the states, p. 3** and **excessive bail prohibition not extended to states, p. 13**.] In fact, Bob could be held "without bail" if the judge deemed it necessary to prevent him from fleeing prosecution. The only part of the 8th Amendment that has been extended to the States is the prohibition against "cruel and unusual punishment:" [See "**Simple Criminal Procedure Outline**", **cruel and unusual punishment violates due process, p. 13**.]

18) **(C)** Answer (C) is correct and (A), (B) and (D) are wrong because all of Dan's appeal rights have been exhausted. In this situation, under the "*Linkletter-Stovall*" standard, the Court's decision will only be applied to new cases and cases currently under appeal but will not be applied to all past cases otherwise. [See "**Simple Criminal Procedure Outline**", **retroactive effect of a finding of unconstitutionality, p. 6**.]

19) **(B)** Answer (B) is correct and (A), (C) and (D) are all wrong because the one exception to the general rule, that criminal defendants almost always have an absolute right to file a Writ of Habeas Corpus, is if they claim evidence obtained in violation of the 4th Amendment was used against them but they had an opportunity to fully and fairly litigate the same claim at the State level. In that one situation, only, criminal defendants will not be allowed to file a Writ of Habeas Corpus. [See "**Simple Criminal Procedure Outline**", **habeas corpus, p. 8**.]

20) **(B)** Answer (A) is wrong because Roy was still at risk for prosecution in 1985 when the statute of limitations was extended from 10 years to 20 years. So the change in the law did not make him liable for a crime that he was not already liable for at that time. (C) and (D) are wrong because the maximum sentence was 20 years at the time the crime was committed, so increasing the penalty after the fact would be an ex post facto law. [See "**Simple Criminal Procedure Outline**", **ex post facto laws, p. 8**.]

Copyright © Practical Step Press, 2014. All rights reserved.

(B) is correct because Roy can be charged with the crime, but he cannot be sentenced to a more severe penalty than existed at the time the crime was committed.

21) **(A)** Answer (B) is wrong because the right to a "speedy public trial before an impartial jury" is guaranteed by the 6th Amendment, not the 5th. [See "**Simple Criminal Procedure Outline**", **right to a speedy trial, p. 12**.] (C) is wrong because the federal "Speedy Trial Act" only governs trial procedures in federal court, and since Abdul is being tried by the "District Attorney" this must be in State court. (D) is wrong because Abdul's fundamental constitutional rights are not subordinate to State funding problems. States create their own funding problems by failing to levy adequate taxes and spending foolishly. (A) is correct because Abdul has a constitutional right to both a speedy trial and habeas corpus review of his case by a federal court if he can show he has exhausted his available State court remedies. [See "**Simple Criminal Procedure Outline**", **habeas corpus, p. 8**.]

22) **(A)** Answer (B) is wrong because even though the U.S. Supreme Court has held the death penalty, per se, is not "cruel and unusual", the death penalty as performed by State X may be "cruel and unusual". [See "**Simple Criminal Procedure Outline**", **cruel and unusual punishment violates due process, p. 13**.] (C) is wrong because death by firing squad has not been ruled to be "cruel and unusual", and criminals have been executed in the United States by this method in recent years. (D) is wrong because it is possible Charley could prove death by firing squad, as carried out in State X where he has been sentenced to death, is cruel and unusual. (A) is correct because the 8th Amendment does prohibit the federal government from exacting "cruel and unusual punishment", and that prohibition has been extended to the States through the 14th Amendment as a due process guarantee. [See "**Simple Criminal Procedure Outline**", **cruel and unusual punishment violates due process, p. 13**.]

23) **(D)** Answer (A) is wrong because the 5th Amendment prohibits a person from being tried twice for the same criminal act, not the 6th. (B) is are wrong because the 5th Amendment prohibits a sovereign (e.g. Nevada) from trying the same defendant twice for the same criminal act, regardless whether the "crimes" charged are different or the same. (C) is wrong because the 5th Amendment does not prohibit California from prosecuting Gallego for the very same crime he was acquitted of in Nevada because it is a different "sovereign". (D) is correct because the 5th Amendment only prohibits the same government agency (sovereign, State or federal government) from prosecuting a defendant twice for the same criminal act. [See "**Simple Criminal Procedure Outline**", **double jeopardy, p. 14**.]

