NAILING  THE BAR

Nailing the MBE

600 Multi-State Bar Exam Practice Questions

With Proven Exam Strategies

Tim Tyler, Ph.D.
Attorney at Law

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[Hyperlinked eBook]

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Published by Practical Step Press

--www.PracticalStepPress.com--

ISBN 978-1-936160-35-8

Introduction

This eBook provides six hundred multiple-choice questions divided into 6 three-hour practice tests of 100 questions each. The questions are presented in the same style that has been used by the MBE for the past 20 years, and they test the same seven areas of law that are tested on the MBE: **Common Law Contracts, UCC (Articles 1 & 2), Torts, Crimes, Criminal Procedure, Evidence (federal rules only), Real Property** and **Constitutional Law**.

In addition, the eBook provides tips, insights, and winning strategies for success on the MBE.

However, none of the 600 questions or answers presented here are from actual MBE exams. We created them all to reflect the type of questions, legal issues, and subject areas tested on the MBE over the past 20 years without actually duplicating any of the actual questions or answers presented on the MBE or in any other source.

SCORING SHEETS. For each 100-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.

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2. **Simple Torts Outline (O-2e)**
3. **Simple Crimes Outline (O-3e)**
4. **Simple Criminal Procedure Outline (O-4e)**
5. **Simple Constitutional Law Outline (O-6e)**
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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**
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8. **Simple Remedies Outline (O-10), ISBN 978-1-936160-30-3**

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Chapter 1: MBE Overview

The Multi-State Bar Exam (MBE) is a multiple-choice question exam developed by the **National Conference of Bar Examiners** (NCBE).

The test is administered by participating jurisdictions on the last Wednesday in February and the last Wednesday in July each year. The format of the exam for many years has consisted of 100 multiple-choice questions to be answered in 3 hours on a Wednesday morning from 9:00 a.m. to 12:00 p.m. (noon) and 100 more questions to be answered in 3 hours in the same Wednesday afternoon from 1:00 p.m. to 4:00 p.m.

Typically the MBE is administered in a morning session and afternoon session as follows:

Morning Session:	9:00 a.m. – 12:00 p.m.	Questions 1 – 100
Afternoon Session:	1:00 p.m. – 4:00 p.m.	Questions 101 - 200

1. Question Structure

Each of the multiple-choice questions on the MBE 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.

In some years the MBE has presented a separate fact pattern for each and every question, and in some years it has presented a fact pattern that is shared by more than one question at certain places in the exam.

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

The NCBE states that **10 questions** on the MBE are only being "evaluated for future use" and are **not actually scored**. Possibly these are some of the questions that have no correct answer or multiple correct answers. Possibly the NCBE intentionally confronts students 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 MBE question**.

2. Subject Matter Tested

The subject areas tested on the MBE are:

- **Common Law Contracts, UCC (Articles 1 & 2);**
- **Torts;**
- **Crimes and Criminal Procedure;**
- **Evidence (federal rules only);**
- **Real Property;** and
- **Constitutional Law**.

More detailed information on the subjects tested, the number of questions from each exam that are actually scored, and the detailed information law students are expected to know are posted at the NCBE website.

It is important for you to remember that the MBE is administered in multiple States, so the "best answers" on the exam reflect common law, broadly adopted modern rules, and federal law, and not law peculiar to your particular state.

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 MBE! So you should not waste time reviewing and fretting about much of what occupied your time in law school when you are preparing for the MBE.

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 NCBE.

First, the MBE WILL test you on your knowledge of **common law** and **broadly adopted modern rules** of law (contracts, torts and crimes), **UCC rules** to the extent they change common law contract rules, the **federal rules of evidence**, and the **Supreme Court decisions** in those areas.

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

- **Case Law**. The MBE never asks questions about specific cases. It will test you 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 it will never ask you to identify the holdings of a particular case.
- **Historical Development of the Law.** The MBE never asks about or tests whether you know how the law developed historically (e.g. the development and relationship between Courts of Law and Equity).
- **Antiquated and Abandoned Legal Concepts.** The MBE tests you only about your knowledge of the law as it currently exists.
- **Broad Legal Concepts.** The multiple-choice format of the MBE presents a fact pattern followed by answer choices relevant to those given facts. That approach prevents it from directly testing broad legal concepts. In other words, it does not ask questions such as, "Which of the following statements most accurately presents the modern view of accomplice liability?"
- **Civil Procedure.** This sort of goes without saying, but if a question on the MBE states an action is in federal court, remember it is not a federal civil procedure question.
- **Model Rules and Restatements.** The MBE 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 the MBE 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 of your time studying. Your knowledge of those things will certainly help you answer some of the MBE 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 200 questions. 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 you answer correctly on the MBE is called your "raw score" and then 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 the MBE is determined by your administering jurisdiction where you are taking the exam (e.g. your State Bar). However, you typically must answer no less than 70% of the questions correctly to pass the MBE. And, depending on how your jurisdiction calculates passing scores, it is quite possible for scores over 70% to be failing grades.

A **common false notion** is that you can pass the MBE if you only answer 65% of the questions (130 out of 200) correctly. This is simply false most of the time. Generally you must answer at least 70% (140 out of 200) of the questions on the MBE correctly to pass your State Bar Exam, and sometimes you must do even better than that.

Another **common false notion** is that if your MBE score is over some magic level (e.g. over 85% correct) you will pass your State Bar Exam, 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.

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. By "analog" we mean one with hands, and not one with a digital readout. The Bar examiners are not going to let you look at a cell phone for obvious reasons! And they might not allow one with a digital readout either. 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 at a variety store.

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

Chapter 2: Two Critical MBE Strategies

It should go without saying (but probably should be said anyway) that the basic thing you have to do to pass the MBE 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 law students fail the MBE every time even though they studied very hard and knew the law in depth. In fact, some of the very best law students manage to fail the MBE. 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 the MBE. And they have absolutely nothing to do with knowing the law being tested.

1. Budgeting Time

The MBE is a "horse race" exam! At the beginning of the MBE 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!"

From that moment you have 3 hours to answer 100 questions in each of the two sessions of the MBE (i.e. the morning session and the afternoon session). 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 the MBE 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.

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A. Synchronize Your Watch!

When you take the MBE 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 a full 3 hours to answer each 100 questions. But they do not reset that clock on the wall.

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.

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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 the actual MBE 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 Bar's 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 100 questions in 3 hours. 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. Or you can put your time marks after every 12 questions. That is where you should be after every 20 minutes. That means mark the booklet from the beginning every 12 questions, just after questions #12, #24, #36, #48, #60, #72 and #84. You should try to finish question #12 after the first 10 minutes, question #36 after about one hour, question #72 after about 2 hours, you should finish question #96 with 20 minutes left to go. That pace will leave you with 13 minutes left for review when you finish the exam.

This is only one way you can insert time marks, but a pace of 12 questions after every 20 minutes is fairly easy to calculate, and the pace it sets is just about right. You might not need 13 minutes left 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.

This approach will produce the following time schedule –

In the -	Answer -	And finish–	Elapsed Time –
first 20 minutes	12 questions	#12	20 minutes
next 20 minutes	12 questions	#24	40 minutes
next 20 minutes	12 questions	#36	60 minutes
next 20 minutes	12 questions	#48	1 hour, 20 minutes
next 20 minutes	12 questions	#60	1 hour, 40 minutes
next 20 minutes	12 questions	#72	2 hours
next 20 minutes	12 questions	#84	2 hours, 20 minutes
next 20 minutes	12 questions	#96	2 hours, 40 minutes
next 20 minutes	4 questions	#100	3 hours
Total – 3 hours	100 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 20 minute mark on your watch when you hit the "Twenty-Minute" marks, but if you are a little behind that is no problem. But if you get more than 5-6 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 33 questions each hour.

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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.

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!

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D. Answer Every Question!

There is no penalty for guessing wrong on the MBE 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 the MBE 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.

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

A. Getting Inside the Question Writer's Head

You can better understand an MBE question if you know what the question writers (Bar examiners) were thinking when they wrote the questions for the MBE.

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

The Bar Question Writers have to present a set number of questions in each of 7 areas of law on each MBE. For example, they have to have about 34 contract law questions, and some of those have to be UCC questions. So the question writers begin with an intension of creating a certain type of question such as a "UCC" question or "Torts" question. That requirement is the foundation of every question – the area of law being tested.

But the Bar seldom wants YOU to easily understand what area of law each question is all about, so it 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 the UCC. 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 MBE 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 has picked up on this, so it is a frequently tested legal rule on the MBE.

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

The Bar examiners test whether you can distinguish between civil actions and criminal actions. This is broader than just "area of law". Even if a question is testing evidence, there are differences in evidence rules for criminal and civil actions!

5) Expect Long Fact Patterns and Short Answer Choices

The "multiple-choice" format of the MBE 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 MBE 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 MBE 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.

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.

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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.

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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.

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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.

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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.

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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 the MBE or any other law school multiple-choice 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.

The term "area of law" generally means torts law, contract law, UCC, criminal law, criminal procedure law, or real property law. Usually evidence and constitutional law questions are obvious. But that is not true when the "right to confront adverse witnesses" comes into play. In those cases there is something of a crossover between evidence and criminal procedure rules.

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.

In addition to the above rule, for the MBE you are to use common law and broadly adopted modern rules for contract, crime, tort and real property questions, UCC Sections 1 & 2 for UCC questions, precedential federal court decisions for constitutional law and criminal procedure questions, and the Federal Rules of Evidence for evidence 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 over 200 "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, New York Times v. Sullivan*, and *Roe v. Wade*.

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.

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, habeus corpus, ex post facto,* and *guardian ad litem*. You also should have heard of (but possibly have not) terms like *profit a prendre* and life estate *per autre vie.*

But on the MBE 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.

EXCEPTION FOR 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.

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 MBE 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 MBE 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 on the MBE lists a series of assertions followed by answer choices as to which of those assertions are true (or false).

For example: Suppose a given MBE question asks, "Which of the following Constitutional amendments establish fundamental rights?

I. 1st Amendment
II. 2nd Amendment
III. 4th Amendment
IV. 5th Amendment

(A) I and II
(B) IV
(C) II, III and IV
(D) All"

If you realize that the rights established by the 2nd Amendment have never been found to be fundamental rights, you would see that item II is wrong. And answer choices A, C and D all include item II. So they all have to be wrong and only answer choice B is correct.

The fact that the 1st and 4th Amendments also establish fundamental rights is irrelevant because the answer choices you are given limit your response to answer choice B.

9) Eliminate Answers Citing the Privileges and Immunities Clause of the 14th Amendment

Any answer choice that cites the **Privileges and Immunities Clause of the 14th Amendment** is always wrong, because that provision of the United States Constitution has virtually no importance. The only "Privileges and Immunities Clause" in the Constitution of any importance is in Article IV. So if an answer says the "P&I Clause" of the 14th Amendment controls anything, that is simply wrong.

10) Eliminate Answers that Assume Unstated Facts

The facts stated in the fact pattern for an MBE 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.

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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.

But 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.

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 the MBE are hard. And the questions presented in these 6 tests are intended to be as hard or even harder than the actual MBE. 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 next five 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; Crimes and Criminal Procedure; Evidence (federal rules only); Real Property;** and **Constitutional Law**.

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. Get a FREE 3-Week Multi-State Bar Exam (MBE) Study Schedule to prepare for the MBE at the **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, including the MBE.

3. Take These Practice Exams in MBE-Type Conditions

The whole purpose of taking the practice exams in this book is to prepare for the MBE, or at least the MBE portion of your State Bar exam, right? So you should take these practice exam under simulated MBE-type conditions!

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A. Always Test Yourself in a Timed Setting

Always test yourself in a **timed setting** (100 questions in 3 hours). 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 the actual MBE. Once you conquer that fear you will be able to walk into the MBE 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 MBE 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 3 HOURS PER EXAM of 100 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 MBE. That is simply stupid and personally dishonest.

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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!

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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 the MBE) 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.

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D. Complete Entire Practice Test in One Sitting

On the actual MBE you will be required to answer 100 questions in the morning and another 100 in the afternoon. But you will learn more, and learn it faster, if you only answer 100 test questions from this book in a morning (in 3 hours), and then spend several hours after that reviewing those questions that confused you and the issues that you failed to answer correctly. The goal is to "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 the MBE is really like. AND you will have no clear idea of whether you are prepared for the real MBE 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 - #6.

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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.

When you have finished grading your exam, add up the questions you got wrong 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".

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

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B. Evaluate Your Performance

If you did not get MORE THAN 70% of ALL the practice questions on Test #1 correct, you probably would have failed the MBE and you need to improve your performance.

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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 100 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 on the MBE. 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.

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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.

Test #1

Test #1 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review. The Answers and Explanations follow.

Questions 1-3

Recently enacted California statutes require barbers to be licensed by the Department of Health, citizens of the United States, residents of California for at least two years, and trained in California by an instructor licensed by California. Jose is a resident alien from Cuba who recently moved to California after working as a barber in New York for several years. His application for a barber's license was denied by the Department of Health. Jose filed a suit against the California Department of Health seeking an order compelling it to issue Jose a barber's license.

1) Jose's best argument to challenge the constitutionality of the requirement barbers must be citizens is:

(A) Congress has plenary power over immigration and naturalization.
(B) It violates the Equal Protection clause of the 14th Amendment.
(C) It violates the Equal Protection clause of the 5th Amendment.
(D) It is a bill of attainder.

2) Jose's best argument against the requirement barbers must be trained in California by instructors licensed by California is:

(A) The requirement has no reasonable relationship to a legitimate State interest.
(B) It burdens his fundamental right to practice his profession.
(C) It violates the Privileges and Immunities Clause of Article IV.
(D) It violates the Privileges and Immunities Clause of the 14th Amendment.

3) If Jose challenges the two-year residency requirement he will probably:

(A) Fail because the State has fundamental authority to protect the health and welfare of its citizens.
(B) Succeed because it violates the Due Process Clause of the 14th Amendment.
(C) Succeed because it violates the Equal Protection Clause of the 14th Amendment.
(D) Succeed because it violates the Privileges and Immunities Clause of the 14th Amendment.

Question 4

Paul sued Dan, a newspaper columnist, for defamation because Dan wrote in his column that Paul beat his wife, Bambi. At trial Paul called Lucy to testify that she read Dan's column in the newspaper stating Paul beat his wife.

4) If Dan objected to Lucy's testimony it would most likely be ruled:

(A) Admissible as an admission of Dan.
(B) Admissible non-hearsay.
(C) Inadmissible under the best evidence rule if Paul possessed a copy of the newspaper in which Dan made the statement.
(D) Admissible if no original copies of the newspaper are available.

Question 5

Homer, owner of Blackacre, entered into a written, recorded oil lease with Marathon Oil under which Marathon had the exclusive right to extract up to 1 million barrels of oil from Blackacre over the next 20 years. Homer would be paid a royalty equal to 5% of the market price of the oil extracted on a quarterly basis. For the first five years Marathon did not extract any oil from Blackacre or pay Homer any royalties. Then the State brought a condemnation action against Blackacre to turn it into a State park.

5) Is Marathon entitled to any compensation from State?

(A) No, because leases are licenses that are not property rights protected by due process.
(B) No, because it did not extract any oil or pay Homer any royalties before the State condemned the land.
(C) Yes because it had a *profit a prendre*, a property right protected by due process.
(D) Yes, because leases are licenses protected by due process.

Question 6

Workman Will was repairing Bob's yacht with a welding torch at Jim's Marina. He did not know it, but earlier in the day Don had been sitting on the dock eating a sandwich and negligently threw his sandwich wrapper into the water. Don did not know there was an oil slick under the dock. There were cracks between the boards on the dock and water beneath that. Sparks from Will's welding torch fell through the cracks toward the water. There was no way for Will to see under the dock or to know that Don's sandwich wrapper had floated into an oil slick floating under the dock. The wrapper absorbed oil, caught fire, and caused Jim's Marina to be totally destroyed. Jim knew there was an oil slick under the dock, but the fire would not have started but for the effect Don's sandwich wrapper.

6) Which of the following statements is best?

(A) Don is liable to Jim because he was negligent to throw the wrapper in the water.
(B) Will is liable to Jim because he was negligent in letting sparks fall under the dock.
(C) Bob is liable to Jim if he hired Will without checking his references.
(D) Jim was contributorily negligent because he knew there was an oil slick under the dock.

Questions 7-8

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.

7) 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.

8) 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.

Question 9

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.

9) 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.

Questions 10-11

Tom entered into a written contract to sell Blackacre to Dick for $500,000 with the close of escrow to be January 1. Dick gave Tom an "earnest money" deposit of $2,000.

10) If Dick is killed in an auto accident on Christmas Eve, under the common law:

(A) Dick cannot acquire marketable title.
(B) Dick's death terminates the land sales contract.
(C) Tom can void the agreement if he returns the deposit.
(D) Dick's executor has the right to enforce and duty to perform the agreement.

11) If a volcano erupts under Blackacre and totally destroys it before the close of escrow, under the common law:

(A) Tom cannot deliver marketable title.
(B) Dick still has to pay $500,000 for Blackacre.
(C) The destruction of Blackacre terminates the land sales contract and Dick has a right to get his $2,000 back.
(D) Dick has a right to void the contract and get his $2,000 back.

Question 12

Hunter was hunting for deer in the National Forest. He thought he saw a deer in the trees. After shooting he discovered he accidentally shot Farmer's cow.

12) If Farmer sues Hunter for negligence:

(A) Hunter is strictly liable.
(B) Hunter is liable if Farmer proves he had a legal right to graze his cow in the National Forest.
(C) Hunter is not liable if the cow reasonably looked like a deer.
(D) Hunter is not liable if Farmer's cow was in the National Forest illegally.

Question 13

Peter, a paraplegic, sued 123 Zippy-Burger, Inc. under the American's with Disabilities Act (ADA) claiming that he was injured at the defendant's restaurant because the handrail next to the toilet in the restroom was 1" below the height required by local building codes. The defendant offered evidence Peter had previously sued ABC Zippy-Burger, Inc., an independently owned and unrelated franchise of the Zippy-Bob restaurant chain, claiming that he was injured in that defendant's restroom because the handrail next to the toilet was installed 1" too high, and that the jury in the prior trial found against Peter.

13) The Court will likely rule that the evidence offered by the defendant:

(A) Inadmissible because the danger of confusion or prejudice it might cause outweighs its probative value.
(B) Inadmissible under the Doctrine of Collateral Estoppel.
(C) Admissible to show motive for Peter's suit against 123 Zippy-Burger, Inc.
(D) Admissible to impeach testimony by Peter.

Question 14

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.

14) 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.

Tort Question 15

Tom and Dick had a water balloon fight. Dick threw a water balloon at Tom. To avoid being hit Tom dashed into the street. Harry was driving his car down the street. Harry was looking into his rearview mirror and did not see Tom until it was too late to avoid an accident. Tom was badly injured.

15) If Tom sues Harry for negligence, Harry's best defense argument is:

(A) Tom assumed the risks when he got into the water balloon fight.
(B) Dick was the actual cause of Tom's injury.
(C) Harry was not the actual cause of Tom's injury.
(D) Harry did not breach his duty of due care.

Questions 16-17

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."

16) 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.

17) 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.

Question 18

18) Which of the following Constitutional provisions would allow Congress to force upon the States a uniform 55 mile an hour highway speed limit?

(A) The Taxing and Spending Power Clause.
(B) The Privileges and Immunities Clause of Article IV.
(C) The General Welfare Clause.
(D) The Commerce Clause.

Question 19

Harry came home from an extended vacation on June 1 to discover an electrical fire in his bedroom had caused extensive damage. Apparently the fire consumed all of the oxygen in the bedroom so the fire did not spread to the rest of the house. His insurance company, Fireman's Friend, later refused to compensate Harry for his damages on the grounds that he failed to notify them within 48 hours from when he discovered the damage.

At trial Harry offers testimony by his girlfriend, Brandy, that she was present on June 2 when she personally looked up the "800" number for reporting claims to Fireman's Friend, gave Harry that number, and listened as Harry reported the fire to employees of Fireman's Friend.

19) Upon objection by Fireman's Friend, the trial judge will likely rule Brandy's testimony is:

(A) Inadmissible because its probative value is outweighed by the prejudice it would cause against the defendant, given that Brandy is Harry's "girlfriend".
(B) Inadmissible hearsay not subject to any exceptions.
(C) Admissible percipient testimony.
(D) Hearsay admissible as a present sensory perception.

Question 20

20) Sam accepted a job offer that required him to move to a different State. As a result, Sam agreed to sell his home, Blackacre, to Bob for $200,000. Escrow was to close on January 1, but Bob orally agreed Sam could continue to use Blackacre until no later than March 1 in exchange for $1000 for each month of use. In February Sam told Bob his plans to move out of the State had been "put on hold" and he offered to pay Bob $2,000 a month rent if he could continue to use Blackacre. Bob rejected the offer and insisted that Sam move out. State law requires landlords to give tenants notice before they can be evicted in the manner prescribed by common law. Bob's best argument that he can have Sam removed immediately without giving him the 30 days notice is:

(A) Sam is a month-to-month tenant.
(B) Sam is a tenant at sufferance.
(C) Sam had an easement, not a tenancy.
(D) Sam is a trespasser.

Question 21

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.

21) 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.

Questions 22-23

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.

22) 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.

23) 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.

Questions 24-26

Water pollution and over-fishing caused the abalone population to dwindle in the State of Oregon. In response, Oregon enacted a law banning the taking of abalone less than 8 inches in diameter, and requiring all people fishing for abalone in Oregon to pay a $2 tax on each abalone taken. Then Congress imposed a federal excise tax of $100 per pound on any abalone taken in violation of State laws and shipped in interstate commerce. Congress also budgeted $2 million for research intended to increase the abalone population in Oregon. In response, the Taxpayer's League sued in federal court to stop the research charging that it was a waste of the taxpayer's money.

24) Which of the following three defense arguments raised by the federal government are valid?

I. The Taxpayer's League lacks standing, even if all of its members pay federal taxes.
II. The federal court lacks jurisdiction to stop Congress because of the separation of powers doctrine.
III. Congress is authorized to act under the Taxing and Spending clause.

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

25) California continued to allow abalone larger than 6 inches to be taken. While fishing off the California coast Fischer, a commercial abalone diver who sells much of his catch to Japanese exporters, accidentally crossed into Oregon waters and was arrested with several abalone than 8 inches in diameter. If Fischer challenges the constitutionality of the Oregon size limit.

(A) The statute will be upheld.
(B) The statute will be found to be an invalid burden on interstate commerce.
(C) The statute will be found to be invalid because it is preempted by conflicting federal law.
(D) The statute will be found to be an invalid violation of the Privileges and Immunities Clause of Article IV.

26) If Fischer from the prior question challenges the $2 Oregon abalone tax:

(A) He will lose because the tax is valid under the Import-Export Clause
(B) He will lose because the tax does not violate the Commerce Clause.
(C) He will win because the tax violates the Import-Export Clause.
(D) He will win because the tax violates the Commerce Clause.

Questions 27-28

Dewey owned three contiguous building lots on the north side of Elm Street on the edge of town. He sold the lot on the left to Huey and the lot in the middle to Louie, and he kept the third lot on the right for himself. Behind the lots to the north was farm land, and beyond Dewey's lot to the east was the beach. Huey and Louie built homes on their lots. The lots were so narrow the only way they could reach their garages in the back was by putting a common dive running north from Elm Street between their two homes. Almost all of the drive was built on Huey's land. Huey and Louie executed and recorded an easement that allowed each to use the shared drive.

27) The town later expanded and Maple Street was built immediately to the north of the lots of Huey and Louie so they no longer needed the common drive to reach their garages. Huey told Louie that he wanted to tear out the driveway since it had taken up a considerable amount of his lot. Louie refused and insisted he would keep using the driveway. Huey responded by blocking the drive so Louie could not use it. If Louie petitions the court to enjoin Huey from interfering with his use of the drive:

(A) He will win.
(B) He will win because Huey is violating the Implied Covenant of Quiet Enjoyment.
(C) He will lose if Huey can show the driveway detracts from the value of his home without providing commensurate benefit.
(D) He will lose because the drive is no longer necessary to reach his garage.

28) Louie built his home so that he would enjoy an unobstructed view of the beach. Then Dewey began to build a tall apartment building on his lot that would block Louie's view of the beach. Dewey's construction project does not violate any existing zoning rules. If Louie petitions to enjoin Dewey from building the apartments he will:

(A) Win if Dewey granted him an "air, light, view easement".
(B) Lose only if he was aware or should have been aware of Dewey's intention to build the apartment building at the time he bought his lot.
(C) Win unless he was aware or should have been aware of Dewey's intention to build the apartment building at the time he built his home.
(D) Win because Dewey is violating an implied reciprocal servitude.

Questions 29-30

Scott's wife Lacy was found in the bottom of San Francisco Bay. She had been shot to death. Scott was charged with her murder but was acquitted. Scott filed a claim with Allfarm Insurance as beneficiary of a life insurance policy on his wife. It provided he would be paid $1 million if Lacy died, and an additional $1 if she died by "violent means". Allfarm refused to pay Scott more than $1 million, and Scott sued Allfarm for the additional $1 million. At trial Allfarm introduced Ethel, Scott's next-door neighbor, who said she heard Scott and Lacy having an argument the night Lacy disappeared in which Scott threatened to kill Lacy. On cross examination Ethel was asked, "Didn't you just make up this story because you are angry Scott was not convicted for Lacy's murder, and you don't want him to get the life insurance?" Ethel denied that allegation. Allfarm then offered testimony by Pete, the prosecutor in the case against Scott, to prove Ethel told the same story to investigators before Scott's murder trial.

29) Upon objection by Scott, the trial judge should rule Pete's testimony is:

(A) Inadmissible as a violation of double jeopardy.
(B) Inadmissible hearsay.
(C) Admissible as former testimony.
(D) Admissible non-hearsay.

30) For the purpose of this question only, assume that Ethel testified at Scott's murder trial and stated, "I heard Scott threaten to kill Lacy the night she disappeared." If Ethel dies before Scotts suit against Allfarm goes to trial, and Allfarm's attorney offers an authenticated transcript of Ethel's statement from the criminal trial, the trial judge should rule the transcript is:

(A) Inadmissible because of collateral estoppel.
(B) Inadmissible hearsay.
(C) Hearsay admissible as former testimony.
(D) Admissible non-hearsay.

Question 31

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 him.

31) 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 32

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.

32) 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.

Questions 33-34

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 syndrome by proxy", a mental illness associated with law school exams.

33) 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.

34) 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.

Question 35

Farmer granted Atlantic Oil Company an easement to cross his farm with a buried petroleum pipeline. The contract between Farmer and Atlantic was silent as to who was responsible for inspecting and maintaining the pipeline. Atlantic did not inspect the pipeline for several years and eventually erosion caused a portion of it to be exposed to the elements. Farmer noticed this was a potentially dangerous condition but did not tell Atlantic. The exposed pipeline erupted one day in a ball of flame that destroyed Farmer's barn.

35) If this jurisdiction recognizes contributory negligence as a complete bar and Farmer sues Atlantic for damages he would:

(A) Lose because Farmer had an affirmative duty to prevent permissive waste by informing Atlantic a potentially dangerous condition had developed.
(B) Lose because he was contributorily negligent.
(C) Win because Atlantic is strictly liable as an easement holder for any damages caused the servient estate of Farmer by its pipeline.
(D) Win because Atlantic had a duty to reasonably maintain the pipeline so it did not pose a danger to Farmer.

Question 36

Able sued Cain for battery. Able called Clark to testify that he was a witness to the incident which occurred on February 23 at the Blue Diamond Bar in Chicago. After Able presented his case-in-chief Cain called his first witness, Clark's ex-girlfriend Sue, who testified Clark had told her he was in Los Angeles at a bar mitzvah on February 23.

36) If Able objects to Sue's testimony, the trial judge should rule it is:

(A) Admissible impeachment if still Clark is available to dispute it.
(B) Admissible whether Clark is still available to dispute it or not.
(C) Inadmissible impeachment.
(D) Inadmissible hearsay.

Questions 37-38

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.

37) 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.

38) 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.

Questions 39-40

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.

39) Romeo can be charged with:

(A) Involuntary manslaughter.
(B) Attempted murder.
(C) Murder and conspiracy to commit murder.
(D) Murder.

40) Morticia can be charged with:

(A) Nothing.
(B) Conspiracy to commit murder.
(C) Conspiracy and attempted murder.
(D) Murder.

Questions 41-45

Jefferson State created Crystal Lake as part of a flood control and recreational development project. The lake and all of the land around it are owned by Jefferson State. State published a "request for proposal" asking private companies to submit proposals for building and running a marina facility at the lake on State land with a 50-year lease. A privately owned corporation, The Yacht Club, Inc., submitted the winning proposal which provided for development of 100 boat slips. The Yacht Club proposed selling memberships to people who wanted to keep boats at the marina. Members would pay monthly dues, and The Yacht Club would also sell fuel, fishing supplies and similar goods to the boaters. The State would receive a portion of The Yacht Club's gross receipts. The proposal provided that when the marina was finished the Yacht Club would have a membership committee create written membership standards and rules. After the marina was completed the membership committee decided memberships would sell for $2,000 with continuing monthly dues of $100 a month. Further, only White, heterosexual, Protestant, Republican male citizens would be allowed to be members.

41) Clinton applied for membership at The Yacht Club and was rejected because he is a Democrat. If he sues to force The Yacht Club to admit him on the grounds it is denying him Equal Protection he will:

(A) Lose because he lacks standing to represent all members of the Democratic party.
(B) Lose because The Yacht Club is a private corporation, and its actions do not constitute an action of Jefferson State.
(C) Win under these facts, even though he has been discriminated against by a private company.
(D) Win unless The Yacht Club can show a rational basis for excluding Democrats.

42) Kennedy applied for membership at The Yacht Club and was rejected because he is an atheist. If he sues to force The Yacht Club to admit him on the grounds it was violating him freedom of religion he will:

(A) Lose because atheism is not a religion.
(B) Lose because the Constitution does not prevent religious discrimination by private parties like The Yacht Club.
(C) Win because the policies of The Yacht Club's violate the Establishment Clause of the 1st Amendment.
(D) Win because the policies of The Yacht Club's violate the Free Exercise Clause of the 1st Amendment.

43) Bob wanted to dock his boat at The Yacht Club but could not afford the membership fees. If he sues to force The Yacht Club to admit him on a claim he is being denied equal protection he will:

(A) Lose because membership in The Yacht Club is not a particularly important privilege.
(B) Lose because de facto discrimination against the poor has consistently been held to be non-actionable.
(C) Win because the poor are a protected class.
(D) Win because individuals cannot be denied public benefits because of an inability to pay.

44) Mary applied for membership at The Yacht Club and was rejected because she is a lesbian. If she sues to force The Yacht Club to admit her on a claim she is being denied equal protection she will:

(A) Lose because the Equal Rights Amendment has never been ratified by the States.
(B) Lose because classifications based on sex are not "suspect".
(C) Win unless The Yacht Club proves keeping lesbians out is substantially related to an important government purpose.
(D) Win unless The Yacht Club proves it has a legitimate purpose for keeping out lesbians.

45) Pierre, a resident alien from France, applied for membership at The Yacht Club and was rejected because he is not a U.S. citizen. If he sues to force The Yacht Club to admit him on a claim he is being denied equal protection he will:

(A) Lose if Jefferson State did not know The Yacht Club would discriminate against non-citizens at the time it entered into the lease agreement.
(B) Lose because only U.S. citizens are guaranteed equal protection.
(C) Win unless The Yacht Club proves it has a rational basis for excluding non-citizens.
(D) Win if The Yacht Club cannot prove excluding aliens is necessary to promote a compelling interest.

Question 46

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.

46) 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.

Questions 47-48

Wayne loaned his car, the Mirthmobile, to his close friend Garth. Garth was driving while drunk and had a head-on collision with Butthead. Butthead sued Garth for negligent driving and Wayne for negligent entrustment.

47) Butthead presents testimony by Bevis, Garth's insurance agent, to prove Garth has had four traffic accidents in the past 18 months. Upon objection the trial judge should find Bevis' testimony:

(A) Inadmissible because evidence of past acts are not admissible to prove disputed acts were done in conformity with character.
(B) Admissible against Wayne to prove Garth had a history of not driving responsibly that he knew or should have known about.
(C) Admissible against Garth if Bevis had personal knowledge of Garth's poor driving record.
(D) Admissible circumstantial evidence that Garth was driving negligently when he hit Butthead.

48) For the purposes of the question above, suppose Wayne offered testimony by his girlfriend, Madonna, that he often loaned his car to Garth without incident and made sure Garth was sober and responsible. Madonna's testimony is:

(A) Inadmissible because Madonna is biased.
(B) Inadmissible character evidence.
(C) Admissible as a present sense impression.
(D) Admissible evidence of habit.

Questions 49-50

Drysdale owned a large tract of ranch land on the far side of Dry Creek in rural Pacer County. In 1990 he sold a small part of it to Clampett. He orally promised Clampett he could always cross Drysdale's land to reach his own if he wanted to. Clampett occasionally did cross Drysdale's land to reach his own.

Years later Drysdale filed a subdivision map with the County proposing to build a bridge from County Road over Dry Creek to the his land and develop it into an upscale community of 500 building lots around a golf course.

Pacer County immediately approved the project because it needed the property tax revenue the development would produce to fund its liberal pension program for retired county supervisors. Drysdale recorded his development plan along with a "Plat of Pretentious Estates" showing the planned lots and streets.

Under County ordinances Drysdale had to build the bridge and pave the streets. Then he would Deed the streets to the County and they would become public property. Drysdale expected the infrastructure costs alone to exceed $50 million, over $100,000 per building lot. He began selling lots in Pretentious Estates to buyers before the streets had been deeded over to the County.

Drysdale completed the bridge from County Road over Dry Creek and a paved a street that ran up to the edge of the parcel owned by Clampett. Then Clampett got a building permit to build a biker bar named "Jed's Pig Palace" on his land facing the new street.

Drysdale brings an action to stop Clampett and others from going through Pretentious Estates to reach Jed's Pig Palace.

49) The best argument for Drysdale is:

(A) Clampett would be unjustly enriched if his customers are allowed to drive thru Pretentious Estates to reach Jed's Pig Palace.
(B) Clampett's only possible claim is that he has an easement by necessity, and the facts do not support that claim.
(C) The Statute of Frauds prevents Clampett from claiming he holds an easement.
(D) Clampett has no right to cross Disdainful Estates until it is deeded to the County and opened to the public because he does not have an easement.

50) The best argument for Clampett is:

(A) Drysdale's recording of the development plan dedicated the streets shown on the plat map to public use.
(B) Drysdale's sale of lots in the development created private easements to use the streets shown on the development plan.
(C) Drysdale's promise to Clampett in 1990 that he could always cross his land created an express easement.
(D) Drysdale's sale of land to Clampett created an easement by necessity.

Question 51

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."

51) 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.

Question 52

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.

52) 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 53

Adam brought home a new, wide screen TV and bragged to his girlfriend Eve, "I got this for only $200 because it's hot." Two months later Eve discovered Adam having sex with Maude. Eve was furious so she reported Adam to the police. Adam was arrested for receiving stolen property, but he claims he had no idea the TV had been stolen.

53) At trial the judge allowed Eve to repeat Adam's statement, over a defense objection. Was his ruling correct?

(A) Yes, because Eve's testimony was admissible non-hearsay.
(B) Yes, because Eve's testimony was a statement against interest.
(C) No, because Eve's testimony is inadmissible hearsay.
(D) No, because Eve's testimony was motivated by malice.

Question 54

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.

54) 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 55

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.

55) 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.

Questions 56-60

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.

56) 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.

57) 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.

58) 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.

59) 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.

60) 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.

Question 61

In exchange for consideration, farmer Brown granted an easement to Anadarko Gas Company to cross his farm with an oil pipeline along a designated strip of land. The easement, which was properly drafted and recorded, gave Anadarko the right to enter the land to install, inspect and maintain the pipeline. Anadarko brought heavy equipment onto Brown's farm and buried the pipeline eight feet deep along the designated strip of land.

Fifty years later Brown sold his farm to MacDonald. MacDonald was unaware of the pipeline's existence, and the Deed Brown gave MacDonald failed to mention the easement.

MacDonald built a new home directly above the pipeline. Then Anadarko announced it was going

to excavate the entire length of the pipeline for inspection and replacement of certain sections.

61) MacDonald petitions the court for an injunction to stop Anadarko from destroying his home. He will:

(A) Fail if Anadarko can prove it is reasonably necessary to unearth and inspect the pipeline.
(B) Fail because Anadarko has a legal right to enter his land and dig up the pipeline.
(C) Succeed because the easement failed to satisfy the Rule Against Perpetuities after the first 21 years passed.
(D) Succeed because the Deed from Brown to MacDonald failed to mention the easement.

Question 62

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".

62) 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 applicable Statute of Frauds section of the Uniform Commercial Code required it to be in writing.
(D) Frank acquired no legal rights under the assignment from Paul because it was a conditional transfer.

Questions 63-65

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.

63) 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.

64) 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.

65) 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 66-67

Ben's Will stated that upon his death some unimproved land he owned in Nevada called "The Ponderosa" was to be given to his son, Hoss, who lived in New York City. Little Joe moved onto The Ponderosa on January 1, 2000, just after Ben died, began farming some of the land, put a fence around another part and grazed cattle, and built a substantial home for himself and his family. Hoss was unaware of what Little Joe had done because he lived so far away. On Friday, December 31, 2009 Hoss traveled to Nevada on vacation and decided to go see the land he had inherited from Ben years before. He was surprised to discover Little Joe there. He confronted Little Joe and told him to get off his land. Little Joe refused. Hoss immediately went to a local attorney, Ann, that afternoon and asked her to evict Little Joe. Ann informed him that the Nevada Code of Civil Procedure states, "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained if the property has been held and possessed adversely to such legal title while being cultivated or improved, protected by a substantial enclosure, or used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant for a period of ten years before the commencement of the action." Ann also mentioned that the County Courthouse had closed at noon for the New Years holiday, and would not reopen until Monday, January 3, 2010.

66) Which of the following is most correct?

(A) Hoss should immediately give Little Joe written permission to stay indefinitely on his land.
(B) Hoss has until Monday to file his action because statutes automatically toll until the next day courts are open.
(C) Little Joe's possession was not adverse because Hoss was unaware of it.
(D) Little Joe's adverse possession was terminated at the moment Hoss told him to get off the land.

67) Suppose that while Hoss was living in New York, unaware Little Joe was occupying his land, he gave Adam permission to hunt on The Ponderosa. Which of the following is most correct?

(A) Little Joe could legally prevent Adam from hunting on the land because he resided there before Hoss gave Adam permission.
(B) Little Joe could not legally prevent Adam from hunting on the land because Adam has a valid easement in gross.
(C) Little Joe could not legally prevent Adam from hunting on the land whether he received permission from Hoss in writing or over the telephone.
(D) Hoss could revoke Adam's permission to hunt on the land at any time if the agreement was not supported by consideration.

Question 68

Adam was a violent alcoholic who often beat his wife, Eve. Adam and Eve went to a New Year's Eve party, and when they got ready to leave Eve asked Adam if he felt sober enough to drive. He replied, "Shut your yap. I only had a couple drinks." Half-way home Adam could barely control the car and said, "Man, I drank more than I thought. I'm really, really looped!" Eve insisted that Adam stop the car and let her drive, but he said, "No way. Real men don't let their wives drive them!" Then he passed out and hit Seth's car, head-on, causing both Eve and Seth severe injuries. Eve immediately divorced Adam. Seth later sued Adam for negligence, and at trial, two years after the accident, his attorney called Eve to testify.

68) If Seth's attorney asks, "What did Adam tell you in the car?" and Adam's attorney objects, Eve's testimony is:

(A) Inadmissible because Eve's testimony would be biased because of malice she feels for Adam.
(B) Inadmissible because the statement was privileged.
(C) Admissible non-hearsay because Adam and Eve are divorced.
(D) Admissible as a statement against interest.

Questions 69-70

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.

69) 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.

70) 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.

Question 71

Adam was a violent alcoholic who often beat his wife, Eve. One day Adam tearfully confessed to Eve that he had been sexually molesting their children. Eve immediately left Adam and filed for a divorce seeking sole physical custody of their children over Adam's opposition.

71) Should the divorce court judge allow Eve to testify, on the record, that Adam confidentially admitted to her that he had been sexually molesting their children?

(A) No, because Adam's confidential statement to his wife is subject to the marital communication privilege.
(B) No, because Adam's statement is inadmissible hearsay.
(C) Yes, because Adam's statement is admissible non-hearsay.
(D) Yes, because the welfare of their children overrides all other considerations.

Question 72

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.

72) What is Juan's best cause of action against Gonsanto?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Question 73

The State Public Employees Retirement System (SPERS) has a rule that the surviving spouses of deceased public employees will not receive any of their pension benefits unless the spouses were married for at least nine months prior to the death of the deceased employee. Adam, a public employee with 30 years of service, lived with his girlfriend Eve for over 20 years before marrying her in June. Six weeks later Adam was murdered by a robber. PERS refused to pay Eve any of Adam's pension benefits.

73) If Eve sues SPERS she will:

(A) Lose unless SPERS has ample funds to pay benefits to all surviving spouses.
(B) Lose if the nine month period is reasonable to achieve a legitimate government goal.
(C) Win unless SPERS proves the nine month period is rationally related to a legitimate government purpose.
(D) Win unless SPERS proves the nine month period is necessary to attain a compelling government purpose.

Question 74

One day Adam hit Seth's car, head-on, causing Seth severe injuries. Adam's brother, Cain, told him he knew a great attorney, Alan, and they went together, along with Adam's wife Eve, to meet with Alan in his office. In Alan's office, in the presence of Eve, Cain, and Alan's paralegal, Susan, Adam stated, "I was really drunk when I had the accident." Later Susan quite working for Alan and became an exotic dancer, and Cain died in a bar fight.

74) Seth sued Adam for negligence and subpoenaed Susan to testify at trial about Adam's statement in Alan's office. Upon objection by Alan, Susan's testimony should be:

(A) Inadmissible hearsay.
(B) Admissible non-hearsay.
(C) Inadmissible because the attorney-client privilege disqualifies Susan, as Alan's paralegal, from revealing confidential communications.
(D) Admissible because Eve's presence at the meeting made it non-confidential.

Question 75

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.

75) 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 76-77

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.

76) 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.

77) 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 78-79

Farmer Brown granted a right-of-way Deed to PowerCo to cross his farm with high voltage line. The Deed was properly recorded. After that Brown sold his farm to Black. Then Black died and the farm passed through several changes of ownership until it was eventually owned by White. None of the many deeds filed by Brown, Black's executor or any of the other intermediate owners mentioned the right-of-way held by PowerCo.

White sold the farm to Green and gave him a general warranty Deed that did not mention the right-of-way.

78) Suppose both White and Green were unaware of the right-of-way Deed, and after Green bought the farm he learned of it. If Green sues White which of the following is most accurate?

(A) White will win because he did not know of the right-of-way.
(B) White will win because Green had constructive knowledge of the right-of-way.
(C) Green will win because White breached the covenants in the Grant Deed.
(D) Green will win because White is liable for negligent misrepresentation.

79) Suppose Green was fully aware of the right-of-way Deed when he bought the farm. If Green sues White which of the following is most accurate?

(A) White will win because he did not know of the right-of-way.
(B) White will win because Green had actual knowledge of the right-of-way.
(C) Green will win because White breached the covenants in the Grant Deed.
(D) Green will win because White is liable for negligent misrepresentation.

Question 80

Andy stepped into a pothole in the parking lot of his apartment complex, The Villas, in the dark and badly injured his knee. A year and two operations later Andy owed the hospital $250,000. Andy hired lawyer, Larry, who went to the scene of the accident, a year after the event, and took a picture of the pothole, which was still there. Immediately after Andy served The Villas with his suit for negligence the pothole was completely repaired. Learning of this, Larry returned to the parking lot and took a photograph of the pothole after it had been repaired. The Villas denies that it was ever negligent and claims the pothole was not a dangerous condition.

80) If Larry tries to introduce photographs of the pothole at trial to prove The Villas was negligent:

(A) They are not admissible unless Larry testifies they accurately show what he personally saw.
(B) They are not admissible because they were not taken at the time of Andy's accident.
(C) They are admissible if Andy or someone else testifies they are accurate depictions of the condition of the pothole before and after it was repaired.
(D) The second picture is not admissible.

Question 81

Concerns about predatory lending practices caused various States to adopt statutes limiting the amounts lenders can charge. This resulted in a confusing patchwork of rules for lenders that operate in multiple States. In response to industry demands Congress adopted the Uniform Lending Practices Act which requires lenders to conform to uniform national standards. Lender controls in the State of Franklin are far stricter than the federal Act, and Franklin believes the Act is too lenient on lenders. Franklin petitions the federal court for an injunction allowing Franklin to continue enforcing its own rules because they are stricter than the Act.

81) The federal court should:

(A) Assign a three-judge panel to hear the matter pursuant to Article III because it involves a State-federal conflict.
(B) Issue a temporary injunction pending trial on the Constitutionality of the Act.
(C) Deny the petition because of the Supremacy Clause.
(D) Issue the injunction because the Balance of Powers Doctrine only allows Congress to create minimum standards but cannot prevent States from exercising State sovereignty.

Questions 82-84

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 need 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.

82) 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.

83) 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.

84) 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.

Question 85

Don, a member of the Monk Mob, was tried and convicted of crashing a birthday party given for Victor in his home and shooting him to death because he asked them to leave and they felt "dissed". After Don was convicted it was revealed that Frankie, one of the jurors at Don's trial, had posted comments about the trial on her Facebook page. Don's attorney moved for a new trial for Don.

85) Which of the following facts would best support Don's argument for a new trial if attested to in sworn affidavits?

(A) During the trial Frankie told her friends she was on the jury and that it was very, very boring.
(B) After the trial Frankie admitted she watched local TV during the trial to see if she was ever shown so she could see how her hair and makeup looked on TV.
(C) After the trial Frankie said she and other jurors intensely hated Don simply because he was in the Monk Mob gang.
(D) After the trial Frankie admitted she never understood the jury instructions.

Question 86

The Hamilton State "No Child Left Unscreened Act" requires all schools, both public and private, for students K-12 to perform various mandatory child heath screenings. There are provisions for paying nonpublic schools, including church-run schools, to perform the screenings and report the test results to health officials.

86) Upon a joint legal challenge from the ACLU and the Roman Catholic Church, the statute should be ruled:

(A) Invalid because the Act will cause excessive entanglement of the State in religious affairs.
(B) Invalid because direct payment of public monies to religious organizations violates the Establishment Clause of the 1st Amendment.

(C) Valid if the State interest in protecting child health outweighs the burden on free exercise of religion and no less burdensome alternatives are possible.
(D) Valid if the purpose and effect of the screenings is purely secular.

Question 87

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.

87) 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 88

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.

88) What crimes is Dagwood guilty of committing?

(A) No crime.
(B) Burglary and larceny.
(C) Larceny but not burglary.
(D) Robbery.

Question 89

A bank was robbed by a man with a bushy red beard. Darryl was arrested and charged with the robbery, but when he was arrested and booked he was clean shaven. At trial witnesses to the robbery testified the robber had a bushy red beard, but they were unable to identify Darryl, who was still clean shaven, as being the same person. The prosecution called Darryl's landlady, Lucy, who offered to testify that until immediately after the robbery Darryl had a bushy red beard.

89) If Darryl's attorney objects to the testimony of Lucy the trial judge should rule it:

(A) Inadmissible because Lucy was not present at the robbery.
(B) Inadmissible character evidence because a "bushy red beard" is not a sufficiently unique feature to prove Darryl was the robber.
(C) Admissible for the limited purpose of supporting the testimony of witnesses to the robbery.
(D) Admissible to prove Darryl could have been the robber.

Questions 90-92

Old McDonald recorded a subdivision map to divide his farm into a residential tract called Tallac Village. The map showed the farm would be divided into 400 residential lots surrounding a 10-acre central park. McDonald sold 300 of the lots using a brochure that emphasized the recreational benefits the park would provide. All Deeds delivered by McDonald expressly referred to the recorded subdivision map and stated, "No structures in excess of 35 feet in height shall be erected on any lot in Tallac Village." Those Deeds were duly recorded. McDonald sold his interest in the rest of the subdivision to Sam by a Deed that had the same

references to the subdivision map and the height restriction. Sam sold the remaining 100 lots in the development without any reference to the subdivision map and height restriction, and he sold the 10-acre lot that had been planned for a park to the Westmark Corporation with a warranty Deed for fair market value. Those Deeds were also recorded.

90) Westmark Corporation announced that it planned to build a shopping center on the 10-acre lot it had bought from Sam. If Paula, a homeowner who bought her lot from McDonald, is granted an injunction preventing Westmark from building the shopping center it is most likely because:

(A) She was entitled to it because she held an equitable servitude.
(B) The judge decided she deserved it.
(C) The subdivision map created an implied covenant.
(D) She held an implied reciprocal servitude.

91) Lucy bought a lot from Sam. She began to build a three story mansion with a total height of 40 feet. If Ethel, a neighboring homeowner, brings an action to stop Lucy from building over 35 feet and wins it is because:

(A) Ethel bought from McDonald, not from Sam.
(B) Lucy's Deed contained a restrictive covenant.
(C) It would lower Ethel's property values if Lucy's house is taller than hers.
(D) Lucy bought subject to an implied reciprocal servitude.

92) Tallac Village is located in the Sierra County Parks and Recreation District (SCPRD). The SCPRD votes to develop the 10 acres purchased by Westmark from Sam into a public park. If SCPRD petitions Superior Court for declaratory relief finding title to the land properly belongs to SCPRD, and not to Westmark, the result will probably be in favor of:

(A) SCPRD because the land was dedicated to and accepted by the County when MacDonald's subdivision map was recorded.
(B) SCPRD because Westmark had constructive notice when it purchased the land from Sam.
(C) Westmark if it has built a shopping center on the land and SCPRD did not assert its claim for 15 years.
(D) Westmark because it was a bone fide purchaser for value.

Questions 93-94

For many years City Fire Department rules required all newly hired firefighters to attend and successfully complete three months of training at the City Fire Academy. While attending the Academy the cadets were on probation and could be terminated at any time without stated cause. After successfully completing the Academy the cadets would become permanent City Fire Department employees and assigned to a City fire station. John was accepted into the Academy and performed better than most of the cadets. One week before his Academy class was to graduate John was called into the office of the commandant, "Captain Rick". Captain Rick said he had heard some bad things about John from an old drinking buddy, and he was being expelled. Captain Rick refused to give any specifics about what he had heard, John was not given a hearing, and there were no City or State rules requiring that he be given a hearing or any reason for his expulsion.

93) Which of the following would give John the best constitutional basis to force the City to give him a statement why he was terminated and an opportunity for a hearing?

(A) He was the only Black cadet in the Academy.
(B) The City Fire Department is currently short-handed.
(C) He was performing at or near the top of his class.
(D) No cadet had ever been expelled from the Academy before without cause.

94) Which of the following, if proven, would give City the best argument for denying John a statement of reasons for his expulsion and a hearing?

(A) John was expelled before he gained permanent employee status.
(B) John was not liked by some of his classmates.
(C) John failed to state in his employment application that he had once been arrested.
(D) John falsely stated on his employment application that he had graduated from high school.

Question 95

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.

95) 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 96

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.

96) 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 97

Cheech arrived in Los Angeles on a flight from Bogotá, and customs inspectors found cocaine in the lining of his suitcase. At trial he testified that his friend Chong had given him the suitcase as a gift and he had no idea cocaine might be hidden inside it. On cross the prosecutor asked him, "Isn't it true that 15 years ago you were convicted of smuggling marijuana into the US from Mexico hidden in the seat cushions of your car?"

97) If Cheech's attorney objects and moves to strike the question, the evidence is:

(A) Admissible to prove Cheech is a drug smuggler.
(B) Admissible to prove Cheech had knowledge drugs might be smuggled hidden inside other objects.
(C) Evidence of a felony conviction, admissible to impeach the credibility of Cheech's testimony.
(D) Evidence of Cheech's past activities, admissible to impeach the credibility of his testimony.

Question 98

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.

98) At Cheech's trial what can be properly introduced into evidence?

(A) Everything.
(B) Nothing.
(C) Just the cocaine.
(D) Just the marijuana.

Question 99

After receiving complaints from local citizens and churches about the town's three "Adult Theaters", Middleville adopted a zoning ordinance which prohibited "adult entertainment" venues from being located within 1,000 feet of residential housing. The ordinance effectively prohibits the three existing "Adult Theaters" from continuing operation in their current locations because they are all within 1,000 feet from residences.

99) If the affected businesses challenge the constitutionality of the ordinance, the Court should hold that:

(A) The ordinance is valid because the First Amendment does not prohibit reasonable time, place, and manner restraints.
(B) The ordinance is not valid if there are no locations in Middleville that meet the requirements of the ordinance.
(C) The ordinance is valid if the entire city of Middleville is equally subject to it.
(D) The ordinance is not valid if it was deliberately drafted to stop the three businesses from continuing operation in their current locations.

Question 100

Capone was charged with federal income tax evasion for understating his income in 2010. His defense attorney, Alan, told him to meet with Betty, a certified public accountant, to work up income and expense schedules for 2010. Capone and Betty met alone. Capone showed her his confidential records and explained his business operation to her in detail. At trial Alan called Betty to testify as an expert witness, and had her introduced the income and expense schedules she had created showing Capone had not understated his income. The federal prosecutor, Ness, then asked Betty to reveal all of the information Capone had shared with her in confidence during their meetings.