24) **(B)** Answer (A) is wrong because the holding of the State Appeals Court would not be reversed if its decision was not wholly based on the previous holding of the Federal District Appeals Court, and was adequately based on the "other argument" concerning the State Constitution. [See "**Simple Criminal Procedure Outline**", **state decisions based on independent and adequate state grounds, p. 7**.] (C) and (D) are wrong because Dan has already been tried and convicted, so if the holding of the State Appeals Court were reversed he would just be returned to prison and would not have a right to a new trial. (B) is correct because the State Appeals Court holding would not be reversed if it based its decision on independent and adequate State grounds. [See "**Simple Criminal Procedure Outline**", **retroactive effect on State appellate court reversals, p. 6**.]

25) **(C)** Answer (C) is correct and (A), (B) and (D) are wrong because the 5th Amendment only prohibits a sovereign (State or federal government) from prosecuting a person twice for the same criminal act. Jose was prosecuted the first time for killing Maria in 1990. The fact that he did not actually kill her is irrelevant. He can be prosecuted for killing Maria again in 2010 because it is a different criminal act. This may not seem fair but you are going to law school, not fair school. [See "**Simple Criminal Procedure Outline**", **prosecution for different criminal acts. p. 16**.]

Copyright © Practical Step Press, 2014. All rights reserved.

26) **(D)** Under the 5th Amendment criminal defendants cannot be forced to make self-incriminating statements. But under the 6th Amendment, no witness statements can be introduced against a criminal defendant unless the defendant has an opportunity to confront and question his accusers. [See "**Simple Criminal Procedure Outline**", **confronting and compelling witnesses, p. 18**.] (A) is wrong because Stan and Bill can be appointed separate juries, and this is a common trial scenario. Then Stan can be compelled to testify about his statement before Bill's jury under a grant of immunity to satisfy the 5th Amendment. He would then be subject to cross examination by Bill's attorney. [See "**Simple Criminal Procedure Outline**", **the use of separate trials or juries to compel testimony, p. 22**.] (B) is wrong because Stan can be compelled to testify at Bill's trial under a grant of immunity. Again he would be subject to cross examination. (C) is wrong because Stan can be compelled to testify under a grant of immunity. (D) is correct because Stan can be ordered to testify against Bill under a grant of immunity. [See "**Simple Criminal Procedure Outline**", **granting immunity to compel testimony, p. 21**.]

27) **(C)** Answers (A) and (B) are wrong because if there is only one jury Stan has a 5th Amendment right as a criminal defendant to decline to testify, but Bill has a 6th Amendment right as a criminal defendant to "confront" Stan over his claim Bill went to the store to rob it. The result is the parts of the statement accusing Bill of a criminal act simply could not be introduced at all. (C) is correct and (D) is wrong because the parts of the statement accusing Bill of criminal acts can be removed or "redacted" and the parts in which Stan admits his own criminal acts can still be admitted. [See "**Simple Criminal Procedure Outline**", **confronting and compelling witnesses, p. 18** and **granting immunity to compel testimony, p. 21**.]

28) **(B)** Answer (A) is wrong because Bob could not be charged with murder until Carl died, so Bob's earlier guilty plea to the robbery charge did not prevent prosecution for the murder charge later. [See "**Simple Criminal Procedure Outline**", **prosecution for crimes not previously chargeable, p. 16**.] (D) and (C) are wrong because murder is not a "lesser included offense" of robbery, and robbery is not a "lesser included offense" of murder. Clearly a person can commit a robbery without committing a murder, and vice versa. (B) is correct because Bob has already pled guilty to robbery, and his assault and battery on Carl were lesser included offenses of that crime. So he cannot be tried a second time by the same "sovereign" for those same criminal acts. Otherwise it would constitute double jeopardy. [Again, see "**Simple Criminal Procedure Outline**", **prosecution for lesser included offenses, p. 15**.] But he can be tried for the murder that resulted from those criminal acts.

29) **(A)** Answer (B) is wrong because the drug evidence was not in "plain view" until the police entered the home with a search warrant. Therefore the drugs were discovered and seized "incident to execution" of that warrant. [See "**Simple Criminal Procedure Outline**", **search and seizure incident to execution of a warrant, p. 55**.] If the warrant was illegal, the evidence was discovered illegally. (C) and (D) are wrong because even though an anonymous tip generally will not establish probable cause, and even though the police lied to get the warrant, the warrant will still be valid if the other statements in the affidavit support a finding of probable cause anyway. [See "**Simple Criminal Procedure Outline**", **effect of police perjury and the Franks Hearing, p. 27**.] (A) is correct because the police statement that "Don sold the undercover officer a stolen TV at his home" was true, and that one statement alone established probable cause for issuance of a warrant to search the home for stolen goods. Once police were in the home legally they were authorized to observe the drugs in "plain view" and to seize it "incident to execution of the warrant.