100) Alan objects to Betty revealing what Capone told her in confidence. The Court will most likely find Betty's testimony:

(A) Inadmissible because it is attorney-work product.
(B) Inadmissible because it is covered by attorney-client privilege.
(C) Admissible because Alan waived Capone's right to claim privilege when he introduced the income and expense schedules at trial.
(D) Admissible non-hearsay.

Test #1 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	B						X		
2	A						X		
3	B						X		
4	B							X	
5	C								X
6	B			X					
7	B	X							
8	A	X							
9	B				X				
10	D								X
11	B								X
12	C			X					
13	A							X	
14	A	X							
15	D			X					
16	D		X						
17	B		X						
18	A						X		
19	C							X	
20	C								X
21	D					X			
22	B			X					
23	D			X					
24	B						X		
25	A						X		
26	B						X		
27	A								X
28	A								X
29	D							X	
30	C							X	
31	D	X							
32	C				X				
33	D			X					
34	A			X					
35	D								X
36	A							X	
37	B	X							
38	C	X							
39	D				X				
40	A				X				
41	C						X		
42	C						X		
43	A						X		
44	D						X		
45	D						X		
46	C			X					

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	B							X	
48	B							X	
49	D								X
50	A								X
51	A		X						
52	A			X					
53	A							X	
54	D	X							
55	A			X					
56	D				X				
57	A				X				
58	A				X				
59	C				X				
60	D				X				
61	B								X
62	B	X							
63	D			X					
64	A			X					
65	D			X					
66	A								X
67	C								X
68	B							X	
69	B	X							
70	D	X							
71	C							X	
72	A			X					
73	B						X		
74	B							X	
75	B	X							
76	D			X					
77	C			X					
78	C								X
79	C								X
80	D							X	
81	C						X		
82	D		X						
83	D	X							
84	B	X							
85	B				X				
86	D					X			
87	A					X			
88	A				X				
89	D							X	
90	B								X
91	D								X
92	C								X
93	D						X		
94	A						X		
95	D					X			
96	D			X					

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
97	B							X	
98	A					X			
99	B						X		
100	D							X	
Total Q's	100	13	4	17	11	5	17	16	17
less Wrong									
No. Right									
% Right									

Test #1 Answers and Explanations

1) **(B)** Answer (A) is wrong because Congress' plenary power over immigration does not alone prevent States from establishing rules based on citizenship when they are justified by compelling State concerns. [See **"Simple Constitutional Law Outline"**, **state sovereignty exception, p. 92**.] (B) is correct because the State law is discriminating against Jose based on citizenship and "alienage" is a "suspect class". Therefore, the State would have the burden of proving the law is necessary for a compelling purpose, and that would be very difficult. [See **"Simple Constitutional Law Outline"**, **discrimination using suspect group requires compelling reason, p. 91**.] (C) is wrong because the 5th Amendment only limits actions of the federal government, not the actions of States. (D) is wrong because a bill of attainder is a legislative finding a person is guilty of a crime.

2) **(A)** Answer (D) is wrong because the Privileges and Immunities Clause of the 14th Amendment was effectively nullified by judicial decision in 1973 and has been dormant ever since. [See **"Simple Constitutional Law Outline"**, **privileges and immunities clause of Article IV (regarding the privileges and immunities clause of the 14th Amendment), p. 25**.] And (C) is wrong because the Privileges and Immunities Clause of Article IV was intended to prevent States from denying residents or citizens from other States the same benefits their own residents or citizens enjoy, and here the California requirement is applied equally against all people. Note that the term "citizens" used in Article IV has been interpreted to be equivalent to "residents of States" rather than "U.S. Citizens". . [See **"Simple Constitutional Law Outline"**, **privileges and immunities clause of Article IV, p. 25**.] (B) is wrong because there is no fundamental right to practices a profession. . [See **"Simple Constitutional Law Outline"**, **the fundamental rights, p. 41**.] (A) is correct by the process of elimination. The classification at issue is not a suspect or quasi-suspect class so the burden would be on Jose to prove there is no rational basis to believe barbers must be trained within California to protect the public health and safety.

3) **(B)** The key to this question is the fact that the right of the people to travel within States or from one State to the other is a fundamental right, and the "class" of people who travel is not a "suspect class". [See **"Simple Constitutional Law Outline"**, **the fundamental rights, p. 41** and **discrimination using suspect group requires compelling reason, p. 91**.] The right to travel is not expressly guaranteed in the Constitution, but is one of the "penumbral" historical rights implied by the concept of "ordered liberty" and implied in the 9th and 10th Amendments. (A) is wrong because even though the State has authority to protect its citizens that does not justify denial of the fundamental right of people to travel in and between States. (D) is wrong because the Privileges and Immunities Clause of the 14th Amendment was effectively nullified by judicial decision in 1973 and has been dormant ever since. [See **"Simple Constitutional Law Outline"**, **privileges and immunities clause of Article IV (regarding the privileges and immunities clause of the 14th Amendment), p. 25**.] (C) is a poor choice because a fundamental right is being infringed but no "suspect" or "quasi suspect" class is involved. The "class" is simply people who are having their fundamental rights violated. And they are not "similarly situated" compared to people who have not traveled into the State either. (B) is the better answer because the law here simply infringes on the right to travel, a fundamental right. And the State would be unable to prove it is necessary for a compelling purpose.

4) **(B)** Answer (A) is wrong because Dan's statement is not an admission of wrongdoing by him. Rather it is an accusation by him of wrongdoing by Paul. [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.] (B) is correct because the evidence is not being offered to by Paul to prove the truth of the assertion, that he beat his wife. Rather it is offered to prove Dan's statement was "published" to others. [See "**Simple Evidence Outline**", **assertion not hearsay unless offered to prove assertion's true, p. 45**.] (C) and (D) are wrong because duplicates and copies are generally admissible unless there is a genuine question whether they are authentic [See "**Simple Evidence Outline**", **admission of duplicates and copies, p. 109**.].

5) **(C)** An "oil lease" is a type of profit (a.k.a. a *profit a prendre*), the legal right to remove natural resources from the land of another. Every profit implies an easement, and they are generally freely alienable property rights. [See "**Simple Real Property Outline**", **easements appurtenant, in gross and profits, p. 80**.] A license is simply permission to enter and use land that is revocable at will, not alienable and not a property right. [See "**Simple Real Property Outline**", **invalid easement becomes license, p. 85.]** Therefore, (C) is correct and (A), (B) and (D) are wrong.

6) **(B)** You may recognize the facts here reflect the case of Wagon Mound where fuel spilled under a dock and caught floating debris on fire. (A) is wrong because no reasonable person would think throwing paper into water would cause danger of a fire. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.] (C) is wrong because even if Bob had checked Will's references, there is no evidence he would not have hired Will anyway. Therefore, Bob is not an actual cause of the fire.

7) **(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.

8) **(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. UCC 1-206 requires a contract for sale of litigation rights worth more than $5,000 to be in writing to be legally enforceable, but Thomas did not sell his rights to Francois. Therefore both (C) and (D) are wrong. (A) is the only right answer.

9) **(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 fail 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.

10) **(D)** Under the common law the death of a contract party after the contract has formed but before it has been fully executed does not void the contract unless the subject matter of the contract clearly requires the existence of the deceased party. [See "**Simple Contracts & UCC Outline**", **death of a party usually does not void a contract, p. 28**.] Real property law does not change this principle. The Doctrine of Equitable Conversion affects the distribution of sale proceeds when a seller dies, but has no application when the buyer dies. [See "**Simple Real Property Outline**", **distribution when seller dies intestate, p. 56** and **distribution when seller dies testate, p. 56**.] The personal representative of an estate (i.e. the executor or administrator of the estate) has the duty to pay all of the debts of the deceased party and to marshal all of the assets of the estate. Therefore, (D) is correct and (A), (B) and (C) are all wrong.

11) **(B)** Under the common law view a buyer of real property assumes the risk of loss at the time the contract is entered into. Therefore, if the property is damaged or destroyed before the close of escrow the buyer suffers the loss unless the loss is caused by the acts or negligence of the seller. [See "**Simple Real Property Outline**", **distribution when property is destroyed, p. 56**.] Therefore (B) is correct and (A), (C) and (D) are wrong.

12) **(C)** You may recognize that Farmer could have sued for trespass to chattel, but that is not what the CALL says so you have to work with that. (A) is wrong because hunting and shooting guns is not an ultra-hazardous activity, so Hunter cannot be "strictly liable". Many students think that everything involving a firearm is ultra-hazardous, and that is just nonsense. [See "**Simple Torts Outline**", **abnormally dangerous and ultra-hazardous activities, p. 23**.] (B) and (D) are wrong because whether the cow is in the National Forest legally or not, Hunter still has a duty to be careful when shooting. This is the same as if an auto driver hits a pedestrian crossing the street; whether the pedestrian is crossing the street "legally" or not does not determine whether the driver was negligent or not. [See "**Simple Torts Outline**", **duties created by peril, p. 49**.] (C) is the best answer because Hunter's duty was to act as a reasonable person would. So if the cow "reasonably" looked like a deer he did not breach his duty to act in a reasonable manner.

13) **(A)** Answer (D) is wrong because only evidence based on opinion and reputation, or evidence of prior convictions, can be admitted to impeach Peter's testimony. [See "**Simple Evidence Outline**", **the collateral evidence rule: no specific act evidence to challenge witness credibility, p. 80** and **prior convictions admissible to challenge witness credibility, p. 82**.] (B) is wrong because "Collateral Estoppel" is a civil procedure term, not an evidence term. (C) is not the best answer because Peter's motive in the current case is not disputed; clearly he is seeking damages for a claimed injury. (A) is the best answer because the only probative value of the evidence offered is to suggest Peter has a history of filing false injury claims, but the jury could easily be confused between the two cases or find against Peter simply because another jury found against him in a totally different case.

14) **(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.

15) **(D)** Answer (A) is wrong because assumption of the risk requires that plaintiffs act with knowledge and acceptance of the risks posed by their own acts, which are the cause of their injury. Here Tom clearly assumed the risks posed by a water balloon fight, but there is no evidence he saw Harry's car approaching and assumed the risks of being hit by it. [See "**Simple Torts Outline**", **assumption of the risk, p. 65**.] (B) and (C) are wrong (assuming Harry breached his duty to drive carefully) because Tom would not have been hurt but for the actions of both Dick and Harry. [See "**Simple Torts Outline**", **actual cause, p. 3**.] (D) is correct because Harry's best argument is that he did not breach his duty to drive carefully. It is not unreasonable for a driver to glance at the rearview mirror occasionally, and it actually is a requirement of safe driving.

16) **(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".

17) **(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".

18) **(A)** Answer (A) is the most likely means the federal government could use by threatening to give States federal funds if they adopted the uniform speed limit (or in the alternative withholding federal funds if they did not). [See **"Simple Constitutional Law Outline"**, **the tax and spend clause, p. 5**.] (B) is wrong because the Privileges and Immunities Clause of Article IV has nothing to do with federal actions with regard to the States. (C) is wrong because there is no "General Welfare Clause". (D) is wrong because even though highways are used for interstate commerce, speed limit laws are not set to promote or regulate commerce.

19) **(C)** Answer (A) is wrong because no matter how damaging Brandy's testimony might be to Fireman's Funds' position, it would not be "undue" or "unfair" prejudice because it goes directly to the heart of the issue in dispute, whether Harry reported the claim in a timely manner. [See "**Simple Evidence Outline**", **the court has discretion to exclude relevant evidence, p. 10**.] (B) and (D) are wrong because Brandy is being asked to state what she did, saw and heard Harry do on June 2, not to repeat an assertion of fact she or Harry made at that time. [See "**Simple Evidence Outline**", **hearsay, p. 43**.] (C) is correct because Brandy is being presented as a percipient witness, one who claims to have observed the events in dispute.

20) **(C)** Answer (A) is not a good argument for Bob because if Sam is a month-to-month tenant he has a right to at least one month's notice before he can be evicted under the common law. [See "**Simple Real Property Outline**", **proper notice is needed to terminate periodic tenancy, p. 31**.] (B) is not a good argument for Bob because even if Sam is a tenant at sufferance, he still would be a tenant who must be given proper notice to be evicted. [See "**Simple Real Property Outline**", **the tenancy at sufferance, p. 31**.] (D) is wrong because Sam remained on the land with Bob's permission so he is not a trespasser at all. (C) is Bob's best argument because if Sam simply had an easement, it was invalid because it was not in writing. And an invalid easement becomes a license that is revocable at will by the landowner, not a tenancy, under common law. [See "**Simple Real Property Outline**", **invalid easement becomes license, p. 85.]**

21) **(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, pp. 28-31**.] 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).

22) **(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).

23) **(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.

24) **(B)** Answer (A) is wrong because argument "II" is invalid. Federal courts have jurisdiction to review the Constitutionality of both federal and State law under the Supremacy Clause. [See **"Simple Constitutional Law Outline"**, **the hierarchy of laws, p. 3**.] (B) is correct because both "I" and "III" are correct. Argument "I" is correct because "taxpayer standing" to sue the federal government to stop inappropriate expenditures has only been recognized with respect to alleged violations of the Establishment Clause of the 1st Amendment, and even then only narrowly. [See **"Simple Constitutional Law Outline"**, **no jurisdiction over claims by parties lacking standing, p. 30**.] It has been generally held taxpayers have no standing with respect to other expenditures because they cannot prove injury with any specificity. Argument "III" is also correct because the Taxing and Spending clause allows Congress to address matters it otherwise could not.). [See **"Simple Constitutional Law Outline"**, **the tax and spend clause, p. 5**.]

25) **(A)** Answer (B) is wrong because even though the Oregon law burdens interstate commerce, that burden is outweighed by the State's interest in protecting natural resources.). [See **"Simple Constitutional Law Outline"**, **state preservation of natural resources – least discriminatory means, p. 8**.] (C) is wrong because the federal tax is not in conflict with the State law, and it is not a comprehensive regulatory scheme. (D) is wrong because the statute is applied to all people regardless of the State in which they reside. (A) is correct by the process of elimination because State laws to protect natural resources are usually valid even if they affect interstate commerce unless a less burdensome means is available.

26) **(B)** Answers (A) and (C) are wrong because the "Import-Export Clause" is an obscure provision of the Constitution that prevents States from levying duties on goods passing through them to or from foreign nations, and that is not the situation here, even if Fisher eventually sells his catch in international trade. (B) is correct and (D) is wrong because even if the tax burdens interstate commerce, the State has the power to use a tax to reasonably protect natural resources and there is no evidence the tax here is unreasonable or excessive.

27) **(A)** Under the Implied Warranty (covenant) of Quiet Enjoyment a landlord has a duty to give a tenant possession and use of property free from unreasonable interference by the landlord, his agents, people with paramount title, and people in common areas. [See "**Simple Real Property Outline**", **the implied warranty of quiet enjoyment, p. 33**.] (B) is wrong because that has no application here since Huey is not a landlord and Louie is not a tenant.(A) is correct and (C) and (D) are wrong because Louie holds an express easement, not an implied easement by necessity, and none of the events that might terminate an express easement have occurred. [See "**Simple Real Property Outline**", **how easements terminate, p. 83**.]

28) **(A)** Answer (D) is wrong because Dewey's lot is not part of a "general plan of tract development" in which other deeds have restrictions. [See "**Simple Real Property Outline**", **implied reciprocal equitable servitudes, p. 94**.] (A) is correct and (B) and (C) are wrong because landowners generally have the right to build vertically on their land, within the limits of zoning laws, even if it blocks views. [See "**Simple Real Property Outline**", **air and sun rights, p. 101**.]

29) **(D)** This is a deliberately confused fact pattern. Clearly Allfarm cannot be claiming Lacy did not die a "violent death", so it apparently is claiming at trial that Scott killed his wife, and as a result they owe him nothing. (You should know that insurance companies do not have to pay beneficiaries who deliberately kill the person they have insured!) That is the only reason the testimony of Ethel and Pete would have any logical relevance. You are told that Allfarm has offered to pay Scott $1 million, but that must be an "offer in compromise" that cannot be revealed to the jury, and should not be considered an "admission of a party opponent". (A) is wrong because "double jeopardy" is a Constitutional Law issue (5th Amendment) in criminal trials only, and this is a civil trial. Scott is not

being criminally prosecuted here a second time for killing his wife. (B) and (C) are wrong because Pete's testimony is not offered to repeat Ethel's statement or to prove Ethel heard Scott threaten to kill Lacy. Instead it is a prior consistent statement offered to rehabilitate Ethel's testimony in court after it has been impeached by Scott. (D) is correct because under the FRE a prior consistent statement in this context is admissible non-hearsay. [See "**Simple Evidence Outline**", **consistent prior statements, p. 50**.]

30) **(C)** Answer (A) is wrong because "collateral estoppel" is a civil procedure term, not an evidence term. If the term is being used here to refer to the "collateral evidence rule" (which would be really weird), that is still totally wrong because Ethel's statement is not and could not be offered to impeach Scott's testimony as a witness. (D) is wrong because admissible non-hearsay under the FRE does not include former testimony. [See "**Simple Evidence Outline**", **the four federal non-hearsay categories, p. 47**.] (B) is wrong and (C) is correct because even though the statement offered by Allfarm is hearsay, it is admissible as former testimony under oath since Ethel made the statement under oath, Scott had a motive and opportunity to cross examine her, and she is now unavailable to testify. [See "**Simple Evidence Outline**", **former testimony, p. 53**

31) **(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.

32) **(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, pp. 37-38**.] (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.

33) **(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

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**.]

34) **(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.

35) **(D)** Answer (A) is wrong because even though tenants have a duty to landlords to inform them of dangerous conditions to prevent permissive waste, Farmer is not a tenant and Atlantic is not a landlord. [See "**Simple Real Property Outline**", **proper notice is needed to terminate periodic tenancy, p. 31**.] (B) is wrong because Farmer had no duty to act. He did not create the peril and his contract did not require him to report it. Without a duty he could not be "negligent" and if he is not negligent he cannot be "contributorily negligent". (C) is wrong and (D) is correct because easement holders have a duty to use and maintain easements in a reasonable manner but are not held to a strict liability standard. [See "**Simple Real Property Outline**", **easements, p. 80**.]

36) **(A)** Answer (A) is correct and (B) is wrong because contradictory testimony can only be admitted to show a witness has falsely or incorrectly testified if the witness is given an opportunity to explain or deny the inconsistencies. [See "**Simple Evidence Outline**", **inconsistent prior statements, p. 50**.] (C) and (D) are wrong because all relevant evidence can be admitted without restriction to directly attack the ability of a witness to observe the events in dispute.

37) **(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 may be 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.

38) **(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.

39) **(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**.]

40) **(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.

41) **(C)** The first lesson to learn from this set of questions is that when several questions are based on a single fact pattern, the correct answer to each question alone is often suggested by the proposed answers to the other questions in the same group based on the central fact pattern. So consider the logical framework suggested by all of the questions as a group before leaping to a conclusion based on any one question alone. Law students often believe the Constitution only protects individuals from "government acts". This is incorrect. The 13th, 14th and 15th Amendments give Congress the power to prohibit equal protection by anyone, including private individuals. Further, the more private individuals use the property, protections, benefits and mechanisms of government in their activities, the less likely they will be allowed to deny others equal protection and due process. Answer (A) is wrong because he has standing to bring an action on his own behalf since his own rights have been infringed. (B) is wrong and (C) is right because of the reasoning explained above. The State is effectively a partner of The Yacht Club in creating and running the marina so acts by The Yacht Club will be subject to the Constitutional protections of equal protection and due process. [See **"Simple Constitutional Law Outline"**, **equal protection rights, p. 86**.] (D) is wrong because the standard The Yacht Club must meet is to show its actions are necessary to attain a compelling government purpose, not that there is merely a "rational relationship".

42) **(C)** Answer (B) is wrong for the same reason explained in the answer to the prior question, The Yacht Club and the State are effectively partners in creating and running the marina, and the actions of The Yacht Club in that enterprise will be treated as State actions. (D) is wrong because the actions of The Yacht Club do not prevent Kennedy from "exercising" his freedom to be an atheist. (C) is correct because the purpose and effect of the policies of The Yacht Club is to favor one establishment of religion over others. [See **"Simple Constitutional Law Outline"**, **the establishment clause and the lemon test, p. 48**.] (A) is wrong because violations of the Establishment Clause depend on the purposes and effects of State actions, not the religious beliefs of the parties objecting to it.

43) **(A)** Answer (A) is correct and (D) is wrong because fee requirements for public benefits, and the denial of those benefits to those who are unable to pay for them, is not a violation of due process unless the benefits are particularly important. But (B) is wrong because if benefits are important due process requires some provision for fee waivers. (C) is wrong because the poor are not a "protected class". The equal protection concepts of "suspect" and "quasi-suspect" classes are not the same as "protected" classes.

44) **(D)** You probably will not see an MBE question use the word "lesbian" for a few years but this same question may well be phrased to concern "women", "homosexuals" or "transsexuals". (A) is wrong because the answer here does not depend on that political effort. (B) and (C) are wrong and (D) is correct because Courts have not held sexual orientation to be a "suspect" or "quasi-suspect" classification. Laws based on sexual orientation only have to be rationally related to a legitimate government purpose. [See **"Simple Constitutional Law Outline"**, **use of disability, age or sexual orientation needs rational purpose, p. 95**.]

45) **(D)** Answer (A) is wrong because what Jefferson State knew originally is irrelevant to the legality of The Yacht Club's subsequent acts. (B) is wrong because the guarantee of equal protection is to "persons" and not just "citizens". (C) is wrong and (D) is correct because classifications base on alienage are "suspect" and place a burden on government to prove they are necessary for a compelling purpose and not merely "rationally related" to some purpose. [See **"Simple Constitutional Law Outline"**, **discrimination using suspect group requires compelling reason, p. 91**.]

46) **(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.

47) **(B)** Answer (D) is wrong because evidence of past acts of Garth are not admissible to prove Garth acted in conformity with character on this particular occasion. (A) and (C) are wrong and (B) is correct because even though evidence of past acts by Garth are not admissible to prove he acted in conformity with his character, they can be admitted to prove Wayne had knowledge of Garth's poor driving skills. [See "**Simple Evidence Outline**", **not hearsay if just offered to prove knowledge of facts, p. 46**.]

48) **(B)** Answer (D) is wrong because the evidence offered does not prove Wayne acted consistently enough to constitute a "habit" of the type that qualifies as an exception to the general rule that evidence of past acts is not admissible to prove actions in conformity with character. [See "**Simple Evidence Outline**", **evidence of habit, p. 72**.] (A) is wrong because whether Madonna is biased or not, and the effect of that, is for the jury to weigh, not the judge. (C) is wrong because Madonna's statement is not hearsay. (B) is correct because evidence that Wayne acted carefully in the past is generally inadmissible to prove the disputed fact whether he was careful when he loaned his car to Garth this last time. [See "**Simple Evidence Outline**", **past act evidence generally inadmissible to prove disputed acts, p. 70**.]

49) **(D)** Until the streets are deeded to the County they belong to Drysdale, and Clampett and his customers would only have a right to be on them if they hold an easement. So Drysdale's best argument is that Clampett does not hold a valid easement. (A) is a bad answer because the issue of whether Clampett has gained an "unjust enrichment" is only relevant after Clampett is granted an easement. It is not an argument why Clampett should not be granted an easement at all. (B) is wrong because Clampett can possibly claim he has an express easement based on Drysdale's promise, or perhaps an implied easement. (C) is wrong because the Statute of Frauds would not stop Clampett from claiming he had an implied easement, easement by necessity, or a prescriptive easement. (D) is Drysdale's best argument, that Clampett does not have an easement to be on his land. [See "**Simple Real Property Outline**", **five ways easements are created, p. 81**.]

50) **(A)** Answer (A) is Clampett's best argument because if the act of recording the development plan dedicated the streets to public use, he and his customers do not need to have an easement to travel on them. (B) is wrong because even though Drysdale's sale of the lots did create implied easements, those implied easements would only vest in the lot buyers, not in Clampett and his customers. (C) is wrong because even though Drysdale gave Clampett an express easement, it was oral and unenforceable because it did not satisfy the Statute of Frauds. (D) is wrong because the fact Clampett only crossed Drysdale's land "occasionally" shows it was not necessary to do so. [See "**Simple Real Property Outline**", **five ways easements are created, pp. 81, et seq.]**

51) **(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.

52) **(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.

53) **(A)** Answer (A) is correct and (C) is wrong because Adam's statement, when introduced by the prosecution, is an admission of a party opponent, non-hearsay under the FRE. [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.] (B) is wrong because a "statement against interest" is a hearsay exception, and Adam's statement is non-hearsay. (D) is wrong because witnesses' biases, emotions, personal interests and other motives for testifying are only factors for the finder of fact (jury) to weigh, not factors affecting the admissibility of evidence.

54) **(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)

55) **(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".

56) **(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.

57) **(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.

58) **(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**.]

59) **(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**.]

60) **(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.

61) **(B)** Answer (A) is wrong and (B) is correct because Anadarko has a legal right to exercise its rights under the easement whether it is fair, necessary, or reasonable. (C) is wrong because the Rule of Perpetuities is only an issue at the moment an interest in land is created, and here the easement vested in Anadarko at creation, satisfying the Rule Against Perpetuities at that time. [See "**Simple Real Property Outline**", **the rule against perpetuities, p. 16**.] (D) is wrong because Anadarko's recording of the easement gave MacDonald constructive notice whether he ever had "actual notice" or not. [See "**Simple Real Property Outline**", **constructive (record) notice, p. 94**.]

62) **(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 UCC 1-206 only requires contracts for a sale of rights exceeding $5,000 in value to be in writing and Paul's assignment to Frank is both gratuitous and for a value less than $5,000. (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.

63) **(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.

64) **(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.

65) **(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.

66) **(A)** Answer (A) is correct because Hoss cannot "commence" an action until January 3, and by then Little Joe will have adversely possessed the land for more than the required 10 year period. So if Hoss gives Little Joe permission to remain on the land prior to the end of the 10 year period, it is impossible

for Little Joe to "adversely" possess it for the entire period. (B) is not a good answer because there is no evidence the Nevada statute tolls this particular statutory time period until the next court day. (C) is wrong because adverse possession only requires open, hostile possession and does not require awareness by the title holder. (D) is wrong because "commencement" of an action starts with the filing of a complaint or petition with a court.

67) **(C)** If Hoss gave Adam permission to hunt on the land in writing it is a valid easement in gross, a legal interest in land. [See "**Simple Real Property Outline**", **easements appurtenant, in gross and profits, p. 80**.] But if Hoss only gave Adam permission orally, it does not satisfy the Statute of Frauds and is only a license to hunt, revocable at will (unless based on a contract supported by consideration). [See "**Simple Real Property Outline**", **invalid easement becomes license, p. 85**.] (B) is wrong because it is not clear that Adam actually has a valid easement in gross. (D) is wrong because once a valid easement is granted, it may be "terminated" but it cannot be "revoked", whether there is an exchange of consideration or not. [See "**Simple Real Property Outline**", **how easements terminate, p. 83**.] (A) is wrong because Hoss' title to the land is superior to any claim by Little Joe before he has successfully established a claim of adverse possession, so any permission Hoss gives to Adam is also superior to a claim by Little Joe. (C) is correct because whether Hoss gave Adam a license or a valid easement it is superior to any rights of Little Joe because Little Joe's rights are inferior to Hoss'.

68) **(B)** Answer (A) is wrong because witnesses' biases, emotions, personal interests and other motives for testifying are only factors for the finder of fact (jury) to weigh, not factors affecting the admissibility of evidence. (B) is correct and (C) and (D) are wrong because Adam's statement to Eve was a confidential communication between spouses. [See "**Simple Evidence Outline**", **marital communication privilege, p. 22**.]

69) **(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.

70) **(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.

71) **(C)** Answer (A) is wrong because the marital communication privilege does not apply in legal actions between the spouses. [See "**Simple Evidence Outline**", **marital communication privilege, p. 22**.] (B) is wrong and (C) is correct because Adam's statement was an admission of a party opponent if introduced by Eve in an action against Adam. [See "**Simple Evidence Outline**", **admissions of a**

party opponent, p. 48.] (D) is wrong because it is simply nonsense; the admissibility of evidence is determined by the rules of evidence, not vague, subjective ideas of what is "right" or "wrong".

72) **(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**.]

73) **(B)** From the beginning you should recognize that Social Security has this same type of rule, and it has been ruled constitutional. But if you don't realize that, here is the logical approach: (A) is wrong because Eve's legal rights are totally unrelated to the availability of funds. (B) is correct because receiving the benefits is not a fundamental right. [See **"Simple Constitutional Law Outline"**, **the fundamental rights, p. 41**.] And Eve is not a member of a suspect class. [See **"Simple Constitutional Law Outline"**, **discrimination using suspect group requires compelling reason, p. 91**.] And this is not a case of discrimination against a quasi-suspect class. [See **"Simple Constitutional Law Outline"**, **use of quasi-suspect class requires persuasive justification, p. 93**.] Therefore, Eve would have the burden of proving there is no rational relationship between the government law and a legitimate governmental goal. If there is such a relationship, she will lose. (C) and (D) are wrong because the burden of proof would be on Eve, not on the government.

74) **(B)** Answers (C) and (D) are both wrong because Cain's presence in Adam's office (not Eve's) made the conversation non-confidential. The presence of any non-privileged person at the time of a statement destroys the shields of confidentiality. As a result neither the marital communication privilege nor the attorney-client privilege apply. (A) is wrong and (B) is correct because the Adam's statement was an admission of a party opponent if introduced by Seth in an action against Adam, non-hearsay under the FRE. [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.]

75) **(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.

76) **(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.

77) **(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, **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**.]

78) **(C)** Answer (C) is correct because a covenant against encumbrances, a representation that there are no encumbrances against the property, is generally part of a general warranty Deed, and White breached the covenant because the right-of-way is an encumbrance. (A), (B) and (D) are wrong because it does not matter whether White or Green knew or should have known of the encumbrance. Grantees that take possession with knowledge of title defects do not waive their rights under express covenants. [See "**Simple Real Property Outline**", **grantee taking with knowledge does not waive express covenants, p. 64**.]

79) **(C)** Answer (C) is correct because a covenant against encumbrances, a representation that there are no encumbrances against the property, is generally part of a general warranty Deed, and White breached the covenant because the right-of-way is an encumbrance. (A), (B) and (D) are wrong because it does not matter whether White or Green knew or should have known of the encumbrance. Grantees that take possession with knowledge of title defects do not waive their rights under express covenants. [See "**Simple Real Property Outline**", **grantee taking with knowledge does not waive express covenants, p. 64**.]

80) **(D)** Answer (A) is wrong because the photos can be authenticated by any knowledgeable witness, plus Larry, as Andy's attorney, is generally barred from testifying on his behalf at all. (B) is wrong because the photos do not have to be taken at the time of the event to be admissible. (C) is wrong and (D) is correct because evidence of a "remedial measure" as shown in the second photo cannot be introduced as evidence to prove negligence in a civil action. [See "**Simple Evidence Outline**", **remedial measures exclusion, p. 27**.]

81) **(C)** Most of these answers are based on purely spurious statements. (A) is wrong because there is no such provision in Article III or anywhere else requiring a 3-judge panel. (B) is wrong because Congress clearly has authority to adopt such provisions under the Commerce Clause. (D) is wrong because there is no such rule related to a "Balance of Powers Doctrine". (C) is correct because under the Supremacy Clause federal law supersedes any conflicting State laws. [See **"Simple Constitutional Law Outline"**, **the hierarchy of laws, p. 3**.] Sometimes States are allowed to enact laws that conflict with federal law. For example, State occupational safety rules may be stricter than federal (OSHA) rules, and State pollution rules may be stricter than federal (EPA) rules. But that is because the federal laws allow that. But if federal laws do not allow States to enact even stricter rules, federal law controls.

82) **(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.

83) **(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.

84) **(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.

85) **(B)** Answers (C) and (D) are wrong because a jury verdict will not be reversed or set aside based on later statements by the jury members concerning their own or other jury member's thought processes or communications with each other during the trial. (A) is wrong because jury members can tell other people they are on the jury; they are not supposed to discuss the trial with anyone except other jury members, but saying that the trial is "boring" is not "discussing" the substance of the case. (B) is correct because jury members can only listen to and consider the evidence presented at trial, and in watching TV coverage of the trial Frankie was exposed to statements, opinions and other influences that constituted inadmissible evidence.

86) **(D)** Answer (A) is wrong because the given facts do not suggest any "entanglement" of government in religion. (B) is wrong because government payments to church-run schools are not, per se, illegal. (C) is wrong because this fact pattern involves the Establishment Clause of the 1st Amendment and the stated test (the balance between the burden on free exercise of religion versus the State interest) applies to the Free Exercise Clause. (D) is correct because if the purpose and effect of the Act is secular and would not cause excessive entanglement of government in religion, the act is valid. [See **"Simple Constitutional Law Outline"**, **government aid to religious organizations – the Lemon test, p. 48**.]

87) **(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.

88) **(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.

89) **(D)** Answer (A) is wrong because Lucy is a percipient witness to the appearance of Darryl at the time of the robbery even if she was not present at the robbery scene. (C) is wrong because evidence cannot be offered to support the testimony of witnesses unless their credibility has first been questioned. [See "**Simple Evidence Outline**", **consistent prior statements, p. 50**.] (B) is wrong and (D) correct because character evidence is admissible to prove ability and opportunity. [See "**Simple Evidence Outline**", **past acts admissible to prove identity, p. 71**.] The evidence offered tends to prove Darryl could have been the robber, even if it is not sufficiently conclusive, by itself, to prove he actually was the robber.

90) **(B)** Answer (A) is wrong because nobody is ever "entitled" to an injunction. An injunction is always a form of equitable relief, and equitable remedies are always at the discretion of the Court (i.e. judge). The only remedies movants are ever "entitled" to are legal remedies and not equitable remedies. (C) is wrong because the only "implied covenants" in the common law of real property are the implied covenant of quiet enjoyment and the implied warranty (covenant) of habitability, and this question has nothing to do with either of them. (D) is wrong because Paula is not seeking to have Westmark restricted to using its land in the same way she is restricted to using her own land. An implied reciprocal equitable servitude is created when Deeds for some parcels within a general plan of tract development are recorded with express use restrictions but others are not. The owner of every parcel designated for uniform development (i.e. for residential structures) is impliedly bound by the same land use restriction. Here Paula seeks to have Westmark restricted to using its parcel for a park, a land use restriction that does not apply to her own parcel or any other parcel. (B) is the correct answer simply because every injunction depends on the judge deciding the equitable considerations are in favor of the moving party. If the judge decided to grant the injunction the judge must have found the development map created an express equitable servitude (not an implied reciprocal servitude), that it touched and concerned the land, was intended to run with the land, and that Westmark had constructive notice of it, even if it did not have actual notice. [See "**Simple Real Property Outline**", **implied reciprocal equitable servitudes, p. 94**.]

91) **(D)** Answer (B) is wrong because it is contrary to the given facts. The facts state Lucy bought from Sam, and that the Deeds for lots sold by Sam had no height restriction. (C) is wrong because it is totally irrelevant if Ethel's property values would go down or not. That is not one of the "legal elements" she must prove. (D) is right and (B) is wrong because Lucy and Ethel have bought lots in a "tract development" where some of the Deeds contain the use restriction and others do not. Therefore, Ethel would claim all lots in the development were purchased subject to an implied reciprocal equitable servitude. Therefore, the use restriction would apply to the entire tract, and it does not matter if the Deed of either Lucy or Ethel contains that restriction. [See "**Simple Real Property Outline**", **implied reciprocal equitable servitudes, p. 94**.]

92) **(C)** Answer (D) is correct in that Westmark did have constructive notice the land it bought from Sam had been set aside to be a public park because that was shown in the subdivision map MacDonald recorded with the County. But this does not necessarily make it the best answer. (D) is wrong for the same reason - Westmark had constructive notice of the potential claim by SCPRD. Westmark may have been a "bone fide purchaser for value" because it paid "fair market value" but it had constructive notice of the potential claim of SCPRD against its interest. (A) would generally be the best answer. When MacDonald recorded his subdivision map and began selling lots, he effectively dedicated the 10 acre parcel to be used as a public park, and the County accepted it by allowing the lots to be sold with that understanding. But even so, the County unreasonably delayed asserting its claim until after Westmark had changed position in reliance on its belief it had clear title to the land. Consequently, Westmark would successfully assert the defense of laches Note this is actually a REMEDIES question masquerading as a "real property" question. One might object that "remedies" is not tested on

the MBE, but the question of "appropriate remedy" is embodied in every area of law. [See "**Simple Real Property Outline**", **events that terminate equitable servitudes, p.96**.]

93) **(D)** The key element to keep in mind here is that the question asks what facts would best show John has a right to a hearing. That makes the issue one of procedural due process. Employment is not a fundamental right, so the real issue is whether John is being deprived of a property right, giving him a right to notice and a hearing. (A) is wrong because the fact John is Black is only relevant to the issue of equal protection, not procedural due process. (B) and (C) are also wrong because they do not support an argument that John is being deprived of a "property right". (D) is the only possible answer. Even if the "written rules" say cadets can be expelled at any time, if no cadet has ever been expelled without cause in the "many years" the Department has had these same rules, it supports an argument there is an established practice and understanding cadets will not be expelled without cause. A course of dealing and practice may create a property right that would entitle John to a hearing. [See **"Simple Constitutional Law Outline", rights must be interests based on legal entitlement, p. 74**.]

94) **(A)** Answer (A) is the best answer because while on probation John was subject to termination at any time without a right to a hearing. (B), (C) and (D) are all arguable reasons that might justify terminating his employment, but not without a hearing once he had a right to one. [See **"Simple Constitutional Law Outline", civil service employment creates a recognized property interest, p. 75**.]

95) **(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**.]

96) **(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**.]

97) **(B)** Answer (A) is wrong because evidence of past acts are generally not admissible to prove conduct in conformity with character. (B) is correct; evidence of past acts is admissible to prove knowledge. [See "**Simple Evidence Outline**", **past acts admissible to prove knowledge, p. 72**.] (C) is not the best answer because the conviction is over 10 years old; therefore it could only be introduced if Cheech was given advance written notice AND the Court found the probative value of the evidence substantially outweighed its prejudicial effect. (D) is wrong because incidences of specific conduct of a witness can only be inquired about on cross examination, at the discretion of the Court, if they concern the witnesses' character for truthfulness or untruthfulness.

98) **(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, pp. 28-30** 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

"**Simple Criminal Procedure Outline**", **lurch area search incident to lawful arrest, p. 53** and **automobile and inventory search incident to arrest, p. 53-54**.] (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.

99) (B) Answer (A) would be correct if the ordinance is a "reasonable" restraint. Although the ordinance is not actually "content neutral", the courts have held that it is not unreasonable to require "adult entertainment" to be located in certain places. But (B) is a better answer than (A) because the ordinance must provide adequate alternative "channels for communication". In other words, an ordinance that simply outlaws all "adult entertainment" everywhere in the city is an unreasonable restraint and therefore unconstitutional. (C) is wrong because an ordinance that prohibits all "expression" of a certain type is unreasonable and unconstitutional whether it is applied to the entire city or not. (D) is wrong because it is irrelevant whether the ordinance was adopted with these businesses in mind or not. In fact, virtually all zoning ordinances are adopted because some existing land use has created a nuisance, so the purpose of zoning changes is usually intended to cure an existing problem. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64**.]

100) **(D)** Answer (A) is wrong because Ness is not asking Betty to reveal anything she created or produced for Alan. [See "**Simple Evidence Outline**", **investigation and attorney work product, p. 14**.] (B) is wrong because Ness is not asking about anything Capone told Alan in confidence. Betty is not an attorney, and not Alan's employee, so even though Alan asked Capone to talk to Betty the attorney-client privilege does not extend to her. [See "**Simple Evidence Outline**", **attorney-client privilege, p. 19**.] (C) is wrong because the information sought is not the income and expense schedules but, rather, the statements and information revealed to Betty by Capone in the process of creating those documents. (D) is correct because any admissions by Capone to Betty would be admissions of a party opponent, non-hearsay under the FRE.

Test #2

Test #2 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review.

The Answers and Explanations for these questions are in the following section.

Questions 1-2

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.

1) 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.

2) 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 3

Huey, Louie and Dewey owned three adjacent lots A, B, and C on Elm Street that were all 30 feet wide and 100 feet deep. Louie put his center lot, B, up for sale. Huey and Dewey agreed to buy Louie's lot and share its use. Each built a home that extended 8 feet onto the center lot formerly owned by Louie, and on the center 14 foot strip between their homes they built a driveway that ran from Elm Street to their detached garages in the back of their homes.

Eventually Huey and Dewy became concerned one of them might die leaving his interest in the center lot to someone who could file a partition action that would leave the survivor of them with only half of the driveway, a 7 foot strip too narrow to drive into their garages in the back.

3) Which of the following plans would best assure both Huey and Dewey that no future owners could prevent either of them from accessing their garage in the back of their home?

(A) They could establish an irrevocable Trust to hold title to the center lot naming themselves Trustees and themselves and their successors in interest as the beneficiaries.
(B) They could enter an agreement under which each grants the other an easement over the center lot as to their own undivided half-interest.
(C) They could enter an agreement to partition the center lot into two 15 foot strips and grant each other easements over the centermost 7 feet of those two 15 foot strips.
(D) They could record a covenant that would prevent them and all of their successors in interest from filing a partition action as to the center lot.

Questions 4-6

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.

4) 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.

5) 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.

6) 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 7

MegaCorp fired Betty, its Chief Financial Officer, and sued her for embezzling $100,000 from its general fund. At trial Betty stated in her defense that the previous CFO of the corporation, Tom, told her she was allowed to pay herself a bonus under the MegaCorp bylaws.

7) If MegaCorp object to this evidence it is:

(A) Admissible because it negates specific intent to commit embezzlement.
(B) Admissible hearsay because it shows the effect it had on Betty's state of mind.
(C) Inadmissible because it is hearsay.
(D) Inadmissible because it is irrelevant.

Question 8

Mary was discovered in Walmart in a storage room by the security guard after the store closed for the night. She was charged with burglary and attempted larceny, but she claimed she had become ill in the restroom and got locked inside the store. The prosecutor offers a certified copy of Department of Motor Vehicle records showing that Mary's truck was parked by the back door to the Walmart the night she was arrested, but the license plates on it had been stolen from another vehicle.

8) Is the DMV record admissible?

(A) No, because specific act evidence of dishonesty is not admissible to impeach a witness' testimony.
(B) No, because the best evidence rule requires the prosecution to present the license plate itself.
(C) Yes, because she stole the license plates so she was going to steal from the store.
(D) Yes, because the stolen license plates show she intended to steal inside the store.

Questions 9-11

Arizona passed the "Hire an American First Act" which provides that State agencies must give the highest hiring preference to U.S. military veterans, second highest to U.S. citizens who are not veterans, and the lowest hiring preference to resident aliens.

9) If the Supreme Court of Arizona held the Act to be in violation of the Equal Protection guarantees of the state constitution and in conflict with federal law as well, could that finding be subjected to further review by the United States Supreme Court?

(A) No, because of the "adequate and independent state grounds" theory.
(B) No, because it would not meet the requirements of certiorari.
(C) Yes, because the Supreme Court of the United States has original jurisdiction over all cases in which a State is a party.
(D) Yes, because the requirements for an appeal would be met.

10) Which of the following is the best legal basis for challenging the provisions of this law giving U.S. veterans highest priority?

(A) The Privileges and Immunities Clause of the 14th Amendment.
(B) The Privileges and Immunities Clause of Article IV.
(C) The Equal Protection Clause of the 14th Amendment.
(D) The powers reserved to the States under the 10th Amendment.

11) Which of the following is the best legal basis for challenging the provisions of this law giving resident aliens lowest priority?

(A) The Due Process Clause of Article IV
(B) The Equal Protection Clause of the 14th Amendment.
(C) The powers reserved to the States under the 10th Amendment.
(D) The Privileges and Immunities Clause of the 14th Amendment.

Questions 12-13

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.

12) 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.

13) If Benny refuses to pay Dr. Quackie and he sues her, 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.

Questions 14-17

Trammel Wood Corporation (TWC) bought a large tract of land in the Mojave desert and laid out an exclusive, gated retirement community with over 10,000 residences situated around three large golf courses. It was named "Trammel Wood - Paradise" but locally it was known as "God's Waiting Room". To provide electricity to the development TWC built a power plant at substantial cost. To pay for the cost of the plant the Deeds for every lot in the development contained three covenants. The first was that the purchasers and their "heirs and assigns in perpetuity" had to buy their electrical power from TWC for the next 30 years. The second was that lot owners were required to pay $500 a year to the Paradise Homeowner's Association for the purpose of paying a security guard service. And the third was that occupancy was restricted to "persons 55 years of age or older one family per residence." Ann bought a new home from TWC. Later TrumpCo gained control of TWC in a hostile takeover, and TWC was merged into TrumpCo. After that Anne died and her home was inherited by her daughter, Angel, who was unaware of the covenants in Ann's Deed.

14) General Power and Light (GPL) built a new interstate transmission line from Hoover Dam running adjacent to Paradise. GPL offered residents of Paradise power at a much lower rate than was being charged by TrumpCo. Angel agreed to buy power for her home from GPL rather than from TrumpCo. TrumpCo sued to enjoin Angel from violating the covenant in her Deed. If TrumpCo loses, it is most likely because:

(A) There is no privity of estate between TrumpCo and Angel.
(B) The covenant is an unreasonable restraint on interstate trade in violation of the Commerce Clause.
(C) Angel was unaware of the covenant at the time she took possession.
(D) The covenant does not touch and concern the land.

15) For four years Angel refuses to pay the $500 a year Homeowner's Association (HOA) dues. If the HOA sues Angel, it will probably:

(A) Lose because the covenant does not touch and concern any land owned by the HOA.
(B) Lose because only other homeowners can maintain a cause of action against Angel.
(C) Win, because the covenant touches and concerns land.
(D) Win because the HOA was an intended third party beneficiary of the original contract between Ann and TWC.

16) The HOA has a contract with MPI Security Company to post guards at each entrance to the development. Suppose Angel refuses to pay the Homeowner's Association (HOA) dues for four years and the HOA Board will not sue her because the costs suit may exceed the $2,000 she owes. Groucho, one of the 20,000 residents in the development, has paid his dues and is angry that Angel has not. If he sues Angel in pro per for breaching the covenant, he will probably:

(A) Win $2,000 in restitution because Angel has violated a covenant running with the land.
(B) Win only ten cents ($0.10) because that is his share of the $2,000 Angel has failed to pay (1/20,000 * $2,000).
(C) Lose because the covenant makes Angel liable to the HOA, not to Groucho.
(D) Lose because he has not yet suffered any actual damages because HOA is still paying MPI for the security services.

17) Angel is 55 years old and has two sons ages 16 and 18. Groucho petitions Superior Court for an injunction barring Angel's sons from living in Paradise. If Groucho loses, it is most likely because:

(A) The covenant violates the 14th Amendment.
(B) The covenant is an unreasonable restriction on alienation.
(C) An injunction would violate the equal protection clause of the 14th Amendment.
(D) An injunction would violate the due process clause of the 14th Amendment.

Question 18

Officer Otto went to Dan's apartment to arrest him for selling stolen property. After he knocked on the door Susie opened it, and Otto saw Dan behind her talking on the phone. Dan quickly said, "Do you still have the stuff? Get rid of it!" The phone call was traced to Dan's brother, Bob, and stolen goods were recovered at Bob's house.

18) At trial for possession of stolen property, Otto's testimony as to what Dan said on the phone is:

(A) Admissible non-hearsay.
(B) Admissible because it is relevant and not prejudicial.
(C) Inadmissible hearsay.
(D) Inadmissible because Dan had not been read his Miranda rights.

Question 19

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.

19) Harry's best cause of action against Dick is:

(A) Assault.
(B) Battery.
(C) Negligence.
(D) Conversion.

Question 20

Granny stated to Attorney that she and three other people were present when she heard Dan say, "Peter is a convicted child molester." But later at trial she cannot remember the name of one of the people who was present at the time.

20) Can the attorney show Granny the notes he made at the time he first questioned Granny to influence her testimony at trial?

(A) No, because he would effectively be telling Granny what to say.
(B) No, because his notes are inadmissible hearsay, an out-of-court assertion of fact.
(C) Yes, because an attorney is allowed to show a witness writings or anything else to refresh the witness' memory about of past events.
(D) Yes, because the attorney's notes are a "recorded recollection".

Question 21

I. Larry threw a banana cream pie.
II. Larry intended to hit Moe with the pie.
III. Moe was hit by the pie.

21) 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.

Question 22

22) After receiving complaints from local citizens, Middleville adopted an ordinance that prevents door-to-door solicitation of charitable donations by organizations that do not use at least 80% of the funds collected for charitable purposes, as defined by statute. Further, before any organization can solicit door-to-door they must obtain a license upon proving they meet the 80% limit. Jehovah's Army of Children, a fringe religious group, challenges the ordinance. The Court should find:

(A) The ordinance is constitutional if the purpose is to protect residents from being annoyed by solicitors.
(B) The ordinance is constitutional because the city's interest in protecting residents from fraud and crime outweighs the interest of the charity in raising funds.
(C) The ordinance is constitutional because the 80% rule is a legitimate way to prevent solicitation by bogus "charities".
(D) The ordinance is unconstitutional because it violates the 1st Amendment.

Question 23

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.

23) 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 24

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.

24) 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.

Question 25

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.

25) 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.

Question 26

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.

26) 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.

Question 27

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.

27) 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 28

28) 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.

Question 29

Dave is arrested for possession of a stolen vehicle. In his defense Dave claims he bought the vehicle from Owen, the previous owner, and sent proof of that to the Department of Motor Vehicles. The prosecution offers testimony by Gary, an employee from DMV, who would testify that he is knowledgeable about how DMV maintains records of vehicle ownership, that the records are carefully maintained and highly accurate, that he has carefully searched all of the DMV records, and that he found no records to show that Owen ever sold the vehicle in question to Dave.

29) Should Gary's testimony be excluded?

(A) No, because it is evidence of absence of a public record.
(B) No, because it is not hearsay.
(C) Yes, because a failure to find evidence is not evidence.
(D) Yes, because the absence of a record is effectively an out-of-court statement that no record exists, an assertion of fact.

Question 30

30) Jose, a California senator, chaired a committee that disbursed funds for clean water projects. Some of the money was received from the federal government under a revenue sharing plan Jose was charged with violation of federal law when he and his committee granted $10 million for an irrigation project without requiring an environmental impact report to assess the impact of the project on the Delta Smelt, an endangered species. Jose's best constitutional argument is that:

(A) Federal law cannot restrict the actions of a State legislature in accordance with State law.
(B) Federalism prevents the federal government from interfering with a State legislator's performance of his authorized, legislative duties.
(C) The 10th Amendment reserves for the States alone the power to act in this area.
(D) He cannot be prosecuted for violation of federal law if State law authorizes them.

Question 31

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.

31) 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 32

Dick was charged with defrauding merchants by writing checks without insufficient funds in the bank to cover them. On cross-examination the prosecutor asked, "Isn't it true that you were charged with writing bad checks in Arizona three years ago?"

32) The Court should rule this question is:

(A) Improper unless Dick was convicted or pled guilty to the prior charge.
(B) Improper because it is a leading question.
(C) Improper use of specific act evidence to impeach the witness, but the Court has discretion to allow it.
(D) Improper use of character evidence to prove conduct in conformity with character.

Question 33

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.

33) 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.

Questions 34-36

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.

34) 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.

35) 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.

36) 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.

Question 37

37) Abdul was a permanent resident of the United States. He applied for a job as a custodian at Our Lady of Perpetual Homework High School for Girls, a parochial school. He was rejected for the job because he was not a woman, not a member of the same church, and not a U.S. citizen. He sued the school in federal court. Abdul will:

(A) Win because he was denied equal protection.
(B) Win because discrimination in employment based on sex is illegal.
(C) Win because discrimination based on religion is illegal.
(D) Lose.

Questions 38-40

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.

38) Bud can be charged with:

(A) Assault and battery.
(B) Assault.
(C) Attempted battery.
(D) Assault and attempted battery.

39) 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.

40) 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 41

Bob was accused of robbery. At the preliminary hearing Mabel, a 90-year old witness to the robbery, testified and identified Bob as the man she saw rob the store. Her testimony was recorded by the court reporter. Mabel is too ill to testify at Bob's trial. The prosecutor offers a certified transcript of Mabel's testimony into evidence.

41) The Court should rule this testimony is:

(A) Inadmissible hearsay.
(B) Admissible hearsay if Bob's lawyer could have cross-examined Mabel at the preliminary hearing.
(C) An inadmissible identification of Bob as the robber unless Mabel appears at the trial and is subject to cross-examination.
(D) Admissible as a public record of the prosecutor's office.

Question 42

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.

42) 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 43

43) Ali was a permanent resident of the United States. He applied for a job as a U.S. history teacher at a public high school. He was rejected for the job because he was not a U.S. citizen. He sued the school in State court. Ali will:

(A) Win if he can show he is loyal to the U.S.
(B) Win because he has been denied equal protection.
(C) Lose because the ability to teach U.S. history is rationally related to citizenship.
(D) Lose because employment is not a fundamental right.

Question 44

Dean got drunk and robbed the liquor store. The next morning his wife, Lucy, found $500 in his wallet. "Where did you get all this money?" she asked. "I robbed Pete's Liquor Store last night," he told her. Lucy left Dean after finding him with Mary and reported him to the police. Dean was arrested for robbery, and Lucy volunteered to testify for the prosecution.

44) Lucy's testimony is:

(A) Inadmissible as both hearsay and privileged.
(B) Admissible non-hearsay as an admission by Dean.
(C) Not hearsay, but inadmissible because it is privileged.
(D) Admissible about what she saw but not about what she heard.

Questions 45-46

A, a land developer, laid out plans for an industrial park with 20 parcels called "White Rock Industrial Park". He intended for the park to have warehouses, offices and industrial sites. The first 10 lots in the development were sold with the following statement in the legal description on the Deeds:

"The Grantee, for himself and his heirs, assigns and successors, covenants and agrees the subject land hereby conveyed shall be used only for wholesale, commercial and industrial purposes, and not for providing retail sales or other activities open to the general public."

A died before he sold the remainder of the lots, and his son B inherited his estate. B started selling the remaining parcels without citing the restriction quoted above in the legal description on the Deeds, and expressing telling buyers that they could use the lots for any commercial purpose.

45) V bought a warehouse in the industrial park from W. W had built the warehouse on a lot he had bought from A. Y bought a lot from B and also built a warehouse. Then Y rented space in his warehouse to X. X established a "gentleman's club" called "Solid Gold Centerfolds" which featured nude dancers. V was very offended by X's operation and considered X's customers to all be "perverts". He filed a petition in Superior Court seeking an injunction to prevent X from operating his nude dancing business in the building built by Y. Which of the following would be the best defense argument for X?

(A) There was no common plan of development as to the entire industrial park.
(B) V has suffered no monetary losses.
(C) A's death terminated vertical privity, leaving V without a right to enforce the restriction.
(D) The restriction cannot be enforced against X if he leased the space without actual knowledge of the restriction because it was not stated in Y's Deed.

46) Z bought a parcel in the industrial park that had originally been sold by A. When he discovered B was selling additional lots with assurances they could be used for any commercial purpose, he filed an action against B seeking a court finding that all parcels in White Rock Industrial Park were subject to the same restrictions that were in his own Deed. Which of the following is most correct?

(A) Z should prevail because the rules of construction require uncertainties in Deeds to be resolved against the grantors.
(B) Z would not prevail because the restriction in his Deed is a restraint on alienation.
(C) Z will prevail if he proves the industrial park was created with a common plan of development.
(D) Z will not prevail because the restriction in his Deed only binds grantees.

Question 47

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.

47) 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 48

48) After the real estate collapse in 2006-2009, federal bankruptcy courts were clogged with a glut of cases. To remedy the situation Congress passed the Accelerated Bankruptcy Act of 2010. As a result, Joe, who used to be in private practice, was hired by the bankruptcy court and appointed to be an administrative law judge to hear claims filed under the Act. After hearing bankruptcy cases for several years the President's Governmental Reduction Commission recommended that the Act be repealed and positions eliminated. Congress acted on the recommendation and Joe's position was eliminated as a result. If Joe sues the government he will:

(A) Lose because he was in private practice before his appointment to be magistrate.
(B) Lose because government employment is not a fundamental right.
(C) Win because federal judges are appointed for life and cannot be removed except on a finding of good cause.
(D) Win because it violates the doctrine of separation of powers for the executive and legislative branches to interfere in the administration of the courts.

Question 49

"Silk" Jones was arrested for rape, but claims he was out of town on the night of the crime. Officer Otto testifies for the prosecution that he stopped a car for a traffic offense on the night of the crime near the scene of the crime, and the driver presented a driver's license with Silk's name and picture on it.

49) Otto's statement about the driver's license is:

(A) Inadmissible hearsay.
(B) Inadmissible if the prosecution has access to the original driver's license.
(C) Admissible to rebut Silk's claim he was out of town on the night of the crime.
(D) Admissible to impeach Silk's testimony.

Question 50

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.

50) 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 51

Seattle adopted an ordinance that made it unlawful for more than 10 people to hold a demonstration in a public place without a permit from the police department. It took two days to obtain a permit, and the permits cost $5. Further, the ordinance authorized the police to stop any and disperse demonstrators to prevent a disturbance of the peace if any demonstrators used "vulgar, annoying or disturbing language" in the presence of anyone who was not part of the demonstration. The Ku Klux Klan sues the City in State court to enjoin it from preventing the Klan from marching down the middle of Main Street in its robes on the Martin Luther King, Junior Birthday holiday.

51) The Klan's strongest argument that the ordinance is unconstitutional is:

(A) Main Street is a pubic forum.
(B) The 1st Amendment guarantees the right to assembly and free expression.
(C) The ordinance is overbroad and fatally vague.
(D) The demonstration is not intended to cause or likely to cause an immediate breach of the peace.

Questions 52-54

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.

52) 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.

53) 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.

54) What is Juan's best cause of action against Gonsanto?

(A) Trespass to land.
(B) Private nuisance.
(C) Public nuisance.
(D) Negligence.

Question 55

55) Developer Don owns a large acreage which he intends to develop into an exclusive gated community. He plans to have 250 lots with upscale residences arrayed around a golf course. One of the main features of the development will be that it has a perimeter wall and a gate staffed 24 hours a day by security guards. Each of the residential lots would be required to pay the Home Owner's Association (HOA) an equal amount each month to pay for the security guards. To best implement this plan Don should use:

(A) Have the lot purchasers sign contracts obligating them to pay the HOA's monthly fees.
(B) Have the lot purchasers grant Deeds of Trust to the HOA to secure payment of the fees.
(C) Have the lot purchasers grant easements to the HOA.
(D) Covenants in the CC&Rs to obligate the lot purchasers.

Question 56

Chaim was arrested after Laquisha, a witness to a murder, saw him sitting in the park and called the police. At trial Laquisha said, "I was walking through the park with Yvette on my lunch break, you know like we do. And I said, "Yvette! Look at that dude! Don't look! Don't look! Well, look but don't let him see you looking. He's the guy that I saw shot that dude at the bar last night. I would recognize those fly pants and bad Jewfro anywhere!"

56) Laquisha's testimony about her statement to Yvette is:

(A) Inadmissible hearsay.
(B) Inadmissible because it is unfairly prejudicial to Chaim.
(C) Admissible as an out-of-court identification.
(D) Admissible as an excited utterance.

Question 57

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.

57) 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.

Question 58

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.

58) 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 59-60

Heritage Corp owned 600 acres of land. In 1990 it divided the land into three parcels of 200 acres each. It subdivided Parcel One to create Heritage Mall, a shopping center. And it divided Parcel Two to create a residential tract called Heritage Place which surrounded Heritage Mall. The plats recorded with the County Recorder for Parcel One and Parcel Two each referenced the other parcel.

Heritage Mall was zoned by the County for commercial use, and at all times it was used exclusively for commercial use.

Heritage Place was zoned by the County as "R2" which permitted the lots to be used for both single-family and multiple-family residential use.

The Deeds for the lots in Heritage Place all contained a provision that said the lots could only be used for single-family residences. Further, the Deeds expressly stated, "Any owner of any lot in Heritage Place has the right to bring an action to enforce the provisions set forth herein."

Stover owned a single-family home in Heritage Place. His father died and he wanted to convert his home into a duplex with a "mother-in-law" apartment for his mother. He applied to the County for a building permit to divide the house into two units. The County granted him all of the necessary permits and he began construction to remodel his home into a duplex.

Ned, who owned a home in Heritage Place, discovered what Stover was doing, and petitioned the court for an injunction to prevent him from using his house as a duplex. Stover responded that he has a fundamental right to live with his mother, so the Deed restriction cannot be enforced against him.

59) The most likely result under these facts is:

(A) Since Stover's planned land use agrees with existing zoning and the County has approved it, he is not in violation of law and cannot be stopped by a court of equity. However, Stover would have a right to be granted an award of damages in equitable restitution for Stover's breach of the covenant.
(B) The court will issue an injunction ordering Stover to return his home to its original configuration as a single-family dwelling.
(C) The restriction in the Deeds for Parcel Two is not enforceable because Heritage Corp did not apply the same restriction equally to the 200 acres which it retained when it created Heritage Mall and Heritage Place.
(D) The restriction in Stover's Deed is not enforceable as to Stover because he has a fundamental right to live with his mother. Court enforcement of the restriction against him would constitute "state action" in violation of that fundamental right.

60) In 2000 Heritage Corp subdivided its third 200 acre parcel (Parcel Three) and called it Heritage Oaks. The Deeds for the lots in Heritage Oaks all contained a provision that said, "This lot is subject to the same land use restrictions that apply to the Deeds for lots in Heritage Place, and any owner of any lot in Heritage Place or Heritage Oaks has the right to bring an action to enforce the provisions set forth herein."

Wilson, a land owner in Heritage Oaks, tries to use the land for commercial purposes, and Ned, a land owner in Heritage Place, petitions the court to enjoin Wilson. The most likely result would be:

(A) will prevail if the court decides Heritage Oaks and Heritage Place are all part of the same plan of common development.
(B) Heritage Corp cannot apply restrictions to Heritage Oaks and Heritage Place without also applying the same restrictions to Heritage Mall because they were all originally part of a single tract of land.
(C) Heritage Corp cannot limit lots in Heritage Oaks to residential use because it has allowed Heritage Mall to be used for commercial purposes.
(D) The court cannot restrict use in a manner in conflict with existing zoning laws.

Question 61

Nguyen was on trial for fraud. The prosecution asked him if he had ever been convicted of tax evasion. Nguyen denied that he ever had been. Then the prosecutor called Weasel, an IRS agent, who offered to testify that Nguyen had been charged with tax evasion two years earlier, pled no contest, and was fined $10,000.

61) Weasel's testimony should be:

(A) Admissible as proper impeachment evidence.
(B) Inadmissible because it violates the Collateral Evidence Rule.
(C) Inadmissible because the best evidence of a conviction is the court record.
(D) Inadmissible because nolo contender pleas are not evidence of convictions under the FRE.

Question 62

62) Gold River is a planned community of condominiums. Every unit in the development contained a restriction in its Deed that restricted ownership and occupancy of the units to "families or groups of unrelated adults not more than three in number". Adam and his girlfriend Eve purchased one of the 2-bedroom condominiums in the development. Later their friends, Samson and Delilah moved in with them. Their next door neighbor Myrtle became very upset and filed a suit for an injunction to force Samson and Delilah to move out. Which of the following would be the best argument for Samson and Delilah?

(A) The restriction is an unconstitutional violation of equal protection.
(B) The two-bedroom condominium is adequate for four adults.
(C) Marriage and family formation are fundamental rights.
(D) Restrictions on the number of occupants in a dwelling are inherently unconstitutional.

Question 63

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.

63) 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 64

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.

64) 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 65

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.

65) 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.

Questions 66-67

Oliver North, a member of the White House staff, refused to answer questions asked of him at a Senate hearing concerning conversations he had with President Reagan regarding the Iran-Contra situation. The Senate cited North for contempt and submitted the matter to a federal grand jury which indicted North.

66) If Oliver North is prosecuted his best defense is to show that:

(A) Disclosure of the details of his discussion with the President would stifle the free exchange of information in the executive branch.
(B) The questions he refused to answer not related to matters subject to Senate oversight.
(C) If he answered the questions he would lose his position with the White House.
(D) The questions he refused to answer were related to his duties as a member of the White House staff.

67) Can the Senate force the Attorney General to prosecute North based on the grand jury indictment?

(A) No because it was a violation of separation of powers principals for the Senate to force North, an employee of the executive branch, to testify.
(B) No because the Attorney General is a member of the executive branch, and Congress has no authority to decide whether he should be prosecuted.
(C) Yes because the indictment accuses North of a crime.
(D) Yes, but only if two-thirds of the Senate votes to prosecute.

Question 68

Benny is accused of burglary. At trial a witness says he saw a man wearing a red jacket leaving the scene of the burglary carrying stolen goods, but she could not see his face. The prosecution presents evidence that Benny committed seven burglaries a year before the burglary in question while wearing a red jacket.

68) The evidence that Benny committed a burglary wearing a red jacket the year before should be:

(A) Admissible because the fact Benny has worn a red jacket in the past tends to prove he is the burglar.
(B) Inadmissible character evidence offered to prove acts it conformity with character.
(C) Inadmissible character evidence.
(D) Inadmissible because the fact Benny has worn a red jacket in the past has too little probative value to outweigh the risks of unfair prejudice.

Questions 69-70

Dr. Frankenstein gave his servant, Igor, a $20 bill and sent him to the local morgue to buy a brain for his monster.

69) 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.

70) 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 71-73

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.

71) 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.

72) 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.

73) 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.

Questions 74-76

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.

74) 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.

75) 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.

76) 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 77

Paula and Denise "had words" at a Vinnie's bar because they were both after Tony. Denise left vowing revenge against Paula. At closing time Paula and Snookie were leaving Vinnie's and crossing the street when a car came screeching out of the dark, running down Paula and narrowly missing Snookie. Paula sued Denise for deliberately hitting her with her car. At trial Paula admitted she did not see who was driving the car but offered to testify that immediately before she was injured Snookie screamed, "Watch out! Here comes that crazy Denise!" Snookie was unavailable to testify because she and Nick got whacked after he ratted to the feds about Fat Al.

77) Paula's evidence about what Snookie screamed is:

(A) Inadmissible hearsay.
(B) Admissible because Snookie is not available to testify.
(C) Admissible non-hearsay as an identification of a person after perceiving them.
(D) An admissible excited utterance.

Question 78

Annie, an elderly and wealthy philanthropist, was approached by the County and asked to give the County some land to be used as a battered women's shelter. Eventually Annie agreed and her attorney delivered to the County a Deed which stated, "Grantor (Annie) hereby conveys to County the herein described tract of land subject to the agreement and understanding that County shall construct thereon a battered women's shelter within one year after this conveyance and shall thereafter maintain said shelter for the benefit of the women of this County."

Within one year after this conveyance the County built the battered women's shelter, and it operated the shelter for five years.

Eventually, due to budget cuts, the women's shelter was closed and the building was used to house miscellaneous county offices.

Annie brought a quiet title action seeking a declaratory judgment the County's failure to maintain the women's shelter caused title to the land and structure to revert to her.

78) Annie should:

(A) Lose because the Deed did not create a contractual obligation on the part of the County.
(B) Lose because the Deed constituted an offer which County accepted by taking possession, but it did not create a possibility of reverter or right of entry.
(C) Win because the Deed created a estate subject to a condition subsequent giving Annie a right of entry.
(D) Win because the Deed created a determinable estate giving Annie a possibility of reverter.

Question 79

79) Goldie owns an "Adult Bookstore" in the City of Smallville. He sells sex toys and "XXX-rated" movies. Around the walls of his store are numerous obscene movie posters showing people, most of whom are nude, engaged in sexual acts. The concerned citizens of Smallville enact an ordinance which makes it an offense to "display advertisements within the City of Smallville which show nude or partially nude people". Goldie is cited for violating the ordinance and issued a fine. If he challenges the ordinance he will.

(A) Win because some nudity is not obscene.
(B) Lose because the posters are obscene.
(C) Win because prohibiting Goldie from showing his movie posters violates his 1st Amendment rights.
(D) Lose because the City has the power to protect public morality.

Question 80

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."

80) Jones is guilty of:

(A) Extortion.
(B) Larceny.
(C) Burglary and larceny.
(D) None of the above.

Question 81

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.

81) 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.

Question 82

82) Juan agreed to sell his home to Fernando and his wife, Elena, subject to conditions, covenants, and restrictions of record and all applicable zoning laws and ordinances. County records showed the lot was subject to a 10-foot utility easement across the back (north) property line, and a 15-foot setback on the front (south) side of the property which was shown in the developer's original subdivision map. The house was zoned as single family residential, and the zoning rules required a 5 foot setback on the sides (east and west property lines) and a 10-foot setback from the sidewalk on the front (south) side.

After the contract was signed Elena saw another house for sale and immediately fell in love with it. She pleaded for Fernando to find some way to get out of the deal they had made with Juan.

Fernando had a property inspector, Miguel, look at the house, and he discovered it had been built 6 inches too close to the sidewalk on the south side.

Fernando told Juan he was backing out of the deal because the house was too close to the front property line. Elena was very happy.

Juan discovered Fernando's true motivation and sued him for breach of contract seeking specific performance. Juan will:

(A) Lose because the fact the house was 6 inches too close to the sidewalk makes the title unmarketable.
(B) Lose because any variation from setback and zoning requirements, no matter how small, amounts to a breach of contract.
(C) Win because the setback violation is *de minimus*.
(D) Win because Fernando raised the objection for hidden and unrelated motives.

Question 83

83) Congress enacts the Migratory Waterfowl Act to protect threatened migratory waterfowl species. The Act makes it illegal to take, possess, or sell any item which is made from the feathers of migratory waterfowl. Tenkiller creates and sells traditional Cherokee artwork using wild duck, goose and egret feathers she finds around the edges of lakes and rivers. She does not kill or harm any animals in the process. She challenges the constitutionality of the Act. She will most likely:

(A) Lose because the Act is intended to protect a national resource.
(B) Lose because the Act is rationally related to interstate commerce.
(C) Win because the Act is an overbroad restraint on the 1st Amendment right to free expression.
(D) Win because, by prohibiting the sale of the Tenkiller's artwork, the Act is taking her property without due process as required by the 5th Amendment.

Question 84

Mr. Klaus was tried for committing murder on Christmas Eve. He was identified by a witness, Virginia, who claimed she could see him commit the murder because of the full moon. Virginia's father, Mr. Carol, testified he knew there was a full moon that night because his wife said, "The moon on the breast of the new-fallen snow gave a luster of mid-day to the objects below!" Mrs. Carol died before trial.

84) If Mr. Carol offers to repeat his wife's statement it is:

(A) Inadmissible because Mrs. Carol is unavailable to testify.
(B) Inadmissible even if his wife was available to testify.

(C) Admissible by judicial notice because records of the National Oceanographic and Atmospheric Administration (NOAA or "No-way") show there was a full moon at the time in question.
(D) Admissible if the existence of a full moon is essential to prove the charge of murder.

Question 85

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.

85) 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.

Questions 86-87

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.

86) Tony can be charged with:

(A) Embezzlement.
(B) False pretenses.
(C) Larceny by trick.
(D) Embezzlement and conspiracy.

87) Vic can be charged with:

(A) Larceny by trick.
(B) Receiving stolen property.
(C) False pretenses.
(D) Accessory to embezzlement.

Question 88

Peter's car collided with Dan's car at an intersection controlled by a traffic signal. Will was a passenger in Dan's car. Dan and Peter each claim the other caused the accident by failing to stop for a red light, and their dispute is going to trial. Will was not injured and is not a party to the action. Dan was convicted of perjury three years before trial, and Will pled guilty to a charge of felony drug possession nine years earlier.

88) If both Dan and Will testify at trial:

(A) Peter has a right to admit evidence of Dan's conviction.
(B) Peter can only admit evidence of Dan's conviction if the Court finds its probative value outweighs the potential prejudicial effect.
(C) Peter has no right to admit evidence of Will's guilty plea because it did not concern a crime of dishonesty.
(D) Peter can only admit evidence of Will's guilty plea if the Court finds the probative value outweighs the potential prejudicial effect.

Question 89

White agreed to sell his estate, Blackacre, to Wong for $300,000. The contract said White was obligated to deliver "title" to Wong, but it did not expressly say "marketable title".

Prior to closing, Wong discovered in the County Recorder records that Black actually held title to Blackacre and not White. However, he also discovered White had been holding Blackacre in adverse possession for 15 years, that Black had admitted that to be true, and the time period for establishing ownership by adverse possession in the State statutes was 10 years.

At the close of escrow White tendered a signed Deed in the form set forth in the sales contract, but Wong refused to tender payment.

89) If White sued Wong for specific performance, which of the following is most correct?

(A) Wong would not be obligated to pay for the land because White had an affirmative duty to reveal his claim to the land was subject to a claim by Black. His failure to reveal that constituted fraud..
(B) Wong would not be obligated to pay for the land because he would be "buying into a law suit" even if White was highly likely to prevail over any claim by Black.
(C) Wong would be obligated to pay for the land because White's action for specific performance is "in rem" even if Black was not a party.
(D) Wong would be obligated to pay for the land because White did not promise to deliver marketable title.

Question 90

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.

90) 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 91-92

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.

91) 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.

92) 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.

Questions 93-94

The President of the United States and the President of Mexico each appointed five members to a Border Commission to study means for stopping illegal drug and weapon trafficking across the U.S.-Mexico border. The Border Commission issued proposed regulations which were adopted by both nations. Congress then authorized the President to enter into an agreement with Mexico which gave the Border Commission the authority to enforce and adjudicate the regulations it had originally proposed.

93) The President's executive agreement with Mexico is:

(A) Invalid because the Executive branch does not have plenary power over international relations.
(B) Valid because the Executive branch does have plenary power over international relations.
(C) Invalid unless it was ratified by a two-thirds vote of the Senate.
(D) Valid because the Executive has unlimited power to enter into executive agreements.

94) Border Commission regulations control the time, place and manner for Border Commission staff to inspect vehicles crossing the Mexico – U.S. border. California law already requires all vehicles entering the State, including those entering from Mexico to be inspected by State inspectors. If the Border Commission seeks an injunction in federal court to stop California from inspecting vehicles entering from Mexico a second time, the district court would most likely declare the State statute:

(A) Invalid because the Supremacy Clause makes an executive agreement the law of the land.
(B) Invalid because the California inspections place an unreasonable burden on trade.
(C) Valid because executive agreements do not supersede conflicting State laws.
(D) Constitutional if California is inspecting vehicles to prevent agricultural pests from entering the State.

Question 95

While driving Tom's car, Dick accidentally ran into Harry's car, badly injuring him. Harry sued Tom for negligently entrusting it to Dick because he knew or should have known Dick had a history of being a reckless driver. At trial Harry offers evidence showing that Dick had had three serious automobile accidents in the two years before the incident in question. Two of those accidents occurred while Dick was engaged in "street racing" and in the third accident Dick was driving while intoxicated.

95) The evidence Harry wants to admit is:

(A) Inadmissible because Dick's character can only be proven by evidence of opinion or reputation.
(B) Inadmissible character evidence.
(C) Admissible to prove Dick was a bad driver.
(D) Admissible if Dick was convicted of a felony because the events occurred within the prior 10 years and testifies as a witness.

Questions 96-97

Byers decided to buy a building lot in a new development called "Smoking Oaks". But he was undecided as to whether to buy Lot 12 or Lot 73. Both were for sale for the same price, $25,000. The sales representative for Smoking Oaks, Ruby, told him, "Why don't you pay us now, and you can take a few days to decide which lot you want?" That sounded good to Byers. So he gave Ruby his check for $25,000, and she gave him a Deed that was complete in every way except it had a blank space where he could write in the number of the lot he wanted, as soon as he decided. She told him, "Once you make up your mind, just fill in the number for Lot 12 or Lot 73 and record it." Byers went back to Smoking Oaks the next day with his wife, and she fell in love with a different lot, Lot 51. So Byers filled in "Lot 51" on the Deed and recorded it.

96) When the developer, Bruno, found out what Byers had done he was very angry because he had planned to keep Lot 51 for himself. He filed a petition in Superior Court seeking an order rescinding the conveyance and clearing title to Lot 51. If he loses it is because:

(A) The recording of a Deed precludes any challenge of its provisions.
(B) When Ruby gave Byers the Deed and told him to fill it in with the lot he wanted, it transferred an implied agency to Byers that could not be restricted by an oral understanding.
(C) The public interest favors certainty in land records.
(D) Ruby caused Bruno's problem.

97) Assume for this question only that before Bruno discovered Byers had conveyed Lot 51 to himself, Byers offered to sell the lot to Tom. In response Tom' attorney examined the recorded records and told Tom that Byers' appeared to hold good title, free from encumbrances. But Tom and his attorney did not make any other effort to see whether Byers held title. Then Tom gave Byers $30,000 in exchange for the lot. If Bruno filed a petition to recover title from Tom and loses, it is most likely because:

(A) Bruno did not have clean hands.
(B) Tom is a bone fide purchaser.
(C) Byers' recording of the Deed on which he filled in the blank with "Lot 25" precluded any later challenge of its provision
(D) What Ruby told Byers he could write on the first Deed is a prior oral agreement barred by the Statute of Frauds.

Question 98

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."

98) 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 99

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.

99) 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.

Question 100

Finley was accused of bank fraud. At his trial Ed offered to testify that Finley had been his good friend for several years and that he was a gentle and courteous person.

100) The evidence Ed offers is:

(A) Inadmissible if offered to prove Finley acted in conformity with his character.
(B) Inadmissible because it does not show Finley is honest.
(C) Admissible character evidence because Finley is a criminal defendant.
(D) Admissible to prove Finley is a decent man.

Test #2 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	D					X			
2	B					X			
3	C								X
4	B			X					
5	B			X					
6	D			X					
7	D							X	
8	D							X	
9	A						X		
10	C						X		
11	B						X		
12	B	X							
13	D	X							
14	D								X
15	C								X
16	A								X
17	D								X
18	A							X	
19	C			X					
20	C							X	
21	B			X					
22	D						X		
23	D					X			
24	D								X
25	B	X							
26	D			X					
27	C				X				
28	C				X				
29	A							X	
30	B						X		
31	C		X						
32	C							X	
33	D	X							
34	A			X					
35	B			X					
36	B			X					
37	D						X		
38	B				X				
39	A				X				
40	D				X				
41	B							X	
42	B	X							
43	B						X		
44	D							X	
45	A								X
46	C								X

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	C	X							
48	B						X		
49	B							X	
50	C					X			
51	C						X		
52	B			X					
53	D			X					
54	A			X					
55	D								X
56	C							X	
57	C	X							
58	B		X						
59	B								X
60	A								X
61	B							X	
62	C						X		
63	D				X				
64	D	X							
65	D		X						
66	B						X		
67	B						X		
68	D							X	
69	B				X				
70	A				X				
71	B	X							
72	A	X							
73	A	X							
74	B			X					
75	A			X					
76	D			X					
77	D							X	
78	B								X
79	A						X		
80	D				X				
81	D					X			
82	A								X
83	B						X		
84	B							X	
85	C	X							
86	B				X				
87	A				X				
88	A							X	
89	B								X
90	B	X							
91	C			X					
92	D			X					
93	B						X		
94	D						X		
95	C							X	

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
96	B								X
97	B								X
98	A	X							
99	D				X				
100	B							X	
Total	100	11	3	17	12	5	16	17	16
Wrong									
Right									
% Right									

Test #2 Answers and Explanations

1) **(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**.]

2) **(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.

3) **(C)** Answer (A) is wrong because under the Rule Against Perpetuities private Trusts cannot be created in perpetuity. Interests created in this manner would be invalid from the beginning. (B) is wrong because Huey and Dewey each own both an interest in a dominant estate (Lot A or Lot C) as well as an undivided half-interest in the servient estate (Lot B). As a result, each has a right to enter the servient estate anyway, and any easement they might hold in that same servient estate immediately terminates because of **merger of ownership**. [See "**Simple Real Property Outline**", **how easements terminate, p. 83**.] (D) is wrong because a covenant will not run with land without horizontal privity at the time of creation, and a mere exchange of promises between neighbors cannot create a covenant that runs and covenants made after land is conveyed lack horizontal privity and will not run. [See "**Simple Real Property Outline**", **horizontal privity always required between original parties, p. 89**.] (C) is correct because if they partition Lot B into two portions, each owning half, each can then convey an easement to the other without it being terminated by merger of ownership.

4) **(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 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**.]

5) **(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.

6) **(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**.]

7) **(D)** Answer (A) is wrong because Betty is not being charged with a crime; MegaCorp's action is civil, so it must be for conversion and proof of Betty's "intent" is not important. (B) and (C) are wrong because Betty is not presenting evidence of Tom's statement to prove it is true. If she wanted to prove the bylaws allowed her to take the money (the defense of consent), she would be introducing the by-laws into evidence, not what Tom told her about them. (D) is correct because honest intentions and mistaken notions are simply no defense to a conversion action. As a result anything Tom told her or whether she believed it to be true is totally irrelevant in a civil action. [See "**Simple Evidence Outline**", **evidence must be relevant to proving material facts, p. 8**.]

8) **(D)** Answer (A) is wrong because there is no evidence Betty has testified at trial, and even if she did the license plates could be presented for a different purpose than to impeach her credibility. (B) is wrong because the evidence the plates on her truck were stolen is not being presented to prove the "contents of a writing" (what the plates "said"). (C) is wrong because evidence of past acts (Betty's theft of the plates) is not admissible to prove an act was done or going to be done in conformity with character (that she was going to steal from the store). [See "**Simple Evidence Outline**", **past act evidence generally inadmissible to prove disputed acts, p. 70**.] (D) is correct because evidence of past acts (Betty's theft of the plates) IS admissible to prove she INTENDED to steal from the store. (The fact she put stolen plates on her truck tends to prove she was trying to avoid being identified and arrested after the theft.) [See "**Simple Evidence Outline**", **past acts admissible to prove intent, p. 71**.]

9) **(A)** Answer (A) is correct and (D) wrong because the Arizona Supreme Court found the law in conflict with the State constitution, and that alone was sufficient to invalidate the law. The US Supreme Court will not question a State determination that a law violates a State law. [See **"Simple Constitutional Law Outline"**, **no supreme court review of state court decisions clearly based on state law, p. 28**.] (B) is wrong because if it had not been for the finding concerning the State constitution, the finding concerning the conflict with federal law would raise a federal question that could be reviewed by the USSC. (C) is wrong because even though the USSC does have original jurisdiction over cases in which a State is a party, this question concerns whether the USSC would hear the matter on appeal, not whether it could have heard it originally.

10) **(C)** Answers (A) and (B) are wrong because the question does not involve Arizona discriminating against residents of other States. Further, (A) is wrong because employment is not within the narrow category of federal privileges protected by that clause of the 14th Amendment. (D) is wrong because this "argument" would actually help the State withstand the challenge so it would not be a good legal basis for the challengers. (C) is the best answer because the preference for veterans is part of a classification system that places non-citizens in the lowest rank. Even though veterans are not a suspect class, the other two classifications, citizens who are not veterans and non-citizens are classes based on alienage. Alienage is a suspect class, so that would put the burden on the State to prove this scheme is necessary to attain a compelling government purpose. [See **"Simple Constitutional Law Outline"**, **discrimination using suspect group requires compelling reason, p. 91**.]

11) **(B)** Answer (A) is wrong because employment is not a fundamental right, so the burden would be on the challengers to prove the law is not rationally related to a legitimate government interest. That would probably not be possible to prove. (B) is the best answer because discrimination based on citizenship (alienage) creates a suspect class so that would put the burden on the State to prove this scheme is necessary to attain a compelling government purpose. [See **"Simple Constitutional Law Outline"**, **discrimination using suspect group requires compelling reason, p. 91**.] (C) is wrong because this "argument" would actually help the State withstand the challenge so it would not be a good legal basis for the challengers. (D) is wrong because the question does not involve Arizona discriminating against residents of other States. Note that the Privileges and Immunities Clause of the 14th Amendment is almost never a correct answer because it is extremely narrow in its application.

12) **(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.

13) **(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.

14) **(D)** This question is intentionally difficult because none of the answers are very good. Consequently you have to choose the best of a bad lot. (A) is wrong because horizontal privity was created when TWC sold Ann her home. And vertical privity was created on each side when TWC's interest transferred to TrumpCo and Ann's interest transferred to Angel. (B) is wrong because the Commerce Clause only restrains State actions, and no State action is at issue here. (C) is wrong because Angel took possession with constructive notice since the covenant was in her Deed, and the Deeds for all lots in the development were no doubt recorded. One can hardly build and sell 10,000 homes without the Deeds being recorded. That leaves only (D), which is not a very good answer either because "nearly all" States agree that when land is conveyed subject to a promise of exclusive dealing, the benefits and burdens of the agreement touch and concern the lands of the parties. But if TrumpCo loses (as the question says), the only plausible reason here (of the four choices given) would be that this is in one of the States that does not hold that position. [See "**Simple Real Property Outline**", **non-competition and trading agreements concern the land, p. 87**.]

15) **(C)** Answer (D) is wrong because third-party beneficiary law is a contract concept superseded by real property concepts when contractual promises are covenants running with the land. (C) is correct, and (A) and (B) are wrong because promises to homeowners' associations are enforceable burdens that run with the land in most States. [See "**Simple Real Property Outline**", **covenants must touch and concern land, p. 87** (see exception concerning homeowners' associations) and **burdens of covenant do not run in two situations, p. 88**.]

16) **(A)** This question reflects the same fact pattern the California Bar tested on the July Bar Exam in 2005 (Question 2). It primarily tests whether students realize covenants are legal duties so a breach of covenant creates a cause of action at law, not at equity, (the same as a tort or breach of contract). As a

result breaches of covenants give plaintiffs a legal right to award of money judgments in restitution (to prevent the breaching defendant from reaping an unjust enrichment) as an alternative to a remedy measured only by the damages they have actually suffered. (C) is wrong because the covenant in Ann's Deed (which ran to Angel) was to benefit all of the other homeowners in the development, including benefits running to Groucho, and not just the HOA. Therefore, she is liable to all of the other existing homeowners for breaching the covenant. (B) and (D) are wrong because Groucho's remedy is not limited to just the damages he has actually suffered. If he were, Angel could reap an unjust enrichment by breaching the covenant. (A) is correct because Groucho has standing to sue (as a promisee who was to benefit from the covenant) and he has a right to be awarded restitution in the amount that would prevent Angel from profiting from her breach of the covenant, $2,000. [See "**Simple Real Property Outline**", **restrictive covenants and servitudes, p. 86** and "**Simple Remedies Outline**", **damages for breach of covenant running with the land, p. 38**.]

17) **(D)** Answer (A) is wrong because the 14th Amendment only prevents States from violating equal protection and due process. While enforcement of the covenant by a State court would be a State action, the creation of the covenant itself is not a State action. (B) is wrong because even though the law frowns on restrictions on alienation, the covenant does not prevent Angel from inheriting title to the property or selling it to others who are less than 55 years of age. It merely restricts occupancy. So the ultimate decision to be made is between (C) and (D), and that would hinge on why a court would issue such an injunction. The only possible reason would be to prevent frustration of Groucho's reasonable expectations that by buying in Paradise he would not have to live near younger neighbors. The covenant discriminates based on age, and that is neither a suspect class nor a quasi-suspect class. Therefore, the burden would be on Angel to prove there is no rational relationship between enforcing this covenant and a legitimate government goal. But that would be impossible since preventing frustration of reasonable expectations of individuals is, in fact, a legitimate goal of government and the courts. Therefore, (C) is a poor choice. In contrast, personal autonomy, including the freedom to have children, raise children, and live with children in a family unit is a fundamental right. That means the State (the Court issuing the injunction) would have the burden of proving the injunction was necessary to attain a compelling government goal. Preventing Groucho from being disappointed is not a "compelling government goal" so (D) is the correct answer. [See "**Simple Real Property Outline**", **non-competition and trading agreements concern the land, p. 87**.]

18) **(A)** Answer (B) is wrong because the testimony clearly is "prejudicial". After all, if it did not hurt Dan's position (by suggesting he possessed stolen property) what relevance would it have? The problem many law students have is they do not discern between the terms "prejudicial" and "unfair prejudice", a totally different issue. Unfair prejudice means the evidence would bias the finder of fact (i.e. jury) against a party for reasons entirely unrelated to the issues at trial. (C) is wrong because it is not hearsay at all. Hearsay must be an assertion of fact. "Do you still have the stuff?" is a question, not an assertion, and "Get rid of the stuff," is an imperative, not an assertion. Since neither is an assertion, neither can be hearsay. [See "**Simple Evidence Outline**", **not everything spoken is an assertion of fact, p. 44**.] (D) is wrong because Dan did not make the statement in response to a custodial interrogation. (A) is correct because "Get rid of it!" is effectively an admission by Dan that Bob is holding the stolen property for him. [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.]

19) **(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).

20) **(C)** This question is about refreshing witness memory. [See "**Simple Evidence Outline**", **refreshing witness memory with writings and things, p. 100**.] (B) and (D) are wrong because the notes are not being offered to the Court as evidence. They are being offered to the witness to help her remember something she has forgotten. (A) is wrong and (C) is right because an attorney can show a witness writings or other things to help refresh their memory of past events.

21) **(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.

22) **(D)** Answer (D) is correct and (A), (B) and (C) wrong because the law clearly infringes on religion (violating the Free Exercise Clause) and promotes some religions over others as well (violating the Establishment Clause). No matter how legitimate the City's interests may be, it will be unable to prove that this ordinance is necessary for a compelling purpose and no less restrictive methods would be adequate. [See **"Simple Constitutional Law Outline", freedom of religious speech, p. 52**, example regarding "Maria". Also see *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980).]

23) **(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**", (regarding 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**.]

24) **(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.

25) **(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. 6**1.] 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.

26) **(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**.]

27) **(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.

28) **(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 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.

29) **(A)** This question is about the admissibility of evidence about the absence of certain records that otherwise should exist. [See "**Simple Evidence Outline**", **exception: various records, p. 58**.] (B) and (C) are wrong because evidence of the absence of a record presented to prove an event did not occur is effectively viewed as an out-of-court assertion that a condition exists, a form of hearsay. (A) is correct and (D) wrong because even though evidence of the absence of a public record that should exist is hearsay, it is admissible under the "public record" exception. [See "**Simple Evidence Outline**", **public records, p. 59**.]

30) **(B)** Answers (A) and (D) are wrong because they are too broadly stated. The Supremacy Clause of Article VI clearly allows federal law to preempt State laws and prevent State actions that deprive citizens of federal rights.. (C) is wrong because federal law can clearly establish environmental protection rules, primarily based on the Commerce Clause. (B) is not a great argument, but it is the best one presented. Generally principles of federalism (State sovereignty; separation of powers) restrict the power of the federal government in controlling how State governments function. [See **"Simple Constitutional Law Outline", traditional areas of state sovereignty, p. 19**.]

31) **(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.

32) **(C)** Note: For the MBE you should apply federal rules. (A) is wrong because Dick is just being asked if he was charged but no evidence is being offered to prove he was convicted. (B) is wrong because leading questions can be used on cross-examination. (C) is correct because a federal Court has discretion to allow witnesses to be questioned about their own past acts on cross-examination, if the questions are probative of truthfulness or untruthfulness. [See "**Simple Evidence Outline**", **generally no specific act evidence to impeach witness credibility (FRE 608(b)), p. 78**.] (D) is wrong because even though the evidence cannot be offered to prove Dick acted in conformity with his character, it can be offered to impeach Dick's credibility as a witness.

33) **(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.

34) **(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.

35) **(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.

36) **(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 to be foreseeable, p. 5**.]

37) **(D)** Answer (D) is correct and the other answers are wrong because the guarantees of equal protection in the 5th and 14th Amendments only apply to government acts and the School is not a government entity. (B) is also wrong because the reference to "employment" suggests statutory law such as the "Fair Employment Act". But the law you are to use when answering the MBE is strictly the Constitutional provisions. Further, sex discrimination in employment is not illegal, even under statutory law, if it is rationally based on legitimate concerns. For example, movie producers do not have to cast actors and actresses in rolls depicting the opposite sex or employ locker room attendants in locker rooms of the opposite sex at gymnasiums, schools, etc. (C) is also wrong because discrimination based on religion is not illegal at religious schools. Religious schools routinely favor members of their own religion in hiring employees

38) **(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**.]

39) **(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**.]

40) **(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".

41) **(B)** This question tests the distinction between the "Prior Statement of Identification" [See "**Simple Evidence Outline**", **prior statements of identification of a person, p. 51**.] and "Former Testimony" [See "**Simple Evidence Outline**", **former testimony, p. 53**.]. The first of these is a form of "non-hearsay" under the FRE and the second is a hearsay exception. (D) is wrong because police and law enforcement records cannot be admitted against a criminal defendant as "public records". (C) and (B) are wrong and (A) is right because Mabel's statement is not "non-hearsay" as a prior statement of identification (because Mabel was too ill to appear at the trial) but is admissible hearsay under the "former testimony" exception to the general hearsay rule as long as Bob's attorney (representing Bob) had an opportunity to cross-examine Mabel (who was under oath) at the time of the preliminary hearing.

42) **(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.

43) **(B)** Alienage is a suspect class so the school has the burden to prove that its discrimination against aliens is necessary to attain a compelling, legitimate government purpose. [See **"Simple Constitutional Law Outline", discrimination using suspect group requires compelling reason, p. 91.**] The school could never prove that so (B) is correct and the other answers are all wrong. Further, (A) is just nonsense. (C) is wrong because it cites the wrong standard of proof. And (D) is wrong because it suggests this is a due process question when it is obviously an equal protection question.

44) **(D)** Answers (A) and (B) are wrong because Lucy's observation of the $500 in wallet is neither an admission by Dean nor hearsay. It is simply an observation by a percipient witness. (C) is wrong and (D) is right because the "marital communication privilege" only prevents Lucy from repeating Dean's statement to her (made in confidence during marriage) but it does not prevent her from testifying against him as to what she saw. Lucy could claim the "spousal privilege" and refuse to testify, but she holds that privilege and is free to waive it. [See "**Simple Evidence Outline**", **marital communication privilege, p. 22** and **spousal testimony privilege, p. 22**.]

45) **(A)** Since V is seeking to enforce a restriction in his own Deed against another parcel that does not have the same restriction, he is seeking a finding that X is subject to an implied reciprocal servitude situation. [See "**Simple Real Property Outline**", **implied reciprocal equitable servitudes, p. 94**.] That is a special case of the general concept of equitable servitudes. [See "**Simple Real Property Outline**", **requirements for equitable servitudes, p. 91**.] (B) is wrong because proof of actual or threatened monetary loss is not a requirement for enforcing an equitable servitude. (C) is wrong because privity is not a requirement for enforcing an equitable servitude. (D) is wrong because the restriction was in the Deed to V's lot, and that was recorded. So everyone had constructive notice of the restriction, including X. (A) is X's best defense because for V to convince the court to enforce an implied reciprocal servitude, he must prove Y's lot is part of a common plan of development. And

even though A laid out the plans for the industrial park, he intended for the parcels to be used in a variety of ways. Without a plan of uniform development X could hardly be expected to be "on notice" that the space he leased was subject to restrictions that were not stated in the Deed to Y's parcel.

46) **(C)** This is also an implied reciprocal servitude question. [See "**Simple Real Property Outline**", **implied reciprocal equitable servitudes, p. 94**.] (A) is wrong simply because even though there are "rules of construction" that courts apply to contracts, covenants, etc. those are rules of LAW. In contrast, Z is seeking injunctive or declaratory relief in EQUITY. Besides there is no issue of "uncertainty" in either Deed at issue. (B) is wrong because the restriction is not a restraint on alienation (sale of the land) but rather a land use restriction. And (D) is wrong because if the restriction does, in fact, limit the uses the grantees can make of the land, a court can clearly act to prevent B from misrepresenting that situation to potential buyers. (C) is the correct answer because the one, central issue when it comes to implied reciprocal servitudes is whether a parcel of land was created as part of a common plan of development. If it was, it should be apparent to all involved that the same land use restrictions should, in equity, apply to all of the parcels.

47) **(C)** Under modern contract law a party may be allowed to legally rescind a contract if events beyond the control of the party make 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.

48) **(B)** Answer (C) is wrong because even though "federal judges" are appointed for life (by the President of the U.S. upon confirmation by the Senate), Joe is an administrative law judge and not a "federal court judge". An administrative judge is simply an employee of the court, often called a "magistrate". They can be removed at any time. (D) is wrong because Congress has total control over the structure and staffing of the "inferior courts" and anyone, including a Presidential commission, may suggest changes to Congress. (A) is wrong because Joe's prior employment is entirely irrelevant. (B) is correct but intentionally misleading. While it is true that government employment is not a fundamental right, that is not as important as the fact that Joe's employment was "at will" because Congress has the power to both fund and cut funds to government programs.

49) **(B)** Answer (A) is wrong because Otto's statement is not an out-of-court assertion. It is a statement about what he actually did and saw. (C) and (D) are wrong and (B) is right because the evidence is admissible to both rebut Silk's claim and impeach his testimony, but if the prosecution has the original driver's license it should be presented to the Court under the Best Evidence Rule because that is the best evidence of what Otto was actually shown. The prosecution is asking the finder of fact to believe Silk was near the scene of the crime based on the driver's license so it should be required to present the license to the finder of fact. [See "**Simple Evidence Outline**", **the best evidence rule for content of writings, recordings and photographs, p. 108**.]

50) **(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. 28-30.]** 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**.]

51) **(C)** This is a good example of a fact pattern that presents an ordinance that might be unconstitutional on several grounds, and you must choose which of the four possible answers is best. (A) is wrong because even if Main Street is a pubic forum, the City can still establish reasonable time, place and manner restraints. It is obviously not "unreasonable" for a City to control parades and demonstrations so they do not block traffic or otherwise cause unnecessary disturbances. (B) is wrong for the same reason. The guarantee of free expression and assembly is not unqualified. (D) is wrong because it suggests either a "fighting words" argument or a "Brandenburg" argument. "Fighting words" are statements intended to cause an immediate breach of the peace, and the "Brandenburg" issue concerns statements intended to cause a likely and immediate violation of law. [See **"Simple Constitutional Law Outline", no vague or overbroad restrictions on speech, p. 59**.] Neither of those are protected speech, but they are not the best answer here. The best argument for the Klan here (of the choices presented) is (C) because the quoted phrase of "vulgar, annoying or disturbing language" is so vague and overbroad it would allow the police to break up any demonstration it wished, thereby infringing on protected expression.

52) **(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.

53) **(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.

54) **(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.

55) **(D)** Answer (A) is wrong because if the lot purchasers sign contracts they are only bound by "privity of contract" and their obligations will not travel with the land to bind new owners of the same land in the future. (B) is wrong for the same reason. Any obligation created by a Deed of Trust (which is effectively the same sort of document that is called a "mortgage" in some states) is only an obligation of the grantor (grantor of the Deed of Trust) and it will not travel with the land to obligate future owners of the same land. (C) is wrong because it is simply nonsense in this context. An easement "attaches" to land, so it does bind future owners, but it does not create an obligation to affirmatively act. Rather, an easement gives a grantee (grantee of the easement) the right to enter, use or occupy land for a limited purpose. (D) is the correct answer. The term "CC&Rs" means "Codes, Covenants and Restrictions" and is a general term for all of the rules and restrictions that apply to a planned community. The "covenants" stated in the CC&Rs, which would be recorded and referred to in the Deeds given to each lot purchaser would bind them and all future owners of the parcels in the development and obligate them to pay the monthly HOS fees.

56) (C) Answer (B) is wrong because it is simply stupid. It is not "unfair" for a witness to identify a defendant based on personal observation. (A) and (D) are wrong, and (C) is correct because this is not hearsay at all under the FRE. Rather, it is an identification of a person, after perceiving them (i.e. seeing them). Laquisha is testifying in court, and available for cross-examination, so this is non-hearsay under (FRE 801(d) (1)). [See "**Simple Evidence Outline**", **prior statements of identification of a person, p. 51**.]

57) **(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.

58) **(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.

59) **(B)** This question presents a "real property – constitutional law" crossover. (A) is wrong for a several reasons. First, this question presents a land-use restriction, which is an equitable servitude. The modifier "equitable" means the remedy here is in equity, not law. In fact, the reason the remedy is at

equity is that there is no remedy at law to begin with. So the fact that Stover is acting in accordance with law, and that the County has approved his actions, is all irrelevant. But since the only remedy here would be in equity, the statement that Stover would have a "right" to a damage award is also wrong. There is no "right" to receive equity. And, finally, this question has to do with violation of an equitable servitude, not a "breach of covenant". (C) is wrong because there simply is no such rule. The creation of land use restrictions as to any one piece of land does not require the same restriction to be applied to any other piece of land. (D) is wrong because the land use restriction here does not prevent Stover from living with his mother. It simply prevents him from dividing his home into two separate dwellings. After all, if he did that he would be living separate from his mother and not "with" her. (B) is the correct answer because the restriction in Stover's Deed is an equitable servitude, it was intended to run with the land, it touches and concerns the land, Stover had notice of it, and Ned has standing to enforce it.

60) **(A)** Answer (D) is wrong because this question involves equitable servitudes, and the remedy is necessarily in equity. Therefore if the court (judge) can do anything at all, it has discretion to fashion a remedy and is not restricted by rules of law (e.g. zoning laws). (B) and (C) are both wrong because there is no requirement that land use restrictions applied to one parcel (Parcel Two here) must be applied equally to all other parcels that were separated from it in the past (Parcels One and Three here). (A) is correct because the only way Ned could possibly have standing to enforce the restrictions on the lots in Parcel Three (Heritage Oaks) is if he was intended to benefit from those restrictions. And that could only be true if Parcel Two and Parcel Three (Heritage Place and Heritage Oaks) were both part of a single plan of common development. Although the facts say Heritage Place was developed before Heritage Oaks, it still may be possible that both were part of a single plan of development intended by Heritage Corp from the very beginning.

61) **(B)** This question tests FRE 608(b). This is often called the "collateral evidence rule". (A) is wrong because even though evidence of a prior conviction for a crime of dishonesty within the prior 10 years can be presented to impeach the credibility of a witness, nolo contender pleas are not "convictions". (D) is wrong because even if a nolo contender pleas was a "conviction", the best evidence of it would be a certified court record anyway, not Weasel who is almost certainly offering mere hearsay. (C) is wrong and (B) is correct because even though the best evidence to impeach the credibility of Nguyen's testimony would be a court record proving conviction, the evidence being offered here is extrinsic evidence offered to prove the witness lied in this matter about being convicted of tax evasion in an earlier matter, and that violates the collateral evidence rule. [See "**Simple Evidence Outline**", **collateral evidence rule: no specific act evidence to challenge witness credibility, p. 80**.]

62) **(C)** Answer (D) is wrong because limits on the number of occupants in dwellings have been upheld as reasonable zoning regulations. There simply is no constitutional right to pack an unlimited number of people into one dwelling. (B) may be true but it is an "argument" without any basis in law for the same reason – zoning restrictions on the number of occupants in a dwelling are presumed to be reasonable. That leaves either (A), the equal protection argument, or (C) the fundamental rights argument. There is a tendency for Constitutional Law professors to view almost every government restriction as raising an equal protection issue, but if government is targeting a "group" that is not a "suspect or quasi-suspect" class it is a very weak approach. Here the "class" is "unmarried adults of more than three" and that is neither a suspect class (race, national origin, alienage) nor a quasi-suspect class (sex, illegitimacy). On the other hand (C) is a correct statement in that marriage and family formation (and the right to NOT marry or form a family) are fundamental rights. The restriction, by stating "unmarried adults", favors married adults over unmarried adults, and enforcement of that restriction by any court would be a governmental denial of due process. The court would have the burden of proving enforcement of the restriction is necessary for a compelling government purpose. [See **"Simple Constitutional Law Outline", government must justify denial of fundamental rights, p. 77**.] Since that would not be possible, (C) is the best argument.

63) **(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.

64) **(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**.]

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66) **(B)** Answer (A) seems valid but it is overbroad. It is important for the executive to discuss matters in confidence, but there is no executive privilege to engage in conspiracies to discuss illegal operations. (B) is the better answer because Congress only has the power to investigate matters over which it has legislative power. (C) is wrong because they fact he might be fired does not excuse him from answering the questions. The only possible basis for him to legally refuse to answer the questions is that it might subject him to criminal prosecution. In that case he should "plead the 5th Amendment". (D) is wrong because Congress can clearly question him about matters related to his duties. [See **"Simple Constitutional Law Outline", the constitutional powers of congress, p. 4.]**

67) **(B)** The separation of powers doctrine gives the executive branch the exclusive power to prosecute criminal cases. But Congress can seek testimony from anybody, including members of the executive branch. Therefore, (A) is wrong and (B) is correct. (C) is wrong for the same reason, and (D) is wrong because there is no exception to this rule even if "two-thirds" of the Senate disagrees. [See **"Simple Constitutional Law Outline", the powers of the president (regarding the "separation of powers"), p. 35**.]

68) **(D)** Answers (B) and (C) are wrong because evidence of past acts can be offered to prove identity. (A) is wrong and (D) is right because even though the evidence tends to identify Benny as the burglar, its probative value is outweighed by the risk of unfair prejudice since many, many people have red jackets. In order for character evidence to identify a defendant as the person who committed a crime it must be evidence of a very distinctive trait. [See "**Simple Evidence Outline**", **past acts admissible to prove identity, p. 71**.]

69) **(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.

70) **(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.

71) **(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.

72) **(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.

73) **(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 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.

74) **(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.

75) **(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 to be 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.

76) **(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, **p. 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".

77) **(D)** Answer (C) is wrong because for this statement to be a "non-hearsay" statement of identification the declarant, Snookie has to be available to testify, and she got "whacked". (B) is wrong because the only types of hearsay that are admissible "because the declarant is unavailable" are statements against interest, statements of pedigree, former testimony, dying declarations, and inherently trustworthy statements, and this is none of those. (A) is wrong and (D) is correct because this is hearsay evidence, but Snookie clearly made the statement while under the emotional distress of an exciting event. That makes it admissible as an excited utterance. [See "**Simple Evidence Outline**", **exception: excited utterance, p. 56**.] [Note: Unfortunately Paula also got whacked shortly after this question was written.]