30) **(D)** Note that the CALL asks for the least correct answer. (A) is a correct statement, and a wrong answer, because a warrant must be issued based on an affidavit that states factual allegations showing probable cause exists. [See "**Simple Criminal Procedure Outline**", **the affidavit, p. 26**.] Merely claiming that an informant is "reliable" is insufficient. The police must state in some detail how and

Copyright © Practical Step Press, 2014. All rights reserved.

why they believe the informant to be a "reliable" source of accurate information. (B) is a correct statement, and a wrong answer because the magistrate must be neutral, and it is a matter of settled law that a magistrate paid a fee for each warrant issued cannot be neutral. [See "**Simple Criminal Procedure Outline**", **the magistrate, p. 26**.] (C) is correct, and the wrong answer, because the warrant must state with particularity the evidence the police are to search for, and that must be evidence of the crime that has been alleged in the affidavit to have been committed. [See "**Simple Criminal Procedure Outline**", **sufficient particularity, p. 32**.] (D) is an incorrect statement, and the correct answer, because warrants often are based on "tips" from informants. [See "**Simple Criminal Procedure Outline**", **totality of the circumstances rule for informers, p. 30**.]

31) **(A)** Answer (B) is wrong because if Craig is on the bus legally, and smells the hashish without moving or manipulating the backpack or anything else, he has probable cause to institute a search and does not need LeRoy's permission to search the backpack. The fact the evidence was on board a motor vehicle would justify a search without waiting to get a warrant. [See the example in "**Simple Criminal Procedure Outline**", **automobile searches, p. 47**.] (C) is wrong because the fact the evidence was on board a motor vehicle justified a search without waiting to get a warrant. (D) is wrong because once Craig smelled the hashish he had probable cause that justified searching for the source of the smell. It is illegal for police to squeeze and manipulate baggage without probable cause to believe they contain drugs, but once probable cause exists a searching of the bags is justified. [See the example in "**Simple Criminal Procedure Outline**", **plain view, p. 36**.] (A) is correct because Craig is on private property, the Greyhound bus, when he smells the drugs. If he has permission to be there, the smell of the drugs is discovered "in plain view". But if he does not have permission, from Greyhound, to be on the bus at all, he is there illegally, and the evidence has been gathered illegally. [See the examples in "**Simple Criminal Procedure Outline**", **pp. 36-37**.]

32) **(B)** Answer (A) is wrong because Cheech let Chong into the house and Chong then consented to let the police into the house. So if Chong was authorized by Cheech to let other people into the house, their entry was consensual, they were not there illegally, and the evidence was seen in "plain view". [See "**Simple Criminal Procedure Outline**", **lawful access to the place of discovery, p. 35**.] (C) is wrong because the fact the police used a deception to gain entry to the house does not make their entry illegal. [See "**Simple Criminal Procedure Outline**", **plain view, p. 36**.] (D) is wrong because there is always implied consent to enter the front yard of houses to approach the door. [See the first example in "**Simple Criminal Procedure Outline**", **consensual entries, p. 37**.] That consent could be revoked by posting a "keep out" sign, but otherwise consent to approach the door is implied. (B) is correct because if Chong was just a TV cable guy there to install a satellite dish he was clearly not authorized to let anyone into the house, and entry by the officers under that circumstance would be illegal.

33) **(C)** Answers (A) and (D) would both be correct unless some exception to the general need for a warrant applies. (B) is wrong because initial discovery of the evidence by a private citizen does not free police from the requirement to obtain a search warrant to enter private land. (C) is correct and it makes (A) and (D) wrong because even though the police entered Dan's land without a warrant, Dan did not have a reasonable expectation of privacy. That is an exception to the general requirements of the 4th Amendment. Dan buried the body where wandering hunters and hikers could easily find it so he had no reasonable expectation of privacy. If a person places evidence where it can easily be discovered by others it is not unreasonable for police to see it there. [See "**Simple Criminal Procedure Outline**", **the lack of reasonable expectation of privacy, p. 40** and **the lack of injury concept, p. 41**.]

Copyright © Practical Step Press, 2014. All rights reserved.

Note: Prices, ISBN numbers and details are subject to change as various volumes are updated.

NAILING THE BAR publications by Practical Step Press – www.PracticalStepPress.com

EXAM GUIDES:

These Exam Guides identify the most commonly tested legal issues and explain WHAT to Say and HOW to Say It on Law School and Bar Exams:

1. **How to Write Essays for Contracts, UCC, Torts and Crimes Law School and Bar Exams (ABC).** The 140 most commonly tested law school and bar exam issues, 217 rules & definitions to answer them, 160 issue spotting hints, how to NAIL THE ELEMENTS, and 20 practice questions with sample answers. $29.95. ISBN 978-1-936160-00-6. © 2009, 2012.