78) **(B)** Answer (A) is wrong because the Deed offered by Annie effectively was an offer to convey they land if the County, in return would build and maintain the shelter. By accepting the Deed the County accepted her offer and a contract formed under which Annie gave the land to County in exchange for its promise to build and maintain the shelter. (B) is correct and (C) and (D) are wrong because the language of the Deed created a contract under contract law, but it did not create a possibility of reverter or right of entry under real property law. For the Deed to create a possibility of reverter it had to clearly state the conveyance was subject to a condition precedent such as "…**for as long as** County maintains said shelter…" And for the Deed to create a right of entry it had to clearly state the conveyance was subject to a condition subsequent such as "…but **only as long as** County maintains said shelter…" Here Annie's offer only required the County to agree to build the shelter and thereafter maintain it. The County did those acts, and that fulfilled its contractual obligations. If Annie wanted it to be clear the land would revert to her if the County ever stopped maintaining the shelter she should have had her lawyer make that clear in the language of conveyance. [See "**Simple Real Property Outline**", **conditions precedent and subsequent, p. 6, et seq**. and **possibility of reverter and right of entry, p.11**.]

79) **(A)** Answer (A) is correct because some nudity is not obscene. Since the ordinance, as written, would infringe on protected expression, it is overly broad and unenforceable. (B) is wrong because even if the posters in the store are obscene, the ordinance itself is overly broad. [See **"Simple Constitutional Law Outline"**, **obscenity: the Miller test, p. 62** .] (C) is wrong because obscenity is not protected by the 1st Amendment. (D) is wrong because even though the City does have the power to protect public morality, the ordinance must be narrowly tailored so that it does not infringe on protected speech.

80) **(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.

81) **(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.

82) **(A)** Answers (B) and (C) are both wrong because even though very small deviations (*de minimus* variations) do not amount to a breach of contract, a six inch setback violation is very possible not going to be considered inconsequential. This would essentially put Fernando in the position of "buying a potential law suit". Of course it is always arguable whether or not deviation is *de minimus*

or not. Put yourself in the place of the judge. If Juan thinks it is a *de minimus* variation, he should have not qualms about putting the house back on the market and selling it to another buyer who has been given notice of the variation. (D) is wrong because regardless of Fernando's motive for seeking a way to get out of the contract, the fact is that he did, in fact, find a clearly legitimate reason to rescind the contract. (A) is correct because the setback violation effectively makes title unmarketable as to Fernando. Juan is simply going to have to put the house back on the market and tell potential buyers about the variation so they will be buying "subject to" the known condition. [See "**Simple Real Property Outline**", **failure to deliver marketable title generally major breach, p. 54**.]

83) **(B)** Answer (A) is wrong because the intent of the Act does not determine its constitutionality. Many governmental acts are well intentioned but illegal. (C) is wrong because even protected expression can be subject to content neutral time, place and manner restraints for important public purposes. Tenkiller is not being prevented from creating artwork with feathers. She is simply being restricted on which types of feather she can use. Her "alternative channel of expression" is to use feathers from domesticated ducks and geese. [See **"Simple Constitutional Law Outline"**, **content-neutral time, place and manner restrictions, p. 64**.] (D) is wrong because it (deliberately) only mentions "prohibiting sale", and does not mention "possession". If Tenkiller were required to surrender artwork she already possesses there would be a "taking" and she would have a right to fair compensation. But the fact pattern does not say the Act requires her to surrender the artwork she already has or even if she has an inventory of artwork she has already made. In fact, almost all government Acts that prohibit the possession of items related to endangered species (e.g. elephant tusk ivory, rhinoceros horn, etc.) have "grandfather" clauses which allow people to keep possession of items they own at the time the Acts are adopted. [See **"Simple Constitutional Law Outline"**, **takings, p. 82**.] (B) is the best answer because the sales ban clearly affects interstate commerce and falls within the powers of Congress under the Commerce Clause. [See **"Simple Constitutional Law Outline"**, **the power over commerce – the commerce clause, p. 6**.]

84) **(B)** Answer (C) is wrong because judicial notice means the trial judge has discretion to relieve a party of the burden of producing evidence to prove an indisputable fact, but that does not affect the admissibility of evidence. (D) is wrong because all relative evidence is admissible, unless its importance is outweighed by the risk it may cause unfair prejudice, confusion to the jury or delay of trial, whether it is "essential" evidence or not. (A) is wrong and (B) is correct because Mrs. Carol's statement is hearsay and not admissible under any exception to the general rule. [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

85) **(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 was 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.

86) **(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**.]

87) **(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.

88) **(A)** Answers (C) and (D) are wrong because Will is just a witness and not an opposing party. Peter has an absolute right to admit evidence witnesses who are not opposing parties have been convicted of any felony of any type within the prior 10 years. [See "**Simple Evidence Outline**", **prior convictions admissible to challenge witness credibility, p. 82**.] (A) is correct and (B) is false because Dan was convicted of a crime of dishonesty, and Peter has an absolute right to admit evidence of all such convictions that are less than 10 years old.

89) **(B)** Answer (A) is wrong for two reasons. First, a real property seller has an affirmative duty to reveal only concealed material defects that a buyer cannot be reasonably expected to discover. [See "**Simple Real Property Outline**", **seller's duty to reveal known concealed defects, p. 64**.] But since Black's claim to the land is a matter of public record, Wong can and has easily discovered it, and would be presumed to have constructive knowledge of it anyway. Second, White has not acted in a manner here that would support a claim of "fraud". [See "**Simple Torts Outline**", **deceit requires scienter, p. 97** and **intent to deceive, p. 97.]** (C) is wrong because the reference to the action being "in rem" is simply nonsense in this context. That phrase, "in rem", concerns whether a court has civil jurisdiction over an action because things in dispute (the "res") are physically within the territorial jurisdiction of the court even if the court has no personal jurisdiction over the parties that would be negatively affected. [See "**Simple Civil Procedure Outline**", **personal jurisdiction compared to In Rem actions, p.31**.] (D) is wrong because White promised to deliver "title" and that implied an obligation to deliver "marketable title". If White did not intend to deliver marketable title he should not have agreed to a contract that did not specify he would "quitclaim". (B) is the best answer because Wong has no obligation to enter into a transaction that raises a substantial likelihood of becoming embroiled in litigation. The proper course of action for White here is to bring a quiet title action against Black to clear title. Then he can deliver marketable title to future purchasers.

90) **(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).

91) **(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).

92) **(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**.]

93) **(B)** Answer (A) is wrong and (B) is correct because the U.S. Supreme Court has decided the President does have plenary powers (total control) over foreign affairs. [See **"Simple Constitutional Law Outline", presidential authority in foreign relations, p. 37**.] However, (D) is overbroad because the President does not have unlimited power to enter into executive agreements outside of foreign affairs. And (C) is wrong because even though a two-thirds ratification is necessary to approve a treaty, there is no two-thirds requirement for executive agreements.

94) **(D)** Answer (B) is wrong because there is no evidence the California inspections place an unreasonable burden on trade. Executive agreements are the "law of the land" unless Congress enacts conflicting rules according to the U.S. Supreme Court. Here the purpose of the Border Commission inspections is to prevent drugs and weapons from being illegally moved across the border. If California were inspecting for the same purpose it would be acting in conflict with federal law, and (A) would be correct and (C) wrong because the Supremacy Clause does apply to executive agreements. But (D) is the better answer because if California is inspecting for a different purpose, it is not acting in conflict with federal law, and the Supremacy Clause has no application. [See **"Simple Constitutional Law Outline", the hierarchy of laws, p. 3**.]

95) **(C)** Answers (A) and (D) are wrong unless the evidence is being presented to impeach Dick's testimony as a witness. (B) is wrong unless the evidence is being offered to prove Dick negligently caused the accident. (C) is correct if the evidence is being offered to prove Tom knew or should have known Dick was a bad driver. [See "**Simple Evidence Outline**", **past acts admissible to prove knowledge, p. 72**.]

96) **(B)** This question is a cross-over combining real property law, agency law and equitable remedies. First, eliminate (A) because if any law said Deeds could never be challenged after recording it would be impossible to correct drafting errors or reverse fraudulent transfers. Obviously that would be an unacceptable situation so (A) must be wrong. (C) is wrong for the same reason. Certainty in land records is no so important as to encourage fraud or prevent correction of filing errors. Next note the question hypothecates Bruno's petition has been denied. If so, the Court (judge) must have found that the conveyance was legally binding on Bruno. But for a Deed to properly convey title, the land involved must be clearly identified in the Deed at the time of conveyance. And the land involved here was not clearly identified when Ruby gave the Deed form to Byers. So the judge must have decided the conveyance actually occurred later when Byers completed the Deed by filling in the blank with "Lot 51". He could only do that legally if he was acting as an agent of "Smoking Oaks". So the judge must have concluded that Bruno made Ruby his agent, and Ruby, in turn, authorized Byers to be an agent for the company as well. (D) is true because Ruby created a problem when she did that, but (B) is an even better answer because it shows the legal principal the judge mush have applied – that Ruby gave Byers the authority to fill in the blank on the Deed, and that authority was not limited by her oral instruction to fill in either "Lot 12 or Lot 73".

97) **(B)** Answer (A) is wrong because Bruno never did anything that would give him unclean hands. (D) is wrong because the rule that prevents presentation of evidence of prior oral agreements is the Parol Evidence Rule, not the Statute of Frauds. (C) is wrong because if any law said Deeds could never be challenged after recording it would be impossible to correct drafting errors or reverse fraudulent transfers. Obviously that would be an unacceptable situation so (C) must be wrong. (B) is correct because Tom is a bone fide purchaser for value without prior knowledge of Bruno's claim against the land because he and his attorney made a "reasonable inquiry" to see if the public records showed Byers held title. [See "**Simple Real Property Outline**", **protections for bone fide purchasers for value, p. 59**.]

98) **(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.

99) **(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**.]

100) **(B)** Answer (A) is wrong because Finley is a criminal defendant so he is allowed to offer character evidence to prove he acted in conformity with his past acts. However, (C) and (D) are also wrong, and (B) is correct because the evidence offered by Ed does not tend to prove whether Finley is an honest person or not. Ed's testimony is simply irrelevant. [See "**Simple Evidence Outline**", **character evidence offered by a criminal defendant, p. 73**.]

Test #3

Test #3 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review.

The Answers and Explanations for these questions are in the following section.

Question 1

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.

1) 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.

Question 2

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.

2) 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.

Question 3

Congress enacts the Migratory Waterfowl Act to protect threatened migratory waterfowl species. The Act makes it illegal to take, possess, or sell any item which is made from the feathers of migratory waterfowl. Tenkiller creates and sells traditional Cherokee artwork using wild duck, goose and egret feathers she finds around the edges of lakes and rivers. She does not kill or harm any animals in the process. She challenges the constitutionality of the Act.

3) She will most likely:

(A) Lose because the Act is intended to protect a national resource.
(B) Lose because the Act is rationally related to interstate commerce.
(C) Win because the Act is an overbroad restraint on the 1st Amendment right to free expression.
(D) Win because, by prohibiting the sale of the Tenkiller's artwork, the Act is taking her property without due process as required by the 5th Amendment.

Question 4

White granted the local power company an easement to install an underground gas main which would cross 10 feet at the far back corner of his palatial estate, Whiteacre.

After that and before the gas main was installed, White agreed on July 1 to sell Whiteacre to O'Hara for $3,000,000, "subject to the encumbrances, codes, covenants and restrictions of record". White agreed to accept a down payment of $600,000 and O'Hara's note for the balance of $2,400,000. Close of escrow was scheduled to occur in 90 days. The purchase contract was not recorded.

The next month O'Hara's wife, Scarlet, fell in love with another estate, Tara, and demanded that her husband repudiate his agreement to buy Whiteacre.

At the close of escrow White tendered the Deed to Whiteacre. O'Hara refused to tender payment on the grounds that he had been unaware of the easement granted to the power company. O'Hara admits that the presence of the gas main would have no significant effect on either his ability to enjoy use of Whiteacre or its value. O'Hara further admitted that his sole reason for repudiating the contract is that his wife insisted on buying Tara instead of Whiteacre. White admits that O'Hara had no actual knowledge of the power company easement at the time they executed the sales contract.

4) If White sues O'Hara for breach of contract, which of the following is most correct?

(A) O'Hara would not be legally obligated to pay for the land because the gas main is a nuisance "per se".
(B) O'Hara would not be legally obligated to pay for the land because White admits he had no actual notice of the easement when he signed the agreement.
(C) O'Hara would be legally obligated to pay for the land if the easement was recorded before the end of June.
(D) O'Hara would be legally obligated to pay for the land because he admits he would suffer no negative effect from the easement and his real motivation is to please his wife, Scarlet.

Question 5

Finley was accused of bank fraud. At his trial Ed offered to testify that Finley had been his good friend for several years and that he was a gentle and courteous person.

5) The evidence Ed offers is:

(A) Inadmissible if offered to prove Finley acted in conformity with his character.
(B) Inadmissible because it does not show Finley is honest.
(C) Admissible character evidence because Finley is a criminal defendant.
(D) Admissible to prove Finley is a decent man.

Questions 6-7

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.

6) 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.

7) 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.

Question 8

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.

8) 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.

Question 9

Juan is an attorney in Arizona. Arizona enacts a statute that makes it illegal for anyone to be an Arizona attorney who entered the United States illegally. Juan was brought into the United States illegally as a child by his parents, but later became a naturalized citizen. Juan admits that he originally entered the United States illegally, and the Arizona Bar Association cancels his Bar membership. Juan brings suit in federal court challenging the Arizona statute.

9) The court would most likely find the statute to be:

(A) An unconstitutional bill of attainder.
(B) An unconstitutional denial of equal protection.
(C) Constitutional if Arizona can show a rational relationship to an important State interest.
(D) Constitutional if Arizona can prove the statute is necessary to attain a compelling State interest.

Question 10

O'Hara owned Tara in fee simple. While he was lying in his death bed, his daughter, Scarlet, signed a warranty Deed transferring Tara to Butler. O'Hara had no knowledge of it. O'Hara's health recovered and the next month he signed a Deed giving Tara to Scarlet. This Deed and the prior Deed from Scarlet to Butler were both recorded. Then Scarlet sold Tara to Ashley for fair market value and delivered a warranty Deed which was promptly recorded. The prior Deeds Ashley had no knowledge of the prior Deed from Scarlet to Butler.

10) Who owns Tara?

(A) Ashley holds title if Butler's Deed was not in his chain of title.
(B) Ashley holds title if the jurisdiction does not hold subsequent grantees bound by the doctrine of estoppel by Deed.
(C) Ashley holds title because he paid fair market value without notice of Butler's claim.
(D) Butler holds title because his claim is senior to Ashley's.

Question 11

Scott was on trial for the murder of his wife, Lacy. Charlie testified that Scott told him he killed his wife. On cross-examination Scott's attorney asked Charlie, "Isn't it true that you are currently awaiting trial on a charge of drug possession?"

11) If the prosecution objects, the question:

(A) Is allowable to impeach Charlie's testimony but extrinsic evidence cannot be admitted by the defense to prove the allegation.
(B) Is allowable to impeach Charlie's testimony by showing he has a motive to testify against Scott.
(C) Is not allowable because extrinsic evidence of specific acts by a witness cannot be admitted to impeach witness testimony.
(D) Is not allowable to impeach Charlie's testimony because drug possession is not a crime involving truthfulness or untruthfulness.

Question 12

Dude was on trial for interstate transport of stolen vehicles. Evidence was introduced to show that a car was stolen in Los Angeles and Dude was discovered in possession of the vehicle in Las Vegas. The trial judge took judicial notice that Los Angeles and Las Vegas are located in different States.

12) The judge:

(A) Eliminated the prosecution's burden of proving the vehicle was taken across a State line.
(B) Shifted the burden to Dude to prove he did not drive the vehicle from Los Angeles to Las Vegas.
(C) Shifted the burden to Dude to rebut the judicial inference.
(D) Requires the jury to accept that the vehicle could not have gotten from Los Angeles to Las Vegas without crossing a State line.

Questions 13-14

Social Security sent Juanita a notice that it had determined she had been overpaid Social Security payments in the amount of $3,000 because she had reported earned income to the IRS in excess of the allowable limit for her age bracket.

13) Assume Juanita is told that she can only appeal the determination if she posts a $9,000 bond. If she cannot afford to post a bond in that amount, and she challenges the requirement in State Superior Court, she will:

(A) Succeed because federal actions can be challenged in State courts.
(B) Succeed because the bond requirement violates the 5th Amendment.
(C) Fail because federal laws cannot be challenged in State courts.
(D) Fail because due process guarantees do not apply to administrative actions.

14) Assume Juanita is told that she can only appeal the determination if she posts a $3,000 bond. If she cannot afford to post a bond in that amount, and she challenges the requirement in State Superior Court, she will:

(A) Succeed because the right to file an appeal cannot be conditioned on the posting of a bond.
(B) Succeed because the right to due process is guaranteed by the 5th Amendment.
(C) Fail because setting the bond equal to the amount in dispute does not violate due process.
(D) Fail if Congress has given the Social Security Administration unrestricted power to establish appeal requirements.

Questions 15-16

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.

15) 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.

16) 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.

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.

Questions 18-20

Richy Rich inherited a tract of desert land called Sandacres and he held title in fee simple. He lived far away in Manhattan and did not know Rancher Roy entered his land in 1980, drilled a well and installed a windmill and water tank to water his cattle.

In 1992 Roy sold his cattle to Yosemite Sam and gave him permission to use his well and water tank on Sandacres. He gave Sam a signed Bill of Sale that said, "For $10,000 I hereby sell to Sam all of my cattle and give him permission to use Sandacres, the well and water tank." Sam recorded the Bill of Sale. Sam stayed on Sandacres for 5 years without Richy Rich's knowledge.

Then Sam contacted Richy Rich in 1997 and leased Sandacres from him for 5 years. After his lease expired in 2002 Sam stayed on Sandacres without Rich's permission for another 6 years.

Richy Rich then quitclaimed Sandacres to Bone Fide Fred in 2008 for fair market value. When Fred showed up to inspect his land he

discovered Sam and the well. He told Sam, "Get off my land!" Sam hastily left.

State law sets the period of time for adverse possession at 10 years.

18) If all of the parties now claim in 2010 that they hold title to Sandacres, the person with a superior claim is:

(A) Bone Fide Fred
(B) Yosemite Sam
(C) Richy Rich
(D) Rancher Roy

19) What interest does Yosemite Sam hold in Sandacres?

(A) None because he did not reside on the land in hostile possession long enough to claim adverse possession.
(B) An easement in gross.
(C) Title by adverse possession because he recorded the Bill of Sale and lived on Sandacres for a total of 11 years in hostile possession.
(D) An equitable servitude.

20) After Richy Rich sold Sandacres to Bone Fide Fred, the well, windmill and water tank belonged to:

(A) Rancher Roy because he installed it.
(B) Bone Fide Fred because Richy Rich held the land in fee simple, so he owned the water rights. Since he sold his entire interest to Fred when he "quitclaimed" the land, Fred obtained the water rights, and that gave him title to the well, windmill and water tank.
(C) Yosemite Sam because Rancher Roy sold him the rights.
(D) To whoever owned Sandacres.

Question 21

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.

21) 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 22

Smith and Wesson were roommates in law school. Wesson was appointed to the position of Assistant Secretary of Labor. In turn, he appointed Smith to be a judge in the Labor Department hearing administrative appeals. After several years a new administration came into office. Wesson was replaced by Jones, and Jones told Smith he was losing his job on the bench.

22) If Smith sues in federal court seeking an injunction that would allow him to retain his position as a judge, he will:

(A) Lose because he is not on the Supreme Court bench.
(B) Lose because his position is not subject to Article III of the Constitution.
(C) Win if he has exhibited good behavior on the bench.
(D) Win because judges cannot be removed from their position after they are appointed.

Question 23

Charlie was charged with battery for driving while intoxicated, running through a red light and smashing into Delta. Delta was severely injured. There are no other witnesses to the accident, but Nancy, a nurse at the hospital, offers to testify that Delta told her, "I'm dying! I'm dying! That idiot ran the light and now I am going to die!" Then, according to Nancy, Delta passed out and lapsed into a coma.

23) Nancy's testimony concerning Delta's statement is:

(A) Inadmissible hearsay.
(B) Admissible hearsay as a dying declaration if Delta actually believed she was dying.
(C) Admissible hearsay as a dying declaration if Delta is not available to testify.
(D) Admissible as an excited utterance.

Questions 24-27

I. Larry threw a banana cream pie.
II. Larry intended to hit Moe with the pie.
III. Moe was hit by the pie.

24) 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.

25) 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.

26) 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.

27) 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.

Question 28

To reduce America's dependence on foreign oil, Congress passed legislation intended to increase oil, gas and coal production by private companies on Indian reservations.

28) Upon a challenge by environmental protection groups, the best argument that Congress has authority to enact this legislation would be its:

(A) Authority to act in the national defense.
(B) Authority to regulate the use of federal lands.
(C) Authority under the Commerce Clause.
(D) Authority to tax and spend.

Question 29

Congress passed legislation establishing the Environmental Protection Commission (EPC). Three of the commission members were selected by the President, one by the Senate, and one by the House of Representatives. The EPC later accused Brutish Petroleum (BP) with a criminal violation of its rules and regulations. An Administrative Law Judge (ALJ) appointed by the EPC to hear administrative appeals found the accusations to be true and fined BP $5 million.

29) BP's best argument to enjoin the EPC from enforcing the fine is:

(A) The EPC action violated its right to due process under the 14th Amendment because the ALJ was an employee of the EPC.
(B) A fine of $5 million exceeds the subject matter jurisdiction of an administrative court.
(C) The rules and regulations of the EPC are unenforceable because its commissioners were appointed illegally.
(D) The accusation of criminal conduct gave BP a right to a jury trial which was violated by having the matter heard only by an ALJ.

Question 30

McDuck planned to build a subdivision of 200 residential houses surrounding a five acre parcel that he thought would be suitable for a grade school or park. But that was uncertain because it depended on future decisions by the local school board and /or the parks department.

McDuck filed a subdivision map for the "Plat of Scrooge Estates" with the County Recorder which showed the 200 numbered lots. The 5 acres in the center of the development was not numbered and nothing on the map indicated what it was to be used for. Along with the map, recorded use restrictions stated, "All lots shown on the "Plat of Scrooge Estates" shall be used for residential purposes only." The County approved the subdivision.

Eventually the school district and parks department both refused to use the 5 acre parcel in the center of the development because they lacked the funding. McDuck then sold the 5 acres to MallCorp to build a shopping center.

Before MallCorp received title Wall Street crashed. MallCorp asked its attorney, Al, to find a way to get out of the contract with McDuck. At the close of escrow Al refused to accept the Deed tendered by McDuck claiming he had not delivered marketable title.

30) Is Al right, or did MallCorp breach the sales contract?

(A) Al is right because the map created uncertainty about the permitted use of the 5-acre parcel.
(B) Al is right because the County approval only applied to the numbered lots.
(C) MallCorp breached because the "Plat of Scrooge Estates" was only comprised of the numbered lots.
(D) MallCorp breached because the use restrictions did not apply to the unnumbered 5-acre parcel.

Question 31

Able pulled out of his parking spot one gray, dark, rainy winter's day, directly into the path of Baker's oncoming car. After Baker collided into the side of Able's car, Able approached Baker and said, "I'm sorry; it's my fault. I didn't see you coming because you should have had your headlights on in these weather conditions. Anyway, I'll pay for your damages." Wanda was one of the witnesses, and she heard Able's statement.

31) At trial Baker's attorney asks Wanda, "What was Able's entire statement to Baker?" If Able's attorney objects the trial judge should:

(A) Overrule the objection because Able's statement is an admission of a party opponent.
(B) Overrule the objection because Able's statement proves he was negligent.
(C) Sustain the objection on public policy grounds.
(D) Sustain the objection because much of Able's statement is inadmissible.

Question 32

Smith and Yoshida, an immigrant, collided at an intersection. Yoshida felt the accident was clearly Smith's fault, but said, "I am so sorry," because in his culture that is the socially proper response when others make stupid mistakes. Hawkins was a bystander, and he heard Yoshida's statement.

32) At trial Smith's attorney asks Hawkins, "What did you hear Yoshida tell my client after the accident?" If Yoshida's attorney objects, the statement is:

(A) Admissible as an admission.
(B) Admissible as a statement against interest.
(C) Admissible as an excited utterance.
(D) Inadmissible because it is not relevant.

Question 33

One night after heavy drinking O'Hare signed a Quitclaim Deed to his hereditary estate, Blackacre, and handed it to O'Brien in front of numerous witnesses at Clancy's Bar. Before O'Brien could record the Deed O'Hare regretted what he had done and demanded that O'Brien return title. Reasonably fearing violence from O'Hare, O'Brien held up the Deed in front of everyone at Clancy's the next evening and said, "I hereby give Blackacre back to O'Hare!" And having said that he ripped the Deed apart. The next week both O'Hare and O'Brien died when their ship, the Edmund Fitzgerald, sank in a storm.

33) If Michael, the sole heir of O'Hare and Patrick, the sole heir of O'Brien both claim to own Blackacre; who does?

(A) Patrick owns Blackacre because O'Brien acquired title when O'Hare handed him the Deed.
(B) Patrick owns Blackacre because O'Brien destroyed the Deed as a result of duress.
(C) Michael owns Blackacre because O'Brien's voluntary destruction of the Deed caused title to revert to O'Hare.
(D) Michael owns Blackacre because O'Brien was a donee, and donees cannot acquire valid title through Quitclaim Deeds.

Questions 34-35

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.

34) 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.

35) 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.

Question 36

Because of a severe recession, California was suffering from sharply reduced tax receipts. In response the Legislature passed the Fiscal Emergency Adjustment Measure (FARM) which ordered McDonald, the head of the State Office of Personnel Administration, to sharply reduce State pensions.

36) If the California State Employees Association (CSEA) sues McDonald to prevent him from reducing the monthly pension payments to retired employees in federal court it will:

(A) Lose because the 11th Amendment prevents individuals from suing States for money in federal court.
(B) Lose because State sovereignty prevents a federal court from commandeering State resources.
(C) Win if it can show the FARM violates the State constitution.
(D) Win because FARM impairs a contractual obligation.

Question 37

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.

37) 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 38

Ella sued Sears for negligence. At trial Ella testified that she was walking through the Sears store with her friend Wanda when she slipped and fell on a wet spot and injured her back. Wanda was the only other known witness but she was not deposed and is not present at trial. On cross-examination the attorney for Sears asked Ella, "If Wanda saw you fall on this alleged "wet spot" why isn't she here to testify on your behalf?"

38) Upon objection by Ella's attorney the judge should:

(A) Have the question stricken because it lacks foundation.
(B) Have the question stricken because it irrelevant and prejudicial.
(C) Have the question stricken because it calls for hearsay and speculation.
(D) Order the question stricken from the record and instruct the jury to disregard it.

Question 39

Lord Grantham of Downton Abbey lost his family's wealth through foolish investments in Canadian railroads. As a result he was forced to sell Downton Abbey to Crawley for a million pounds, far less than it was worth. The sales agreement only bound Lord Grantham to convey marketable title at the close of escrow. Crawley did not get any fire insurance. The night before escrow was to close a fire broke out when lightening struck, and Downton Abbey burned to the ground.

39) If Crawley is still obligated to pay Lord Grantham a million pounds under their sales contract it is because:

(A) The doctrine of equitable conversion controls.
(B) Crawley cannot plead equity in a real property transaction.
(C) Land is unique. Therefore, Lord Grantham is entitled to specific performance.
(D) Crawley's failure to insure his position precludes him from equitable consideration.

Questions 40-41

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.

40) 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.

41) 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.

Question 42

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.

42) 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 43-45

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.

43) 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.

44) 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.

45) 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.

Question 46

Concerned about violent crimes, Congress passed the Brady Handgun Violence Protection Act which required background checks before handguns could be purchased in many situations. The law banned the sale of handguns to illegal aliens, convicted felons, fugitives from justice, people convicted of domestic violence, mental incompetents, and other specific groups,

46) The best constitutional argument in support of this measure is:

(A) The 17th Amendment.
(B) The Commerce Clause.
(C) The 2nd Amendment.
(D) The General Welfare Clause.

Question 47

Abdul and Ali were charged with conspiracy to plant a bomb in the Pentagon. Aziz testified that he was an undercover federal agent and present at a meeting with Abdul and Ali. He stated that Ali suggested planting the bomb, and that Abdul expressed support. At trial Saddam testified that he knew Aziz well, and that he was a dishonest man willing to say anything for money. Then Jones offered to testify that Aziz had purchased merchandise at his store with a stolen credit card.

47) Upon objection by the prosecution, Jones' testimony is:

(A) Inadmissible.
(B) Inadmissible because it is cumulative impeachment.
(C) Admissible if Aziz was convicted of a crime for using the stolen credit card.
(D) Admissible because use of a stolen credit card is probative of untruthfulness.

Question 48

Rodriguez rented a house to Gomez for $1,000 a month. After a year Gomez asked Rodriguez if he would sell him the house. Rodriguez offered to sell him the house for $48,000. Gomez said he could not get a loan for that amount because he had bad credit. So Rodriguez suggested that he would give Gomez the Deed to the house if he paid him $2,000 every month and paid all of the property taxes, insurance, maintenance and utilities for the next four years. Gomez agreed.

Over the next four years Gomez made the payments and also spent $15,000 on improvements without Rodriguez' consent. When Gomez had completed the agreement Rodriguez did not deny that they had an oral agreement, but he said he had "changed his mind". Then he refused to give Gomez the Deed. Gomez sued and Rodriguez cited the Statute of Frauds as his defense.

48) If Gomez loses his case it is because:

(A) He is not entitled to equitable relief because Rodriguez did not reap an unjust benefit.
(B) Rodriguez did not agree to the improvements Gomez did.
(C) The acts of Gomez were not enough to prove the existence of an oral land sales contract.
(D) The Statute of Frauds is an absolute bar to enforcement of an oral land sales contract.

Question 49

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.

49) 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.

Questions 50-51

Following the collapse of the real estate market and revelations concerning wide-spread real estate loan fraud throughout the nation, Congress passed the Real Estate Loan Fraud Prevention Act. Under the Act real estate loan fraud was made a federal crime punishable by up to 20 years in federal prison. In concurrent legislation Congress established a special Circuit Court in New York with exclusive jurisdiction to try all such loan fraud cases because of their extreme complexity.

50) Tom was accused of loan fraud for acts he committed in Texas. If Tom argues that it is unconstitutional to try him in New York for crimes he is alleged to have committed in Texas he will:

(A) Win.
(B) Win if he is being denied his rights under the 7th Amendment.
(C) Win because he is being denied his 5th Amendment right to due process.
(D) Lose because Article I gives Congress the power to establish inferior courts and Article III gives it plenary power to define their jurisdiction.

51) Dick, was charged with real estate loan fraud under the new federal law. If Dick argues Congress lacked the power to make real estate loan fraud a federal crime he will:

(A) Win because the law infringes police powers reserved to the States by the 10th Amendment.
(B) Win because the law is not necessary to attain a compelling interest.
(C) Lose if he crossed State lines or used interstate communications in the process of his criminal activities.
(D) Lose.

Question 52

Betty, the former Chief Financial Officer of MegaCorp, was charged with embezzling $100,000 from its general fund. At trial Betty stated in her defense that the previous CFO of the corporation, Tom, told her she was allowed to pay herself a bonus under the MegaCorp bylaws.

52) If the prosecution objects to this evidence it is:

(A) Admissible evidence to prove Betty had a right to the money.
(B) Admissible because it suggests Betty lacked criminal intent.
(C) Inadmissible because the bylaws themselves are the best evidence.
(D) Inadmissible hearsay.

Question 53

Sam agreed to sell Blackacre to Bob for $1 million. They signed a legally enforceable, written sales agreement. Sam was to tender the Deed to Bob on May 1 in exchange for payment in full.

On May 1 Sam tendered the Deed to Blackacre to Bob, but Bob refused to pay because he had discovered there was still a $100,000 mortgage against the property. Sam said he was going to pay that mortgage off with the money he got from Bob, and he offered to put the money paid by Bob in escrow with a professional escrow company

to assure that was done. Bob refused to cooperate saying, "That wasn't part of our deal. You had to tender clear title and you did not."

53) In a suit seeking legal enforcement of their agreement, Sam's best argument is:

(A) He has not breached any provisions of the sales contract.
(B) Under the Doctrine of Equitable Conversion equitable title passed to Bob as soon as they entered into the contract, giving Sam an equitable right to use the sale proceeds to clear title.
(C) Upon execution of a land sales contract mortgage liens automatically transfer to encumber the sales proceeds.
(D) A seller of real property has an implied right to use the sales proceeds to clear the title being conveyed of encumbrances.

Questions 54-55

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.

54) 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.

55) 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.

Questions 56-57

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.

56) 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.

57) 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.

Question 58

The NAACP sues the State of Florida in the federal district court in Florida for violation of the Voting Rights Act of 1965 and the Civil Rights Act of 1964. At trial the NAACP calls Mary, an attorney for the Florida Secretary of State's office, as an adverse witness. Mary refuses to answer several questions, citing attorney-client privilege.

58) The Court:

(A) May apply either federal or Florida law concerning attorney-client privilege.
(B) Must apply either federal or Florida law concerning attorney-client privilege, depending on which is more probative of the truth.
(C) Must apply federal law concerning attorney-client privilege because the suit claims federal law has been violated.
(D) Must apply Florida law concerning attorney-client privilege because the suit has been brought in a Florida district court.

Questions 59-60

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.

59) 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.

60) 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.

Questions 61-62

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.

61) 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.

62) 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.

Questions 63-65

Oregon passed a law that made it illegal for retail stores in Oregon to provide their customers with plastic bags to carry their purchases. Violations of the statute could be punished with fines of $500. In addition the State Department of Consumer Affairs was given the power to suspend a violator's business license in the case of "repeated offenses". The term "repeated offenses" was not defined.

63) P-Mart was fined for giving customers plastic bags six times. One month later it was notified by the Department of Consumer Affairs that its business license had been suspended. The suspension was to be for 30 days and begin on the first day of the next month. P-Mart sued the State seeking an injunction to prevent its business license from being suspended.

(A) P-Mart will lose because Oregon is exercising the "police powers" reserved to the States by the 10th Amendment.
(B) P-Mart will lose because the Department of Consumer Affairs has the power to interpret the term "repeated offenses" in any manner that does not violate the 14th Amendment guarantee of due process.
(C) P-Mart will win because it was not given notice and a hearing before its license was suspended.
(D) P-Mart will win because the statute is fatally vague as to what "repeated offenses" means.

64) BagCo, a company headquartered in Washington State manufactures and sells plastic bags to retail stores in Oregon. It brings suit in Oregon district court seeking declaratory relief on the grounds the Oregon law violates the Commerce Clause. The court should:

(A) Abstain until Oregon State courts have had an opportunity to assess the constitutionality of their own State law.
(B) Dismiss the suit because BagCo is not a retailer in Oregon.
(C) Hear the matter because it is a judicially efficient means to decide constitutional questions.
(D) Hear the matter because it raises a federal question.

65) BagCo, a company headquartered in Washington State manufactures and sells plastic bags to retail stores, filed suit in Oregon State court challenging the constitutionality of the Oregon law. If the Oregon Supreme Court ruled against BagCo and it appealed to the United States Supreme Court:

(A) The court will have diversity jurisdiction.
(B) The court may grant a hearing because a federal question is involved.
(C) The court would deny a hearing because the highest court in each State makes the final determination of the constitutionality of its own laws.
(D) The court would deny a hearing because the 11th Amendment prohibits federal courts from hearing suits prosecuted against State by citizens of other States.

Question 66

Brutus is accused of raping Vickie. At trial he offers testimony Vickie consented to have sex many times before the incident after in which she claimed he raped her.

66) The evidence is:

(A) Inadmissible to prove she acted in conformity with character.
(B) Inadmissible to prove he lacked criminal intent.
(C) Admissible to prove Vickie consented to have sex with him in the incident in dispute.
(D) Admissible to impeach Vickie's testimony.

Question 67

Adam executed and delivered a Deed that conveyed Blackacre in fee simple to his children, "Dick and Jane, their heirs and assigns as joint tenants with right of survivorship". Then Dick executed a Will that said, "I hereby give Blackacre to Tom for life, then to Max for life, and then to Max's heirs and assigns." Then Jane gave a Deed to Henry that said, "I hereby quitclaim my interest in Blackacre to Henry, his heirs and assigns." Henry then entered into a contract to sell his interest in Blackacre to Marvin for $1 million.

67) Can Henry deliver marketable title to Marvin?

(A) No, regardless of any other facts, because title acquired by a Quitclaim Deed is impliedly not marketable.
(B) Not if Jane died before Dick.
(C) Yes, but only if he is not a co-tenant.
(D) Yes if Dick died before Jane quitclaimed her interest.

Questions 68-69

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.

68) 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.

69) 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.
(D) None of the above.

Question 70

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.

70) 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 71

Pete and Don were in an automobile accident and each blames the other for negligence. At trial Weldon testified that he was listening to TV-6 when a news announcer said, "There is a red pickup truck speeding at a high rate of speed down Main Street. Live Copter 6 is en route for video." Weldon said that caused him to look out his window because he lived on Main Street. Outside his window he saw Don's red pickup truck had collided with Pete's car.

71) Weldon's testimony is:

(A) Admissible as a statement of a percipient witness.
(B) Admissible because he had firsthand knowledge of the broadcast.
(C) Inadmissible hearsay.
(D) Inadmissible because it is irrelevant.

Question 72

Green entered into a standard written land sales contract in which he agreed to sell Blackacre to Brown for $500,000. Green's attorney, Alvin, drafted a Deed to the estate, and at the close of escrow Green gave the Deed to Brown in exchange for payment in full. Brown later recorded the Deed.

Three years later Brown agreed to sell Blackacre to White. At the close of escrow White refused to go through with the deal because he discovered Green had sold an easement across Blackacre to the Highway Department before he sold it to Brown. Brown was unaware of the easement because it had never been used. He sued Green for damages and discovered that the Deed prepared by Alvin, which he had accepted and recorded without careful inspection, was actually a Quitclaim Deed, not a Warranty Deed as he had assumed. Alvin admits that he inadvertently used the wrong format when he was drafting the Deed.

72) What is Green's best defense?

(A) Under *Peerless*, the conveyance of Blackacre from Green to Brown should be rescinded because there was a mutual mistake.
(B) Brown's proper cause of action is breach of warranty based on the Deed he accepted rather than breach of contract.
(C) The easement does not justify an award of damages because it is not being used.
(D) The easement did not violate Green's contract with Brown.

Questions 73-74

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.

73) 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.

74) 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.

Question 75

Gertrude approached patrolman Paul and said, "I have a complaint. The hippies in the apartment below me are 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.

75) 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.

Questions 76-77

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.

76) 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.

77) 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.

Questions 78-79

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.

78) 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.

79) 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 80-81

Rachel inherited four acres of land from Joey. Then she took hostile possession of an additional three acres adjacent to it that were owned by Phoebe. She called her seven acre estate "Friendly Acres". Rachel agreed to sell Friendly Acres to Monica for $25,000. The sales contract did not expressly state the quality of title Rachel was obligated to deliver. At the close of escrow Rachel tendered a Deed that accurately described Friendly Estates, and Monica accepted it. Suppose Phoebe subsequently brings an action to successfully eject Monica from the three acres Rachel took by hostile possession. Monica sues Rachel.

80) Which of the following is most correct?

(A) Monica's remedies stem from Rachel's implied contractual duty to deliver marketable title.
(B) Monica may rescind the conveyance because Rachel has committed a breach of warranty.
(C) Monica's remedies are limited by the terms of the Deed she accepted.
(D) Monica's remedies are not limited by the terms of the Deed she accepted because it fraudulently represented Rachel held title to all five acres.

81) Suppose the contract between Rachel and Monica expressly obligated Rachel to deliver "marketable title", but the Deed she tendered, which was accepted by Monica, did not contain any express covenants of title.

(A) Rachel will win because the terms of a land sales contract are impliedly incorporated into the Deed.
(B) Rachel will win because the Deed contained no warranties.
(C) Monica will win because the Deed controls Rachel's liability.
(D) Monica will win because the Deed tendered by Rachel was fraudulent.

Question 82

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.

82) 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.

Question 83

Sam is charged with robbing a liquor store. Surveillance video indicates the robbery occurred at 10:00 p.m. At trial Max testifies that he and Sam were in Clancy's bar drinking at that time. Sam's attorney asks Max, "Are you certain you were in Clancy's with Sam at 10 o'clock?" Max responded, "Sure, because the TV news came on and the announcer said, "It's ten o'clock. Do you know where your children are?" That made us laugh because we didn't really give a damn."

83) Max's testimony is:

(A) Inadmissible hearsay.
(B) Inadmissible because the best evidence rule requires production of a videotape of the TV broadcast.
(C) Admissible because the statement is not offered to prove it was true.
(D) Admissible because it is inherently trustworthy.

Question 84

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."

84) 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.

Questions 85-86

The members of a political movement called Occupy! sought to display their anger over large banks being enriched with government bail-out funds after their irresponsible actions have impoverished the nation and left thousands homeless. To get their message across to the President they begin camping in Lafeyette Park across Pennsylvania Avenue from the White House, giving loud speeches and shouting obscenities at the White House. Cindy, one of the leaders of the Occupy! movement, delivered a loud speech to the assembled crowd in which she said, "We are homeless while the President lives in the lap of luxury in that mansion over there at our expense! We should go show the President what it's like to be homeless!" Then she led the roaring crowd across the street to the gates of the White House. At that point the crowd was stopped by a line of police in riot gear and Cindy was arrested for violating a federal statute that makes it a crime to "threaten federal officials acting in the performance of their duty."

85) If Cindy raises a constitutional claim based on the 1st Amendment she will:

(A) Fail because incitement of violent and criminal acts is not protected expression.
(B) Fail because she threatened the President.
(C) Succeed because her statements were protected speech in a public forum.
(D) Succeed because the statute is unconstitutional on its face.

86) After Cindy was arrested, members of the Occupy! movement declared they would hold a candle-light vigil in the park for her. National Park Service regulations prohibit people from loitering in Lafeyette Park between midnight and six a.m. The purpose of the rule was to discourage drug dealers and prostitutes from lingering around the park at night and permit personnel to clean up trash and tend the lawns. When members of the Occupy! movement refused to leave the park at midnight they were arrested. If challenged, the Park Service rule would probably be held:

(A) Unconstitutional as an infringement of protected expression.
(B) Unconstitutional as an infringement of the right to peaceably and petition government for a redress of grievances.

(C) Constitutional on its face but not as applied in this instance because they were not drug dealers or prostitutes.
(D) Constitutional on its face and as applied.

Question 87

Adam and Yang were in an automobile accident in State X. Adam was from State Y, and Yang was from State Z. Adam sued Yang in federal court in State Z for negligence based on diversity jurisdiction. At trial Yang offered to testify and Adam objected on the grounds that Yang had previously been convicted of perjury, and as a result the evidence rules of law in State Z deemed him incompetent to testify.

87) Assuming Adam's reference to State Z law is correct, Yang's testimony is:

(A) Inadmissible.
(B) Admissible because federal courts use federal rules of evidence, not State rules.
(C) Admissible because federal courts use federal rules of evidence in civil actions.
(D) Admissible because Yang is not a resident of State Z.

Questions 88-89

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.

88) 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.

89) 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 90

Bob went to Dr. Smith after falling and hurting his leg. Dr. Smith took x-rays and told Bob his leg was only bruised and not broken. The leg kept hurting for several weeks so Bob went to Dr. Jones who quickly discovered the leg was broken and needed surgery. Bob sued Dr. Smith for negligence. At trial Bob called Dr. Brown, a properly qualified expert witness, to testify the x-rays taken by Drs. Smith and Jones both showed Bob had suffered a spiral, hairline fracture that, in his opinion, required immediate surgery under the accepted standards of medical practice.

90) Upon objection by Dr. Smith, Dr. Brown's testimony should be:

(A) Admitted if he applied the accepted standards of medical practice.
(B) Admitted if he is a qualified expert witness.
(C) Excluded because the x-rays themselves are the best evidence.
(D) Excluded if his opinion is based on facts not in evidence.

Question 91

91) Which of the following statutory provisions, absent all other policy considerations, would make the title priority of recorded documents easiest to ascertain based on the public record?

(A) "The title interest of a bone fide purchaser for value without notice in a recorded document shall be paramount to all other recorded interests."
(B) "Declarations in recorded documents that valuable consideration has been paid shall not be legally rebuttable."
(C) "Title interests evidenced by recorded documents shall be superior to all subsequently recorded title interests."
(D) "Title interests may be recorded without the requirement of witnessing."

Questions 92-93

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 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.

92) 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.

93) 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.

Question 94

94) 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 95

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!"

95) 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*.

Question 96

Cain inherited 3,000 acres from his father Adam. He asked his attorney, Larry the Lawyer, for advice concerning the following idea. He proposes to develop the land into a gated adult community called Eden Estates surrounding a country club and golf course. He would form a corporation called Paradise, Inc., transfer 40 acres to it, and build a plush country club and golf course. Cain would initially own all 1,000 shares of Paradise, Inc. While the country club was being built he would subdivide the remaining land into 1,000 residential lots. Each Deed to the residential lots would have the following provisions:

i) The owner of each residential lot is entitled to 1 own share of Paradise, Inc.
ii) The lots are strictly limited to residential use.
iii) Occupancy is limited to people who are 55 years of age or older.
iv) All residents (owners or renters) have an unrestricted right to use the country club and golf course facilities.
v) Each lot owner would be obligated to pay an annual assessment to Paradise, Inc. for maintenance of the country club and golf course in the amounts necessary to offset reasonable operating expenses.
vi) Lot owners will have an unrestricted right to convey their lots to new owners who would have the same rights and obligations as the original owners.

96) Larry the Lawyer should tell Cain -

(A) Future owners of the residential lots probably cannot be forced to pay the annual dues.
(B) The Deed provisions are an illegal restraint on alienation.
(C) The Deed provisions make title to the lots unmarketable.
(D) Court enforcement of the Deed restrictions would violate the 14th Amendment.

Question 97

Bill and Stan are on trial for murder of the clerk at the Sack–o–Suds. At trial prosecutor Trotter admits authenticated photos into evidence showing the tire marks made by the murderers as they sped away from the convenience store. The defense attorney, Vinnie, then calls Mona Lisa Vito as an expert witness and shows her the photos. She had been sitting in the courtroom listening to the testimony but had not previously conducted any other investigation. Vinnie asks, "Miss Vito, based on your experience as an automotive expert, did the defendants kill the clerk at the Sack-o-Suds?" She immediately gave an opinion that the defendants did not shoot the clerk because the vehicle that made the tire marks in the photo was a 1963 Pontiac Tempest, not the defendants' 1964 Buick Skylark.

97) Upon objection by prosecutor Trotter, Ms. Vito's testimony should be:

(A) Admitted because an expert may base an opinion solely on facts presented at trial.
(B) Excluded because she did not first state the evidence upon which her opinion was based.
(C) Excluded because she had no knowledge of the facts except what had been presented at trial.
(D) Excluded because the identity of the murderers is an ultimate issue to be decided by the jury.

Question 98

Moki was a 300-pound student from Fiji who attended Ohio State University on a football scholarship. Federal law authorized the United States Citizenship and Immigration Services (USCIS) to determine his immigration status, and under its rules Moki had a right to notice and hearing before his immigration status could be changed. However, the congressional act that empowered the USCIS also contained a provision that allowed the House of Representatives, by resolution, to identify and order the deportation of "undesirable aliens".

Two weeks before Moki was going to play in the Rose Bowl against UCLA he was accused of cheating on his economics midterm. Based on that Orville Klump, an alumni of UCLA and California representative, slipped a resolution through the house at five p.m. on Christmas Eve declaring Moki to be an undesirable alien who should be deported before he could play in the Rose Bowl on New Year's Day.

98) Moki's best constitutional argument against the House resolution is:

(A) He was denied due process because he was not granted a hearing before the House of Representatives acted.
(B) The resolution is an illegal bill of attainder.
(C) Congress lost all power over immigration issues when it authorized the USCIS to determine his immigration status.
(D) The House resolution was for an improper motive.

Question 99

99) 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 100

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.

100) What damages can Farmer recover from Gonsanto?

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

Test #3 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	C	X							
2	B			X					
3	B						X		
4	C								X
5	B							X	
6	A				X				
7	D				X				
8	A			X					
9	A						X		
10	A								X
11	B							X	
12	A							X	
13	B						X		
14	C						X		
15	B	X							
16	C	X							
17	D			X					
18	D								X
19	B								X
20	D								X
21	B			X					
22	B						X		
23	A							X	
24	D			X					
25	C			X					
26	D			X					
27	D			X					
28	C						X		
29	C						X		
30	A								X
31	D							X	
32	A							X	
33	A								X
34	B		X						
35	D		X						
36	D						X		
37	A	X							
38	D							X	
39	A								X
40	B			X					
41	A			X					
42	B	X							
43	A				X				
44	B				X				
45	D				X				
46	B						X		

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	A							X	
48	C								X
49	A	X							
50	A						X		
51	D						X		
52	B							X	
53	D								X
54	B	X							
55	C	X							
56	C			X					
57	D								X
58	C							X	
59	D			X					
60	D			X					
61	A				X				
62	C				X				
63	C						X		
64	B						X		
65	B						X		
66	C							X	
67	D								X
68	A	X							
69	C	X							
70	B					X			
71	C							X	
72	B								X
73	B			X					
74	A			X					
75	A					X			
76	C				X				
77	D				X				
78	B		X						
79	C		X						
80	C								X
81	B								X
82	B					X			
83	D							X	
84	C	X							
85	C						X		
86	D						X		
87	A							X	
88	D					X			
89	A					X			
90	C							X	
91	C								X
92	C			X					
93	C			X					
94	C				X				
95	A	X							
96	A								X

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
97	A							X	
98	B						X		
99	D				X				
100	A	X							
Total Q's	100	13	4	17	11	5	17	16	17
less Wrong									
No. Right									
% Right									

Test #3 Answers and Explanations

1) **(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.

2) **(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.

3) **(B)** Answer (A) is wrong because the intent of the Act does not determine its constitutionality. Many governmental acts are well intentioned but illegal. (C) is wrong because even protected expression can be subject to content neutral time, place and manner restraints for important public purposes. Tenkiller is not being prevented from creating artwork with feathers. She is simply being restricted on which types of feather she can use. Her "alternative channel of expression" is to use feathers from domesticated ducks and geese. [See **"Simple Constitutional Law Outline"**, **content-neutral time, place and manner restrictions, p. 64**.] (D) is wrong because it (deliberately) only mentions "prohibiting sale", and does not mention "possession". If Tenkiller were required to surrender artwork she already possesses there would be a "taking" and she would have a right to fair compensation. But the fact pattern does not say the Act requires her to surrender the artwork she already has or even if she has an inventory of artwork she has already made. In fact, almost all government Acts that prohibit the possession of items related to endangered species (e.g. elephant tusk ivory, rhinoceros horn, etc.) have "grandfather" clauses which allow people to keep possession of items they own at the time the Acts are adopted. [See **"Simple Constitutional Law Outline"**, **takings, p. 82**.] (B) is the best answer because the sales ban clearly affects interstate commerce and falls within the powers of Congress under the Commerce Clause. [See **"Simple Constitutional Law Outline"**, **the power over commerce – the commerce clause, p. 6.]**

4) **(C)** Answer (A) is wrong because a gas main is not a "nuisance per se", and the issue of nuisance is irrelevant in any event. (B) is wrong because even if O'Hara had no "actual" notice, he would still be obligated if he had constructive notice of the easement. (D) is wrong because O'Hara is either legally obligated to perform the contract or not. Whether he would suffer negative effects as a result of the easement and his motives for repudiating the contract are all irrelevant to that issue.(C) is the correct answer because if the easement was recorded before the end of June (by June 30) it was an "encumbrance of record" and O'Hara agreed to buy subject to that encumbrance on July 1. He would be deemed to have had constructive notice of the easement whether he had actual notice or not. On the other hand, if the easement was not recorded by June 30, it would not be an "encumbrance of record" on July 1, and O'Hara would not be obligated to buy subject to it, even if he admits it would have no negative effect on him, and is not the actual reason he is repudiating the contract.

5) **(B)** Answer (A) is wrong because Finley is a criminal defendant so he is allowed to offer character evidence to prove he acted in conformity with his past acts. However, (C) and (D) are also wrong, and (B) is correct because the evidence offered by Ed does not tend to prove whether Finley is an honest person or not. Ed's testimony is simply irrelevant. [See "**Simple Evidence Outline**", **character evidence offered by a criminal defendant, p. 73**.]

6) **(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, pp. 40-41**.]

7) **(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, pp. 40-41**.]

8) **(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.

9) **(A)** This question involves a classification that seems to be based on alienage, a suspect class, so at first (B) seems to be correct. But denial of equal protection based on a suspect class is constitutional if Arizona shows it is necessary to attain a compelling State interest, so (D) would be the better answer, and (B) would be wrong. (C) is clearly wrong because it cites the wrong standard for a classification based on alienage. But (A) is superior to all the other answers because the statute is an attempt by the Arizona legislature to inflict punishment on a described group of people. That is a bill of attainder, a legislative act declaring a group of people guilty of some crime and punishing them without a trial. [See **"Simple Constitutional Law Outline", constitutional provisions of minor interest, p. 40** (bills of attainder).] States are prohibited from enacting them by Article I, Section 10 [1.]. [Also see *United States v. Brown* (1965) 381 U.S. 437.]

10) **(A)** This is a "chain of title" problem. Ashley paid fair market value without actual knowledge of the earlier Scarlet – Butler Deed. Therefore, he is a bone fide purchaser for value without notice (BFPVW) if he did not have constructive notice of the prior Scarlet – Butler transfer. For that to be true, the court must find that the prior transfer by Scarlet was "outside Ashley's chain of title". That means a finding that the court must find the Scarlet – Butler transfer would not have been discovered by a title research which was done with reasonable due diligence.

Generally Ashley would be a BFPVW here because a **diligent title search** would usually trace transfers from O'Hara (the "root") using the **grantor index** to show O'Hara did not convey the property to anyone before he transferred to Scarlet, and that she did not convey to anyone between the time she received from O'Hara and the time she conveyed to Ashley. That would make Ashley a BFPVW holding title. But title searches only look at when Deeds are recorded and it is not clear the Scarlet – Butler Deed was recorded before the Scarlet – Ashley Deed. Also, jurisdictions vary, and some jurisdictions have "**tract indexes**" that show all conveyances of each parcel in one place. In that case a diligent title search should have revealed the Scarlet – Butler Deed. And even though Scarlet did not hold title at the time she conveyed to Butler, she did gain title later and might well be bound by the principle of "**estoppel by Deed**".

Consequently, either Butler or Ashley holds title but it depends on facts not given. Therefore (A) is correct because if the Scarlet – Butler Deed was not in Ashley's chain of title he is a BFPVW and that gives him superior title. (B) is not as good an answer because even if the doctrine of "estoppel by Deed" is not followed, that fact alone might not give Ashley superior title. (C) is wrong because Ashley would be deemed to have constructive knowledge of the Scarlet – Butler Deed if it was in his chain of title. (D) is wrong because Butler's claim would not be superior if Ashley is a BFPVW.

11) **(B)** Answer (A) is wrong because the question is not probative of Charlie's truthfulness or untruthfulness. (C) is wrong because the Court has discretion to allow a witness to be asked about specific acts on cross-examination. (B) is correct and (D) is wrong if the purpose of the question is to show Charlie has a motive to testify falsely against Scott. [See "**Simple Evidence Outline**", **past acts admissible to prove motive, p. 71**.]

12) **(A)** Answer (A) is correct because judicial notice relieves a party of the burden to prove, with evidence, facts that are generally accepted to be true. (B) is wrong because the prosecution still has the burden of proving Dude is the one who took the vehicle across a State line. (C) is wrong because Dude has no burden to prove the fact subject to judicial notice is false. (D) is wrong because in a criminal trial in a federal court the judge must instruct the jury that it does not necessarily have to accept the matter judicially noticed to be a fact. [See "**Simple Evidence Outline**", **establishing material facts by judicial notice, p. 39**.]

13) **(B)** Answer (C) is wrong and (A) is true because actions claiming violation of rights guaranteed under the U.S. Constitution can always be brought in State courts, including challenges of federal laws. (D) is wrong because the 5th Amendment guarantee of due process applies to all federal actions, including administrative actions. But even though (A) is a true statement, (B) is the better answer because due process requires the government to provide individuals with a means of appealing government actions. Requiring a $9,000 bond when the amount in dispute is only $3,000 merely serves to deny appellants due process. [See **"Simple Constitutional Law Outline", due process, p. 74**.]

14) **(C)** Answer (D) is wrong because Congress cannot give any government agency "unrestricted powers" in excess of constitutional limits. (C) is a better answer than (A) and (B) because it does not offend due process to have appellants post bonds equal to the amounts in dispute. In fact, this is a common court practice when money judgments are under appeal. [See **"Simple Constitutional Law Outline", due process, p. 74**.]

15) **(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. 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.

16) **(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 a gift promise, 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.

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) **(D)** Answer (C) is wrong because Rancher Roy held the land in hostile possession for 12 years, long enough to establish a claim by adverse possession. If Richy Rich had tried to evict him at any time after 2000 Roy would have prevailed. (B) is wrong because Roy gave Yosemite Sam permission to be on the land, but he did nothing to give him title to it. The Bill of Sale did not evidence that Roy was giving Sam ownership of the land, and the fact that Sam paid Richy Rich rent after that shows that he did not think he had a claim of ownership, himself. Sam did not hold the land in hostile possession as to Roy, because Roy gave him permission to be there. And he did not hold it for 10 continuous years with respect to Rich, because he leased it from Rich between two periods of hostile possession (as to Rich, not Roy). (A) is wrong because Bone Fide Fred is not a bone fide purchaser for value without notice. Since he would have discovered the existence of the well, windmill, water tank, cattle and Yosemite Sam on the land if only he had inspected before buying, he had "**inquiry notice**" that Sam was on the land, and that a claim of adverse possession might well exist. Property buyers are charged with inquiry notice of all encumbrances that should have been discovered by reasonable inspection, and Bone Fide Fred did not show up to inspect the land until after he bought it.. [See "**Simple Real Property Outline**", **protections for bone fide purchasers for value, p. 59**.] And since Bone Fide Fred is not a BFPVW, his claim to title can be no stronger than the person from whom he received it, Richy Rich. And Richy Rich's claim is inferior to Rancher Roy's claim of adverse possession, as stated above. Therefore, the best answer is (D), Rancher Roy gained title by adverse possession and did not lose it by turning the land over to be occupied by Yosemite Sam.

19) **(B)** Answer (A) is correct, but not the best answer. Sam did not stay on the land in hostile possession at any time, in any way. He resided on the land with permission from Roy from 1992 to 1997, a period of 5 years. Then he was on the land with permission from both Roy and Rich from 1997 to 2002. Then he was on the land with permission from Roy 2002 to 2008. So if Roy gained title by adverse possession to begin with (which he did), Sam never was in hostile possession at all. And if Roy did not gain title by adverse possession at all, Sam still did not have hostile possession for any 10 year continuous period. (C) is wrong for the same reason; Even if Sam lived on the land without permission from Rich, he did not hold hostile possession for a continuous period of 10 years. (D) is wrong because it is just silly. An equitable servitude is a land-use restriction. That has no application here. (B) is the correct answer. Roy gained title by adverse possession and then he sold Sam an easement in gross – the right to enter the land to water his cattle. [See "**Simple Real Property Outline**", **easements appurtenant, in gross and profits, p. 80**.]

20) **(D)** Answer (A) is wrong because once permanent improvements are "attached" to land they become real property, part of the land itself. [See "**Simple Real Property Outline**", **there are only two types of property, p.1**.] Tenants who make improvements to land do not gain an interest in the improvements or in the land. [See "**Simple Real Property Outline**", **no right to reimbursement for improvements, p.27**.] (B) is wrong because ownership of water rights does not convey title to the land itself or any improvements thereon. (C) is wrong because Roy sold Sam his cattle and an easement. He did not sell Sam the well, windmill or water tank. (D) is correct because the well, windmill and water tank are improvements to the land, and title to them belongs to whoever owns title to the land itself.

21) **(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.

22) **(B)** Under Article III judges of both the supreme and inferior courts cannot be removed after they have been appointed "during good behavior". Further, they cannot have their compensation reduced while they are on the bench. (A) is wrong because the rule applies to both the Supreme Court and to the inferior courts. However, administrative law judges are not considered to be judges of the "supreme or inferior courts". Therefore, (C) and (D) are also wrong, and (B) is correct.

23) **(A)** Answers (B) and (C) are wrong because hearsay can only be admitted as a "dying declaration" under the FRE in a civil action or a homicide prosecution. [See "**Simple Evidence Outline**", **dying declaration, p. 54.]** Many students will pick (D), but that is wrong because Delta's statement was made in the hospital, not immediately after the accident while she was still under the stress of that event. All the exclamation points may suggest excitement, but Delta clearly had time to ponder her situation and compose a story that would benefit her. [See "**Simple Evidence Outline**", **exception: excited utterance, p. 56**.] (A) is correct by the process of elimination.

24) **(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 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.

25) **(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.

26) **(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.

27) **(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.

28) **(A)** Answer (A) is wrong because even though any oil, gas or coal produced as a result of the legislation might improve national security, there is no direct nexus between this act and defense. (B) is wrong because Indian reservations are not federal lands. The federal government may have previously owned the land, but it was given to the Indians in the past and is now owned by them. (D) is wrong because the act does not involve federal spending. (C) is the best answer because the Commerce Clause (Article I, Section 8) gives Congress total control over trade with Indian tribes along with international and interstate trade. [See **"Simple Constitutional Law Outline", the power over commerce – the commerce clause, p. 6**.]

29) **(C)** Answer (A) is wrong because the 14th Amendment only applies to State actions, and this was an action by a federal agency. (B) is wrong because the subject matter jurisdiction of "inferior" federal courts, including administrative law courts is determined by Congress itself under Article III, Section 1. (D) is wrong because there is no clear right to a jury trial unless a criminal defendant faces a possibility of incarceration for a year or longer. (C) is correct because the role of Congress is only to establish laws, not to enforce them. Enforcement is up to the executive branch. Under the "Appointments Clause" of Article II, Section 2 [2.], the President appoints all "officers" of the United States, subject to Senate consent. But Congress can vest sole appointment authority in the President, the courts or the heads of departments. Congress cannot establish a law and then appoint the people who will enforce it. [See **"Simple Constitutional Law Outline", no power to appoint officers or enforce laws, p. 17**.] So Congress had no authority to appoint any of the EPC commissioners, and the rules and regulations enacted by them are therefore invalid and unenforceable.

30) **(A)** Answer (A) is correct because the map made it uncertain whether the 5 acres could be used for anything other than residential use. All land sales contracts impliedly require the delivery of "marketable title" unless the agreement expressly states that only a "Quitclaim Deed" is being promised. That means delivery of title that is "reasonably free from doubt in both law and fact" on the settlement date. [See "**Simple Real Property Outline**", **failure to deliver marketable title generally major breach, p. 54**.] Here it is reasonably uncertain whether the use restrictions recorded along with the subdivision map were intended by the County to apply to the 5 acre parcel or only to the numbered lots shown on the map. (B), (C) and (D) are all wrong for the same reason – it simply is not clear whether the County approval was based on a requirement that the 5 acre parcel must be used for residential purposes.

31) **(D)** Any time a statement consists of multiple portions, parse the statement into its individual parts and consider each separately. "I'm sorry" is irrelevant, "it's my fault," is an admission, "you should have had your headlights on," is hearsay, and "I'll pay for your damages," is an offer in compromise. (A) is wrong because only part of the statement is an admission. (B) is wrong because an offer in compromise cannot be admitted to prove liability, and the hearsay portion is inadmissible. (C) is wrong because this is all a matter of law, not "public policy". The motives of Congress in adopting the FRE are simply irrelevant to the question of what those rules are. (D) is correct because much of Able's statement is inadmissible for different reasons. [See "**Simple Evidence Outline**", **hearsay, p. 43.]**

32) **(A)** Answer (B) is wrong because Yoshida, the declarant, is not "unavailable". (C) is wrong because there is no evidence Yoshida was speaking while still under the "stress" of the accident. (A) is right and (D) is wrong because Yoshida's statement appears to be an admission that would tend to prove he caused the accident. Whether he was really "sorry" or simply saying he was "sorry" as a cultural practice is for the finder of fact (jury) to decide, not the judge. [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.]

33) **(A)** Answer (A) is correct because the act of physically delivering the Deed to O'Brien caused title to transfer from O'Hare to O'Brien. [See "**Simple Real Property Outline**", **intent to convey implied by deed delivery, p.59**.] (B) and (C) are wrong because O'Brien's destruction of the Deed did not "undo" what O'Hare had already done, whether it was the result of duress or not. And O'Brien's words cannot convey title either because it would violate the Statute of Frauds. (D) is simply nonsense. There is no rule of law that says donees cannot obtain title via a Quitclaim Deed.

34) **(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.

35) **(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.

36) **(D)** Answer (A) is wrong because the 11th Amendment does not bar suits seeking to enjoin State officials. (B) is wrong because CSEA's suit is not an action by the federal government to deprive California of resources. (C) is wrong and (D) is right because retired employee's rights to receive pensions were established by past employment contracts and Article I, Section 10 prohibits States from enacting any law that impairs obligations established by contracts. [See **"Simple Constitutional Law Outline", states are barred from impairing existing contracts, p. 23**.]

37) **(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 have 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.

38) **(D)** All of the answers are somewhat correct but (D) is the best of them. (A) is correct because no evidence has been produced to show Ella knows WHY Wanda is not there. (B) is also correct because the reason Wanda is absent does not prove any material fact. The question really has been asked to make the jury speculate Ella is keeping Wanda away to prevent her from being questioned. But the truth is that if Sears wanted Wanda to testify it would have subpoenaed her. (C) is also correct because Ella is being asked to either repeat what someone has told her about where Wanda is, inadmissible hearsay, or else speculate about where she is, and speculation is not evidence. (D) is the best answer because the jury has already heard the question asked, may be prejudiced by it, and should be instructed to disregard it. [See "**Simple Evidence Outline**", **evidence violations may cause reversal on appeal, p. 11**, at last paragraph on p. 12.]

39) **(A)** Answer (A) is correct because the common law doctrine of equitable conversion held that land buyers (who could later plead specific performance) assume the risk of destruction and suffer the loss at the time they enter into a land sales contract unless the subsequent destruction was caused by the seller. [See "**Simple Real Property Outline**", **doctrine of equitable conversion; distribution when property is destroyed, p.56**.] (B) and (D) are wrong because parties can always plead equity (whether the get it or not is a different issue). Crawley's failure to get insurance might be considered by the judge, but it would not necessarily "preclude" him from considerations of equity. (C) is wrong and intended to twist your brain. Yes land is unique, but only a buyer (Crawley here) can be granted specific performance (sellers like Grantham cannot), AND nobody is "entitled" to it either – it is at the discretion of the judge.

40) **(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.]**

41) **(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, pp. 4-5**.]

42) **(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.

43) **(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**.]

44) **(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.

45) **(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.

46) **(B)** Answer (A) is an example of common "multiple-choice trick" If a multiple-choice answer raises a concept you have never heard of it is most likely wrong. You probably have never heard of the 17th Amendment because it is of very little interest in law school. It simply determines the election of Senators. (B) is correct because this law has an effect on interstate commerce. Therefore, Congress is

empowered by the Commerce Clause. . [See **"Simple Constitutional Law Outline", the power over commerce – the commerce clause, p. 6.]** (C) is wrong because the 2nd Amendment can only limit the powers of Congress and can not empower it to pass any laws at all. (D) is wrong because there is no such thing as the "General Welfare Clause". Any answer that suggests Congress can pass laws for the "General Welfare" other than to "tax and spend for the general welfare" is always wrong.

47) **(A)** Answer (B) is wrong because only two items of evidence to prove a witness has an untruthful character is hardly "cumulative". (C) is wrong because the evidence objected to does not prove Aziz was convicted of a crime of dishonesty. (A) is correct and (D) is wrong because evidence proving specific acts of dishonesty is not admissible to impeach the testimony of a witness. [See "**Simple Evidence Outline**", **collateral evidence rule: no specific act evidence to challenge witness credibility, p. 80**.]

48) **(C)** The key to this question lies in the CALL at the end. The facts strongly suggest Gomez would win his suit pursuant to the "Part Performance Doctrine", but the CALL requires you to presume that Gomez lost, and given that is so, then WHY did he lose it? [See "**Simple Real Property Outline**", **part performance doctrine may allow enforcement in equity, p.50**.] (D) is wrong because the Part Performance Doctrine is an exception to the general rule the SOF will not allow enforcement of an oral land sales contract because it might be enforceable in equity. Therefore, the SOF is only a "legal bar" and not an "absolute bar". (B) is wrong because under the Part Performance Doctrine, valuable improvements are a consideration for the Court, whether the land seller agreed to them or not. (A) is wrong because Rodriguez clearly is reaping an unjust benefit. Therefore (C) is the correct answer. For a movant to enforce an oral land sales contract in equity under the Part Performance Doctrine, the Court (judge) must be convinced that there is no other rational explanation for the payments made and actions taken by the movant (the buyer) but for the fact an oral sales contract must have existed. And if the acts of Gomez were not enough to prove that (in the eyes of the judge) then he would lose his case.

49) **(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.

50) **(A)** This is a devilish question. (B) is wrong because the 7th Amendment only pertains to civil trials, not criminal trials. (C) is wrong because nothing in the facts suggests he is being denied due process. (A) is correct and (D) is wrong because even though Congress does have the power to establish inferior courts (Article I, Section 8 [9.] and Article III, Section 1), and plenary power to determine their jurisdiction (Article III, Section 2 [2.]), defendants accused of having committed crimes within a State have a right to be tried in that same State before an impartial jury from that same State (Article III, Section 2 [3.] and the 6th Amendment).

51) **(D)** Answer (B) is wrong because it cites the standard when a government act infringes on fundamental rights, but no fundamental rights are at issue here. (C) is wrong because federal regulation of activities that affect interstate commerce in general is valid even if those activities do not cross State lines in a particular case. (D) is correct and (A) is wrong because the Commerce Clause (Article I, Section 8 [3.]) gives Congress the power to regulate interstate commerce, and loan fraud in general would have an impact on interstate commerce. The 10th Amendment only applies to powers that are not specifically delegated to Congress. . [See **"Simple Constitutional Law Outline", the power over commerce – the commerce clause, p. 6**.]

52) **(B)** Answer (A) is wrong because if the evidence is offered to prove Tom's statement (an out-of-court assertion) was true, it would be inadmissible hearsay. (C) is wrong because the purpose of the evidence is not to prove what the bylaws say. (D) is wrong unless the purpose of the evidence is to prove Betty had a right to take the money, and in that case (C) would be correct and (D) would still be wrong. (B) is correct because if Betty offers the evidence to prove she thought she had a right to the money, it is not being offered to prove she did have a right to the money, and not hearsay. [See "**Simple Evidence Outline**", **hearsay, p. 43** and **assertion not hearsay unless offered to prove assertion's true, p. 45**.]

53) **(D)** Answer (B) is wrong for two reasons. First the "doctrine of equitable conversion" does not apply to the facts presented. It applies when parties to a land sales contract die, or the subject matter of the contract is destroyed, before title is conveyed. [See "**Simple Real Property Outline**", **doctrine of equitable conversion, p.56**.] The second reason (B) is wrong, is simply that there is no such thing as an "equitable right". The word "right" means a "legal right" or right established by law. There are no "rights" in equity because equity is at the discretion of the Court (judge). (A) is wrong because Sam has, in fact, breached his duty to deliver marketable title, title that is free from encumbrances. This is an implied duty, even if the contract did not expressly say he had to deliver title free from encumbrances. (C) is wrong simply because there is no such rule of law. When mortgaged land is sold the mortgage can be paid off, assumed by the buyer, replaced (a novation), or the buyer can take title subject to the mortgage. But the mortgage lien does not "automatically transfer" to the sales proceeds. [See "**Simple Real Property Outline**", **sale of mortgaged land, p.67**.] (D) is the best answer because it is Sam's most rational argument. Usually land sales contracts provide for the use of an escrow company to facilitate the use of the buyer's funds to clear encumbrances from the seller's title. Even though Sam and Bob did not expressly agree to this, a Court is most likely to agree with Sam that this is an implied right of the seller.

54) **(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.

55) **(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.

56) **(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. 101**.] (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.

57) **(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. 101**.] Therefore, (A), (B) and (C) are wrong, whether Carl was negligent or not, and (D) is the correct answer.

58) **(C)** Answers (A) and (B) are wrong because the Court has no choice in which rules of law to apply . (C) is correct and (D) is wrong because even though State privilege rules apply in federal courts in many actions, federal rules apply in civil actions based on claims that are to be decided by federal law. [See "**Simple Evidence Outline**", **no independent federal rule for most privileges, p. 16**.]

59) **(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.

60) **(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.

61) **(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.

62) **(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**.]

63) **(C)** Answer (A) is wrong because even though Oregon may have the power to regulate in this area, it is still subject to constitutional requirements. (C) is clearly correct and (B) and (D) are not the best choices because the 14th Amendment requirement of due process requires P-Mart to be given notice and an opportunity for a hearing before its license can be suspended. . [See **"Simple Constitutional Law Outline", procedural due process: the right to notice and a hearing, p. 78**.] This is clearly true while the issue of whether or not the term "repeated offenses" is fatally vague or can be determined by the State is far more arguable.

64) **(B)** Answer (A) is wrong because BagCo raises a federal question and not merely a question of whether the law violates the Oregon State constitution. (B) is correct and (C) and (D) are wrong because federal courts can only hear "actual cases and controversies". As a result they cannot provide "declaratory relief" and can only hear cases where the moving parties have suffered injury or clearly will suffer injury that can be remedied by the court. Since BagCo is not a retailer in Oregon, it has not been and will not be charged with violating the law and does not have a "justiciable" case. [See **"Simple Constitutional Law Outline", no jurisdiction over claims by parties lacking standing, p. 30**.]

65) **(B)** Answer (A) is wrong because "diversity" is only a jurisdictional issue as to federal district courts. (B) is correct because the constitutionality of the Oregon statute has been challenged, and that creates a "federal question" that the court may hear. (C) is wrong because the highest court in any State only has the final say on whether State laws are valid under the State's own constitution and not whether they are valid under the United States Constitution. (D) is wrong because the 11th Amendment does not prevent the constitutionality of a State law from being challenged in a federal court. . [See **"Simple Constitutional Law Outline", the appellate path to the supreme court, p. 29**.]

66) **(C)** Answer (A) is wrong because a criminal defendant can introduce evidence of past acts of an alleged victim to prove they acted in conformity with character on an incident in dispute. (B) is wrong because evidence of past acts can be admitted to show intent. (D) is wrong because evidence of specific acts (other than past criminal convictions) cannot be admitted to impeach the truthfulness of a witness. (C) is correct because a defendant can introduce evidence of specific prior sex acts between the defendant and an alleged victim to prove consent to sexual conduct. [See "**Simple Evidence Outline**", **evidence of prior sex acts of alleged victim to prove consent, p. 75**.]

67) **(D)** This is the sort of question where it might help to quickly sketch a tree diagram showing the relationship between the parties. And note that Dick's execution of a Will does not guarantee that he died before Jane, or that he died at all. (A) is wrong because there is no such rule of law. Title received by a Quitclaim Deed is no less marketable than title received by Warranty Deed. (B) is wrong because Jane could convey clear title to half of Blackacre to Henry even if Dick was still alive. That would destroy the joint tenancy, giving Henry half of Blackacre as a tenant-in-common. Then he could deliver marketable title as to that interest to Marvin. The existence of co-tenants is not a title defect. [See "**Simple Real Property Outline**", **failure to deliver marketable title generally major breach, p. 54** for a list of common title defects.] (C) is wrong because even if Henry is a co-tenant (a tenant-in-common with Tom, Max, or Max's heirs) he can still deliver marketable title as to his own half interest. (D) is correct but slightly misleading simply because the other answers are wrong. If Dick died before Jane quitclaimed her interest to Henry, she held title to all of Blackacre and conveyed all of that title to Henry. But even if Dick did not die before Jane she still could convey clear title to half of Blackacre to Henry. So either way Henry can deliver marketable title to Marvin.

68) **(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 "**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 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.

69) **(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.

70) **(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**.]

71) **(C)** Answers (A) and (B) are wrong because Weldon did not see the accident. Therefore he has no personal knowledge whether he heard the broadcast or not. (D) is wrong because Weldon is effectively saying, "Don was speeding" and that would tend to prove he caused the accident. (C) is correct because Weldon's restatement of what he heard on TV is inadmissible hearsay without exception. [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

72) **(B)** Real estate sales contracts impliedly obligate the seller to deliver marketable title unless the seller expressly offers to only "quitclaim". Since Green and Brown entered into a "standard" sales contract, Green impliedly promised to give Brown marketable title. And an easement is a title defect whether it is being used or not. Therefore (C) and (D) are wrong because Green violated the sales contract, and that breach would entitle Brown to damages. But (A) is also wrong because mutual mistake (and *Peerless*) is a reason a contract might be void or invalid but neither Green nor Brown were "mistaken" when they entered into the sales contract. The "mistake" arose later when Green tendered the Deed prepared by Alvin to Brown, and Brown accepted that without objection. Green breached the contract when he failed to convey marketable title, but Brown accepted Green's performance without objection. And that acceptance of Green's performance discharged his duties under the contract. [See "**Simple Real Property Outline**", **deed discharges contract under common law merger doctrine, p.62.]** As a result the only duties Green could still be liable for are the duties set forth in the Deed Brown accepted. Therefore (B) is Green's best defense.

73) **(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.

74) **(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**.]

75) **(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 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.]

76) **(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, pp. 56-57**.] 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).

77) **(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, pp. 56-57**.] 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

78) **(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.

79) **(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.

80) **(C)** Real estate sales contracts impliedly obligate the seller to deliver marketable title unless the seller expressly offers to only "quitclaim". Since Rachel and Monica entered into a land sales contract without specifying the quality of title Rachel was to deliver, she was impliedly obligated by the contract to give Monica marketable title. But when Monica accepted the Deed offered by Rachel it discharged Rachel from all of her contractual duties. [See "**Simple Real Property Outline**", **deed discharges contract under common law merger doctrine, p.62**.] Therefore, (A) is wrong. (B) is wrong for the same reason –contracts cannot be "rescinded" after performance has been discharged. After Rachel was discharged from her contractual duties she was only obligated by the terms of the Deed Monica accepted, and there are no facts to show that it contained any warranties. Therefore (C) is correct. (D) is wrong because there is no evidence Rachel acted "fraudulently". She may well have believed that she had gained title to the three acres by adverse possession.

81) **(B)** This question may perplex students who are familiar with "special warranty deeds" defined by State statutes. Under those statutes the use of certain words or phrases in Deeds may imply various warranties. For example in California the use of the word "grant" in a Deed creates, by implication, a Warranty Deed. [See "**Simple Real Property Outline**", **special warranty deeds, p.63**.] You must answer this question based on common law. (A) is wrong because the express and implied promises of a land sales contract are not incorporated into the Deed. [See "**Simple Real Property Outline**", **deed discharges contract under common law merger doctrine, p.62**.] (B) is correct and (C) is wrong because the Deed does control Rachel's liability, but the Deed in this case did not contain any express covenants of title. (D) is wrong because there is no evidence Rachel acted "fraudulently". She may well have believed that she had gained title to the three acres by adverse possession.

82) **(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.

83) **(D)** Answer (B) is wrong because the evidence is not offered to prove what the TV announcer said, but that what he said was true. (C) is wrong because the statement made by the TV announcer is offered to prove the truth of the statement, that it was 10 o'clock. That makes it hearsay. (A) is wrong because even though the statement was hearsay, it is admissible hearsay. (D) is correct. This is an example of "inherently trustworthy hearsay". [See "**Simple Evidence Outline**", **exception: inherently trustworthy statements, p. 60**.]

84) **(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.

85) **(C)** Answer (A) is wrong because her actual statements did not advocate violence. When actual statements are quoted be sure to read them carefully. She only said they should "show the President what it is like to be homeless." Nothing in that statement suggests she is advocating violence. (B) is wrong and (C) is correct for the same reason. She never actually threatened the President with harm. (D) is wrong because the statute as written outlaws threats of violence, and threats of violence are not protected speech. [See **"Simple Constitutional Law Outline", incitement: the Brandenburg test, p. 61**.]

86) **(D)** Answers (A) and (B) are wrong because the rule appears to be a reasonable time, place manner restraint which leaves multiple avenues for expression. (D) is correct and (C) is wrong because time, place and manner restraints must be enforced in a content neutral manner. Their purpose for staying in the park after midnight, and the "message" they wanted to deliver cannot be used to justify an exception to the rule. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64**.]

87) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because State Z is the forum State, State Z law is to be applied by the federal court, and federal courts are required to use the competency rules of the forum State in actions seeking remedies based on State law. State "competency rules" may disqualify witnesses that have been convicted of certain felonies, and "Dead Man's Rules" may prevent witnesses from testifying about what a decedent has said or done. However, the vast majority of States have repealed these old, odd rules. [See "**Simple Evidence Outline**", **witnesses are presumed competent, p. 86.]**

88) **(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.

89) **(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**.]

90) **(C)** Answers (A) and (B) are wrong because even if Dr. Brown is a "qualified expert" applying "accepted standards" he is describing what he saw rather than simply offering an opinion based on what he saw, and that is the role of a percipient witness not an expert witness. (D) is wrong because expert witnesses are allowed to base their opinions on facts that are not in evidence, and even on inadmissible evidence. (C) is correct because instead of Dr. Brown saying "what he saw in the x-rays" the Best Evidence Rule requires the x-rays themselves to be produced. Dr. Brown could then testify as to his opinion based on that evidence. [See "**Simple Evidence Outline**", **the best evidence rule for content of writings, recordings and photographs, p. 108**.]

91) **(C)** Answer (A) is wrong because it is not possible to ascertain from recorded documents in the "public record" which claimants are bone fide purchasers for value without notice, nor would it show which of two or more BFPVs had superior title. (B) and (D) are wrong because they would do nothing to show which of two or more claimants has superior title. (C) is correct because it creates a "race statute" which gives superior title to the first person to record an interest, and that would be discernable from the "public record".

92) **(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**. .]

93) **(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**.]

94) **(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.

95) **(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.

96) **(A)** The very first thing you should recognize here is that land use restrictions in "gated adult communities" are very common, and Courts do enforce them. So these restrictions are not generally held to be restraints on alienation, title defects or unconstitutional. As a result, answers (B), (C) and (D) seem unlikely and your attention should immediately be drawn to the odd way Cain is proposing to sell these lots. Instead of having the corporation own and sell the lots, he is proposing to convey some land to the corporation first, and then sell the remaining land to the lot buyers himself. So he is having the lot buyers promise him directly that they will pay the corporation, and they are not making any promises directly to the corporation. About half the courts refuse to enforce covenants against future land owners if they do not benefit the land of the original promisee (Cain) or his assigns. [See "**Simple Real Property Outline**", **burdens of covenant do not run in two situations, p. 88**.]. Therefore, (A) is the best answer,(B) is wrong because the provisions give unrestricted right to convey, (C) is wrong because Deed restrictions, per se, do not make title unmarketable, and (D) is wrong because the land use restriction here is not unconstitutionally discriminatory.

97) **(A)** Answer (B) is wrong because an expert witness does not have to state the evidence upon which an opinion is based before presenting the opinion. (D) is wrong because an expert witness can express an opinion about any issue if it is based on their expertise except whether a defendant acted with criminal intent. (A) is correct and (C) is wrong because an expert may express may base an opinion solely on evidence presented at trial. [See "**Simple Evidence Outline**", **admissibility of expert opinions, p. 98**.]

98) **(B)** Answer (A) is not the best answer because people who are affected by laws usually have no due process right to notice or to be heard by the legislative body enacting them before they are adopted. (C) is not the best answer either because even though Congress authorized the USCIS to determine Moki's immigration status, it reserved the right in the same action to override USCIS decisions by resolution. Therefore the grant of authority to USCIS was subject to Congress' reservation of power. (D) is simply wrong because the underlying motives of certain members of Congress do not determine whether or not the actions Congress takes are constitutional. (B) is the correct answer because this is clearly a bill of attainder, a legislative act that singles out an individual or group and inflicts upon them punishment without the benefit of a trial. Bills of attainder are efforts by a legislative branch to not only create the law to be enforced but to determine the "violators" (finding Moki to be "undesirable") and punish them as well (ordering him to be deported). In the process "trial by legislature" violates the separation of powers and usurps the authority of the executive and the judicial branches. Although this question is intended to be preposterous and rather humorous this actually happens frequently. Legislatures often target vulnerable and unpopular people for punishment without a trial. [See **"Simple Constitutional Law Outline", constitutional provisions of minor interest, p. 40**.]

99) **(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**.]

100) (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 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.

Test #4

Test #4 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review.

The Answers and Explanations for these questions are in the following section.

Question 1

1) 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 2-5

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.

2) 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.

3) 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.

4) 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.

5) 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 6

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.

6) 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.

Questions 7-9

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."

7) 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.

8) 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.

9) 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.

Question 10

Concerned over President Frump's decision to invade Wackiestan, Congress passed the Military Deployment Act. The Act stated Congress could, by a joint resolution of both houses, compel the President to remove troops from any foreign country unless there has been a formal declaration of war. President Frump vetoed the Act, but then Congress overrode his veto. Following that the Congress passed a joint resolution ordering the President to remove all troops from Wackiestan within 60 days.

10) The Act is most likely:

(A) Unconstitutional because it allows Congress to pass joint resolutions without presenting them to the President for approval.
(B) Unconstitutional because the President is the commander-in-chief of the armed forces.
(C) Constitutional because Congress has plenary power to declare war, raise and support an army and navy, and make rules controlling the army and navy.
(D) Constitutional because the President's veto of the Act was overridden by Congress.

Question 11

Don was driving down the street when he accidentally hit a pedestrian, Peter, who was crossing the street. Peter was a 17 year old high school student. Peter and his father, Fred, went to Al the attorney to discuss suing Don. They discussed how the accident occurred and the injuries Peter had suffered. Peter revealed he had recklessly darted across the street in the dark in front of Don's car. Al he said he needed a $5,000 retainer to carry the suit. Fred decided to shop around for an attorney who would carry the suit on a contingency basis. Peter and Fred eventually hired Larry the lawyer. Larry filed suit for Peter in his own name because he had turned 18 years old by that time. At trial Don called Al the attorney as a witness and asked him to reveal what Peter had told him about how the accident happened.

11) Upon objection from Larry the lawyer, Al's testimony would be:

(A) Inadmissible because of the attorney-client privilege.
(B) Inadmissible because Al was not a witness to the accident.
(C) Admitted because the attorney-client privilege was waived when Peter filed suit with a different attorney.
(D) Admissible non-hearsay.

Questions 12-14

Otto owed Blackacre in fee simple in the state of Ohiowa. Ohiowa had a statute that said the common law would be followed when it came to priority of claims, except that no claim is superior to a claim by a subsequent bone fide purchaser for value without notice of prior claims.

On June 1 Otto sold Blackacre to Able for fair market value and gave him a Warranty Deed.

On June 10 Otto received a loan from Baker in exchange for his note, which was secured by a security interest in Blackacre (e.g. a Mortgage or Deed of Trust). Otto did not tell Baker of the sale to Able.

On June 11 Baker recorded his security interest in Blackacre at the County Recorder's office.

On June 15 Otto gave his brother Charley a Quitclaim Deed to Blackacre as a gift. Charley had no knowledge of the prior sale to Able or the loan from Baker.

On June 16 Charley recorded his Quitclaim Deed.

On June 17 Able recorded his Warranty Deed.

On June 20 Charley sold Blackacre to Delta for fair market value and gave him a Warranty Deed. Delta had no knowledge of any of the prior conveyances.

On June 21 Delta recorded his Warranty Deed.

Able and Delta both claim they own Blackacre, and both claim Baker has no claim against the property.

12) Able filed a quiet title action against Delta seeking a court determination that he holds superior title to Blackacre. If Able loses and Delta wins the most likely reason is -

(A) Charley had no notice of Able's claim.
(B) Between the Warranty Deed of Able, and the Warranty Deed of Charley, the later one gets priority.
(C) Charley recorded his Quitclaim Deed before Able recorded his Warranty Deed.
(D) Able's Warranty Deed was outside the chain of title.

13) If Baker petitioned the Court for a finding that Able held title to Blackacre subject to his security interest (i.e. that he could foreclose on Blackacre if Otto failed to repay his loan), judgment should be in favor of -

(A) Baker because he loaned money to Otto without notice that Otto had already sold Blackacre to Able.
(B) Baker because he recorded his mortgage before Able recorded his Deed.
(C) Able because a mortgagee is not a bone fide purchaser for value under the common law.
(D) Able because Baker did not buy Blackacre.

14) Suppose, for the purpose of this question only, that Charley had not sold Blackacre to Delta. If Able petitioned the Court for a determination that he held superior title to Blackacre vis-à-vis Charley, judgment should be in favor of -

(A) Able because Otto gave him title to the land before Charley got title.
(B) Able because Charley is not a bone fide purchaser for value.
(C) Charley because he recorded his Deed first.
(D) Charley because he received title from Otto without knowledge that Otto previously have sold title to Able.

Questions 15-17

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.

15) 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.

16) 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.

17) 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.

Question 18

Dick was charged with murder. Dick claimed he killed in a sudden rage and should be only be found guilty of manslaughter. The judge instructed the jury that the State had to prove guilt beyond a reasonable doubt, but the homicide was presumed to be murder unless Dick showed by a preponderance of the evidence he acted in a heat of passion, and in that case the charge could be reduced to manslaughter. Dick was convicted of murder.

18) Upon appeal Dick's conviction should be:

(A) Reversed because legal presumptions are not allowed in criminal prosecutions.
(B) Reversed because the judge's instruction shifted the burden of proof to the defendant.
(C) Upheld because Dick's burden was only to produce evidence showing he acted in a heat of passion, not one of ultimate persuasion.
(D) Upheld because the judge properly instructed the jury that the State had the burden of proving guilt beyond a reasonable doubt.

Question 19

19) Which of the following complaints must be filed in the United States Supreme Court?

I. John Doe, a private individual, complains that Mary Roe, the British ambassador to the United Nations, negligently hit him with her car in New York City.

II. The State of California complains that the State of Nevada is allowing casinos in Nevada to pollute Lake Tahoe in violation of federal law.

III. Royal Caribbean Cruise Lines claims that a freighter operated by Navios Maritime Holdings negligently collided with its cruise ship 100 miles off the coast of Florida.

IV. Simon Cowell, a citizen of the United Kingdom, sues the State of New York for injuries he suffered when he was arrested by New York State police.

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

Question 20

Paula sued Donna for breach of contract. Donna testified she legally rescinded the contract by sending Paula a properly addressed, properly stamped, legal notice of rescission by first-class mail as provided for in the agreement. Paula claims she never got the notice.

20) The trial judge should:

(A) Instruct the jury to presume Paula got the notice if it was mailed.
(B) Instruct the jury it may presume Paula got the notice if it was mailed.
(C) Instruct the jury to ignore whether Paula got the notice or not.
(D) Instruct the jury to decide whether the evidence presented proves Paula did not get the notice.

Questions 21-22

The Department of Housing and Urban Development (HUD) announced it was giving New York City a $50 million federal grant to develop low-income housing.

21) The American's for Fiscal Responsibility petitioned the court for an injunction stopping HUD from giving NYC the grant on the grounds that it was unconstitutional. The strongest constitutional argument that HUD has the authority to give NYC the grant would be based on:

(A) The Taxing and Spending Clause
(B) The General Welfare Clause.
(C) The Equal Protection Clause of the 14th Amendment.
(D) The Commerce Clause.

22) During planning stages the City determined it could increase the amount of low-income housing by 20% if it built mixed-use structures with 10% retail space at the street level and 90% residential space above it. The rental income from the retail space would fund the additional low-income housing space. When HUD became aware some of the grant would be used to build retail space it obtained a federal court injunction freezing the bank accounts holding the grant funds. If the City moves the court to lift the injunction the court will most likely:

(A) Deny the motion because the concept of State sovereignty does not apply to municipalities.
(B) Grant the motion because the concept of State sovereignty bars federal agencies from telling the City how to allocate its resources.
(C) Deny the motion because the concept of State sovereignty does not bar federal agencies from telling the City how to allocate resources it has been provided by the agency.
(D) Grant the motion if City can prove its approach would create more low-income housing because that was the purpose of the grant.

Question 23

Amy applied for a job with Corp. Corp asked Amy's previous employer, Betty, about Amy's job performance. Amy subsequently sued Betty for defamation. At trial Corp offers to testify, "I got a letter from Betty that said, and I quote, "We fired Amy after we discovered she was embezzling funds from our bank account", end quote."

23) Upon objection the evidence should be:

(A) Admitted if the original letter is unavailable.
(B) Admitted whether the original letter is available or not.
(C) Excluded because it is hearsay.
(D) Admitted as evidence of mental state.

Question 24

24) Sam agreed to sell Blackacre to Bob on May 1. They wrote up a sales agreement that was complete in every respect except for one – it did not expressly state whether Sam was to deliver clear title. At closing on July 1 Sam offered a Quitclaim Deed and Bob refused to accept it. Which of the following is true?

(A) Sam is required to deliver the entire interest he holds at the time of closing, July 1.
(B) Sam is required to deliver the entire interest he held at the time of contract, May 1.
(C) Sam is required to deliver title that is free from reasonable doubt in both law and fact.
(D) The contract is unenforceable because there was no meeting of the minds.

Question 25

Bob is arrested for causing a serious accident while drunk driving. He is arraigned in Superior Court before a judge who has been a strong advocate for stricter laws against drunk drivers. The judge 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.

25) 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.

Questions 26-27

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.

26) 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.

27) 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 28-29

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.

28) 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.

29) 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.

Question 30

Amy applied for a job with Corp. Corp sent Amy's previous employer, Betty, a letter asking about Amy's job performance. Amy subsequently sued Betty for defamation because of the response she sent back to Corp. At trial Amy offers as evidence a copy of the letter Corp sent to Betty asking about her job performance.

30) Upon objection the evidence should be:

(A) Excluded unless the original letter is unavailable.
(B) Excluded whether the original letter is available or not.
(C) Admitted if Corp testifies that he personally knows the letter offered is a record created in the regular course of business operation.
(D) Admitted whether the original letter is available or not.

Question 31

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.

31) 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 32

Hal was a famous movie actor and Wanda was a struggling actress when they began living together. They entered into a written contract that said everything they acquired while they were cohabitating belonged to them equally. After living together for 20 years Hal took all of the money in his bank account and ran off with a starlet. When Wanda tried to obtain her half of their assets she found State law held property agreements between unmarried couples living together to be void as a matter of public policy.

32) If Wanda challenges the constitutionality of the State law:

(A) She will lose if the State proves the law is rationally related to a legitimate government purpose.
(B) She will lose if she cannot prove the statute is not rationally related to a legitimate government purpose.
(C) She will win if she proves the statute is not necessary to attain a compelling government purpose.
(D) She will win unless the State proves the statute is necessary to attain a compelling government purpose.

Question 33

William testified that he sent Bob a legal notice in a properly addressed, properly stamped envelope by first-class mail on January 17, and then completed and signed a dated Proof of Service form. When asked if he was certain of the date he mailed the notice William stated, "Yes. I looked at a copy of the Proof of Service form just before I came to the stand."

33) A motion to strike William's testimony as to the date should be:

(A) Sustained because the best evidence of the date is the original Proof of Service form, not a copy.
(B) Overruled because the Proof of Service form is a collateral matter to which the Best Evidence Rule does not apply.
(C) Overruled if William has personal knowledge as to the date he mailed the notice.
(D) Sustained because the Proof of Service form constitutes hearsay.

Questions 34-35

Benny learned he had a terminal illness. Intending to avoid the expenses of probate, he bought a form Deed at a stationary store. He filled it out, signed it, and gave it to his son, Junior. The Deed gave all of Benny's land to Junior, and he described it as follows:

"PARCEL 1: All of my farm that is located two miles south and three miles east of Springfield, Ohio, being 160 acres, in a square one-fourth of a mile on each side, the northeasterly corner of which lies at the westerly boundary of Lester Smith's farm; and

PARCEL 1: All of my one-acre parcel which includes a dwelling at 942 Elm Street, Cincinnati, Ohio."

The Deed contained Covenants of Seisin, Warranty and Quiet Enjoyment. Benny handed the Deed to Junior. Junior handed it back to Benny, and Benny put it in his dresser drawer.

The description of Benny's farm was factually correct.

The description of the house on Elm Street was wrong because the parcel was actually only three-fourths of an acre. In addition, it was subject to a recorded utility easement in favor of the local power company. However, the utility company had not used the easement for several years so no evidence of it would have been revealed by an inspection.

Benny did not own any other property on Elm Street.

34) For purposes of transferring title, the description of Parcel 1:

(A) Was legally insufficient because of vagueness.
(B) Was legally enforceable because the Deed contained a Covenant of Seisin.
(C) Was legally enforceable because it was factually correct and displayed no ambiguity.
(D) Would have been legally sufficient if Junior had been a bone fide purchaser for value.

35) For purposes of transferring title, the description of Parcel 2:

(A) Was legally insufficient because the property was subject to an easement.
(B) Was legally insufficient because it overstated the amount of acreage.
(C) Was legally insufficient because a Deed purporting to transfer a greater estate than the grantor holds is void *ab initio*.
(D) Was legally sufficient because the error regarding the acreage is not fatal.

Question 36

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!"

36) 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.

Questions 37-39

The State of Jefferson established a school voucher system funded by real estate property taxes. Each parent of school age children who was a home owner was given vouchers after they paid their property taxes that could be given to schools, including parochial schools and private academies, where the children were enrolled. The schools then received funding from the State in exchange for the vouchers.

37) Which of the following is the State of Jefferson's best argument for using public funds to financially support parochial schools?

(A) The voucher system saves the State money because the nuns at parochial schools get paid far less than public school teachers.
(B) The purpose and effect of the voucher system does not promote religion.
(C) Refusal to fund students attending parochial schools would deny them equal protection.
(D) The purpose and effect of the voucher system is to promote the general welfare.

38) John feels the voucher system is unconstitutional because it allows public funds to be used to support parochial schools. To challenge the law on 1st Amendment grounds he must claim:

(A) He is a member of a suspect class.
(B) He is a taxpayer.
(C) He is a renter.
(D) He is a parent.

39) Martin feels the voucher system is unconstitutional because it allows public funds to be used to support racially segregated private schools. Which of the following facts would best support his challenge of the law?

(A) One of the legislators who helped establish the voucher system admits he wanted to promote racial segregation.
(B) Enrolment in racially segregated private academies increased 30% after the voucher system was established.
(C) The proportion of minority students in public schools increased 10% after the voucher system was established.
(D) The vast majority of parents who send their children to racially segregated schools use vouchers to pay for it.

Question 40

Bill sued Owen for breach of contract after Owen refused to pay him for construction services. Bill offers to testify from memory as to the amounts he invested in labor and materials, his expected profits, and consequential damages he incurred after Owen's breach, and admits he has extensive records that he reviewed when preparing for trial.

40) Owen's objection that the best evidence would be the actual records Bill reviewed would be:

(A) Sustained because an oral summary of written records requires that the originals be available for examination.
(B) Sustained because Bill's records are the best evidence of his damages.

(C) Overruled if Bill has personal knowledge as to his damages.
(D) Overruled if Bill's records are regularly kept in the course of his business activities.

Question 41

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!"

41) 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.

Questions 42-43

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.

42) 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.

43) 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.

Questions 44-46

Homeless Harry took hostile possession of an old farm owned by Absentee. He lived there in the old farm house long enough to gain title by adverse possession. He then agreed to sell the farm to Zonker. But their sales agreement did not specify the quality of title Harry was to deliver to Zonker.

44) Suppose for the purposes of this question only, Zonker moved into the house before escrow closed and one of his Grow-Lamps caught the house on fire. The fire caused so much damage the house was not livable. At the close of escrow Harry tendered a Quitclaim Deed. Zonker refused to accept it and demanded return of his earnest money deposit. The rights of Harry and Zonker would be determined by:

(A) The Doctrine of Equitable Conversion.
(B) The Implied Covenant of Habitability.
(C) The Covenant of Quiet Enjoyment.
(D) Subrogation.

45) Suppose for the purposes of this question only, Harry died in a fire before the close of escrow. Further suppose that he had a valid Will that he had executed some years earlier. It left his personal property to Doonesbury and his real property to Boopsie. And the farm Harry was selling to Zonker was the only real property Harry owned. Which of the following is correct?

(A) The sales contract is no longer valid after the death of Harry. Boopsie will get the farm, Doonesbury will get Harry's personal property, and Zonker will get his earnest money deposit back.
(B) Zonker will have the option of voiding the land sales contract or continuing to go through with it.
(C) Doonsebury will get all of the proceeds from the sale of the farm because it is personal property. Boopsie will get nothing.
(D) Boobsie will get the proceeds from the sale of the farm because the source of the money is real property. Doonesbury only gets Harry's other personal property.

46) Suppose for the purposes of this question only Harry died in a fire before the close of escrow and that he died intestate. Which of the following is correct?

(A) The sales contract is no longer valid after the death of Harry. Zonker will get his earnest money deposit back.
(B) Zonker will have the option of voiding the land sales contract or continuing to go through with it.
(C) The proceeds from the sale of the farm will go to Harry's next of kin.
(D) The proceeds from the sale of the farm will go to Harry's intestate heirs.

Question 47

Ford sued Monet for damage to his car caused by paint that drifted onto it in the wind while Monet was spray painting Trump's house next door. Ford offers into evidence a photograph of his car to show the extent of the damage caused.

47) Upon objection from Monet the judge should:

(A) Not allow the photograph if the best evidence of the damage would be repair shop estimates.
(B) Not allow the photograph as evidence if the person who took the picture is unavailable to testify.
(C) Admit the photograph if Ford testifies it was taken soon after the damage occurred.
(D) Admit the photograph if Ford testifies from personal knowledge it accurately shows the damage to his car.

Questions 48-49

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.

48) 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.

49) 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.

Question 50

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.

50) 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 51

Ford sued Monet for damage to his car caused by paint that drifted onto it in the wind while Monet was spray painting Trump's house next door. Ford testified that he saw "Monet's Painting Service" written on the side of the painter's truck earlier that day. So he called the number for "Monet's Painting Service" listed in the Yellow Pages, and a voice answered that said, "Monet's Painting Service." Ford then says he asked, "Are you the ones who got paint all over my car today?" to which the voice on the phone said, "Yeah, we sure did. I'm real sorry about that."

51) Upon Monet's objection the judge should:

(A) Allow the statement only if the person who spoke on the phone has an opportunity to explain or deny it.
(B) Allow the statement only if Ford testifies he was familiar with Monet's voice and recognized him to be the person to whom he was speaking.
(C) Take judicial notice that the Yellow Pages is accurate.
(D) Admit the statement because the call was made to a place of business concerning a business matter.

Question 52

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.

52) 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.

Questions 53-54

Jasper Fudd, a bankruptcy court judge in Alaska, was accused of accepting bribes. He was impeached by House of Representatives, tried before the Senate without a jury, convicted and removed from his office.

53) Judge Fudd appeals that his impeachment and removal from office was unconstitutional. He will:

(A) Win because the Constitution requires the trial of all defendants accused of crimes to be held in the State where the crime is alleged to have occurred.
(B) Win because the Constitution requires impeachment trials to take place in the same house of Congress that initiated the impeachment.
(C) Win because the Constitution requires all criminal trials to be by jury.
(D) Lose.

54) Judge Fudd was subsequently indicted by a federal grand jury for the same act of bribery for which he was impeached. He was ordered to stand trial in the Alaska district court. Judge Fudd moved the court to dismiss. He will:

(A) Lose because his previous trial was not a criminal trial.
(B) Lose because the grand jury returned the indictment after he was impeached.
(C) Win because the 5th Amendment bars him from being tried for the same offense twice.
(D) Win if the indictment is based on facts that were revealed during the impeachment trial.

Question 55

Smith sued Jones for breach of a written contract. Jones denies that he ever entered into a contract with Smith and claims his signature, which appears on the contract, is a forgery. Smith calls Brown, a notary public, as a witness to offer testimony that he went to college with Jones fifteen years earlier, saw Jones' signature at that time, and that in his opinion the signature on the contract is Jones' signature.

55) Upon Jones' objection the judge should:

(A) Overrule it because a layman may identify the signature of any person whose signature he is familiar with.
(B) Overrule it because a notary public is an expert witness for the purpose of identifying signatures.
(C) Sustain it because testimony by someone who has seen Jones' signature more recently than fifteen years ago would be the best evidence.
(D) Sustain it because Brown is not an expert witness.

Question 56

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.

56) 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 57

Tom conveyed Blackacre to, "Dick for life, then to Harry, his heirs and assigns." At the time there was an existing mortgage of $200,000, with monthly mortgage payments of $2,000, comprised of $1,000 in interest, $300 in property taxes, and $700 paid against principal. The reasonable rental value of Blackacre is $1,500 a month. Dick moved into Blackacre, but he refuses to pay more than $1,500 a month of the mortgage payment. He insists Harry should pay the additional $500 expenses of a month.

57) Which of the following is most correct based on generally adopted rules of law?

(A) Dick has to pay the $700 principal and Harry has to pay $1,300 a month for the taxes and interest.
(B) Dick has to pay $1,300 a month for the taxes and interest and Harry has to pay the $700 principal.
(C) Dick only has to pay $1,300 a month for the taxes and interest. But if Harry pays the principal, and Dick refuses to pay part of it, he can force Dick to surrender his life estate.
(D) Dick can pay the entire $2,000 and if Harry refuses to pay any part of it Dick can force Harry to surrender his remainder.

Question 58

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.

58) 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.

Questions 59-60

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.

59) 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.

60) 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 61

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.

61) 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.

Question 62

62) 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.

Question 63

Tom sued Dick for negligence following a traffic accident. Dick counter-claimed. To prove the accident was Dick's fault, Tom offers a photograph into evidence showing the position of the two damaged automobiles in the middle of the intersection after the accident.

63) Tom must, at a minimum:

(A) Produce witnesses to establish the chain of custody of the photograph from the time it was taken until trial.
(B) Produce a witness to testify the photo accurately shows the position of the cars after the accident.
(C) Produce a witness to testify the photo accurately shows the position of the cars when the accident occurred.
(D) Produce a witness to testify the photo accurately shows the position of the cars at the time the photograph was taken.

Question 64

64) Cameron and Mitchell owned Blackacre in the State of Arivada as joint tenants with right of survivorship. Cameron mortgaged his interest in the estate to get a car loan from Bank of Armenia. Cameron died before he paid off the loan, and his estate descended to his legally adopted daughter, Lily. If Arivada is a title theory State, which of the following is most correct?