2. **How to Write Essays for Contracts & UCC Law School and Bar Exams (A).** The 51 most commonly tested law school and bar exam Contracts and UCC issues, 79 rules & definitions to answer them, 71 issue spotting tips, and 7 practice questions with sample answers and explanations. $19.95. ISBN 978-1-936160-01-3. © 2009, 2012.

3. **How to Write Essays for Torts Law School and Bar Exams (B).** The 52 most commonly tested law school and bar exam Torts issues, 91 rules & definitions to answer them, 39 issue spotting tips, and 7 practice questions with sample answers and explanations. $19.95. ISBN 978-1-936160-02-0. © 2009, 2012

4. **How to Write Essays for Crimes Law School and Bar Exams (C).** The 37 most commonly tested law school and bar exam Crimes issues, 76 rules & definitions to answer them, 50 issue spotting tips, and 6 practice questions with sample answers and explanations. $19.95. ISBN 978-1-936160-03-7. © 2009.

5. **Nailing the BABY Bar: How to Write Essays for the California First Year Law Student Exam (BB).** This book has the same materials as the book "How to Write Contracts, UCC, Torts and Crimes Law School and Bar Exams" PLUS explanation of the California First Year Law Student Exam format. $29.95. ISBN 978-1-936160-04-4. © 2010, 2011, 2012

6. **How to Write Essays for Constitutional Law, Criminal Procedure and Civil Procedure Law School Exams (DEF).** The top 33 issues, 104 rules & definitions, 111 issue spotting hints, and 18 practice questions with answers and explanations. $29.95. ISBN 978-1-936160-09-9. © 2011, 2012.

7. **How to Write Essays for Criminal Procedure Law School and Bar Exams (D).** Issues, rules, questions and answers for Criminal Procedure. $19.95. ISBN 978-1-936160-10-5. © 2010., 2011, 2012

8. **How to Write Essays for Civil Procedure Law School and Bar Exams (E).** Issues, rules, issue spotting, questions and answers for Civil Procedure. $19.95. ISBN 978-1-936160-11-2. © 2010., 2012

9. **How to Write Essays for Constitutional Law Law School and Bar Exams (F).** Issues, rules, issue spotting, questions and answers for Constitutional Law. $19.95. ISBN 978-1-936160-12-9. © 2010, 2012, 2013.

10. **How to Write Essays for Real Property, Wills, Trusts and California Community Property Law School and Bar Exams (GHIJ).** The 93 top issues, 213 rules & definitions, 165 issue spotting hints, and 20 practice questions with answers and explanations. $29.95. ISBN 978-1-936160-13-6. © 2010, 2011, 2013.

11. **How to Write Essays for Real Property Law School and Bar Exams (G).** Issues, rules, issue spotting, questions and answers for Real Property. $19.95. ISBN 978-1-936160-14-3. © 2010, 2013.

12. **How to Write Essays for Wills and Trusts Law School and Bar Exams (HI).** Issues, rules, issue spotting, questions and answers, Wills and Trusts. $19.95. ISBN 978-1-936160-15-0. © 2010.

13. **How to Write Essays for California Community Property Law School and Bar Exams (J).** Issues, rules, issue spotting, questions and answers for Community Property. $19.95. ISBN 978-1-936160-16-7. © 2010.

14. **How to Write Essays for Evidence, Remedies, Business Organization and Professional Responsibility Law School and Bar Exams (KLMN).** The top 103 issues, 142 rules & definitions, 223 issue spotting hints, and 20 practice questions with answers and explanations. $29.95. ISBN 978-1-936160-17-4. © 2011, 2012.

15. **How to Write Essays for Evidence Law School and Bar Exams (K).** Issues, rules, issue spotting hints, questions and answers for Evidence. $19.95. ISBN 978-1-936160-18-1. © 2010.

16. **How to Write Essays for Remedies Law School and Bar Exams (L).** Issues, rules, issue spotting hints, questions and answers for Remedies. $19.95. ISBN 978-1-936160-19-8. © 2011.

17. **How to Write Essays for Business Organization Law School and Bar Exams (M).** Issues, rules, issue spotting hints, questions and answers for Corporations and Business Organization. $19.95. ISBN 978-1-936160-20-4. © 2011.

18. **How to Write Essays for Professional Responsibility Law School and Bar Exams (N).** Issues, rules, issue spotting hints, questions and answers for Professional Responsibility. $19.95. ISBN 978-1-936160-21-1. © 2011.

19. **Rules and Definitions for Law Students (O).** Over 800 rules and definitions for Torts, Contracts, UCC, Criminal Law, Civil Procedure, Criminal Procedure, Constitutional Law, Real Property, Wills, Trusts, Community Property, Evidence, Remedies, Business Organization and Professional Responsibility. $24.95. ISBN 978-1-936160-22-8. © 2014

20. **How to Write Essay Answers for Law School and Bar Exams; The Essential Guide to California Bar Exam Preparation (PR).** The top 380 issues tested on law school and bar exams in these 14 areas of law tested on the California Bar Exam. 565 issue spotting hints, how to NAIL THE ELEMENTS, and 48 uniquely different practice questions with sample answers and explanations. $64.95. ISBN 978-1-936160-05-1. © 2014.

21. **How to Write Performance Tests for Bar Exams (Q).** A guide for writing Performance Tests for Bar Exams. Formatted specifically for the California State Bar Exam with examples of letters, memorandums, pleadings and other required documents. $19.95. ISBN 978-1-936160-23-5. © 2014.

22. **333 Multiple-Choice Questions for First-Year Law Students (MQ1).** 333 multiple-choice questions on contracts, UCC (Articles 1 & 2), torts, crimes, and criminal procedure arranged into 10 practice exams as tested on California's First-Year Law Student Exam ("Baby Bar") and the General Bar Exam (GBX). $29.95. ISBN 978-1-936160-34-1. © 2014.

23. **Nailing the MBE (MQ2).** 600 multiple-choice questions arranged in 6 practice exams as tested on the MBE with answers, explanations and proven exam strategies. $74.95. ISBN 978-1-936160-38-8. © 2014.

CONDENSED OUTLINES:

These condensed Simple Outlines give "90 Percent of the Law in 90 Pages" to quickly and easily explain the generally adopted Black Letter Law and Bright Line Rules without excessive discussion of historical development or odd holdings that have little or no modern application:

24. **SIMPLE CONTRACTS & UCC OUTLINE (O-1)** © 2010, 2011, 2013 ISBN 978-1-936160-06-8....$19.95

25. **SIMPLE TORTS OUTLINE (O-2)** © 2010, 2011, 2013 ISBN 978-1-936160-07-5....$19.95

26. **SIMPLE CRIMES OUTLINE (O-3)** © 2010, 2011, 2012 ISBN 978-1-936160-08-2....$19.95

27. **SIMPLE CRIMINAL PROCEDURE OUTLINE (O-4)** © 2011 ISBN 978-1-936160-24-2....$19.95

28. **SIMPLE CIVIL PROCEDURE OUTLINE (O-5)** © 2012 ISBN 978-1-936160-25-9....$19.95

29. **SIMPLE CONSTITUTIONAL LAW OUTLINE (O-6)** © 2012 ISBN 978-1-936160-26-6....$19.95

30. **SIMPLE EVIDENCE OUTLINE (Fed. & Cal. rules) (O-7)** © 2012 ISBN 978-1-936160-27-3....$19.95

31. **SIMPLE REAL PROPERTY OUTLINE (O-8)** © 2012 ISBN 978-1-936160--28-0. ..$19.95

32. **SIMPLE CALIFORNIA COMMUNITY PROPERTY (O-9)** © 2012 ISBN 978-1-936160-29-7....$19.95

33. **SIMPLE REMEDIES OUTLINE (O-10)** © 2010, 2012 ISBN 978-1-936160--30-3 ..$19.95

34. **SIMPLE CALIFORNIA WILLS & TRUSTS OUTLINE (O-11)** © 2012 ISBN 978-1-936160--31-0 ..$19.95

All of these books are available as "**eBooks**". For more information visit our website at

www.PracticalStepPress.com

Test Yourself to LEARN THE LAW and HOW TO BUDGET TIME on Exams.

333 Multiple-Choice Questions for First-Year Law Students on —

CONTRACTS, UCC (Articles 1 & 2), TORTS, CRIMES and CRIMINAL PROCEDURE —

- **Winning Strategies on Law School Multiple-Choice Exams;**
- **How to Practice for Law School Multiple-Choice Exams;**
- **10 One-Hour Practice Tests with 33 Questions Each;**
- **Questions Arranged According to Typical Class Instruction;**
- **Tests Structured to Match the MULTI-STATE BAR EXAM, the California First-Year Law Student Exam ("BABY BAR"), and the California General Bar Exam;**
- **Detailed Explanations of Correct Answer to Each Question with Page Citations to NAILING THE BAR Simple Outlines.**

Published by

Practical Step Press

www.PracticalStepPress.com

MQ1

ISBN 978-1-936160-34-1