(A) Mitchell and Lily own equal interests in Blackacre as tenants-in-common, subject to the mortgage held by Bank of Armenia.
(B) Mitchell and Lily own equal interests in Blackacre as tenants-in-common. Lily's interest, alone, is subject to the mortgage held by Bank of Armenia.
(C) Mitchell alone owns Blackacre, free from any claim by Bank of Armenia.
(D) Mitchell alone owns Blackacre, subject to the claim of Bank of Armenia.

Question 65

Davis is charged with conspiracy to commit tax fraud following a lengthy investigation by federal agents. At trial a tape recording obtained via a legal wiretap on Davis' phone is offered as evidence, and Lucy is called as a witness to identify Davis' voice on the recording.

65) Which of the following would be the least acceptable reason to admit the tape into evidence?

(A) Lucy heard Davis speak in person but never heard him talk on the phone.
(B) Lucy heard Davis talk after the recording was made for the specific purpose of preparing for trial.
(C) Lucy talked to Davis on the phone but never heard him talk in person.
(D) Lucy heard secretly taped recordings of Davis speaking.

Questions 66-67

The Ohio Vehicle Code limits driver's licenses to individuals who have the ability to push down on brake pedals with their feet. Paula was denied a driver's license because she is a paraplegic. She sued the State of Ohio in federal district court.

66) Paula will:

(A) Win because the law denies paraplegics procedural due process by failing to give them an opportunity to demonstrate their driving abilities.
(B) Win because the law violates the Privileges and Immunities Clause of the 14th Amendment.
(C) Win if the State is unable to prove the law is necessary to attain a compelling government purpose.
(D) Win because there is no rational basis for denying driver's licenses to paraplegics.

67) The State's strongest argument in defense of the Vehicle Code is:

(A) A paraplegic is an inherently dangerous driver, and the State has a duty to ensure that unsafe drivers are not licensed.
(B) Driving is a privilege and not a right protected by due process considerations.
(C) The statute does not deny equal protection to similarly situated individuals because paraplegics are not similarly situated with respect to drivers who have control of their legs and feet. compelling government purpose.
(D) The 10th Amendment reserves general police powers, including the licensing of drivers, to the State.

Question 68

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".

68) 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 69

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.

69) 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.

Questions 70-72

Bevis decided to break into Butthead's house and steal his TV. Bevis left his apartment on his way to Butthead's.

70) 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.

71) 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.

72) 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.

Question 73

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.

73) 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 74

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.

74) 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.

Question 75

Allen sued Bob over a land dispute claiming that his father, Fred, never deeded his farm to Bob.

75) Which of the following would be the least acceptable way for Bob to prove Fred's signature deeding the land to him is genuine?

(A) A witness offers to testify he personally heard Fred say he signed the Deed in dispute.
(B) With a certified copy of the Deed in dispute from the County Recorder where it was recorded over twenty years earlier.
(C) The jury compares the signature on the Deed to a sample of Fred's handwriting admitted into evidence at trial.
(D) Bob offers the testimony of his friend Lucy who states that at Bob's request she studied several undisputed signatures by Fred and they match the signature on the Deed.

Question 76

Cain was living with his father, Adam, on his estate Greenacres, when Adam suddenly died. Cain and his brother Abel inherited Greenacres. Cain continued to live on Green acres while Abel lived far away in Sodom-by-the-Bay. For the next 20 years Cain maintained Greenacres and paid the mortgage and other expenses in lieu of rent. There was never any discussion or agreement between Cain and Abel about this arrangement.

One day Abel told Cain he wanted to sell his interest in Greenacres. Cain was angry because he felt he had earned the right to be sole owner.

The local jurisdiction follows the common law regarding co-tenancies and has a 10-year adverse possession statute.

76) If Cain petitions the Court in a quiet-title action he will:

(A) Lose because one co-tenant cannot acquire title by adverse action against another co-tenant.
(B) Lose because Cain never did anything to prevent Abel from returning to and using Greenacres.
(C) Win because Abel impliedly waived his rights to his interest by failing to demand rent from Cain for 20 years.
(D) Win because Cain occupied the land and paid all of the expenses for over 10 years.

Question 77

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.

77) 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.

Questions 78-79

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.

78) Lou's best cause of action against Bud is:

(A) Assault.
(B) Battery.
(C) Intentional infliction of emotional distress.
(D) None of the above.

79) 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 80-81

At the urging of liquor companies in Hawaii, the State of Hawaii adopted a law that taxed alcoholic liquors at a lower rate if they were "tropical liquors" made within the United States from pineapples, guavas, or mangoes. Liquor producers on the mainland attack the validity of the law.

80) The best argument for Hawaii to support the validity of this law is:

(A) The 21st Amendment gives States the power to control the sale and distribution of alcoholic beverages, including the power to tax.
(B) It does not deny equal protection to liquor producers in other States or U.S. possessions and territories such as Puerto Rico and the Marshall Islands.
(C) It does not create an unreasonable burden on interstate commerce because it does not discriminate against liquor producers in other States.
(D) The Commerce Clause

81) The best basis for attacking the validity of the law is::

(A) The Due Process Clause of the 14th Amendment.
(B) The Equal Protection Clause of the 14th Amendment.
(C) The Commerce Clause.
(D) The Privileges and Immunities Clause.

Question 82

Dr. Kervorkian, a psychiatrist, testified that based on his examination of Sheen, including a report by the Betty Ford Clinic based on a brain scan conducted outside his presence, he believes Sheen is permanently mentally ill.

82) If the report by the Betty Ford Clinic is not admitted into evidence, the testimony by Dr. Kervorkian is:

(A) Inadmissible because he has no personal knowledge the brain scan was conducted properly.
(B) Inadmissible if Sheen has access to the report.
(C) Admissible if the report is of the type reasonably relied on in psychiatric practice.
(D) Admissible if the report is qualified as a business record.

Questions 83-84

Walter and Skyler moved to Desert City and told everyone they were married. Walter was a high school chemistry teacher and Skyler took care of the household. They bought a house and held title with a right of survivorship. They had a bank account and credit cards in the name of "Mr. and Mrs. Walter White". And they filed joint tax returns as "Mr. and Mrs. White." Walter paid the mortgage from his earnings at the school. Over the next seven years they had two children. Then Walter grew tired of Skyler and started having an affair with Crystal Blue. Behind Skyler's back he had his lawyer Saul execute a Will in which he gave his entire estate to Crystal.

Walter died suddenly from a gunshot wound.

These events occurred in a State that does not recognize common law marriage, does not use community property law, and follows the common law on tenancy by the entireties.

83) For the purposes of this question only, suppose Walter and Skyler were legally married. If Crystal brings an action claiming she owns half of the White's house she will:

(A) Lose because Skyler received Walter's interest in the house at his death and it would not pass to Crystal through his probate estate.
(B) Win if Walter and Skyler held title as Tenancy by the Entireties.
(C) Lose unless Walter and Skyler held title as joint tenants and Walter executed a Deed transferring his interest to himself.
(D) Win because she and Skyler each own half of the house as tenants-in-common.

84) For purposes of this question only, suppose that Walter and Skyler were never legally married at all, but did sincerely believed they were common law spouses. Further, suppose that the Deed described title as, "Walter White and Skyler White, husband and wife, as tenants by the entireties". If Crystal brings an action claiming she owns half of the White's house she will:

(A) Lose because Skyler received Walter's interest in the house at his death and it would not pass to Crystal through his probate estate.
(B) Lose because an imperfect tenancy by the entireties automatically converts to a joint tenancy.
(C) Win because she and Skyler each own half of the house as tenants-in-common.
(D) Win if Walter deeded his interest in the house to himself.

Question 85

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.

85) 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.

Questions 86-87

Hansel and Gretel were walking through the forest when they came upon Witch's cottage made of gingerbread and candy.

86) If they began eating the outside of the cottage, they are guilty of:

(A) Burglary and larceny.
(B) Burglary.
(C) Larceny.
(D) Malicious mischief.

87) 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 88

Dr. Kervorkian, a psychiatrist, hears trial testimony by Sheen that suggests he is suffering from delusions of grandeur.

88) Dr. Kervorkian is then called as a witness and he states an opinion, based solely on his observation of Sheen in court, that he is mentally ill. Kervorkian is then asked if, assuming Sheen is mentally ill, it could have been caused by his consumption of potentially lethal amounts of cocaine. His opinion is:

(A) Inadmissible because it is a hypothetical question based solely on prior testimony.
(B) Inadmissible because it is based on facts that are not supported by admitted evidence.
(C) Admissible because experts can present opinions based on hypothetical questions.
(D) Admissible because his expertise allows him to form an opinion based on Sheen's testimony.

Question 89

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.

89) 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 90

Attorney Al, the plaintiff's attorney, asked the witness, "You saw the accident didn't you?"

90) Upon objection the question would be stricken if it were asked:

(A) Of a young child.
(B) On cross examination.
(C) Of the defendant.
(D) To qualify the witness.

Questions 91-92

Two brothers, Sam and Max, bought Blackacre, a 10 acre parcel of unimproved land. Sam proposed that they develop it into an apartment complex. Max didn't want to do that but orally agreed Sam could build apartments on the five acres to the west. Max said that he would do something else with the five acres to the east. Sam mortgaged his interest in Blackacre, borrowed a substantial amount of money and developed the westerly 5 acres into a complex of 50 apartments called "Oak Tree Place". Max rented the easterly 5 acres out to a sheep rancher under an oral agreement.

The two men kept all of their business dealings separate, each taking the rental income of each half for himself.

After 20 years Sam died. Sam's Will named Max to be the executor of his estate, which was left entirely to Sam's son Junior. The entire 10 acre parcel had an appraised value of $2.6 million, and of that Oak Tree Place accounted for $2.5 million.

Junior petitioned the Court for a finding that he was entitled to inherit the westerly 5 acres with Oak Tree Place, worth $2.5 million. Max opposed.

91) If the Court finds that Max is the sole owner of Blackacre the most likely reason is that:

(A) The Court found for Max based on detrimental reliance.
(B) Blackacre is located in a Lien Theory State.
(C) Sam and Max held title as tenants-in-common.
(D) Sam could not unilaterally sever the joint tenancy.

92) If the Court finds that Junior holds sole title to the 5 acres with Oak Tree Place the most likely reason is that:

(A) Max had a fiduciary obligation to Junior because he was the named executor in Sam's Will.
(B) Sam acted in Detrimental Reliance.
(C) The oral agreement between Sam and Max terminated their co-tenancy.
(D) The Statute of Frauds did not apply in this situation because of the Main Purpose Rule.

Questions 93-94

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.

93) 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.

94) 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.

Questions 95-96

To combat juvenile delinquency, the City Recreation Department hosted dances for teenagers between the ages of 13 and 19 each Saturday night in the Central Park Auditorium. A group of male gang members began coming to the dance in groups and starting fights. To discourage this the Recreation Department instituted a policy that no males could attend the dances without a female companion. Rob and Steve, a homosexual couple, tried to get into the dance and were turned away because they were not accompanied by female partners.

95) Angry, Rob and Steve petitioned the federal court for an injunction to prevent the Recreation Department from banning unescorted males from attending the dances. The Court should:

(A) Grant the petition unless the Recreation Department shows the rule is substantially necessary for a legitimate government purpose.
(B) Grant the petition if Rob and Steve show the ordinance is not necessary to attain a compelling public purpose.
(C) Deny the petition if the Recreation Department shows the rule is rationally related to efforts to maintain order at the dances.
(D) Deny the petition because the rule falls within the general police powers reserved to the States by the 10th Amendment.

96) If Rob becomes 20 years old before his petition is heard, the federal court will:

(A) Dismiss the matter because he is too old to attend the dances anyway.
(B) Dismiss the matter if he has been attending the dances with a female companion.
(C) Hear the case because he/she claims to have already suffered a past deprivation of constitutional rights.
(D) Have the discretion to the case anyway because other teenage males will still be impacted by the ordinance.

Question 97

Winston was accused of poisoning his wife. At trial Dr. Smith, a pathologist for the County Coroner, testified that her staff examined tissue taken from the wife's body using various scientific tests and based on their reports it was her opinion the wife died from arsenic poisoning. The tissue samples and staff reports were not introduced into evidence.

97) Upon objection Dr. Smith's opinion should be:

(A) Admitted because her opinion is the result of a legally imposed duty.
(B) Admitted if she followed accepted medical practices.
(C) Excluded because the opinion is based on evidence that has not been admitted.
(D) Excluded because the cause of death is an ultimate issue for the jury to decide.

Question 98

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.

98) Robert knew where Swifty 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.

Question 99

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.

99) 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.

Question 100

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.

100) 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.

Test #4 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	C					X			
2	C			X					
3	B			X					
4	A			X					
5	B			X					
6	C	X							
7	D		X						
8	B		X						
9	C		X						
10	A						X		
11	D							X	
12	D								X
13	A								X
14	B								X
15	A				X				
16	C				X				
17	D				X				
18	B							X	
19	B						X		
20	D							X	
21	A						X		
22	C						X		
23	A							X	
24	C								X
25	B					X			
26	D	X							
27	D	X							
28	D			X					
29	D			X					
30	D							X	
31	C					X			
32	D						X		
33	C							X	
34	A								X
35	D								X
36	A			X					
37	B						X		
38	B						X		
39	A						X		
40	C							X	
41	C	X							
42	B			X					
43	A			X					
44	A								X
45	C								X
46	D								X

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	D							X	
48	A				X				
49	B				X				
50	A	X							
51	D							X	
52	D			X					
53	D						X		
54	A						X		
55	A							X	
56	D	X							
57	C								X
58	B					X			
59	B	X							
60	B	X							
61	C			X					
62	C				X				
63	B							X	
64	B								X
65	D							X	
66	A						X		
67	C						X		
68	B					X			
69	C			X					
70	D				X				
71	A				X				
72	B				X				
73	B	X							
74	C			X					
75	D							X	
76	B								X
77	C	X							
78	D			X					
79	B			X					
80	A						X		
81	C						X		
82	C							X	
83	C								X
84	C								X
85	C	X							
86	A				X				
87	D				X				
88	B							X	
89	A	X							
90	D							X	
91	B								X
92	B								X
93	A			X					
94	B			X					
95	A						X		
96	D						X		

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
97	B							X	
98	B				X				
99	A		X						
100	D	X							
Total	100	13	4	17	12	5	16	17	16
Wrong									
Right									
% Right									

Test #4 Answers and Explanations

1) **(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.

2) **(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 reasonably for purposes of public or private necessity, the burden is on them, not Harry to prove those claims.

3) **(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.

4) **(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.

5) **(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.

6) **(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.

7) **(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.

8) **(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.

9) **(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**.]

10) **(A)** Answer (A) is correct because Article I, Section 7 [3.] requires all joint resolutions of Congress to be presented to the President for consideration and either approved by the President or re-passed by two-thirds of each house of Congress over a presidential veto. Here the Act was presented to the President, vetoed, and then re-passed by Congress, overriding the veto. But the Act itself allows "joint resolutions" which apparently do not have to be presented to the President for consideration. That would be unconstitutional. (B) is wrong because even though the President is commander-in-chief, his powers are subject to the powers vested in Congress as set forth in (C). And (C) is wrong because even though Congress is vested with these powers, its enactments must be presented to the President for consideration. (D) is wrong because even though the Act itself was presented to the President and enacted over the President's veto, the Act provides for "joint resolutions" which

apparently do not have to be presented to the President for consideration. [See **"Simple Constitutional Law Outline", presidential authority to veto bills, p. 37**.]

11) **(D)** Answer (A) is wrong because the attorney-client privilege never attached since Fred was present as Peter revealed the cause of the accident to Al. That made the discussion "non-confidential". Note that Fred had not been appointed *guardian ad litem* for Peter at that time so he was not acting in a fiduciary capacity. (B) is wrong because Al can testify as to admissions made by Peter even if he was not a witness to the accident. (C) is wrong because it is simply nonsense. Once attorney-client privilege attaches it can only be waived by the client revealing the confidential facts. (D) is correct because Peter's statements to Al were admissions of a party opponent, non-hearsay under the FRE, and not privileged. [See "**Simple Evidence Outline**", **attorney-client privilege, p. 19**.]

12) **(D)** Able and Delta are both bone fide purchasers for value, and Delta bought last. So under the statute Delta would have the superior claim if he received title without knowledge of Able's claim But Able recorded before Delta took title, and generally Delta would have constructive knowledge of Able's claim as a result. That means Delta would lose unless the Court found that a reasonably diligent title search would not have revealed Able's claim. Since the CALL asks why Delta might win, it could only be because Able's Deed was "outside the chain of title". Therefore (D) is correct. [See "**Simple Real Property Outline**", **the grantor-grantee index and title search, p. 72**.] (B) and (C) are wrong because Charley received Blackacre as a gift while Able purchased for value. That would make Able's claim generally superior. (A) is wrong because whether Charley had notice or not is irrelevant to whether Delta had notice.

13) **(A)** Answers (C) and (D) are wrong because Baker was a bone fide purchaser of a security interest in the land. He gave Otto money (the loan) in exchange for Otto's note and his security claim on Blackacre. A security interest in land is a claim against the land the same as an easement, a lease or a Deed. [See "**Simple Real Property Outline**", **different interests in land are conveyed different ways, p.2**.] (A) is correct and (B) is wrong because under the common law (applicable here) a subsequent bone fide purchaser for value without notice of prior claims gains superior title. The fact that Baker recorded before Able is irrelevant to that issue.

14) **(B)** Able would prevail over Charley because he was a bone fide purchaser for value and Charley was not (he is a donee, the recipient of a gift). This was controlled by the statute cited here, but it would be the same result under the common law. [See "**Simple Real Property Outline**", **the common law priority of claim rules, p. 70**.] Therefore (B) is right and (C) and (D) are wrong. (A) is wrong because Able would have superior title even if Charley got title first.

15) **(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, pp. 24-25**.]

16) **(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, pp. 24-25**.] 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**.]

17) **(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**.]

18) **(B)** This is the sort of gibberish you may face on a real MBE exam. So get used to it. Prosecutors decide the charges against defendants, not the defendants, not the judge, and not the jury. So any suggestion that Dick or the jury can decide he should be charged with manslaughter instead of murder is simply nonsense. (A) is wrong because legal presumptions are not improper, per se, in criminal cases. However, criminal defendants are presumed to be innocent until proven guilty. Therefore, (C) and (D) are wrong, and (B) correct because the prosecution must actually prove Dick acted with malice aforethought. That legal element cannot simply be "presumed". Otherwise the burden of proof would be shifted to Dick, denying him substantive due process. [See "**Simple Evidence Outline**", **the burden of proof, production and persuasion, p. 4**.]

19) **(B)** Article III, Section 2 [2.] gives the Supreme Court original jurisdiction over all matters that affect ambassadors, public ministers and counsels, and those in which a State is a party. Therefore, it would appear case I involving an ambassador, and cases II and IV involving States would all have to be filed with the Supreme Court. However, the 11th Amendment was passed later and it bars federal courts from having any jurisdiction over suits against States by citizens of the United States or citizens or subjects of any foreign State. Therefore, case IV could not be filed in a federal court at all. Therefore (B) is the correct answer and the other answers are wrong. [See **"Simple Constitutional Law Outline", the constitutional role of the Supreme Court, p. 27**.]

20) **(D)** Answer (C) is wrong because whether or not Paula got the notice is a material issue. It cannot simply be ignored. (A) and (B) are wrong and (D) is correct because even if sending the properly addressed and stamped notice by first class mail creates a legal presumption it was received by Paula, Paula's testimony rebuts that presumption. That leaves the matter for the jury to decide based on the evidence presented. It ends up being Paula's word against Donna's, and the jury must decide if Paula's testimony is more compelling (a preponderance of the evidence) or not. [See "**Simple Evidence Outline**", **establishing material facts by legal presumption, p. 40**.]

21) **(A)** Answer (A) is correct because the federal government has the power to raise revenues through taxes and spend the funds for the general welfare. (B) is wrong because there is no "general welfare" clause other than the power to tax and spend for the general welfare as referred to in answer (A). (C) is wrong because the purpose of the grant is not to assure equal protection for any particular class other than "low income" people. (D) is wrong because there is no logical nexus between building low-income housing and the regulation of commerce between States, Indian tribes or foreign countries. [See **"Simple Constitutional Law Outline", the tax and spend clause, p. 5**.]

22) **(C)** Answer (A) is wrong because the concept of State sovereignty applies to both States and their subdivisions such as cities and counties. (C) is correct and (B) and (D) are wrong because federal agencies have total control over how federal grant money is to be spent by States and other recipients, even if that is not the best use of the money. . [See **"Simple Constitutional Law Outline", the tax and spend clause, p. 5**.]

23) **(A)** Answers (C) and (D) are wrong because the evidence of what the letter said is not hearsay. It is not being offered to prove the truth of the assertions within the letter, that Amy was fired or that she stole, but rather to prove what Betty told Corp. (A) is correct and (B) is wrong because the evidence is being offered to prove what Betty said in the letter, so the Best Evidence Rule requires admission of the original letter if it is available. [See "**Simple Evidence Outline**", **the best evidence rule for content of writings, recordings and photographs, p. 108**.]

24) **(C)** Answer (C) is correct because an implied promise of every land sales contract is that the seller will deliver marketable title, title that is free from reasonable doubt in both law and fact. [See "**Simple Real Property Outline**", **failure to deliver marketable title generally major breach, p. 54**.] This implied promise can be expressly waived by agreement of the parties. But if there is no express agreement otherwise, this is the implied term of the contract. Therefore (A), (B), and (D) are all wrong.

25) **(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**.]

26) **(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.]

27) **(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**", **waiver of condition, p. 36** and **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.

28) **(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.

29) **(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**.]

30) **(D)** Answer (A) is wrong because the letter in question is not being offered to prove its contents. [See "**Simple Evidence Outline**", **the best evidence rule for content of writings, recordings and photographs, p. 108**.] (B) and (C) are wrong because the letter is not hearsay. It is not being offered to prove the truth of any assertions within it. (D) is correct because the letter is being offered merely to prove Betty was asked to comment on Amy's job performance. That would be a material fact, and this evidence tends to prove it is true because Corp asked her to do that. That makes the letter relevant evidence. [See "**Simple Evidence Outline**", **evidence must be relevant to proving material facts, p. 8**.]

31) **(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**.]

32) **(D)** The right of an individual to enter into a contract is not a fundamental right. But the right to marry or not marry is one of the "penumbral" fundamental rights of personal freedom "rooted in the nation's history and fundamental to the concept of an ordered liberty," unspecified in the Constitution but alluded to by the wording of the 9th Amendment. [See **"Simple Constitutional Law Outline", the right to marry is a fundamental right, p. 69**.] By denying unmarried individuals the same right to contract that married individuals have, the State statute infringes on a fundamental right. Therefore the burden is on the State to prove the law is necessary to attain a compelling State interest. As a result (D) is correct and (A), (B) and (C) are wrong. . [See **"Simple Constitutional Law Outline", government must justify denial of fundamental rights, p. 77**.]

33) **(C)** Answers (A) and (B) are wrong because the copy of the Proof of Service form is not being introduced as evidence, so the Best Evidence Rule is irrelevant. (D) is wrong and (C) is correct because if William has personal knowledge as to the date, the Proof of Service form has simply been used to refresh his memory and he is not simply repeating what it said in Court. The memory of a witness can always be refreshed before or during testimony by showing them a writing or anything else. On the other hand, if William was simply repeating what the Proof of Service form said without any personal knowledge about it that would be hearsay. [See "**Simple Evidence Outline**", **refreshing witness memory with writings and things, p. 100**.]

34) **(A)** Answer (A) is correct because the description is simply too vague to determine which land Benny was trying to give to Junior. (B), and (C) and (D) are wrong for the same reason.

35) **(D)** There is no entirely correct answers here so you have to use the process of elimination to pick the best of a bad lot. (A) is wrong because the existence of an easement is irrelevant to the issue of whether or not property is sufficiently legally described. (C) is wrong because there simply is no such rule of law. (B) is wrong and (D) is the best answer because the error in describing the area of the lot would not be fatal. However, if one of the possible choices had simply been, "Was legally insufficient," that would have been the best answer because "street addresses" such as "942 Elm Street" are not sufficient for real property purposes. The proper methods for describing land on documents of conveyance are the metes and bounds method, government survey methods, or by reference to a plat. [See "**Simple Real Property Outline**", **methods of land description, p.48**.]

36) **(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**.]

37) **(B)** Answer (A) is simply a silly argument. Economic efficiency does not justify a constitutional violation. (C) is wrong because the 14th Amendment equal protection arguments cannot justify violation of the 1st Amendment. Students in parochial schools are simply not "similarly situated" to students in public schools. (B) is correct and (D) is wrong because the only argument that can justify the State's use of public funds in parochial schools is that the purpose of the law was not to promote religion, and the effect of the law has not promoted religion either. [See **"Simple Constitutional Law Outline", government aid to religious organizations: the Lemon test, p. 48**.]

38) **(B)** Generally individuals have no legal standing to challenge how the government spends its money. The one exception is that taxpayers have standing to challenge unconstitutional government spending in violation of the Establishment Clause of the 1st Amendment. (B) is correct and (A), (C) and (D) are wrong because being a taxpayer is the one thing that would give Juan standing to challenge the voucher system violates the 1st Amendment. [See **"Simple Constitutional Law Outline", no jurisdiction over claims by parties lacking standing, p. 30**.]

39) **(A)** The equal protection guarantee of the 14th Amendment only bans deliberate discrimination. Coincidental impact is not enough. (A) is correct because it supports a claim the law was intended to deny equal protection to suspect classes. (B), (C) and (D) are all wrong because they only show the law had a disparate impact but do not prove it was intended to have that effect. [See **"Simple Constitutional Law Outline", only deliberate discrimination prohibited, p. 87**.]

40) **(C)** Answer (A) is wrong because there is no absolute requirement that writings and other things used to refresh a witnesses memory of past events must be produced at trial, but the Court has discretion to order it. (B) is wrong because the purpose of Bill's testimony is not to prove what his records say. Rather it is to state what his damages were. (D) is wrong because Bill's testimony is not hearsay. (C) is correct because if Bill has personal knowledge as to his damages, his records have simply been used to refresh his memory and he is not simply repeating what they say in Court. [See "**Simple Evidence Outline**", **refreshing witness memory with writings and things, p. 100**.]

41) **(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 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.

42) **(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.

43) **(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, pp. 33-34**.] 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, pp. 33-34** 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.

44) **(A)** Answer (A) is the correct answer because the "doctrine of equitable conversion" determines the rights of the parties to a land sales contracts when one of them dies or the property is destroyed or substantially damaged before the close of escrow. However, States are sharply divided on the application of this concept to different fact patterns. [See "**Simple Real Property Outline**", **doctrine of equitable conversion, p. 56**] (B), (C) and (D) are wrong simply because they are concepts that do not apply in this situation.

45) **(C)** Under contract law the death of a party to a contract does not make the contract void or voidable. [See "**Simple Contracts & UCC Outline**", **death of a party usually does not void a contract, p.28**.] Therefore, (A) and (B) are wrong. Further, under the "doctrine of equitable conversion", if a party to a land sales contract dies testate, and the Will was executed before the sales contract, the sales proceeds are distributed as personal property of the decedent. Therefore (C) is correct and (D) is wrong. [See "**Simple Real Property Outline**", **doctrine of equitable conversion – distribution when seller dies testate, p.56**.]

46) **(D)** Under contract law the death of a party to a contract does not make the contract void or voidable. [See "**Simple Contracts & UCC Outline**", **death of a party usually does not void a contract, p.28**.] Therefore, (A) and (B) are wrong. Further, under the "doctrine of equitable conversion", if a party to a land sales contract dies intestate the sales proceeds are distributed to the decedent's intestate heirs in most States. A few States provide for distribution to "next of kin". Therefore (D) is the better answer relative to (C). [See "**Simple Real Property Outline**", **doctrine of equitable conversion – distribution when seller dies intestate, p.56**.]

47) **(D)** Answer (A) is wrong because there is no rule that oral testimony or written documents are better evidence than photographs. (B) is wrong because there is no rule the person who takes a photograph must be present to testify. (C) is wrong because there is no rule photographs must be taken at the time of events in dispute. (D) is correct because photographs must be authenticated by a person with personal knowledge of the matters depicted. [See "**Simple Evidence Outline**", **authenticating a writing, recording, photograph, map, diagram or illustration, p. 108**.]

48) **(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**.]

49) **(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, pp. 59-60**.] (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, pp. 59-60**, and **burglary, p. 50**.]

50) **(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.

51) **(D)** Answer (A) is wrong because the statement is not a "prior inconsistent statement" of a witness. (B) is wrong because a telephone conversation can be authenticated without proof of recognition of the person speaking. (C) is wrong because the accuracy of the telephone book is simply irrelevant. (D) is correct because evidence of a telephone call can be authenticated if it is to a telephone number assigned to a business and the conversation concerns a business matter. (FRE 901 (b) (6).) [See "**Simple Evidence Outline**", **identification of a party on the telephone, p. 106**.]

52) **(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 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.

53) **(D)** Answer (A) is wrong because Article I, Section 1 [6.] gives the Senate the sole power to try all impeachments, and Article III, Section 2 [3.] specifically excludes impeachment trials from the general requirement defendants must stand trial in the States where they are accused of wrongful acts. (B) is wrong because Article I, Section 2 [5.] gives the House of Representatives the sole power to impeach action, but Article I, Section 2 [6.] gives the Senate the sole power to try any such impeachment. (C) is wrong because Article III, Section 2 [3.] specifically excludes impeachment trials from the general requirement defendants must be given a jury trial. (D) is correct because (A), (B) and (C) are wrong.

54) **(A)** Answer (B) is wrong because it is simply irrelevant whether the indictment was issued before or after the impeachment trial. (C) is wrong because Article I, Section 3 [7.] limits punishment arising out of an impeachment to removal from office, a civil penalty, but specifically provides those who are removed from office are still subject to indictment and criminal prosecution. Since the 5th Amendment only prevents a person from being "put in jeopardy twice of life and limb", and he was not put in "jeopardy of life and limb" at the impeachment trial, the 5th Amendment does not apply. (D) is wrong because it is simply irrelevant whether the indictment was based on any evidence revealed in the impeachment trial. (A) is correct because impeachment trials are civil actions, not criminal actions.

55) **(A)** Answer (B) is wrong because notary publics are not "expert witnesses" for identifying signatures. (C) is wrong, and sort of a confused reference to the "Best Evidence Rule" because the purpose of the evidence is to authenticate the signature, not prove its "contents". (D) is wrong and (A) is correct because any layman may give an opinion about the signature or handwriting of any other person as long as they are familiar with it. [See "**Simple Evidence Outline**", **authentication of handwriting by a non-expert, p. 105**.]

56) **(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.

57) **(C)** Life tenants (Dick here) have a duty to pay all mortgage interest and property taxes up to the fair market rental value of the property. Here the fair market rental value is $1,500, and the interest and property taxes are $1,300, so Dick must pay the entire $1,300. Therefore (A) is wrong and (B) is a correct answer. But if remaindermen (Harry here) make the principal payments, they can force the life tenants to pay a portion (the portion is based on the life expectancy of the life tenant). And if the life tenant fails to pay that portion the remaindermen can force the life tenant to surrender the life estate. Therefore (C) is a better answer than (B). (D) is wrong because there is no rule allowing life tenants to force remaindermen to surrender their remainders. [See "**Simple Real Property Outline**", **duties of life tenants to remaindermen, p.5**.]

58) **(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**.]

59) **(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.

60) **(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.

61) **(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.

62) **(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.

63) **(B)** Answer (A) is wrong because the "chain of custody" does not have to be proven for photographs to authenticate them. (C) and (D) are wrong and (B) is correct because FRE 901 only requires the proponent of a photograph to prove it is what it what the proponent claims it is. Since Tom only claims the photo shows the position of the autos "after the accident" he only has to produce a witness to testify it shows the position of the cars "after the accident" and does not have to prove it shows their positions "when the accident occurred" or "when the photograph was taken". [See "**Simple Evidence Outline**", **authenticating a writing, recording, photograph, map, diagram or illustration, p. 108**.]

64) **(B)** If Arivada is a title theory State, Cameron terminated the joint tenancy when he mortgaged his interest. That converted title to tenants-in-common at the time of the mortgage. And that means (C) and (D) have to be wrong because Mitchell would not receive Cameron's share at his death. (A) is wrong because nothing Cameron did could cause Mitchell's half interest in the house subject to the mortgage with Bank of Armenia. Therefore, (B) is the only possible correct answer. [See "**Simple Real Property Outline**", **states split on effect of mortgage on joint tenancy – title theory states, p.24**.]

65) **(D)** Under FRE 905(b)(5) a witness can identify a voice whether it is heard firsthand or through mechanical means as long as the circumstances connect it with the speaker. (A), (B) and (C) are all wrong because they would all serve to authenticate the voice on the tape as being Davis since Lucy personally knew each time she was listening to Davis speak. (D) is correct because there is no evidence Lucy had personal knowledge the person she listened to was actually Davis. [See "**Simple Evidence Outline**", **identification of a speaker by voice, p. 105**.]

66) **(A)** Answer (B) is wrong because the facts do not pertain to discrimination for Ohio citizens and against out-of-state citizens. (C) is wrong because driving is not a fundamental right. Therefore the burden would not be on the State to prove the law was necessary to attain a compelling government purpose. Therefore, the choice has to be made between (A) and (D). (D) is the worst of the two answers for two reasons. First, there clearly is a rational reason between driving safety and the ability to push down on the brake pedals of cars, because drivers that cannot control their cars are a public hazard. Second, and more importantly, due process demands that before a government agency can "deprive an individual of a right with finality" it must give them fair notice that the deprivation is being considered and "afford them a hearing". The issuance of driver's licenses is an administrative function, individuals usually have a right to appeal decisions to an "administrative law judge" (ALJ) and suits cannot be filed in "real" courts until "administrative remedies" have been exhausted. "Real" court judges are very busy people considering very serious matters, and they don't like their docket crowded with matters that could have been, and should have been handled by an ALJ. Therefore, the best answer is the judge will tell Ohio to give Paula a hearing to prove her driving skills. That clears the docket, makes the judge happy, and affords due process. [See **"Simple Constitutional Law Outline", procedural due process: the right to notice and a hearing, p. 78**.]

67) **(C)** This question deliberately gives you four very bad answers. This actually happens on the real MBE, so the lesson to learn here is that when the question asks what is "the best answer" it means the best of the bad lot presented. As shown below, it is often best to use the process of elimination and NOT consider the potential answers in the same order they are presented. (A) is a bad answer because it argues that a specific group of people are "inherently dangerous". This is the sort of "guilt by presumption" that violates the essence of due process. To argue a group of people is "inherently defective" implies they should be denied basic rights without a trial at all. (B) is also entirely wrong because due process considerations apply to every government act that denies an individual life, freedom or property rights, no matter how trifling it may be. (D) is wrong because the the 10th Amendment was adopted in 1791, but the 14th Amendment requiring States to afford due process was adopted in 1868. That means that any conflict between the two must be resolved in favor of the 14th Amendment. The 14th Amendment supersedes and overrules the 10th Amendment.. (C) may not be a great answer because it is a defense to an equal protection complaint and does not defeat a due process complaint, which would be the plaintiff's best argument (as explained in the answer to the prior question). But the facts do not actually state what arguments the plaintiff has raised in her suit. [See **"Simple Constitutional Law Outline", similarly situated people distinguished from reasonable classifications, p. 88**.]

68) **(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, pp. 8-9**.] (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.

69) **(C)** Answer (A) is wrong because Tom cannot recover lost future income on a strict liability theory. [See "**Simple Torts Outline**", **damages (under strict liability theory), 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.

70) **(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.

71) **(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".

72) **(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.

73) **(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.

74) **(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.

75) **(D)** Answer (A) would be hearsay, but admissible as a statement against interest (FRE 804(b)(3)). (B) would also be hearsay, but admissible as a recorded document affecting a property interest (FRE 803(14)), and would authenticate the signature as part of an "ancient document" under FRE 901 (b)(8). (C) is also allowable under (FRE 901 (b)(3)). Therefore (A), (B) and (C) are all wrong because they would be allowable methods for proving the signature. (D) is not an allowable method under FRE 901 (b)(2) (opinion of a lay witness) because Lucy acquired her familiarity with Fred's signature solely for purposes of litigation, and it not allowable under FRE 901 (b)(3) either because Lucy is not an expert witness. Therefore (D) is the correct answer. [See "**Simple Evidence Outline**", **authentication of handwriting by a non-expert, p. 105**.]

76) **(B)** Answer (A) is wrong because a co-tenant can establish a claim of adverse possession. However, each co-tenant has the right to occupy and use all of jointly owned land without the obligation to pay rent. Consequently, mere occupation of the land, or failure to occupy the land, or paying the expenses of the land, cannot alone be the basis for a finding of adverse possession. Therefore, (C) and (D) are wrong. By the process of elimination (B) is the best answer. In order for Cain to prove he gained title by adverse possession, he must prove he "ousted" Abel by affirmatively acting to prevent him from returning to and using the land. [See "**Simple Real Property Outline**", **hostile possession by co-tenant requires ouster, p.74**.]

77) **(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.

78) **(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.

79) **(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.

80) **(A)** This actually happened, and you should be aware of it. This Hawaii law was intended to discriminate against liquors made elsewhere in favor of liquors made in Hawaii. The fact that similar liquors could be made in Puerto Rico or American Samoa or somewhere else did not negate that fact. So the issue was whether the broad powers to control the sale and distribution of alcoholic beverages given to States by the 21st Amendment allowed intentional discrimination against out-of-state producers contrary to established law concerning the Commerce Clause. Therefore, the correct answer is (A). But the answer to the next question tells you what the Supreme Court decided. [See **"Simple Constitutional Law Outline", the State 21st Amendment exception, p. 10**.]

81) **(C)** Answer (A) is wrong because selling liquor is not a fundamental right, and there is a very rational relationship between this law and the very legitimate goal of the Hawaii State government to help out its own liquor industry by taxing it at a lower rate. (B) is wrong because liquor companies are not in a suspect or quasi-suspect class. And (D) is wrong because Hawaii was treating all liquor companies the same, as long as they were making liquor out of fruit (that does not grow on the mainland!). (C) is the best answer because the Supreme Court held the 21st Amendment, while broad, does not allow States to deliberately discriminate against out-of-state businesses to favor local businesses. [See **"Simple Constitutional Law Outline", the State 21st Amendment exception, p. 10**.]

82) **(C)** An expert witness may give an opinion based on all available evidence, including inadmissible evidence like hearsay, if it is of the type experts in the same field reasonably rely on in practice. (P. 98) Therefore, (C) is correct and (A), (B) and (D) are wrong. [See "**Simple Evidence Outline**", **factual basis for expert witness opinion, pp. 98-99**.]

83) **(C)** Answer (A) would be correct and (D) would be wrong if Walter and Skyler held title with right of survivorship at the time of Walter's death. [See "**Simple Real Property Outline**", **the right of survivorship, p.20**.] In that case Walter's interest would pass to Skyler, free from Walter's probate estate. The only way Crystal could win a share of the house is if Walter did something secretly to change the title form so that it no longer provided for right of survivorship. (B) is wrong because he could not legally do that if the original form of ownership was tenancy by the entireties. [See "**Simple Real Property Outline**", **tenancy by the entireties, p.21**.] But (C) is the best answer because if Walter and Skyler held title as joint tenants, Walter could have broken the joint tenancy and converted it to a tenancy-in-common by filing a new Deed transferring his own interest to himself. That would make his interest a tenancy-in-common, which he could convey to Crystal at his death. [See "**Simple Real Property Outline**", **freely alienable creating a tenancy-in-common, p.24**.]

84) **(C)** A tenancy by the entireties only exists between a couple that is validly married. [See "**Simple Real Property Outline**", **tenancy by the entireties, p.21**.] If Walter and Skyler were not legally married then they could not hold title in that form regardless of what the Deed said, and regardless of what they "sincerely believed". (B) is a misstatement of the law – something made up to mislead the gullible. A tenancy-in-common is the presumed form of concurrent estate, modernly. [See "**Simple Real Property Outline**", **tenancy-in-common, p.22**.] And tenancy-in-common does not provide for right of survivorship. Therefore (A) is wrong. (D) is not the best answer because Walter would not have to deed his interest to himself at all. It would already be a tenancy-in-common interest.

Therefore, (C) is the best answer because Walter's Will would convey his interest to Crystal and she would own half the house.

85) **(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.

86) **(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 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. 35-36**.] And if there was no larceny, there would be no burglary, and then none of the answers would work at all.

87) **(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.]

88) **(B)** Answer (B) is correct and (A), (C) and (D) are wrong because even though an expert witness can give an opinion based on a hypothetical question, it cannot be based on facts that are unsupported by any admitted evidence. [See "**Simple Evidence Outline**", **expert witness opinion based on hypothetical evidence, p. 99**.]

89) **(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.

90) **(D)** This is a leading question. (A) is wrong because leading questions are often allowed with young children. (B) is wrong because leading questions are allowed on cross examination. (C) is wrong because leading questions are also allowed with hostile witnesses, and the opposing party is always considered "hostile". (D) is the best answer because, even though leading questions are often allowed as to preliminary matters such as the witness' name, the question asked here does not concern a "preliminary matter". [See "**Simple Evidence Outline**", **leading the witness, p. 93**.]

91) **(B)** Answer (C) is wrong because the only way Max could receive total ownership under these circumstances is by right of survivorship, and tenants-in-common do not have right of survivorship. Sam and Max must have held title as joint tenants (because tenancy by the entireties is out of the question under these facts). (D) is wrong because parties to a joint tenancy can always sever it by filing a new Deed. That would convert it to a tenancy-in-common. [See "**Simple Real Property Outline**", **freely alienable creating a tenancy-in-common, p.24**.] (A) is wrong because Sam was the one who relied on Max's statements, not vice versa. (B) is the correct choice because if Sam mortgaged his interest in Blackacre in a Title Theory State it would have permanently converted their joint tenancy into a tenancy-in-common, and then Junior would have inherited Sam's interest.. [See "**Simple Real Property Outline**", **states split on effect of mortgage on joint tenancy – title theory states, p.24**.] But if Max received Sam's interest Blackacre had to have been in a Lien Theory State.

92) **(B)** Answer (A) is wrong because it is a misstatement of law. The fact that Max was named to be executor in Sam's Will has no legal effect on the rights of the parties under real property law. There is no evidence here that Max ever actually acted as the executor of Sam's estate anyway. (C) and (D) are also misstatements of law. Under the Statute of Frauds oral agreements for the conveyance of interests in land are generally unenforceable at law. [See "**Simple Real Property Outline**", **application of the statute of frauds, p.49**.] And there is no such thing as a "Main Purpose Rule" with respect to the SOF. So the Statute of Frauds would apply here, and no oral agreement between Sam and Max could legally change that. But an oral agreement to convey an interest in land may be enforceable in equity under the Part Performance Doctrine based on a finding of Detrimental Reliance (and/or Promissory Estoppel). [See "**Simple Real Property Outline**", **part performance doctrine may allow enforcement in equity, p.50**.] Therefore (B) is the only possible answer.

93) **(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.

94) **(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**.]

95) **(A)** Government acts to deprive rights based on sexual based classifications are "quasi-suspect" and government has the burden to prove they are substantially related to achievement of important government objectives. You may also find this described as "persuasive justification". Therefore (A) is correct. (B) is wrong because it shifts the burden of proof to Rob and Steve. (C) is wrong because it states the wrong standard of proof. (D) is wrong because the equal protection clause of the 14th Amendment is a restriction on all State powers established by the Articles of the Constitution and all prior Amendments. [See **"Simple Constitutional Law Outline", use of quasi-suspect group requires persuasive justification, p. 93**.]

96) **(D)** A real, live controversy must exist at all stages of review for a federal court to have jurisdiction, not merely when petitions are filed or else federal courts will usually dismiss the complaints as being moot. Therefore (C) is wrong. But this is not true when the same issue may reoccur and the passage of time inherent in the judicial process would cause it to escape judicial review. The case of *Roe v. Wade* is a perfect example. Petitioner Roe was denied an abortion and had already given birth to the baby she wanted to abort before the Supreme Court heard the matter. The court did not dismiss the matter for mootness because the same abortion ban continued to impact other women even though the passage of time caused it to no longer impact Roe, herself. Therefore, (A) is wrong. (B) is wrong because it does not negate the fact that he is continuing to be impacted by the ban. (D) is correct because the court continues to have discretion to hear a petition challenging a law that would continue to impact other parties even if the passage of time has caused the party initiating the action to no longer be subject to it. [See **"Simple Constitutional Law Outline", limited powers to hear moot claims, p. 32**.]

97) **(B)** Answer (B) is correct and (A), (C) and (D) are wrong because expert opinions are admissible if they are based on accepted practices and the type of evidence reasonably relied on by other experts in the same field even if the evidence itself is inadmissible. [See "**Simple Evidence Outline**", **factual basis for expert witness opinion, pp. 98-99**.]

98) **(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**.]

99) **(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. 65**.] 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 goods after they were delivered to FedEx, and it is liable for the contract price, $2,500. So the right answer is (A), and the other answers are wrong.

100) **(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.

Test #5

Test #5 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review.

The Answers and Explanations for these questions are in the following section.

Questions 1-5

While the U.S. Supreme Court was inside hearing oral arguments, Sarah led a crowd of angry Tea Party protesters up the steps of the Supreme Court building and shouted through a bull horn, "We're mad as hell and aren't going to take it any more! The leftist judges in this Court are God damned traitors! We should hang them from the nearest tree so they can burn in Hell!" After saying this, the crowd roared approval. Then Sarah circulated through the crowd shaking hands, having her picture taken with her supporters, and soliciting campaign contributions.

1) A federal law provides criminal penalties for "all speechmaking, picketing, protesting, demonstrating, or any other gathering of any type on the steps of the Supreme Court building while the Supreme Court is in session." If Sarah is charged with violating this law, which of the following is most correct?

   (A) The law is constitutional as written and as applied to Sarah.
   (B) The law is constitutional as written, but it would be unconstitutional to use it to prosecute Sarah under these circumstances.
   (C) The law is unconstitutional because it denies freedom of expression while the Court is in session.
   (D) The law is unconstitutional because the steps of the Supreme Court are an historical public forum for political discussion.

2) If Sarah is prosecuted for violating the law that makes it a crime to make speeches on the steps of the Supreme Court building:

   (A) Sarah has the burden to prove the law has no reasonable purpose.
   (B) Sarah has the burden to show there was no compelling need for the law and less burdensome alternatives could accomplish the same goal.
   (C) The government has the burden to prove a rational purpose for the law.
   (D) The government has the burden to show the law is necessary to attain a compelling purpose.

3) Who can bring a suit in federal court attacking this law against speechmaking on the Supreme Court steps?

   (A) Any taxpayer.
   (B) A candidate for President who planned to give a campaign speech on the Supreme Court steps while the Court was in session.
   (C) A Senator who is a member of the Tea Party and angry about recent Court decisions.
   (D) The Americans for Freedom, a non-profit organization established for the express purpose of attacking unconstitutional laws.

4) Another federal law provides criminal penalties for, "any person who threatens a federal official with violence for acts done in the course of official duty." Which of the following is most correct?

(A) The law is unconstitutional as written.
(B) The law is constitutional as written, but Sarah could not be prosecuted under it.
(C) The law is constitutional as written, and Sarah could be prosecuted under it.
(D) The law is constitutional as written, but Sarah could only be prosecuted under it if Supreme Court justices heard what she said.

5) Suppose Sarah was arrested later and prosecuted for violating an 1825 federal statute that made it a federal crime to "proclaim blasphemies or make sacrilegious statements in a federal courthouse". Further suppose she is only the second person to ever be prosecuted under this statute. Which of the following would be her least effective defense argument?

(A) Prosecuting her violates the 5th Amendment because the statute is fatally vague.
(B) Prosecuting her violates the 1st Amendment because the statute supports the establishment of religion.
(C) Prosecuting her under the statute violates the 5th Amendment because it denies her equal protection.
(D) Prosecuting her violates the 1st Amendment because the statute infringes freedom of expression.

Question 6

Plaintiff Paul testified at trial about the pain and suffering he continued to endure as a result of the auto accident caused by defendant Don. Dr. Welby, an expert witness hired by the defendant's insurance company then took the stand and was asked if Paul's injuries were permanent.

6) If Dr. Welby has no other information except Paul's testimony, would he be allowed to testify whether Paul's injuries are permanent?

(A) No because that is an ultimate issue to be decided by the jury.
(B) No, because he has no personal knowledge of Paul's condition.
(C) Yes, because an expert witness can base an opinion on nothing more than the facts made available at trial.
(D) Yes, if he first reveals the basis for the opinion.

Question 7

Angus executed a Deed that said, "I hereby give all of my interest in my hereditary estate, Highclaire, to my daughter Bonnie for life, and then to my grandson, McDuff, his heirs and assigns." The monthly mortgage payments on Highclaire were $1,000 a month. Of that amount $500 was interest and $200 was property taxes.

7) Which of the following best describes the obligations of Bonnie and McDuff?

(A) Bonnie has a duty to pay the mortgage.
(B) McDuff has a duty to pay the mortgage.
(C) Bonnie has a duty to pay the interest and taxes.
(D) Bonnie has a duty to pay a portion of the principal based on the relative value of her life estate and McDuff's remainder.

Question 8

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

8) 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 9

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's warehouse in Des Moines via FedEx as agreed. 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.

9) 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 10-11

Mean Mike takes Timmy's dog Lassie and refuses to give her back. Lassie is a mangy old dog but Timmy loves her.

10) What is Timmy's best cause of action?

(A) Conversion.
(B) Trespass to chattels.
(C) Intentional infliction of emotional distress.
(D) Negligence.

11) 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.

Questions 12-13

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.

12) 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".

13) 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.

Question 14

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.

14) 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.

Question 15

15) Larry leased a commercial building to Starbucks, Inc. for 10 years. The lease said that Starbucks, Inc. could not sublease the space.

Can Starbucks, Inc. assign its lease to Burger King, Inc.?

(A) No because tenants may not assign leases without the landlord's permission as a matter of general law.
(B) No because the prohibition against subletting impliedly prohibits assignment.
(C) Yes because the limitation in the lease is a restraint against alienation.
(D) Yes because restraints against alienation are strictly interpreted.

Question 16

Sheen sued Warner Brothers claiming he developed a permanent mental illness called "Lohan's Syndrome" because of the stress it subjected him to by demanding that he adhere to a busy production schedule. But Warner Brothers alleged it resulted from Sheen's heavy drug use.

At trial Dr. Phil testified that Sheen's disability was caused by the pressure of meeting an unreasonably demanding production schedule. On cross-examination Dr. Phil was shown a passage from "*Diseases of the Celebrity Class*" by Dr. Ruth, which suggested Sheen's symptoms could be the result of "Osbourne's Syndrome", a result of heavy drug use. Dr. Phil admitted Dr. Ruth was a recognized authority in this area, but objected that Osbourne's Syndrome was inapplicable to Sheen's symptoms.

Dr. House, an expert witness for Warner Brothers, then testified there was no substantive difference between the symptoms of Lohan's Syndrome and Osbourne's Syndrome.

Warner Brothers then asked Judge Judy to admit the passage in Dr. Ruth's book into evidence.

16) Judge Judy should rule the textbook passage should be:

(A) Admitted into evidence, but only to impeach the testimony of Dr. Phil.
(B) Read to the jury if the judge finds the passage relative.
(C) Not admitted into evidence because it is inadmissible hearsay.
(D) Admitted into evidence as an exhibit for the jury to consider.

Question 17

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.

17) 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.

Question 18

Owen leased a 2-bedroom apartment to Moe and Larry for one year at $1,000 a month. Owen used a "form lease" he had purchased at a stationary store. It said, "Any assignment, subletting or transfer of any rights under this lease without the express written consent of the landlord is strictly prohibited, null and void."

Larry invited Curley to move into the apartment and share his bedroom if he would pay $500 of the monthly rent. Larry told Owen about Curley moving into the apartment, and Owen did not voice any objection to the arrangement.

But Moe did not want Curley in the apartment and filed an action against Owen, Larry and Curley seeking a finding that Larry was prohibited from subletting to Curley. Larry's argument was that he was a tenant-in-common under a "tenancy for years" lease and had a right to assign any part of his one-half interest in the apartment.

18) In this dispute Moe will:

(A) Lose because enforcement of the lease provision would be a restraint on alienation.
(B) Lose because Owen is willing to waive the lease restriction that prohibits alienation.
(C) Win because the lease expressly prohibits assignment.
(D) Win because co-tenants have no legal right to assign all or part of their leasehold without the consent of the other co-tenants.

Question 19

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".

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. Pablo especially enjoyed the lobster bisque and tiramisu. But 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.

19) 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.

Question 20

Oscar leased a 600 acre farm to Vinnie for 10 years at a rate of $30,000 per year. The farm had 200 acres planted with Zinfandel grapes, a house and a barn Vinnie used to ferment and bottle wine.

After 3 years the County seized 300 acres of the farm by eminent domain in a condemnation action so it could resell the land to a developer who was going to build an "auto mall". The land seized by the County was comprised of 200 acres of grapes, and 100 acres of undeveloped land. The house, barn and 300 acres of other undeveloped land were not affected.

The County condemnation action provided a compensation award allocated between Oscar and Vinnie according to their respective interests.

The 300 acres Vinnie was left with were not usable for agriculture, so he abandoned the property. Oscar sued him for breach of contract seeking an award of damages for lost rents calculated at $30,000 per year for the remaining term of the lease.

The lease did not have provisions for the possibility of condemnation, and the jurisdiction follows the common law view.

20) Oscar will:

(A) Win an award calculated at $30,000 per year because the condemnation did not relieve Vinnie from his obligation to pay rent in that amount.
(B) Win because Vinnie had an affirmative obligation to avoid waste and is unable to return the premises to Oscar in the condition it was in when he leased it.
(C) Lose because his inability to provide Vinnie with possession of the whole property for the entire term of the lease is a violation of the Implied Covenant of Quiet Enjoyment.
(D) Lose because Vinnie has suffered a frustration of purpose which excuses him from further performance.

Question 21

Tom sued Dick for breach of contract claiming that he had supplied him with substandard concrete. Dick claimed that the concrete supplied met contract specifications but was damaged by unusually variable temperatures, failure of an express material condition of the contract.

During the contract period Yoshida, a commercial nursery operator, kept detailed records of high and low temperatures in the same area to control his greenhouses.

Tom obtained Yoshida's records and had a statistician, Stats, analyze them to prove temperatures had not been unusually variable.

21) Yoshida was called by Tom to testify about how he compiled his records, which were available for inspection. His testimony should be:

(A) Admitted to lay a foundation for the testimony of Stats.
(B) Admitted to support the credibility of Tom and Stats as witnesses.
(C) Excluded because it calls for hearsay.
(D) Excluded because the way he compiled his records is irrelevant.

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

Odem leased a house with a detached garage to Tanner. Tanner liked to do handicrafts as a hobby. Without Odem's knowledge or permission, Tanner installed a work bench in the garage with electric lights and power tools that he wired directly into the garage's electrical system. Without Tanner's knowledge Odem mortgaged the house to Bank of Arabia. Odem failed to make his payments to Bank of Arabia, and it foreclosed on the house. Tanner's lease came to an end and he began to remove his workbench with its electrical equipment. Bank of Arabia filed for an injunction to prevent Tanner from removing the workbench and saw.

23) If the Court refuses the injunction the most likely reason is that:

(A) The Statute of Limitations precludes the Bank from claiming an interest in the equipment.
(B) Residential tenants have a right and duty to remove all of their personal property at the termination of a lease, absent some agreement to the contrary.
(C) Tanner installed the equipment solely for his personal use.
(D) Tanner was not given notice of the mortgage.

24) If the Court grants the injunction the most likely reason is that:

(A) Tanner installed the equipment without Odem's permission.
(B) The condition of the garage could not be restored to its original condition after the equipment was removed.
(C) Tanner only used the equipment for a hobby, not for a trade.
(D) The equipment was wired into the garage's electrical system rather plugged into a wall outlet.

25) For this question only, suppose the equipment in the garage was paid for by Tanner but installed in the garage for him by Odem. If the other facts were the same, Bank of Arabia's chances of success would be:

(A) Improved.
(B) Reduced.
(C) Unaffected.
(D) Dependant on whether the mortgage expressly included personal property on the premises.

Question 26

Vinnie called Mona Lisa Devito as an expert witness in auto mechanics and asked her several questions about her background, experience, education and knowledge about automobile carburetors, transmissions, ignition, timing, and tires. The judge allowed Ms. Devito to testify over prosecutor Trotter's objection she was not qualified. Ms. Devito testified that in her opinion a 1964 Buick Skylark did not produce the tire marks shown in the prosecution's Exhibit A. The next day on cross-examination prosecutor Trotter asked Ms. Devito, "Isn't it true you failed to graduate from an automotive mechanic school?" Vinnie objected.

26) The judge should:

(A) Grant the objection because Ms. Devito's character is not at issue.
(B) Grant the objection because the judge already decided she was a qualified expert.
(C) Overrule the objection because specific acts bearing on truthfulness may be asked on cross-examination.
(D) Overrule the objection because it is relevant to the weight the jury should give her testimony.

Question 27

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.

27) 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 28

Dave called Willie to testify he thought Vic was a violent and dangerous man who attacked people without warning because that was what everyone said.

28) The trial judge should rule Willie's testimony:

(A) Inadmissible character evidence to prove Vic attacked Dave.
(B) Inadmissible on the issue of Dave's guilt because Vic is not the one on trial.
(C) Admissible only if Willie has personal knowledge Vic was violent.
(D) Admissible if Dave claims he is not guilty because of self-defense.

Questions 29-30

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.

29) 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.

30) 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.

Question 31

Trinity Development Corp. built a planned community around a golf course outside the City of Davis. The recorded subdivision map and many of the parcel Deeds included a declaration of Codes, Covenants and Restrictions which stated, among other things, "No home shall be sold to or purchased by anyone other than Christians." The restriction was not stated in the Deed for the parcel owned by Pat. Pat entered into a contract to sell his home to Myron, a Jew. Other homeowners filed a petition in Superior Court seeking an injunction to prevent Pat from selling to Myron.

31) If Pat opposes the petition:

(A) He will probably win because the law frowns on restraints on alienation.
(B) He will probably win if he and Myron were both unaware of the Deed restriction at the time they entered into the contract.
(C) He will probably win because of the equal protection clause of the 14th Amendment.
(D) He will probably win because the restriction was not stated in his Deed when he bought his property.

Question 32

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."

32) 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 33

Mike was accused of battery for attacking Ike in a bar, but Mike claims he acted in self defense. At trial Mike offers the testimony of Omar who offers to testify that he has known Mike for years and that he is a meek and mild person.

33) Upon objection, the offered testimony is:

(A) Inadmissible unless Mike is being prosecuted for battery.
(B) Admissible because it suggests Mike did not commit battery.
(C) Inadmissible unless Omar's statement is confined to opinion and reputation.
(D) Admissible if Ike is suing Mike for battery.

Questions 34-35

Congress enacted the Omnibus Education Funding Act which required all States to file an annual Public Education Budget Plan ("State Plan") which had to be reviewed and approved by the U.S. Department of Education (USDE). The Act provided, "Once a State Plan has been reviewed and approved by USDE it can not be limited or modified by federal courts without the prior approval of USDE." The State of Texas submitted a State Plan that provided more funding for men's sports programs than it did for women's sports programs. After public hearings the plan was approved by USDE. Then the National Organization for Women (NOW) petitioned federal district court for an injunction requiring the State Plan to be modified to give men and women's sports programs equal funding. Texas and the USDE opposed the petition on the grounds that once the State Plan was approved federal law prevented the courts from changing it.

34) Which of the following is the strongest argument the Act is unconstitutional?

(A) The Act impairs the sovereign power of States to determine how public education will be funded.
(B) Congress does not have the power to limit the jurisdiction of federal courts.
(C) The Act violates the Privileges and Immunities Clause of the 14th Amendment.
(D) Congress does not have the power to determine the application of the 14th Amendment.

35) Which of the following is the strongest argument the Act is constitutional?

(A) The 14th Amendment gives Congress the power to define governmental conduct that violates the Equal Protection Clause.
(B) Article III gives Congress the power to restrict the jurisdiction of the federal courts.
(C) Sports programs have a sufficient effect on interstate commerce to allow Congress to regulate them under the Commerce Clause.
(D) When Congress provides States with federal funding for education, Congress has the power to determine the conditions under which those funds are to be spent.

Question 36

Mike was accused of battery for attacking Ike in a bar, but Mike claims he acted in self defense. At trial Mike produced the testimony of Omar who said he had known Mike for years and that he had a reputation for being non-violent. The prosecutor then asks Omar, "Did you know Mike was torturing cats last year?"

36) Upon objection, the judge should:

(A) Allow the evidence because it tends to prove Mike attacked Ike.
(B) Allow the evidence because Mike "opened the door" to it when he presented Omar's testimony.
(C) Both (A) and (B).
(D) Neither (A) nor (B).

Question 37

Penny was an aspiring actress, working as a waitress, who rented an apartment for $600 a month, payable in advance. She was unhappy that the building's elevator never worked. So she urged other tenants, Sheldon and Leonard, to join her in a "tenant's association". Subsequently, as president of the tenant's association, she sent the building supervisor, Howard, a demand that the elevator be repaired.

The next month Howard told Penny her rent was being raised to $1,000 a month. Penny was angry and protested that the other tenants like Sheldon and Leonard only paid $600. In response Howard served her with a 60-day eviction notice.

Penny refused to vacate and at an eviction hearing she presented the above facts.

37) If the judge refuses the petition to evict Penny, absent other facts, it is most likely:

(A) The given facts implied a term of one year absent any contrary agreement.
(B) Howard did not give her adequate notice to terminate an implied periodic tenancy.
(C) The judge concluded this was a retaliatory eviction.
(D) There was an implied agreement Penny would be charged rent commensurate with the rents charged other tenants.

Question 38

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.

38) 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.

Questions 39-41

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.

39) 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.

40) 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.

41) 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.

Question 42

Tom owned Blackacre as his separate property. He was married to Ann and had two children, Moe and Larry. He executed a Will that said, "I give Blackacre to my poor widowed wife for life and then to my children that live to the age of 25, but if any of my children die before reaching the age of 25, God forbid, their issue, if any, shall receive the share they would have received if they had lived to the age of 25."

After executing this Will, Tom and Ann divorced. He later married Beth and had another child, Curley. Then Tom died, survived by Beth, Moe, Larry and Curley. Moe was 15 years old, Larry was 13 years old, and Curley was 6 years old.

42) In a jurisdiction which recognizes the common-law Rule Against Perpetuities which of these is the best answer?

(A) The remainders to Moe, Larry and Curley, and / or in the alternative to their issue are all valid.
(B) The remainders to Moe and Larry and / or in the alternative to their issue are valid, but the gift to Curley and / or his issue is invalid.
(C) The remainders to Moe, Larry and Curley and their issue are all invalid because Tom could remarry a woman who was not born until after he executed his Will.
(D) The remainders to Moe, Larry and Curley are valid, but the gifts to their issue are invalid because Tom could marry a woman who was not born until after he executed his Will.

Question 43

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".

43) 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 44

Leroy was accused of killing Hamad. Omar testified for the prosecution that he saw Leroy kill Hamad. Leroy's attorney believed Omar was far away in Chicago on the day in question selling stolen property so he asked Omar, "Isn't it true you were selling stolen goods in Chicago on the day in question?" Omar refused to answer on the grounds it could tend to incriminate him. The judge ordered Omar's entire testimony to be

stricken and instructed the jury to completely disregard it.

44) Which of the following best supports the judge's order?

(A) The trial record, prior to the question in dispute, does not establish that his testimony could have incriminated him.
(B) The right of a criminal defendant to defend himself outweighs Omar's right to avoid self-incrimination.
(C) Omar's invocation of the 5th Amendment denied Leroy's 6th Amendment right to confront an adverse witness.
(D) Omar has not been charged with a crime so he cannot claim a privilege against self-incrimination.

Question 45

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.

45) 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.

Questions 46-47

Arnold Shortsgrabber, a State legislator, was accused of sexually assaulting Vickie, a member of his staff, in his office in the State Capitol late one night while the House Finance Committee was struggling to produce a budget bill. The State Attorney General, Arnold's crony, declined to prosecute on the grounds that State law provided Arnold with legislative immunity. The U.S. Attorney filed charges against Arnold in federal court for violating Vickie's civil rights.

46) Which of the following is the strongest constitutional argument in Arnold's defense?

(A) State sovereignty bars the federal government from interfering with State legislators in performance of their duties.
(B) Under the Speech and Debate Clause of Article II, Section 6, Arnold is immune from arrest for his actions.
(C) Federal courts must abide by the provisions of State law with regard to legislative immunity.
(D) The application of federal civil rights statutes to State legislators violates due process.

47) Which of the following is the strongest argument against Arnold's constitutional defense?

(A) Congress has plenary power under the General Welfare Clause.
(B) Congress has the power over State legislators because Article IV, Section 4 guarantees a republican form of government.
(C) The 14th Amendment gives Congress the power to apply federal civil rights law to State legislators.
(D) The Necessary and Proper Clause gives Congress the power to apply federal civil rights law to State legislators.

Question 48

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.

48) 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.

Questions 49-51

Yang Tsu, a widower, owned an apartment building in fee simple. Yang had only one child, a son named Yang Tong who has only one child, a daughter named Yang Mae. Yang Mae was an SSI recipient, so Yang Tsu was concerned about her inheriting assets that would deny her government benefits. So he told his attorney to draft a Will that conveyed the apartments, "to Yang Tong for life, and then to the children of Yang Mae in fee simple if they reach the age of 18."

49) If Yang Mae has no children when Yang Tsu dies:

(A) Yang Mae's children will receive nothing because the conveyance violates the Rule Against Perpetuities.
(B) Yang Mae's children have a springing use.
(C) Yang Mae's children have a vested remainder subject to divestment.
(D) Yang Mae's children have contingent remainders.

50) If Yang Mae has young children when Yang Tsu dies and she is young enough to have more in the future:

(A) Yang Mae's children will receive nothing because she could have more children over 21 years later.
(B) Yang Mae's children have vested remainders subject to conditions subsequent.
(C) Yang Mae's children have contingent remainders.
(D) Yang Mae's children have a vested remainder subject to open.

51) Suppose Yang Mae has one child, Tom, when Yang Tsu died. And suppose Tom is 18 and Dick is 15 when Yang Tong dies. But then, a year later, she has a third child, Harry.

(A) Tom and Dick have vested remainders subject to open.
(B) Harry gets nothing.
(C) Dick and Harry have contingent remainders.
(D) Tom, Dick and Harry all have vested remainders subject to open.

Questions 52-53

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.

52) 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.

53) 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.

Question 54

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.

54) 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 55

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.

55) 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 56

Boopsie and Brutus were in the Dew Drop Inn when Brutus and Vic got into a confrontation. Immediately before trial Boopsie and Brutus got married.

56) If Boopsie is called as a witness at trial and asked what she knows:

(A) The judge can order her to testify about everything she saw and everything Brutus told her before she married him.
(B) The judge cannot order her to testify about anything if Brutus is charged with a crime.
(C) She can refuse to testify under the Marital Privilege.
(D) Brutus can refuse to let her testify under the Spousal Privilege.

Questions 57-58

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."

57) 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.

58) 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.

Questions 59-61

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.

59) 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.

60) 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.

61) Linda's best cause of action against Pervis is:

(A) Trespass.
(B) Private nuisance.
(C) Intrusion.
(D) Malicious interference.

Question 62

Tom sues Dick over an automobile accident and calls Harry as a witness. Harry refuses to testify citing the 5th Amendment.

62) The judge should order Harry to testify unless:

(A) The judge finds Harry possibly would incriminate himself.
(B) The judge finds Harry will clearly incriminate himself.
(C) The judge finds Harry will most probably himself.
(D) Harry is not granted immunity.

Question 63

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.

63) 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 64

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 with killing the girl in California.

64) 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 65

The town square in Mayberry has a bandstand where politicians, evangelists and other groups often make speeches, deliver sermons, hold revivals, etc. On election day Gomer and Barney tried to take the stand at the same time. Gomer wanted voters to elect Andy for Sheriff, and Barney wanted them to get rid of Andy. They started fighting over which would get to speak first. That caused the Town Council to enact an ordinance the next week that said, "Anyone who wants to speak on the bandstand in the park has to be scheduled by the Mayor and issued a permit. The Mayor will decide who has permission to use the park and when." The local Ku Klux Klan often held rallies in the park, burning crosses and ranting about the superiority of White people. They believed the mayor, Aunt Bea, would deny them a permit to hold their next rally in the park because she didn't share their hatred of racial minorities, homosexuals, Jews, and Democrats. In fact, they considered her to be a closet communist. So they held a rally in the park without a permit. Andy issued them a citation for violating the ordinance. They tried to protest the citation at the next Town Council meeting but they were not allowed to speak.

65) If the Klan challenges the citation in federal court they will probably:

(A) Fail because the ordinance is rationally related to a legitimate government purpose.
(B) Fail because the ordinance did not attempt to get a permit from Aunt Bea.
(C) Succeed because the ordinance is void on its face.
(D) Succeed because they were denied procedural due process.

Question 66

Tom sues Dick over an automobile accident. Harry was a passenger in Dick's car, and after the accident he sought treatment from Dr. Welby for the injuries he had suffered. Later Harry went to Africa as a missionary. Unable to force Harry to appear, Tom calls Dr. Welby as a witness and asks him what Harry told him about how he was injured.

66) Which of the following would most likely prevent Tom from questioning Dr. Welby about what Harry said?

(A) It would be hearsay.
(B) Harry's attorney appears at trial to assert the physician-patient privilege.
(C) Dr. Welby objects asserting the physician-patient privilege.
(D) Dick objects asserting the physician-patient privilege.

Question 67

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.

67) 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.

Question 68

The State of California required autos sold within the State to have special smog equipment and to be inspected every four years to see if they meet emission standards. But cars bought outside the State did not have the same smog equipment. The State had a budget shortage and the Legislature did not want to pass a tax increase. So instead the legislature passed a statute that required anyone who registered a car in California that was previously registered outside the State, regardless of how old it was or how it was equipped, had to pay a "smog impact fee" of $600, and the revenues raised went into the State's general fund.

Frances moved from Nevada to be closer to her family in California. When she went to DMV to register her car she was told she had to pay $600 extra because the car had been previously registered in another State.

68) If this law is challenged a federal court should find:

(A) The law is unconstitutional.
(B) The law is unconstitutional because it violates the Privileges and Immunities Clause of Article IV.
(C) The law is constitutional because it is a proper exercise of the State's rights under the Import-Export Clause.
(D) The law is constitutional under the Import-Export Clause if it is consented to by Congress.

Questions 69-70

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.

69) 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.

70) 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 71-72

After a natural gas pipeline owned by Pacific Gas and Electric exploded, a bill was introduced in Congress to establish a 5- member pipeline Utility Safety Commission. The Commission would have the power to investigate public utility safety issues, establish safety regulations, prosecute utilities that violated the safety regulations, and make recommendations to Congress for new laws. The bill provided that two Commission members would be appointed by the Speaker of the House, two by the President pro tem of the Senate, and the fifth member by the President.

71) If the bill is enacted as planned which of the following is most correct?

(A) The Commission could not enforce its own regulations.
(B) It would deny due process if no Commission members were from the public utility industry.
(C) Congress cannot delegate legislative power to the Commission without clear guidelines.
(D) Regulations promulgated by the Commission must be approved by Congress.

72) Which of the following Commission activities are constitutional?

I. Investigating public utility safety issues.
II. Establishing pipeline safety regulations.
III. Prosecuting utilities that violate the regulations.
IV. Making recommendations to Congress for new laws to control pipeline safety.

(A) All of the above.
(B) II and III.
(C) I and IV.
(D) I, II and IV.

Question 73

Bob was driving down a two-lane highway when he was hit head-on by a Ramco truck driven by Don, Ramco's employee. Ramco's attorney, Al, asked George, the regional manager, to interview Don in confidence and send him a report of Don's account of how the accident happened. In discovery Bob's attorney demands a copy of the report that George gave Al.

73) Will Ramco be required to give Bob's attorney the report that George gave Al?

(A) No, because it is privileged under the attorney-client privilege.
(B) Yes if it contains information that Bob substantially needs and cannot obtain any other way without undue hardship.
(C) No because everything in the report is hearsay.
(D) Yes because everything of value to Bob in the report would be an admission of a party opponent.

Questions 74-76

O'Hara held his hereditary estate, Tara, in fee simple. He drafted his own Will which said,

> "Upon my death my estate Tara is to be given to my daughter, Scarlet, her heirs and assigns. But if Scarlet dies survived by her husband and any issue, then her husband shall have a life estate and the remainder shall go to Scarlet's issue, their heirs and assigns. And if Scarlet dies survived by a husband but without issue, Tara is to go to my brother, Angus, his heirs and assigns."

O'Hara died, and before his estate was probated Angus conveyed his interest in Tara to Scarlet's husband, Rhett. After that Scarlet died without issue. Her Will gave her entire estate to her husband Rhett.

Then Angus filed a petition in Court seeking a finding that he was the true owner of Tara. If this jurisdiction follows the Doctrine of After-Acquired Title, which of these is the best statement?

74) If Angus gave Rhett a Quitclaim Deed:

(A) Rhett holds title to Tara because the Doctrine of After-Acquired Title applies to a testamentary devise.
(B) Rhett holds title to Tara because Angus deeded his interest to him.
(C) Angus holds title because Rhett took nothing under the terms of O'Hara's Will.
(D) Angus holds title because he did not hold any interest in Tara at the time he deeded his interest to Rhett.

75) Suppose for the purposes of this question only, Scarlet was survived by a daughter, Bonnie Blue, and Angus gave Rhett a Quitclaim Deed:

(A) Bonnie has a remainder in Tara because she is Scarlet's heir.
(B) Rhett holds title because Scarlet gave it to him in her Will.
(C) Angus holds title because he gave Rhett a Quitclaim Deed and not a Warranty Deed.
(D) None of the above.

76) If Angus gave Rhett a Warranty Deed:

(A) Rhett holds title to Tara because the Doctrine of After-Acquired Title applies to a testamentary devise.
(B) Rhett holds title to Tara because Angus deeded his interest to him.
(C) Angus holds title because Rhett took nothing under the terms of O'Hara's Will.
(D) Angus holds title because he did not hold any interest in Tara at the time he deeded his interest to Rhett.

Question 77

Barbie met Ken while walking through the marina in her new bikini. Ken was 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, "Do I look like the kind of woman who has to pay for a date?!?"

77) If Ken was 17 years old and Barbie was 40:

(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 the contract against Barbie because he detrimentally relied on her implied promise to pay.
(D) Ken could legally Barbie to pay him.

Questions 78-80

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.

78) 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

79) 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

80) 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 81

Vic was driving down a two-lane highway when he was hit head-on by a Bob's truck driven by Ted. Ted was Bob's employee. Bob and Ted met with a lawyer, Larry, to discuss the accident in the presence of Larry's assistant, Clark. At that meeting Bob admitted he failed to maintain the brakes on his truck. Vic sued both Bob and Ted as joint defendants. After that Bob filed a cross-complaint against Ted for indemnification so that if Vic obtained a judgment against Bob, Bob would get a judgment against Ted for indemnification. At trial Vic called Ted to testify as a hostile witness. Vic asked Ted to reveal that Bob had admitted his negligence during the discussion with Larry.

81) On objection from Bob, the judge should rule Ted's testimony is:

(A) Inadmissible because of attorney-client privilege.
(B) Admissible because Bob waived attorney-client privilege when he sued Ted.
(C) Admissible because Bob made the statements in the presence of Ted and Clark, who were not attorneys.
(D) Inadmissible because Ted is adverse to Bob, so he has a motive to distort what Bob said.

Question 82

Vic was driving down a two-lane highway when he was hit head-on by a Bob's truck driven by Ted. Ted was Bob's employee. Bob and Ted met with a lawyer, Larry, to discuss the accident in the presence of Larry's assistant, Clark. At that meeting Bob admitted he failed to maintain the brakes on his truck. Vic sued both Bob and Ted as joint defendants. After that Bob filed a cross-complaint against Ted for indemnification so that if Vic obtained a judgment against Bob, Bob would get a judgment against Ted for indemnification. At trial Ted called Clark in his defense against Bob and asks him to reveal what Bob said about the brakes on his truck.

82) On objection from Bob, the judge should rule Clark's testimony is:

(A) Inadmissible because Bob has not waived attorney-client privilege.
(B) Admissible because the meeting between Larry, Bob, Ted and Clark was not confidential.
(C) Inadmissible because attorney-client privilege does not apply to a witness who does not have a confidential relationship with the person against whom the evidence is offered.
(D) Admissible because attorney-client privilege does not apply to joint consultations with attorneys by adverse parties.

Questions 83-84

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

83) 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.

84) 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.

Question 85

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.

85) 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 86

86) State A enacts a statute requiring used cars to pass an emission standards test ("smog test") before they can be registered in the name of a new owner. Four parties file petitions in federal court challenging the constitutionality of the law. Which of the four following parties would be most likely to have standing?

(A) Mitsuzuki Corporation, a Japanese auto manufacturer which faces the possibility of a class-action law suit because its vehicles seldom pass the emissions tests.
(B) Cal Huffington, a large car dealer in State B who has entered into a contract to sell 500 used cars to Car Max, a used car dealer in Sate A.
(C) Lenny, a resident of State A who was thinking about buying a used car from a guy named Squiggy.
(D) Squiggy, a resident of State A who was thinking about selling his car to a guy named Lenny.

Question 87

Huey was driving his car with Louie as a passenger. He followed Dewey into an intersection when they were involved in a three-car accident with Daffy. Dewey sued Daffy for negligence claiming that Daffy ran a red light. Louie was deposed by Daffy and he said Dewey caused the accident by running a red light. Then Huey sued Daffy, and at trial Louie testified that Daffy caused the accident by running a red light. Daffy then offers into evidence a certified copy of the transcript of Louie's prior deposition statement.

87) On objection from Huey the judge should rule the transcript is:

(A) Admissible hearsay that can be used to impeach Louie's testimony if he is given an opportunity to explain or deny the statement subject to cross-examination.
(B) Admissible only to prove Daffy did not cause the accident.
(C) Admissible only to impeach Dewey's testimony.
(D) Not hearsay and admissible to impeach Dewey's testimony and prove Daffy did not cause the accident if Louie testifies and is subject to cross-examination.

Question 88

88) Tweaker conveyed his farm, Heavenly Acres, to Zonker with a Deed that stated, "To Zonker, his heirs and assigns, as long as the premises is used to grow medical marijuana, and then to Stoner, his heirs and assigns. If the common law Rule Against Perpetuities is used by the local jurisdiction, Stoner holds:

(A) A right of entry.
(B) A possibility of reverter.
(C) An executory interest.
(D) No valid interest.

Question 89

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.

89) 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 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.

Questions 90-91

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".

90) 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.

91) 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.

Questions 92-93

Concerned about the "Nigerian Prince Scam" and other fraud perpetrated over the internet, Congress enacted the Uniform Email Solicitation Act, which established requirements that must be met by individuals or organizations before they can solicit funds via the internet.

92) Application of the Act to the activities of a religious order, Our Lady of Perpetual Begging (OLPB), would interfere with its religiously motivated activities. Which of the following best describes the burden of proof in this situation?

(A) OLPB must prove the Act, as applied to them, is not a neutral law of general application.
(B) OPB must prove the Act, as applied to them, is not rationally related to any legitimate government purpose.
(C) The government must prove the application of the Act to OLPB is necessary to attain a compelling purpose.
(D) The government must prove it has substantial reasons for the restrictions established by the Act, as they are applied to OLPB.

93) What constitutional power of Congress could justify the Act?

(A) The power to promote the Progress of Science and Useful Arts.
(B) The Commerce Clause.
(C) The Necessary and Proper Clause.
(D) The Supremacy Clause.

Questions 94-95

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.

94) 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.

95) 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 96

Dorthea was charged with murdering disabled tenants in her board and care home and burying their bodies in her yard. Igor testified before the Grand Jury that Dorthea told him her dog had died and she paid him $100 to bury a large object wrapped in plastic in the yard. Before Dorthea was brought to trial Igor was charged separately with helping conceal the body of a murder victim.

96) If Igor refuses to testify at Dorthea's trial citing the 5th Amendment, and continues to refuse after being ordered to by the judge, a properly certified transcript of his Grand Jury testimony is:

(A) Inadmissible.
(B) Inadmissible if Igor was granted use immunity to testify at the preliminary hearing.
(C) Admissible as a statement against interest.
(D) Admissible as former testimony.

Question 97

In exchange for valuable consideration, Washington executed and delivered an instrument to Adams which stated, "The Grantor may sell Mount Vernon during the Grantor's lifetime, and if the Grantor does decide to sell the property, or else at the Grantor's death, the land shall be offered to Adams, his heirs or assigns, at a price of $1,000 per acre, and they shall have 60 days from the receipt of that offer in which to exercise this right. Adams recorded the document.

97) Adams rights under this instrument are:

(A) Invalid because it would be an unreasonable restraint on alienation.
(B) Invalid because it restrains Washington's power to make testamentary dispositions.
(C) Valid because it does not violate the Rule Against Perpetuities.
(D) Valid because Adams recorded the instrument.

Question 98

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.

98) 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 99

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.

99) 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.

Question 100

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.

100) 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.

Test #5 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	A						X		
2	A						X		
3	B						X		
4	B						X		
5	C						X		
6	C							X	
7	C								X
8	D	X							
9	B		X						
10	B			X					
11	B			X					
12	C				X				
13	A				X				
14	A					X			
15	D								X
16	B							X	
17	A	X							
18	B								X
19	D			X					
20	A								X
21	A							X	
22	B			X					
23	C								X
24	B								X
25	A								X
26	D							X	
27	C			X					
28	D							X	
29	B			X					
30	D			X					
31	C						X		
32	A	X							
33	A							X	
34	D						X		
35	B						X		
36	C							X	
37	C								X
38	C	X							
39	C			X					
40	C			X					
41	B			X					
42	A								X
43	A					X			
44	C							X	
45	D				X				
46	A						X		

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	C						X		
48	C	X							
49	D								X
50	C								X
51	B								X
52	A		X						
53	D		X						
54	B	X							
55	B				X				
56	B							X	
57	B	X							
58	A	X							
59	D			X					
60	D			X					
61	C			X					
62	A							X	
63	C				X				
64	D					X			
65	C						X		
66	B							X	
67	A				X				
68	A						X		
69	A				X				
70	C				X				
71	A						X		
72	D						X		
73	A							X	
74	D								X
75	D								X
76	B								X
77	D	X							
78	A			X					
79	B			X					
80	C			X					
81	A							X	
82	D							X	
83	A	X							
84	D	X							
85	A				X				
86	B						X		
87	D							X	
88	D								X
89	C		X						
90	D					X			
91	C					X			
92	C						X		
93	B						X		
94	B				X				
95	D				X				

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
96	A							X	
97	C								X
98	C	X							
99	A			X					
100	D	X							
Total Q's	100	13	4	17	11	5	17	16	17
less Wrong									
No. Right									
% Right									

Test #5 Answers and Explanations

1) **(A)** This law is content neutral as written because it applies to gatherings "of any type", and it is narrowly tailored to only those times when the Court is in session. Further, the law has a reasonable and legitimate purpose, to prevent Court proceedings from being disrupted, and since it only applies to the steps of the Court building when the Court is in session it leaves ample alternative channels for political protest. Therefore (C) and (D) are wrong because this is a legitimate "time, place, manner" constraint as written. The law must be applied in a "content neutral" manner for it to be constitutional, so it has to be applied to Sarah the same as anyone else. Therefore (B) is wrong and (A) is correct. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64**.]

2) **(A)** Valid "time, place, manner" restraints only have to be content neutral, reasonable, and provide adequate "alternative channels" for communication. Since this law appears to meet those criteria the burden would be on Sarah to prove the law does not have any reasonable purpose. As a result (A) is correct and (B), (C), and (D) are wrong. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64.]**

3) **(B)** To bring an action in a federal court movants must have "standing". That means they must show they have suffered or will suffer actual injury. (A) is wrong because simply being a taxpayer does not provide standing except when taxpayers are objecting to an illegal expenditure of tax funds, such as spending in violation of the establishment clause of the 1st Amendment. (C) and (D) are wrong for the same reason, these people cannot show they have suffered or will suffer actual injury. (B) is the best answer because the candidate can show a logical and direct relationship between the law at issue and the injury it would cause his campaign effort. [See **"Simple Constitutional Law Outline", no jurisdiction over claims by parties lacking standing, p. 30**.]

4) **(B)** Answer (A) is wrong because statements that advocate commission of crimes or incite violence are not protected by the 1st Amendment. But under the Brandenburg Test, statements cannot be punished for "inciting violence or crimes" unless they create a "clear and present danger" because they are intended to cause and are likely to cause immediate violence and criminal acts. Here Sarah's speech was not intended to cause, and did not cause immediate violence. Therefore, (B) is correct and (C) is wrong. (D) would be wrong in any case because whether or not the justices heard what she said is entirely irrelevant. [See **"Simple Constitutional Law Outline", incitement: the Brandenburg test, p. 61**.]

5) **(C)** Answer (D) would be a good argument for Sarah because the statute clearly burdens freedom of expression. And (B) would be a good argument because the statute is clearly intended to support or defend certain religious beliefs. And (A) is a good argument because the meaning of the terms "blasphemies" and "sacrilegious" are uncertain. But (C) is not a good argument because the statute does not, on its face, deny equal protection, and even if she is only the second person prosecuted for violating the law there are no facts to show it is being applied to her in a discriminatory manner. Therefore, (C) is the best answer because it would be her least effective defense argument. [See **"Simple Constitutional Law Outline", only deliberate discrimination prohibited, p. 87**.]

6) **(C)** Answer (C) is correct and (A), (B) and (D) are wrong because expert opinions can be based on facts made known to them at trial. (FRE 703). The facts upon which the expert bases the opinion do not have to be revealed first. (FRE 705), and opinions can concern ultimate issues to be decided by the finder of fact, except for the mental state of a criminal defendant (i.e. criminal intent). (FRE 703). [See "**Simple Evidence Outline**", **factual basis for expert witness opinion, pp. 98-99**.]

7) **(C)** The holder of a life estate (life tenant) has a duty to pay the interest and taxes on the estate, but not more than the rental value of the estate. [See "**Simple Real Property Outline**", **duties of life tenants to remaindermen, p.5**.] Therefore (A) and (B) are wrong, and (C) is a correct statement of the law. Life tenants ALSO can be forced to pay a portion of the principal payments based on the relative value of the life estate compared to the remainder (based on life expectancies). So (D) would also be a correct statement of the law if McDuff pays the principal. But there are no facts to show if McDuff has paid the principal, so (D) is not as good an answer as (C) under these facts.

8) **(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**.]

9) **(B)** Under UCC 2-509, if a seller is to ship goods to a buyer, and the contract expressly requires delivery to a particular place, the risk of loss remains with the seller until the goods are delivered by the carrier to that destination. So the risk of loss remained with Forge (and Fabio as its assignee) after the goods were delivered to FedEx. [See "**Simple Contracts & UCC Outline**", **risk of loss and loss in transit, p. 109**.]. (A)is wrong because there is nothing "unique" about these "clips" and specific performance cannot be ordered against a supplier unless the goods in dispute are "unique". (B) is correct because Forge would only be liable for the excess of Office Smart's cover price over the contract price (if Office Smart did cover) or else the excess of market price over contract price (if Office Smart did not cover). (C) is wrong because it would not be liable fore the entire cost of replacing the goods.

10) **(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.

11) **(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).

12) **(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 "**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**.]

13) **(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, pp. 59-60**.] (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**.]

14) **(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**.]

15) **(D)** Answers (A) and (B) are wrong because restraints on alienation are generally disfavored by law. Tenants generally can assign leases without a landlord's permission, and restraints against subletting do not imply or create prohibitions against assignment. [See "**Simple Real Property Outline**", **restraints on alienation are generally disfavored, p. 2.**] Both (C) and (D) are plausible answers, but (D) is a better answer than (C) because subleasing and assignment can be prevented. But lease terms that prohibit subleasing or assignment will be strictly construed. [See "**Simple Real Property Outline**", **only express provision can prevent assignment or sublease, p. 44**.]

16) **(B)** Answer (C) is wrong because even though the passage is hearsay, it is admissible hearsay as a "learned treatise" called to the attention of the opposing party and admitted to be authoritative. (FRE 803 (18)). (B) is correct and (A) and (D) are wrong because the passage can only be read to the jury and cannot be received as an exhibit under that exception. [See "**Simple Evidence Outline**", **exception: learned treatises, p. 59**.]

17) **(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**.]

18) **(B)** Answer (D) is wrong because Moe and Larry are tenants-in-common. Tenants-in-common are free to alienate their shares of the estate (even a leased apartment) without the consent of the other co-tenants. [See "**Simple Real Property Outline**", **tenancy-in-common, p. 22**.] (A) and (C) are wrong because even though restraints on alienation are generally disfavored by law, lease terms that prohibit subleasing or assignment will be enforced, subject to strict scrutiny. . [See "**Simple Real Property Outline**", **restraints on alienation are generally disfavored, p. 2.**, and **only express provision can prevent assignment or sublease, p. 44**.] (B) is the correct answer because the purpose of the lease provision is intended to protect Owen, not Moe. And if Owen has no objection to Curley moving into the apartment, he has waived the provision. Another way of looking at it is that Moe has no standing to enforce a provision that was never intended to benefit him in the first place.

19) **(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 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**.]

20) **(A)** This question, like many, requires the process of elimination unless you have a firm understanding of the common law view on this situation. (B) is wrong because the events that took place were far beyond the control of Vinnie, so he has not committed waste. (C) is wrong for the same reason – the County action was beyond Oscar's control so it was not a violation of the Implied Covenant of Quiet Enjoyment. That leaves just (A) and (D). Under the common law view a partial taking of land by the government does not terminate the lease and the tenant has a duty to continue to pay rent as originally agreed. [See "**Simple Real Property Outline**", **compensation for partial taking of land – common law view: no termination or rent abatement, p. 45**.] Under this approach the tenant gets compensated for the amount the rental value of the land is reduced, but must continue to pay rent to the landlord as originally agreed. Therefore (A) is correct and (D) is wrong.

21) **(A)** Answer (B) is wrong because evidence that a witness is credible cannot be introduced until after the testimony of the witness has been impeached. (C) is wrong because the evidence is not hearsay. Yoshida's records are not being offered into evidence. Rather, his testimony is being offered to explain how he compiled those records. (A) is correct and (D) is wrong because the evidence is relevant to prove the findings of Stats are based on reliable factual data. While experts do not have to provide a statement of underlying facts, nothing prohibits them from doing so. [See "**Simple Evidence Outline**", **factual basis for expert witness opinion, pp. 98-99**.]

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)** This question deals with the removal of fixtures. (A) is wrong because the Statute of Frauds only controls whether contracts, promises or agreements can be legally enforced. It is irrelevant to whether fixtures can be removed. (B) is a correct statement of law, but once Tanner wired in the work bench it became real property and not personal property. (D) is wrong because Tanner is just a tenant, and whether or not he had notice of the mortgage is irrelevant to his right to remove fixtures. (C) is the best answer because many Courts (especially the older ones) held that a tenant has a right to remove fixtures if they were originally installed with an intention of removing them at the end of the lease. If Tanner installed the bench with intent to remove it later, he installed it solely for his own use. [See "**Simple Real Property Outline**", **tenant's rights and duties regarding fixtures, p.42**.]

24) **(B)** Answer (A) is wrong because it is a misstatement of law. Whether Odem gave permission or not has no effect on Tanner's right to remove the equipment at the end of the lease. (D) is wrong because this fact is simply why the equipment was a fixture rather than personal property. It is irrelevant to whether Tanner can remove the fixture. (C) is wrong because even though this was not a trade fixture Tanner still would have a right to remove it in many cases. (B) is the best answer because if the condition of the garage could not be restored to its original condition many Courts would bar Tanner from removing the fixtures. [See "**Simple Real Property Outline**", **tenant's rights and duties regarding fixtures, p.42**.]

25) **(A)** Answer (D) is wrong because the equipment at issue is a fixture, not personal property. So whether or not the mortgage mentioned personal property would be irrelevant to whether these fixtures can be removed. (A) is a better answer than (B) and (C) because, absent any other facts, if Odem installed the equipment it is more likely both Tanner and Odem intended for it to be a permanent fixture. Otherwise, why would Odem spend the effort installing it? And if Odem installed it with intent to make it a permanent fixture, Courts would be less likely to allow Tanner to remove it. [See "**Simple Real Property Outline**", **tenant's rights and duties regarding fixtures, p.42**.]

26) **(D)** This question touches on the confusion caused by the use of the term "character" in FRE 404 to mean evidence of past acts of all types, the restriction of "character" evidence for the purposes of FRE 608 to only evidence of "truthfulness" or "untruthfulness", the use of "impeachment" in the FRE to mean any attack on the believability of a witness for any reason, including bias, ignorance and inability to perceive or remember events in dispute, which the FRE does not expressly address. (A) is wrong because every witness' character becomes an issue as soon as they are called to testify. (B) is wrong because an expert witness' qualifications can always be questioned, even after the judge allows them to testify. (C) is a true statement of the law but irrelevant here because her failure to graduate is

not probative of her character for truthfulness or untruthfulness. (D) is correct because the testimony of any witness can always be directly challenged (impeached) by evidence they are biased, lack knowledge, did not accurately observe, understand or remember disputed events, have lied in testimony, or their testimony contradicts their other statements.). [See "**Simple Evidence Outline**", **directly challenging the credibility of testimony, p. 101**.]

27) **(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, pp. 38-39**.] (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.

28) **(D)** The difficulty presented by this question is that the fact pattern gives very few facts so you have to glean the facts from the answers offered. They suggest Dave is a criminal defendant accused of attacking Vic, and that Dave may be claiming self defense. (A) and (B) are wrong because it is admissible for that purpose if Dave is a criminal defendant presenting relevant evidence to support his defense. (C) is wrong because if character evidence is admissible at all, it is admissible in the form of reputation or opinion. (D) is correct because if Dave has been accused of a crime and claims self-defense, this evidence is relevant and admissible.). [See "**Simple Evidence Outline**", **character evidence offered by criminal defendant, p. 73**.]

29) **(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.]**

30) **(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**.]

31) **(C)** Answer (A) is wrong because equitable restrictions running with the land are generally enforced by the Courts in equity. (B) and (D) are wrong because it was a "planned community" so recording of the plat map and the recording of some Deeds in the same development with the restriction gave both Pat and Myron constructive notice of the restriction, and if it is an enforceable equitable servitude at all, it also formed an implied reciprocal equitable servitude. (C) is the correct answer because enforcement of the restriction by a Superior Court would result in a denial of equal protection by a State in violation of the 14th Amendment. [See **"Simple Constitutional Law Outline"**, **equal protection rights, p. 86**.]

32) **(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.

33) **(A)** The trick of this question is that you are not told initially if Mike has been "accused" in a civil or criminal action. (A) is correct and (B), (C) and (D) are wrong because character evidence cannot be introduced to prove acts in conformity with character except by a criminal defendant, and after that happens, by the prosecution in rebuttal. It does not matter if the evidence is based on acts or just opinion. (FRE 404(a), (b)(1)).). [See "**Simple Evidence Outline**", **past act evidence generally inadmissible to prove disputed acts, p. 70**.]

34) **(D)** Answer (A) is wrong because Congress' power to "tax and spend for the general welfare" gives it the power to tell States what they have to do to get federal funding for education. (B) is wrong because Article III, Section 2 [2.] gives Congress the power to determine the jurisdiction of all federal courts except for the original jurisdiction of the Supreme Court, and the federal court powers established by *Marbury v. Madison.* c appellate jurisdiction and determination of constitutionality, p. 27.] (C) is wrong because the Privileges and Immunities Clause of the 14th Amendment protects individuals from actions by States, not actions by the federal government. (D) is the correct answer because under the holding of *Marbury v. Madison* it is the right and duty of federal courts to determine if a challenged law is constitutional. Here the USDE approval of the State Plan has the effect of federal law, and Congress cannot limit the federal court's jurisdiction to determine if the Plan meets the equal protection requirements of the 14th Amendment, and to fashion a remedy if it does not. Congress cannot limit that aspect of the jurisdiction of federal courts. [See **"Simple Constitutional Law Outline", appellate jurisdiction and determination of constitutionality, p. 27**.]

35) **(B)** Answer (A) is wrong because Section 5 of the 14th Amendment only empowers Congress to enact laws to enforce the guarantees of equal protection and due process, not to limit them to any extent less than federal courts have determined to be required. (C) is wrong because the Act does not regulate interstate commerce. Rather it limits the jurisdiction of the federal courts. (D) is wrong because the authority of Congress to regulate how federal funds are spent is irrelevant to the issue of whether Congress can prevent a federal court from deciding if it is unconstitutional. (B) is the best answer presented because Article III expressly authorizes Congress to determine the jurisdiction of the federal

Courts, except for the original jurisdiction of the Supreme Court. However, (B) is not entirely correct either because *Marbury v. Madison* held that it is the right and duty of federal courts to determine if challenged laws are constitutional. It can be argued that Congress can prevent an inferior court from addressing this issue, but that would simply transfer jurisdiction from the inferior courts to the Supreme Court. [See "**Simple Constitutional Law Outline**", **appellate jurisdiction and determination of constitutionality, p. 27**.]

36) **(C)** Generally evidence of past acts cannot be introduced to prove acts in conformity with character. (FRE 404(a)). But a criminal defendant is allowed to introduce evidence of his own character for that purpose. (FRE 404(b)(1)). But when character evidence is admitted for any purpose evidence of specific instances of conduct can be asked about. (FRE 405(a)). (A) is correct because if Mike was torturing cats it tends to prove he is a violent person who attacked Ike. (B) is correct because once Mike had Omar say he did not have a reputation for violence, it opened the door for the prosecution to question Omar about specific instances of Mike's conduct. Therefore (C) is wrong, and (D) is correct. Since (A), (B) and (D) are all correct, (D) is the best answer.). [See "**Simple Evidence Outline**", **character evidence offered by criminal defendant, p. 73**.]

37) **(C)** Answer (B) is wrong for two reasons. Penny had a periodic tenancy (month-to-month) but it was not merely "implied". Second, there are no facts to suggest she was not given adequate notice of termination. 60-day's notice certainly seems adequate. Notice of termination for a month-to-month lease is usually just one full period in advance. (A) is wrong because the facts indicate a month-to-month lease, not an implied one-year lease. (D) is a misstatement of the law. There is no implication that all tenants in an apartment building are charged the same rent, and it is commonly the case that they are not. (C) is the best answer because the facts suggest Al raised the rent to retaliate against Penny, and it is generally illegal for landlords to retaliate against tenants for asserting their legal rights. [See "**Simple Real Property Outline**", **exception: no retaliatory eviction, p.39**.]

38) **(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.

39) **(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.

40) **(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".

41) **(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 prove the defendants spoke with actual malice, and Hoffa could not do that here. [See "**Simple Torts Outline**", **punitive damages (in defamation actions), 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.

42) **(A)** This is patterned after an actual Bar question, and it illustrates that sometimes there are no clearly correct answers. So you have to simply pick the best of a bad lot. (B), (C) and (D) are all wrong because they suggest the Rule Against Perpetuities (RAP) would apply at the time Tom executed his Will. That is wrong because Wills do not take effect until the death of the testators. So they do not create any interests in land like life estates or remainders until the testators die. So nothing that happened or could have happened between the time Tom executed his Will and his death is relevant to whether or not the RAP was violated. Therefore (A) is the best answer by default.

But answer (A) is also wrong if the intent of the Will was the children would not vest until they reached the age of 25 since Tom could die, leaving Beth pregnant. That would raise the possibility her unborn child would not vest for over 21 years. That would violate the RAP. So the only way (A) could be correct is if the Will meant all Tom's children would vest at birth and could only "take possession' at age 25. Remember that any future gift to a person who is not identified by name (i.e. identified as "child", "grandchild", etc.) that is conditioned for an uncertain period or for over 21 years will almost always violate the RAP. [See "**Simple Real Property Outline**", **common situations when the RAP is violated, p. 17**.]

43) **(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.

44) **(C)** This question is something of an Evidence / Criminal Procedure crossover. Answer (A) is wrong because the judge's determination whether Omar's answer might incriminate him is not based on the prior trial record. (B) is wrong because Leroy's right to confront Omar as an adverse witness is no more important than Omar's right to avoid forced self-incrimination. (D) is wrong because the 5th Amendment right to refuse to avoid self-incrimination does not require that one be accused of a crime. (C) is correct because Leroy has a 6th Amendment right to confront Omar as an adverse witness, but Omar has a 5th Amendment right to avoid self-incrimination. So if Omar refuses to answer questions in cross-examination he cannot be a witness against Leroy at all. His testimony must be stricken and the jury told to disregard it.

45) **(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.]**

46) **(A)** Answer (B) is wrong because the Speech and Debate Clause only applies to members of Congress. (C) is wrong because the Supremacy Clause of Article VI makes State laws subordinate to federal law. Federal courts only follow the provisions of State laws in civil actions based on diversity. And that has nothing to do with this situation. (D) is wrong because nothing about these facts suggests that Arnold is being denied due process. (A) is not a great defense, but it is probably Arnold's best argument. Article IV, Section 4 guarantees every State a "republican form of government", and the 10th Amendment expressly states that all powers that the Constitution does not specifically delegate to the United States (federal government) or prohibit to the States are retained by the States, or to the people. These provisions support the doctrine of State sovereignty or "federalism" which prevent federal interference with State governmental functions. [See "**Simple Constitutional Law Outline**", **limited state sovereignty, p. 18**.]

47) **(C)** Answer (A) is wrong because there is no such thing as a "General Welfare Clause" in the Constitution. The only mention of general welfare in the Constitution is in the "Tax and Spend Clause" that limits Congress' ability to act for the "general welfare" of the people to taxing and spending on their behalf. Other than that all congressional acts must be based on specific enumerated powers given to Congress. (B) is wrong because Article IV, Section 4 actually is an argument in favor of Arnold's defense because it limits Congress' power over State governments.(D) is wrong because the express terms of the Necessary and Proper Clause only give Congress the power to enact laws necessary to enforce the powers given to Congress in Sections 1-8 of Article II of the Constitution. (C) is the correct answer because Section 5 of the 14th Amendment expressly gives Congress the power to enact laws to prevent States from violating the rights of citizens to due process and equal protection. [See **"Simple Constitutional Law Outline", power to protect civil rights and voting rights, p. 14.]**

48) **(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**.]

49) **(D)** Answer (A) is wrong because Yang Mae is named in the Will, and that makes her a "life in being". And, her children, if she has any at all, would have to be born while she was alive. And they would have to vest, if they vested at all within 18 years after her death. (B) is wrong because what the children have, if anything is a remainder. A "use" is an archaic concept that has little modern application. Long ago it was an arrangement in which a person had a right to receive benefit from property that was held in trust for them by a trustee. And a "springing" interest is one that arises upon the failure (or occurrence) of a condition. A person who held a "use" did not hold property in fee simple. Here Yang Tsu said "in fee simple" so this could not be a use. (C) is wrong because the interest of Yang Mae's children could not possibly vest until they are born and identifiable because until then there is nobody to vest the interest in. That leaves only (D). May Tsu's children have been given the remainder after the death of Yang Tong. It is contingent because it is a grant to unborn grantees. [See "**Simple Real Property Outline**", **contingent remainders, p.10**.]

50) **(C)** Answer (A) is wrong because Yang Mae is named in the Will, and that makes her a "life in being". And, her children, if she has any at all, would have to be born while she was alive. And they would have to vest, if they vested at all within 18 years after her death. (B) is wrong because the age condition is a condition precedent that must hold for them to vest, not a condition subsequent that must hold for them to retain their interests. [See "**Simple Real Property Outline**", **conditions precedent and subsequent, p.6**.] (D) is wrong because the children she has when Yang Tsu dies do not become vested until they reach the age of 18. [See "**Simple Real Property Outline**", **vested remainders subject to open, p.9**.] (C) is correct because her children will not vest until they reach the age of 18. That gives them contingent remainders.

51) **(B)** This is a class gift. The class is "children of Yang Mae who reach the age of 18." Since Yang Mae had children when Yang Tsu died, this was not a gift to an empty class. At that point Tom had a contingent remainder subject to open (contingent on him reaching the age of 18 and also subject to the fact other children might be born). And if a class is not empty when a future interest is created, it will close when the first member can "take in possession". [See "**Simple Real Property Outline**", **vesting of class gifts, p.14**.] So, when Yang Tong died, Tom was old enough to take in possession. As a result, the class closed and Tom had a vested remainder and Dick had a contingent remainder. (B) is correct and (C) and (D) are wrong because when Harry was born the class had already closed and he has no interest. (A) is wrong because Dick has a contingent remainder (subject to the condition he still has to live to be 18), and Tom has a vested interest that is free from all conditions. His interest might increase if Dick does not live to be 18 but it cannot be reduced or lost.

52) **(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.

53) **(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.

54) **(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. 36**.]

55) **(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.

56) **(B)** The "marital communication privilege" is the right of each spouse to stop the other from testifying about confidential communications between the spouses during marriage, and the "spousal testimony privilege" is the right of each spouse alone to refuse to testify against the other (about anything, not just communications) in criminal prosecutions. [See "**Simple Evidence Outline**", **marital communication privilege, p. 22** and **spousal testimony privilege, p. 22**.] Some States may extend the Spousal Privilege to civil actions. These terms may be mixed up and mangled in case law and text books, but the distinction between them is clearly established in law. (A) is wrong and (B) is correct because Boopsie has a right to refuse to testify under the Spousal Privilege if Brutus is on trial for a crime. (C) is a bad answer because the Marital Privilege only shields confidential communications during marriage and it is highly unlikely she is going to be asked questions about things Brutus told her immediately before trial. (D) is wrong because Boopsie holds the Spousal Privilege, not Brutus.

57) **(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.

58) **(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.

59) **(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**.]

60) **(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**.]

61) **(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.

62) **(A)** This is something of an Evidence–Criminal Procedure crossover. Witnesses have a 5th Amendment right to refuse to testify in both criminal and civil actions as long as the judge finds there is any reasonable possibility they could incriminate themselves. Therefore (A) is correct and (B) and

(C) are wrong. (D) is wrong because witnesses cannot be "granted immunity" in civil actions. That is solely a possibility in a criminal action because the prosecutor represents the State.

63) **(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.

64) **(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, pp. 14 et seq.]**

65) **(C)** If this were a valid "time, place, manner restriction" (A) and (D) would both be good answers. But it is not a valid "time, place, manner" restraint because it gave the mayor the power to decide "who has permission to use the park." That gave Aunt Bea absolute power to restrict freedom of expression based on who wanted to speak, and it created a prior restraint as well. That means the ordinance would be subject to strict scrutiny, and Mayberry would have to prove it was necessary to attain a compelling government purpose. That would be impossible, so (C) is correct. The ordinance is void on its face. Since that is true, (B) is wrong as it does not matter if they tried to get a permit or not, and (D) is wrong as it does not matter if they were denied due process or not. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64**.]

66) **(B)** Answer (A) is wrong because even though anything Harry told Dr. Welby would be hearsay when repeated by Dr. Welby, it would still be admissible under the "medical diagnosis and treatment" exception. (C) and (D) are wrong, and (B) is correct, because Harry, as the patient, holds the "physician-patient privilege" and not Dr. Welby or Dick. [See "**Simple Evidence Outline**", **patient-physician privilege, p. 23**.]

67) **(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.]**

68) **(A)** California actually did this in about the 1980s, and the law was declared unconstitutional sometime between 1995 and 2005. The "Import-Export Clause" (Section 10 [2.]) is a red herring. This constitutional provision is seldom discussed in law school. It states that "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be

absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul [sic.] of the Congress." Given the language of the Constitution and the times in which it was written, the term "Imports" clearly means goods imported into the United States from a foreign country. Although this statute might apply to a car registered in California that had previously been registered in a foreign county, this is not an "import duty" so (C) and (D) are wrong. And even if this were an import duty, the fee is not "absolutely necessary for executing inspection Laws" and the net proceeds are not being turned over to the federal treasury either. So (C) and (D) are still wrong. (B) is wrong because the Privileges and Immunities Clause of Article IV prevents States from discriminating against the citizens of other States and this law impacts California's own citizens, not the citizens of other States. While this law does have an intentionally disproportionate impact on people like Frances who have moved to California from another State, it is not being applied to them until they have become residents of California. (A) is the best answer because this law is intended to extort money from people moving into California from other States. That infringes on the right to move about the country from State to State, a fundamental right that is not expressly stated in the Constitution. But this has been held to be a fundamental right "reserved to the people" in the "penumbra" of the Constitution referred to in the 9th and 10th Amendments. Otherwise States could refuse to let people move into them from the other States. Since this is a fundamental right, any infringement of it is subject to strict scrutiny, and the State would have the burden to prove the law was necessary to attain a compelling purpose. That would be impossible here since the "purpose" of the law is simply to raise revenue without a general tax increase. [See "**Simple Constitutional Law Outline**", **freedom of travel, p. 55** and **laws penalizing newcomers generally invalid, p. 55**.]

69) **(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 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.

70) **(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, pp. 59-60.]** (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**.]

71) **(A)** Answer (B) is wrong because the due process does not require appointment of industry representatives to regulatory agencies with oversight over those same industries. (C) is wrong because Congress can, and often does, delegate legislative powers to Departments, boards and commissions with very vague guidelines without violating the Constitution. (D) is wrong because Congress can delegate the authority to establish regulations without requiring subsequent consent or approval. (A) is correct because enforcement of laws, rules and regulations is the function of the executive branch. Under the "Appointments Clause" of Article II, Section 2 [2.], the President has authority to appoint

ambassadors, Supreme Court justices and certain other officers, and Congress can vest the power to appoint inferior officers in the President, the courts or department heads. But Congress does not have the power to appoint any "inferior officers" with executive powers itself. [See **"Simple Constitutional Law Outline", no power to appoint officers or enforce laws, p. 17.]**

72) **(D)** Answer (B) is wrong because Congress always has the power to investigate issues, even when it has no legislative power. Therefore Activity I would always be allowable and (B) is wrong because it fails to include Activity I. (C) is wrong because Congress has the power to control public utility pipelines under the Commerce Clause because it is an activity that has a clear effect on interstate commerce. Therefore Activities II and IV are allowable and (C) is wrong because it excludes Activity II. But under the "Appointments Clause" of Article II, Section 2 [2.], Congress does not have the power to enforce laws or appoint anyone to such a position. That makes Activity III improper, and (A) is wrong as a result. That leaves (D) as the correct answer. [See **"Simple Constitutional Law Outline", no power to appoint officers or enforce laws, p. 17**.]

73) **(A)** Answer (C) is wrong because the report probably contains admissions which are not hearsay under the FRE. (D) is wrong because even though the report may contain admissions, it is privileged. (A) is correct and (B) is wrong because even though the report is definitely "attorney-work product" it is also covered by the attorney client privilege since it is created by George, an agent of the defendant, based on an interview with Don, an employee of the defendant, and sent to Al in confidence. [See "**Simple Evidence Outline**", **attorney-client privilege, p. 19**.]

74) **(D)** The "Doctrine of After-Acquired Title" is just another name for the concept of "estoppel by Deed". [See "**Simple Real Property Outline**", **estoppel by Deed, p.64**.] "Estoppel by Deed" means that if a person like Angus transfers an interest in land via a Warranty Deed, but doesn't really hold title at the time of transfer, the Warranty Deed will become effective, and transfer title later, should he acquire title later. Here the doctrine has no application because Angus gave Rhett a Quitclaim Deed, not a Warranty Deed. So (D) All Angus' Quitclaim did was convey to Rhett the interest that Angus held at the time. (A) and (B) are wrong because Angus held no interest in Tara at the time he quitclaimed to Rhett, and "estoppel by Deed" has no application. (C) and (D) are both correct and you have to choose the better of them (weed out the less appropriate one). (D) is the better answer because it is exactly correct. (C) is not as good an answer because even though Rhett took nothing under the terms of O'Hara's Will, he still would hold title to Tara if Angus had held title at the time he quitclaimed it to Rhett.

75) **(D)** Every question that offers "None of the above" as an answer demands that you use the process of elimination. Here O'Hare's Will gave Tara to Scarlet in fee simple subject to an executory interest. [See "**Simple Real Property Outline**", **types of defeasible estates and doctrine of equitable waste, p.6**, and **executory interests, p. 12**.] Fee simple meant that at Scarlet's death her interest would normally go to her "heirs and assigns". And she left her entire estate to Rhett in her Will, so he would normally receive title as an "assign". But under the terms of the condition subsequent in O'Hara's Will, Scarlet's death caused Tara to go to Rhett as a life estate with a remainder to Bonnie. In other words, Rhett and Bonnie held "executory interests" in Tara. So (B) is wrong because Rhett did not take under the terms of Scarlet's Will. Rather, he took a life estate via the executory interest created by the terms of O'Hara's Will. (C) is wrong because Angus never received title at all since Scarlet was survived by issue, Bonnie. And (A) is wrong because Bonnie holds the remainder that follows Rhett's life tenancy because she is Scarlet's "issue", as set forth in O'Hare's Will, and not because she is Scarlet's heir. Therefore, by the process of elimination the correct answer is (D).

76) **(B)** Answer (B) is the correct answer and (A), (C) and (D) are wrong for exactly the same reasons explained for the question before last. [See "**Simple Real Property Outline**", **estoppel by Deed, p.64**.] "Estoppel by Deed" means that even though Angus transferred title to Tara to Rhett via a Warranty Deed at a time when he did not hold title at all, any title he acquired to Tara after that would automatically transfer to Rhett. That is an implication of the Warranty Deed. While (A) says Rhett would get title, it is not as good an answer because "estoppel by Deed" does not have any particular connection with title receive via a testamentary devise.

77) **(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, if there is equitable jurisdiction, based on detrimental reliance or promissory estoppel but only to the extent it is necessary to prevent injustice. But Ken has a legal cause of action here so there is no equitable jurisdiction. Otherwise it is incorrect to make an unqualified statement that the "contract could be enforced". (D) is correct because Ken can legally enforce any contract that formed regardless of his age.

78) **(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.

79) **(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.

80) **(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.

81) **(A)** Answer (B) would be correct if Ted were testifying in his own defense against Bob because when two parties consult with a single attorney, one who then files an action against the other waives the right to claim attorney-client privilege against the other. But both Bob and Ted still hold the right to raise attorney-client privilege as against Vic. (C) is wrong because Clark is Larry's agent and subject to the same rules of confidentiality, and Ted was a client of Larry the same as Bob. (D) is just nonsense. Whatever Ted's motives might be does not affect the admissibility of evidence. (A) is correct because attorney-client privilege attached to the conversation, and Bob has not waived it as to Vic, a third party. [See "**Simple Evidence Outline**", **attorney-client privilege, p. 19.]**

82) **(D)** Answer (B) is wrong because Larry was subject to a duty of attorney-client confidentiality because he was consulting with clients, Bob and Ted, in confidence, and Clark, as Larry's employee was subject to the same duty. (C) is wrong because Clark, as Larry's employee, did have a

confidential relationship with both Bob and Ted, the same as Larry. (A) is wrong and (D) is correct because when Bob filed a cross-action against Ted he waived his right to claim attorney-client privilege against Ted as to the conversation with Larry in Clark's presence. [See "**Simple Evidence Outline**", **attorney-client privilege, p. 19**.]

83) **(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.

84) **(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.

85) **(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**.]

86) **(B)** Article III Section 2 [1.] has been interpreted to limit the jurisdiction of federal courts to "actual cases and controversies" in which moving parties allege facts showing they have suffered or will suffer real and immediate injury for which the court can provide a remedy. Mere conjecture that injury in the future is possible are insufficient. (B) is the correct answer and (A), (C), and (D) are wrong because Huffington is the only party that stands to suffer real and immediate injury. [See **"Simple Constitutional Law Outline", no jurisdiction over claims by parties lacking standing, p. 30**.]

87) **(D)** Answer (A) is wrong because the prior statement was made under oath. If it had not been made under oath this would be correct. (B) and (C) are wrong and (D) is correct because the prior statement made under oath is not hearsay, and may be used for both impeachment and to prove material facts as long as the declarant testifies and is subject to cross-examination. [See "**Simple Evidence Outline**", **inconsistent prior statements, p. 50**.]

88) **(D)** Answer (D) is the correct answer because regardless of the type of future interest (future estate) Tweaker has created it is obvious all concerned (Tweaker, Zonker and Stoner) could die, and medical marijuana could still be grown on the land for over 21 years, and then the condition might fail and title would vest in some person who was not alive at the time the interest was created. So this interest violates the Rule Against Perpetuities and is invalid from the beginning. [See "**Simple Real Property Outline**", **common situations when the RAP is violated, p. 17.]**

If that were not the case, (C) would be the best answer because Tweaker has given Zonker a current estate (possessory interest) subject to a condition, and that creates an executory interest. [See "**Simple Real Property Outline**", **executory interests, p. 12.]** (A) is wrong in any case, because this does not involve a condition subsequent, and because Zonker expressly granted the future interest to Stoner (did not reserve it for himself or his heirs). [See "**Simple Real Property Outline**", **right of entry, p. 11**.] (B) would be wrong in any case, even though this involves a condition precedent, because Zonker

expressly granted the future interest to Stoner (did not reserve it for himself or his heirs). [See "**Simple Real Property Outline**", **possibility of reverter, p. 11**.]

89) **(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**.]

90) **(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**.]

91) **(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**.]

92) **(C)** This is a trick question. In the case of *Yoder* (1972) it was held that government has the burden to prove substantial reasons for restricting religiously motivated conduct (parents taking children out of school). That suggests the correct answer is D). But in *Employment Division (Oregon) v. Smith* (1990) it was held religiously motivated conduct (the use of peyote) can be restricted by neutral laws of general application, and that suggests the correct answer is (A). But neither of those cases involved restrictions on the freedom of expression. This is actually a free speech question hiding behind the smoke screen of a "free exercise of religion" fact pattern. What is the Act actually doing? It is a prior restraint to restrict free speech. It prevents people from soliciting donations, a form of protected speech. That requires strict scrutiny, so the correct answer is (C), the government must prove this law is necessary to attain a compelling purpose. [See **"Simple Constitutional Law Outline", prohibiting protected speech requires a compelling need, p. 64.]**

93) **(B)** The only power of Congress that would authorize it to regulate activities on the internet is the Commerce Clause since the internet affects interstate and international commerce (and commerce with Indian Tribes, too; that is something of much less interest today). (A) is wrong because that clause only gives Congress the power to establish patent and copyright laws. (C) is wrong because that clause only gives Congress the power to create laws necessary to carry out powers that are enumerated elsewhere in the Constitution. (D) is wrong because that only concerns conflicts between State and federal laws. [See **"Simple Constitutional Law Outline", the power over commerce – the commerce clause, p. 6**.]

94) **(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.]**

95) **(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**.]

96) **(A)** This is a very tricky criminal procedure crossover question. (B) is wrong because the testimony is not being used against Igor in any way. (C) is wrong because Igor's statement was actually not against his interest. He made it to claim ignorance and thereby exonerate himself from criminal liability. (D) would seem to be correct based on evidence rules, but it is actually wrong based on criminal procedure rules because Igor's statement is clearly "testimonial" in nature. Therefore, under the holdings in *Crawford* and *Bryant* admitting it would violate Dorthea's 6th Amendment right to cross-examine (confront) Igor. Therefore (A) is correct and the evidence simply cannot be used. [See "**Simple Evidence Outline**", **three reasons hearsay is generally inadmissible, p. 43.]**

97) **(C)** The answers offered are sort of goofy so they require you to use the process of elimination to pick the best one. What Washington has actually done is sell Adams a purchase option, an option to purchase his land at a set price if Washington decides to sell it or else at his death. This type of option is usually called a "right of first refusal". [See "**Simple Real Property Outline**", **options to purchase land, p. 52.**] Answers A) and (B) are nonsense answers because land purchase options are commonly sold, or otherwise conveyed, and are certainly not considered to be unreasonable restraints on alienation or violations of testamentary rights. (D) is wrong because even though options are usually recorded to provide public notice (and thereby prevent a bone fide purchaser for value from gaining superior title), they are "valid" anyway, and recording them does not make them "valid". Therefore (C) is the best answer. Since Adams, his heirs or assigns, must act no later than 60 days after the death of Washington, title must vest, if at all, within 21 years after a life in being at the creation of the option.. [See "**Simple Real Property Outline**", **the rule against perpetuities, p. 16**.]

98) **(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.

99) **(A)** Answer (A) is correct and (D) is wrong because the drunk's entry onto the land was volitional, not involuntary. A trespass to land is an intentional entry onto the land of the plaintiff. [See "**Simple Torts Outline**", **trespass to land, p. 28**.] The drunk intentionally wandered into Mildred's yard, even though he may have had impaired faculties, and may not have even known where he was. The defendant is liable for all damages caused, even if the entry is by mistake. But if the entry is the result of a physical accident (not a mental accident or mistaken belief) the proper tort is negligence and not trespass to land. (B) and (C) are wrong because the drunk did not interfere with Mildred's ability to use her land.

100) **(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.

Test #6

Test #6 Questions

Take this simulated MBE test of 100 mixed subject questions in a **three-hour timed setting**! You have three hours to answer 100 questions just as you would have in a real MBE exam (i.e. in the morning or afternoon session). You should complete about 12 questions every 20 minutes (6 questions every 10 minutes) and that will give you ample time to review.

The Answers and Explanations for these questions are in the following section.

Question 1

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.

1) 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.

Question 2

Vic was a college soccer star. Don was jealous of him. 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 was given an antibiotic. Vic died as a result because he was allergic to the antibiotic.

2) 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 3

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.

3) 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.

Questions 4-8

Home values in the State of Calvada dropped precipitously during the nationwide housing market collapse. As a result many homeowners owed more on their homes than their market value. At the same time interest rates plunged to historic lows. But many homeowners were unable to refinance to take advantage of the new, low interest rates because mortgage lenders refused to refinance any loan that did not have at least 20% equity value. As a result, many home owners had not only lost their home equity, but they were also locked into paying off existing mortgages at the old, higher than market rate if interest. To resolve the problem Calvada established the State Home Finance Corporation (SHFC) as an independent, government owned non-profit corporation to make home loans at market interest rates to any homeowners whose home values had dropped more than $300,000 in the prior four years.

4) The U.S Department of Housing and Urban Development (HUD) has regulations that control the home loan industry. Is the SHFC subject to those regulations?

(A) Yes because SHFC is making home loans.
(B) No because it violates State Sovereignty (the doctrine of federalism) for a federal agency to interfere in the operation of a State funded entity.
(C) No because State agencies are immune from federal regulation.
(D) No because SHFC only operates in Calvada so no interstate commerce is involved.

5) Calvada Homeowners for Fairness (CHF), an association of Calvada homeowners who do not qualify to refinance their mortgages with SHFC, petitions federal court citing the 14th Amendment, seeking an injunction that would force SHFC to make loans available for all Calvada homeowners equally. What would be the probable outcome?

(A) CHF will prevail if SHFC cannot show a compelling reason for not making its loans available to all Calvada homeowners on an equal basis.
(B) CHF will lose because SHFC has a rational basis for using its funds to help those Calvada homeowners who have suffered the greatest losses.
(C) CHF's petition will be dismissed because SHFC is an independent corporation and not subject to the 14th Amendment.
(D) CHF's petition will be dismissed because it violates the 11th Amendment.

6) Scheming Brothers, a powerful nation-wide lender that was substantially involved in causing the housing market collapse has lost $25 million in loan revenue as a result of homeowners refinancing their home loans through the State Home Finance Corporation. It petitions the court to enjoin Calvada arguing the State Home Finance Corporation is unconstitutional. What would be the probable result?

(A) Scheming Brothers will lose because the State Home Finance Corporation is a valid exercise of State powers.
(B) Scheming Brothers will lose because it lacks standing.
(C) Scheming Brothers will win because it violates the equal protection guarantees of the 14th Amendment to allow only select homeowners to refinance through a State owned corporation.
(D) Scheming Brothers will win an injunction because it violates the 14th Amendment guarantee of due process for a State to go into competition against private businesses that must pay taxes.

7) About 30% of the population of Calvada is Cheyenne Sioux. But 99% of the homeowners who qualified for the State Home Finance Authority program were not Cheyenne Sioux. If Knife challenges the loan program as a violation of equal protection, which of the following facts would be the most helpful for him?

(A) Only 1% of the homes that fell in value over $300,000 during the prior four years were owned by Cheyenne Sioux.
(B) The authors of the bill that created the State Home Finance Authority intended to discriminate against Cheyenne Sioux.
(C) The vast majority of Cheyenne Sioux in Calvada live in modest homes that were never worth more than $300,000
(D) The State could have permitted the Finance Authority to help all citizens whose homes fell in value, regardless of the amount.

8) Which of the following Commission activities are constitutional?

I. Investigating public utility safety issues.
II. Establishing pipeline safety regulations.
III. Prosecuting utilities that violate the regulations.
IV. Making recommendations to Congress for new laws to control pipeline safety.

(A) All of the above.
(B) II and III.
(C) I and IV.
(D) I, II and IV.

Question 9

Pat was crossing the street when she was hit by a red Ford that sped away. Wendy saw the accident and followed the red Ford until it pulled into the parking lot of the Exotic Body tattoo parlor on Bay Street. She then ran into the street, flagged down officer Orville, and told her what had happened. Orville immediately arrested Dave as he sat behind the wheel of the red Ford.

9) Pat sues Dave. Wendy is not present at trial, and Orville offers to testify as to what Wendy told him. His testimony is:

(A) Inadmissible because Dave cannot cross-examine (confront) Wendy as required by the holding in *Crawford v. Washington*.
(B) Inadmissible hearsay.
(C) Admissible as an excited utterance.
(D) Admissible under these circumstances as an inherently trustworthy statement.

Question 10

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.

10) 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.

Question 11

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.

11) 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.

Question 12

12) Bevis conveyed Blackacre to Butthead with a Deed that said, "To Butthead, his heirs and assigns in fee simple as long as the land is used for agricultural purposes, then to Zonker, his heirs and assigns."

After this conveyance, Bevis' interest in Blackacre under the common law is:

(A) A reversion in fee simple absolute.
(B) A right of entry.
(C) A possibility of reverter.
(D) Nothing.

Question 13

Pete sued Diane for hitting him with her car, but an issue was whether Pete's back injury was caused by the collision or by a pre-existing condition as a result of a different accident Pete had some years before. Pete called Dr. Casey who offered to testify that when he first saw Pete after the latest injury Pete told him he had been working full time as a construction worker without any pain or disability.

13) Dr. Casey's testimony is:

(A) Inadmissible because Pete is available to testify.
(B) Inadmissible hearsay.
(C) Admissible because it relates a statement made for medical diagnosis and treatment.
(D) Admissible because it was a statement of Pete's existing physical condition.

Question 14

Scrooge McDuck's Will had the following provision:

> "I give my hereditary estate, Duck Lake, to my nephew Donald Duck for life, and then to his surviving children in equal shares as long as they do not convey or attempt to convey their interests in Duck Lake before they are 22 years of age, and if they violate this provision their interests shall immediately pass to and become the property of the remaining children of Donald then living. I give the residual of my estate to Daisy."

Scrooge died the next year, and Donald died the year after that survived by two children, Huey and Louie.

Huey and Louie wanted to immediately sell Duck Lake. But Louie was only 18 years old. So they petitioned the Court for a finding that the provision preventing them from selling the property before they were 22 years old was void. Daisy opposed their petition and sought a finding that she held title to Duck Lake as part of the residual of Scrooge's estate.

14) The Court should decide:

(A) The remainders given to Donald's children were valid, and Duck Lake is not part of Scrooge's residual estate.
(B) The provisions concerning the remainders given to Donald's children were valid and enforceable.

(C) The provisions concerning the remainders given to Donald's children were an unlawful restraint on alienation, so Daisy received Duck Lake at Donald's death.
(D) Daisy received Duck Lake at Donald's death because the provisions concerning the remainders given to Donald's children violated the Rule Against Perpetuities.

Question 15

Pablo was charged with robbery. At trial Pablo was sporting a beard, and a witness, Juanita, was unable to recognize him. The prosecutor then showed Juanita several photographs and asked her if any of the people in the photos were the man she saw rob the store. Juanita pointed at a photo taken of Pablo before he grew the beard and said, "This is the photo I picked out at the police station right after the robbery."

15) Juanita's testimony is:

(A) Objectionable because it is irrelevant.
(B) Objectionable because it is non-responsive to the question.
(C) Admissible non-hearsay because relates a prior statement of identification of a person after perceiving them.
(D) Objectionable if Pablo is the only person in the photos who looks like him.

Questions 16-18

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.

16) 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.

17) 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.

18) 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

Question 19

Scott was charged with murdering Lacy on Christmas Eve. At trial Mandy offers to testify that Lacy told her the morning she disappeared that she was going to tell Scott she wanted a divorce as soon as he came home from fishing.

19) Mandy's testimony is:

(A) Inadmissible hearsay.
(B) Inadmissible because it is irrelevant.
(C) Admissible because it is not hearsay.
(D) Admissible because it is evidence of what Lacy intended to do the day she disappeared.

Question 20

Cohen was tried for robbing the First City Bank. At trial his attorney asked, "What happened when the police arrested you?" Cohen said, "I told them I've never been in that bank but they didn't believe me."

20) Cohen's statement is:

(A) Inadmissible because it is a self-serving statement.
(B) Inadmissible hearsay.
(C) Admissible non-hearsay as a prior consistent statement.
(D) Admissible for impeachment only.

Questions 21-22

Jose owned Rancho Seco in fee simple. He devised Rancho Seco as follows:

> "I hereby give Rancho Seco to those of my grandchildren who live to the age of 21. I intend for this to include all of my grandchildren, whenever they might be born."

Jose was survived by three children, Juanita, Carmen and Rueben, and two grandchildren, Maria and Rogelio.

21) If this conveyance was in Jose's Will, a Court would hold that it does not violate the Rule Against Perpetuities because:

(A) The Rules of Construction interpret testamentary instruments to put the express intentions of testators into effect rather than to invalidate them under the Rule Against Perpetuities.
(B) The devise would be interpreted to mean that Jose intended to include only those grandchildren born prior to his death.
(C) Under the Rule of Convenience, the class would close when the first grandchild reached the age of 21.
(D) Jose's surviving issue would be measuring lives.

22) The Court would hold that this devise does violate the Rule Against Perpetuities if:

(A) Jose wrote this provision into his Will and he had no surviving grandchildren.
(B) Jose wrote this provision in a Deed which he recorded.
(C) Jose wrote this provision into his Will.
(D) Jose fathered a child that was born after he died.

Questions 23-25

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.

23) 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.

24) 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.

25) 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.

Question 26

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."

26) 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.

Question 27

Joe's Liquor Store was robbed. Joe worked with a police sketch artist to create a likeness of the robber. The sketch bore a strong resemblance to Wilson, and based on that and other evidence he was arrested and charged with the robbery.

27) If the sketch is offered as evidence at trial:

(A) Inadmissible because it is based on Joe's opinion about the robber's appearance.
(B) Inadmissible because it is hearsay whether Joe is available to testify or not.
(C) Inadmissible because the best evidence would be testimony from Joe.
(D) Admissible non-hearsay as an identification of a person if Joe is available to testify.

Question 28

Jefferson conveyed Monticello by an instrument that said, "to Quincy and then, upon the death of my son, Adams, to my grandchildren, their heirs and assigns, share and share alike, as long as Quincy uses the property solely as a residence." Quincy immediately moved into Monticello and began to reside there as soon as the conveyance became effective.

Six years later Quincy granted an oil lease to Rockefeller. Rockefeller began extracting oil from under Monticello. He paid royalties to Quincy, who continued to reside there.

Jefferson's grandchildren petitioned the Court for an award of damages and an injunction to stop Rockefeller from removing oil from under Monticello in the future. Jefferson and Adams did not join in the action.

28) Which of the following is most likely to happen?

(A) The Court will award damages but deny the injunction because the grandchildren do not have possessory estates
(B) The Court will grant the injunction but deny an award of damages because Jefferson and Adams are not joined as parties to the action.

(C) The Court will grant the injunction and award damages, but require the damages to be placed in trust until Adams dies or even longer.
(D) The Court will find in favor of the petitioners because Quincy's interest automatically terminated as soon as he began letting Rockefeller to remove oil from the land.

Question 29

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".

29) 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 30

Owen held Greenacre in fee simple. He executed and delivered a Deed that said, "I hereby grant all of my interest in Greenacre to my brother Carl, his heirs and assigns; but if my brother Don is still alive thirty (30) years from now, then to Don, his heirs and assigns."

30) The provision for the future transfer of title to Don is:

(A) Invalid because it violates the Rule Against Perpetuities.
(B) Valid. Don holds a vested future estate subject to total divestment.
(C) Valid. Don holds an executory interest.
(D) Valid. Don holds a reversion.

Question 31

Bob is accused of bank robbery. At trial Joe the bartender offers to testify that when he saw how much money Bob had in his wallet he quipped, "You must have robbed a bank!" and Bob made no response.

31) This evidence is:

(A) Inadmissible because Bob had no reason to respond to Joe.
(B) Inadmissible because Bob had a right to remain silent.
(C) Admissible as a statement made in the presence of the defendant.
(D) Admissible because Bob's conduct showed he had committed the robbery.

Question 32

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.

32) 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 33

33) Because of safety concerns Congress enacts a statute that bars tourists from entering Yellowstone National Park and the travel plans of over a million people are disrupted. The American Automobile Association petitions the court to enjoin application of the statute. They will:

(A) Win unless the safety risks outweigh the disruption caused by the statute.
(B) Win because the right to travel is fundamental, unless the government can prove the entry ban is necessary to attain a compelling government purpose.
(C) Lose if the statute has any rational basis, no matter how minor it may be.
(D) Lose because the statute is for the general welfare.

Question 34

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. 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."

34) 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.

Questions 35-37

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.

35) 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.

36) 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.

37) 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 38

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."

38) 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 39

Zonker has a prescription that allows him to legally possess limited amounts of "medical marijuana" under California law. He and his friend Doonesbury drive to Yosemite National Park, which in within the State of California, to backpack. While enjoying the view of a waterfall Zonker began smoking some marijuana. He was immediately arrested by a park ranger for violating federal law which makes the possession of marijuana a crime.

39) Zonker can be prosecuted for an act committed in California for an act that is not illegal under California law:

I. Because of the Commerce Clause.
II. Because of the Supremacy Clause.
III. Because Congress has control over federal lands.

(A) I alone.
(B) I and II together.
(C) III alone.
(D) I and II together and III alone.

Question 40

Vickie was attacked from behind by a man on a dark street. Later the same evening police arrested Dodd near the same area for public drunkenness. Vickie was shown photographs of six men and she identified Dodd as the man who had attacked her. But later at trial Vickie cannot identify Dodd as the man who attacked her.

40) If the prosecutor offers Vickie's prior identification of Dodd's photograph as the man who attacked her:

(A) It should be admitted.
(B) It should be excluded because Vickie was not shown enough photos to make her identification reliable.
(C) It should be excluded because Dodd was not represented by counsel when Vickie was shown the photos.
(D) It should be excluded because it is hearsay.

Question 41

41) Tess devised her home "to my daughter, Helen, for life, then to Helen's children, their heirs and assigns." Helen, a 70 year old widow, has two adult children, Able and Baker.

A Court should hold that the remainder to Able and Baker is:

(A) Vested subject to total divestment.
(B) Vested subject to partial defeasance.
(C) Contingent.
(D) Indefeasibly vested.

Question 42

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."

42) 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.

Questions 43-45

George owned a house on Main Street. He gave Alice a Deed to the house on Main Street which said:

> "… to Alice, her heirs and assigns as long as she uses the house as a residence, but if it is not used as a residence then to the City of Anaheim."

George also owned a house on Broadway. He gave Betty a Deed to that house which said:

> "… to Betty, her heirs and assigns as long as she uses the house as a residence, but if it is not used as a residence for the next 21 years, then to the Boy Scouts of America."

George later died leaving a Will which said:

> "… to Carla, I leave all of my real estate. And to Don I leave the residual of my estate."

Don was George's son and sole heir.

The jurisdiction in which this all occurred follows the common law for all real estate transactions.

43) After George executed his Will and before he died the interest of the City of Anaheim in the house on Main street would best be described as:

(A) An executory interest.
(B) A contingent remainder.
(C) A right of entry.
(D) Nothing.

44) The interest of the Boy Scouts in the house on Broadway would best be described as:

(A) An executory interest.
(B) A contingent remainder.
(C) A right of entry.
(D) Nothing.

45) Suppose for the purposes of this question only, Alice and Don enter into a land sales contract to sell the house on Main Street to Bill for $300,000. And at the close of escrow Bill refused the Deed offered by Alice and Don claiming they could not deliver good title. If Alice and Don sued Bill seeking specific performance the Court would:

(A) Find for Bill because the City of Anaheim holds an interest in the house under the terms of the Deed given to Alice by George.
(B) Find for Bill because Carla holds an interest in the house under the terms of George's Will.
(C) Find for Alice alone because the gift to the City of Anaheim violates the Rule Against Perpetuities.
(D) Find for Alice and Don together because they own the house in fee simple absolute.

Question 46

Paul was injured in an accident when Don ran a red light and hit collided with his car. Don had been drinking at Joe's Bar. Paul sued Joe's Bar claiming it negligently sold alcohol to Don after he was already obviously inebriated. William was called as a witness and asked if Joe's Bar kept selling Don drinks after he was already obviously drunk.

46) William says, "I told my friend Bill, "Dude, look at Don. He's getting another drink and he's already wasted"." This testimony is:

(A) Inadmissible unless William is expert at determining drunkenness.
(B) Admissible because William made the statement while he was observing Don.
(C) Inadmissible hearsay.
(D) An admissible excited utterance.

Question 47

47) The State of Pennsylvania enacts a law that allows the State Department of Education to loan mathematics, science, history, and languages textbooks to all public and private schools, including parochial schools. The Elijah Muhammad Black Muslim Academy, a school that only admits Black Muslim students, submits a request for text books. If the State Department of Education denies the request and the Academy petitions federal court for an injunction which of the following is most likely true?

(A) The law is unconstitutional because it fosters excessive entanglement with religion.
(B) The law is unconstitutional because it advances religion.
(C) The law is facially constitutional but it would be unconstitutional in application to loan books to the Academy.
(D) The law is unconstitutional because States cannot provide aid private schools

Question 48

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.

48) Dick can be charged with and convicted of:

(A) Embezzlement.
(B) Forgery.
(C) Larceny by trick and uttering.
(D) Larceny by trick.

Question 49

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.

49) 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.

Question 50

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.

50) 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.

Questions 51-52

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.

51) Pervis' best defense is:

(A) Self defense.
(B) Defense of property.
(C) Contributory negligence.
(D) Assumption of the risk.

52) 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.

Question 53

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.

53) 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 54

Concerned by a study finding widespread racial discrimination against Black people, Congress passes an Act that prohibits, among other things, all acts of racial discrimination, including those by private individuals, in real estate transactions. The Mayer Company, a home builder, has a policy of refusing to sell its new homes to Black people. Jones sought to buy a new home from the Mayer Company and was turned away because he is Black. He seeks an injunction to force Mayer to sell to him, and Mayer opposes on the ground the Act is not within the enumerated powers of Congress.

54) Jones' best argument that the Act is constitutional is based on:

(A) The Commerce Clause because discrimination in home sales has an effect on interstate commerce.
(B) The 5th Amendment equal protection guarantee.
(C) The 14th equal protection guarantee.
(D) The 13th Amendment prohibition of slavery and involuntary servitude.

Question 55

Irving was hospitalized after being in a 2-car auto accident. Carl, the driver of the other car, visited him in the hospital and said, "I feel just terrible about this. I'll pay your medical bills because I should not have been talking on my phone while driving."

55) Evidence of Carl's statement is:

(A) Inadmissible as a matter of public policy.
(B) Inadmissible hearsay.
(C) Admissible hearsay.
(D) Admissible non-hearsay as to that part in which he admits he was talking on the phone.

Question 56

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.

56) 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 57

Mona sued her employer, County, for sexual harassment she suffered at the hands of her supervisor, Orville. Mona called Orville as a witness, expecting him to admit that he had sexually harassed her. However, on direct examination Orville denied touching or sexually harassing her in any manner. Mona now seeks to confront Orville with a statement he made in deposition that he had, in fact, "rubbed" himself against her in a sexually suggestive manner.

57) Orville's prior statement is:

(A) Admissible as an admission by a party opponent.
(B) Inadmissible because Mona cannot impeach her own witness.
(C) Admissible both to impeach Orville's testimony and to prove Orville sexually harassed Mona.
(D) Admissible only to refresh Orville's memory.

Question 58

58) Some young men adopt a clothing style called "sagging" which is characterized by wearing baggy pants belted several inches below the waist so a substantial amount of underwear is displayed. Irritated by this trend and determined to protect public morality, Congress passes a law that makes it illegal to wear clothing that deliberately shows underwear.

(A) This law would apply to everyone in the United States.
(B) This law could be applied to people in Washington D.C.
(C) This law could be applied to people on Indian lands.
(D) This law is not within the enumerated powers of Congress.

Question 59

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.

59) 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.

Question 60

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.

60) 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 61

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 - Dick." 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.

61) 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.

Question 62

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.

62) 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 63

An organization called "Right to Life" suddenly held a "flash mob" demonstration in front of the offices of Planned Parenthood which blocked the sidewalk. Children walking to school were forced to cross the street at an intersection that did not have a traffic signal, marked crosswalk or crossing guard. One child was hit by a car. The City Council reacted by adopting an ordinance which stated among other things, "It shall be illegal for anyone to stand, loiter, gather, pass out literature, give speeches, hold signs or demonstrate in any manner, for any reason, on any public sidewalk, in any public park, or in any other public place in a manner that creates a traffic hazard." Some months later Homer was standing on the sidewalk near a busy intersection holding a crudely lettered sign that said, "Homeless Vet. Please help." As Dan neared the intersection he was distracted by Homer's sign and ran into the back of Mary's car stopped in front of him. Mary was badly injured. Police responding to the accident arrested Homer for violating the ordinance.

63) Which of the following is most correct?

(A) This ordinance is void on its face but valid as applied to Homer.
(B) This ordinance is void on its face and as applied to Homer.
(C) This ordinance is valid on its face and as applied to Homer.
(D) This ordinance is valid on its face but void as applied to Homer.

Question 64

Tom died intestate. Benny seeks to prove he is Tom's brother by introducing into evidence a Deed of land executed by Tom which said "I, Tom, hereby give to my brother, Benny…" The Deed had been duly recorded with the County Recorder pursuant to statute.

64) The photocopy is:

(A) Inadmissible under the best evidence rule.
(B) Admissible as a statement of personal or family history.
(C) Inadmissible hearsay.
(D) Admissible as a statement in a document affecting an interest in property.

Question 65

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.

65) Tom has a right to be awarded:

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

Question 66

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.

66) 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.

Question 67

Granny owned an acreage within the city limits. She was unable to pay the property taxes. So she negotiated a deal with City by which she would be forgiven for the past taxes she owed if she would in exchange convey the land to City for use as a senior citizen's center. Granny executed a Warranty Deed which was drafted by City. It said,

> "… to City in fee simple, subject to the understanding that within two years from the date of this Deed City shall construct and thereafter maintain and operate a senior citizen center called "Granny's Place" on said land for the next 21 years."

City built the senior citizen center but two years later it was closed due to budget deficits. Then City began using the building for administrative offices.

Granny died and her executor petitioned the Court for a finding that title to the land had reverted to her estate since City had violated the condition stated in the Deed.

67) The Court should:

(A) Find for City because a land use restriction is only enforceable in equity.
(B) Find for City because the Deed stated a contractual condition without creating a reversionary interest.
(C) Find for Granny's estate because the Deed stated a condition subsequent which retained a right of entry.
(D) Find for Granny's estate because the Deed stated a condition precedent which retained a reversion.

Question 68

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.

68) 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 69

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.

69) 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 70

Harry petitions the Court for an order finding that a Deed executed by Tess, who is deceased, was invalid because she was mentally incompetent at the time she executed it. As evidence he presents a sworn affidavit executed by Tess' physician, Doc, in which he states he is a licensed psychiatrist and had been treating Tess at the time she executed the Deed. Further, he states that in his expert opinion she was suffering from Alzheimer's Syndrome and so mentally incompetent she was completely unable to understand what she was doing when she signed the Deed.

70) Upon objection Doc's statement is:

(A) Admissible as an expert opinion.
(B) Admissible as a statement made for purposes of medical diagnosis and treatment.
(C) Inadmissible hearsay, not within any exception.
(D) Inadmissible as an expert opinion.

Question 71

71) Gramps could no longer afford to pay the monthly mortgage payments on his estate, Blackacre. So he conveyed Blackacre to his daughter, Debbie, for life and then to his grandson, Rex.

(A) Rex must pay the mortgage.
(B) Debbie must pay the interest portion of the mortgage.
(C) Debbie must pay a portion of the monthly mortgage bill based on the value of her life estate relative to the value of Rex's remainder.
(D) None of the above.

Questions 72-73

Atlas Manufacturing enters into a contract with the U.S. Postal Service to sell it 8,000 mail delivery trucks with steering wheels on the right-hand side. Atlas is to deliver the vehicles to Postal Service facilities in several States. The vehicle code of one of those States, Franklin, states among other things, "It shall be illegal to sell any vehicle in the State of Franklin for operation on public highways unless the steering wheel is located on the left-hand side. The minimum fine for each violation of this statute shall be $500."

72) If Atlas files a petition in federal court seeking a declaratory judgment that it will not be liable to the State of Franklin for delivering vehicles to the Postal Service there, the court should:

(A) Deny the petition.
(B) Grant the petition and hold that the statute violates the Commerce Clause.
(C) Grant the petition and hold that the statute violates the Contracts Clause.
(D) Grant the petition and hold that the statute violates the Supremacy Clause.

73) Suppose Franklin levies a fine of $500 against Atlas for each vehicle it delivers to the Postal Service. If Atlas petitions federal court for injunctive relief, the court should:

(A) Deny the petition.
(B) Enjoin the State because it is violating the Commerce Clause.
(C) Enjoin the State because it is violating the Contracts Clause.
(D) Enjoin the State because it is violating the Supremacy Clause.

Questions 74-75

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.

74) 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.

75) 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 76

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.

76) 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 77

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.

77) Bud and Lou can be charged with:

(A) Murder.
(B) First degree murder.
(C) Involuntary manslaughter.
(D) None of the above.

Question 78

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.

78) 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 79

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.

79) 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.

Question 80

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.

80) Lou can be charged with:

(A) Bank robbery.
(B) Aiding and abetting.
(C) Compounding a felony.
(D) Misprision of a felony.

Question 81

Tom and Dick were arrested for robbing a bank. Before a Miranda warning could be given Tom blurted out, "We're guilty as charged. This is the last time I go along with one of Dick's dumb ideas." Dick stood by silently.

81) At Dick's trial evidence of Tom's statement when he was arrested is:

(A) Inadmissible because Dick had a right to remain silent.
(B) Admissible as an admission by a co-conspirator.
(C) Inadmissible hearsay.
(D) Admissible because Dick's silence impliedly admitted what Tom was saying was true.

Question 82

Pops owned a house near the law school his son, Sam, attended. By oral agreement, Pops let Sam live in the house rent-free. Sam's friend Mary moved in with him. Pops was aware of this and voiced no objections. Pops was concerned Sam was not applying himself to his studies with the necessary vigor. So he executed a valid Deed which conveyed the house,

> "… to Sam his heirs and assigns, as long as he earns a law degree and passes the Bar before he reaches the age of 30, and if not to my daughter Wilma, her heirs and assigns."

Pops gave Sam the Deed, and Sam recorded it.

82) Can Sam evict Mary?

(A) Rex must pay the mortgage.
(B) Debbie must pay the interest portion of the mortgage.
(C) Debbie must pay a portion of the monthly mortgage bill based on the value of her life estate relative to the value of Rex's remainder.
(D) None of the above.

Question 83

Fred injured his knee in a fall after he stepped on a banana that had fallen to the floor in the Food Mart. At trial Food Mart calls Clark to testify that after the fall Fred stated, "Damn! I hurt that knee playing football. Now I have to go through that all over again."

83) Clark's testimony is:

(A) Inadmissible hearsay.
(B) Inadmissible because the previous injury to Fred's knee is irrelevant to the fact he has injured it a second time.
(C) Admissible as an excited utterance.
(D) Admissible non-hearsay.

Question 84

Fred injured his knee in a fall after he stepped on a banana that had fallen to the floor in the Food Mart. At the hospital Fred was examined by Doc who wrote in his notes at the time, "Patient complains of pain in left knee. States that left knee was operated on some years earlier for football injury but had completely healed prior to incident. Severe swelling of lateral anterior area of the left knee."

84) If Doc dies before trial his examination notes are:

(A) Non-hearsay because it is an admission of a party opponent.
(B) Admissible as a statement made for purposes of medical diagnosis and treatment.
(C) Inadmissible hearsay.
(D) Admissible as a present sense impression.

Question 85

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.

85) 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.

Question 86

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.

86) 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.

Question 87

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.

87) 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.

Questions 88-89

The California Department of General Services (DGS) awarded a contract to Southwest Airlines that it would carry all State employees and officials who need to travel on official business for the next two years. Based on past data, Southwest anticipated the contract would increase its passenger-miles flown by 20%, so it entered into a contract to buy 10 more aircraft from Boeing to assure sufficient capacity. Unfortunately, the Great Recession caused California tax receipts to plunge, and the State faces a serious budget deficit. In the meantime American Airlines offers to carry California employees and officials for a lower rate.

88) Suppose Governor Shortsgrabber orders DGS to declare the contract with Southwest void. If Southwest petitions federal court to enjoin DGS from voiding the contract, the court should:

(A) Grant the injunction because it is unconstitutional for DGS to rescind the contract.
(B) Deny the petition because it violates State sovereignty for federal courts to commandeer State resources.
(C) Grant the injunction because California is equitably estopped since Southwest, entered into the contract with Boeing in reliance on the contract with DGS.
(D) Dismiss the petition because the 11th Amendment prevents Southwest from suing in a federal court.

89) Suppose Governor Shortsgrabber orders DGS to cut air travel by State employees and officials in half. If Southwest petitions federal court to enjoin DGS from reducing passenger miles, the court should:

(A) Grant the injunction because it is unconstitutional for DGS to impair the obligations it assumed under the contract.
(B) Deny the petition because it violates State sovereignty for federal courts to commandeer State resources.
(C) Grant the injunction because California is equitably estopped since Southwest, entered into the contract with Boeing in reliance on the contract with DGS.
(D) Dismiss the petition because the 11th Amendment prevents Southwest from suing in a federal court.

Questions 90-91

Lucy owned a home in Prestige Estates, a gated community. The legal description on the Deeds for every residential lot in the development concluded with the phrase,

> "… subject to those codes, covenants and restrictions applicable to Prestige Estates filed with the County Recorder on June 1, 1995 at Book 37, Page 12."

Among those recorded covenants was a requirement that each lot owner was required to pay an annual fee of $500 to the homeowner association for "security services". The security services consisted of an automated gate at the entrance to the development. During the day the gate was open and a guard named Fred monitored the traffic going in and out.

Lucy always paid her homeowner dues, so she was shocked one day when Fred told her he might quit because he wasn't getting paid in full. He said one of the residents had not paid their dues for 10 years, and the homeowner's association wouldn't do anything about it.

Lucy mentioned this to her friend, Ethel, over drinks in the club house, and she was shocked when Ethel said, "Lucy, you are such a sucker. Sure I haven't paid my dues for the past 10 years,

and that sissy homeowner's association isn't going to do anything about it either."

Lucy felt this was so wrong she approached the president of the homeowner's association, Desi. Desi said, "Lucy, you are so stupid. If we sued Ethel it would cost us more in legal fees than the back dues she owes us. And Fred isn't going anywhere, either. He needs the job and nobody else would ever hire that old relic. So why should we pay out thousands of dollars to lawyers to collect the back dues from Ethel? We are better off just doing nothing."

Lucy admits that she has not suffered any personal harm as a result of Ethel's refusal to pay the homeowner's association. But it gnaws at her.

90) If Lucy sues Ethel over her failure to pay dues, she:

(A) Must plead equity
(B) Must seek restitution.
(C) Must prove she has suffered damages.
(D) Lacks standing. If the homeowner's association refuses to act, she cannot act on its behalf.

91) The most likely outcome of a suit by Lucy against Ethel is:

(A) She will be granted an injunction forcing Ethel to pay her past dues.
(B) She will win $5,000, and can keep it all for herself.
(C) She win $5,000, but for the homeowner's association, not for herself.
(D) She will win $5,000, but for Fred, not for herself.

Question 92

Donald 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.

92) 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 93

Mean Mike takes Timmy's dog Lassie and refuses to give her back. Lassie is a mangy old dog but Timmy loves her.

93) 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.

Question 94

Laverne and Shirley were sisters who lived together on Green Acres, a Wisconsin farm they had inherited from their grandmother, as tenants in common. Laverne got sick and tired of milking the cows, and sick and tired of Shirley too. One day they had a huge fight and Laverne left on the bus to Milwaukee. She got a job working at the brewery, and vowed to never go back to Green Acres.

A year later Ziggy, who owned Cheeseland, the farm to the west of Green Acres, called Shirley and said he was having a new fence built along their property line, and he was uncertain exactly where the true boundary actually was. They agreed to meet and discuss the matter.

Shirley and Ziggy met at the local bar, tossed back a few boiler makers, and agreed the true boundary between the farms was uncertain. To avoid the cost of a survey, they reached an oral

agreement where the fence should be built. Ziggy built the fence as they had agreed.

Years later Shirley tragically died intestate when her milk cows were stampeded by a badger. Laverne was her sole heir.

Laverne quit her job at the brewery and returned to the farm to discover the fence built by Ziggy encroached on her property by several feet.

94) If Laverne sues Ziggy for encroachment she will:

(A) Win because the oral agreement between Ziggy and Shirley failed to satisfy the Statute of Frauds.
(B) Win because a tenant in common cannot give away any part of the land without the consent of the other tenants in common.
(C) Lose because Shirley was authorized to agree with Ziggy as to the boundary between the farms.
(D) Lose because she abandoned her tenancy in common interest when she left Green Acres.

Question 95

Peter sued Dave for negligence after a traffic accident. Dave claims Peter caused the accident by crossing the center line on his motorcycle, hitting his car head-on. Dave presents a witness, Will, to testify that he was having lunch in a restaurant with Vick and heard Vick exclaim, "That motorcycle's on the wrong side of the street!" just as the accident occurred. Vick has since died.

95) Will's testimony is:

(A) Inadmissible because of the Dead Man's Statute.
(B) Inadmissible hearsay.
(C) Admissible because Vick is unavailable to testify.
(D) Admissible as a present sense impression.

Question 96

96) Congress passes a law that requires all State and local police departments that receive federal funds to devote a specific amount of their expenditures for the War on Drugs Program in schools, including private and parochial schools. What is the best constitutional argument in support of this measure?

(A) The Tax and Spend Clause.
(B) The National Defense powers implied in the power to declare war, raise an army and navy, and to raise and organize a militia.
(C) This General Welfare Clause.
(D) The Commerce Clause.

Question 97

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.

97) Bernie can be charged with:

(A) Burglary.
(B) Attempted burglary.
(C) Attempted larceny.
(D) No crime.

Question 98

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.

98) 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 99

Manager found some his company's merchandise hidden behind the dumpster behind his warehouse. He called the police to report a theft. Cop told Manager that there had been a lot of thefts in the area, and that the police were trying to catch the fence that was "moving" the stolen goods in the area. So he asked Manager to leave the merchandise hidden behind the dumpster so the police could establish a "stakeout" and catch both the thieves and the fence. Later that evening one of Manager's employees, Sticky, got off work, went behind the warehouse, retrieved the stolen goods and put them in his car. The police tailed Sticky and he went to Moe's Pawn Shop. After Moe had purchased the merchandise the police arrested both Moe and Sticky.

99) Which of the following is most correct?

(A) Moe is guilty of conspiracy and theft.
(B) Moe is guilty of attempted receipt of stolen property.
(C) Moe is guilty of attempted receipt of stolen property, conspiracy and theft.
(D) Moe is guilty of receipt of stolen property.

Question 100

Bill and Hillary were running for a seat on the City Council. As a stunt, Bill called Charity, the head of a local organization for handicapped children, and pretended to be a member of Hillary's campaign staff. Bill said, "Hillary strongly supports programs for the handicapped and loves children." Charity responded that she admired Hillary's support of the handicapped and expressed a desire to bring some children to meet Hillary. Bill told her Hillary would love to host the children at her offices. It was soon agreed that

Charity would bring a group of children to Hillary's office to meet her. When Charity showed up at Hillary's office it was a total surprise to Hillary and she was unprepared. Bill had a news photographer there to capture Hillary in an awkward situation.

100) Hillary's best cause of action is:

(A) False Light.
(B) Defamation.
(C) False Light and Defamation.
(D) Invasion of Privacy.

Test #6 Answer Sheet

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
1	B					X			
2	B				X				
3	D			X					
4	A						X		
5	B						X		
6	A						X		
7	B						X		
8	D						X		
9	B							X	
10	C	X							
11	C			X					
12	C								X
13	C							X	
14	A								X
15	B							X	
16	B			X					
17	B			X					
18	C			X					
19	D							X	
20	B							X	
21	D								X
22	B								X
23	D		X						
24	D		X						
25	D		X						
26	D	X							
27	B							X	
28	C								X
29	A			X					
30	C								X
31	A							X	
32	D				X				
33	C						X		
34	B	X							
35	A			X					
36	C			X					
37	D			X					
38	D				X				
39	D						X		
40	A							X	
41	B								X
42	A	X							
43	D								X
44	A								X
45	B								X
46	B							X	

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
47	C						X		
48	D				X				
49	C					X			
50	C	X							
51	A			X					
52	D			X					
53	B				X				
54	D						X		
55	D							X	
56	C	X							
57	C							X	
58	B						X		
59	B				X				
60	D	X							
61	D		X						
62	B					X			
63	D						X		
64	B							X	
65	B	X							
66	D			X					
67	B								X
68	C				X				
69	A					X			
70	C							X	
71	B								X
72	A						X		
73	D						X		
74	A	X							
75	D	X							
76	D			X					
77	D				X				
78	D					X			
79	A			X					
80	C				X				
81	C							X	
82	B								X
83	D							X	
84	B							X	
85	A	X							
86	D			X					
87	C				X				
88	A						X		
89	B						X		
90	B								X
91	B								X
92	A	X							
93	D			X					
94	C								X
95	D							X	
96	A						X		

Question	Answer	Contracts	UCC	Torts	Crimes	Criminal Pro	Const. Law	Evidence	Real Property
97	D				X				
98	C	X							
99	B				X				
100	A			X					
Total	100	13	4	17	12	5	16	17	16
Wrong									
Right									
% Right									

Test #6 Answers and Explanations

1) **(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.

2) **(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, pp. 69-70**.] (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 Vic's death because negligence by others is conclusively presumed by law to be foreseeable. [See "**Simple Crimes Outline**", **criminal causation, p. 12.]**

3) **(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.

4) **(A)** The only enumerated power of Congress that would justify its regulation of the home loan industry is the Commerce Clause. (D) is wrong because even if SHFC only makes loans within Calvada, those loans would still have an aggregate effect on interstate commerce, so Congress can regulate it under the "aggregation doctrine". [See "**Simple Constitutional Law Outline**", **the expansion of congressional power through the aggregation doctrine, p. 7**.] (C) is wrong because it is simply silly. State agencies are not "immune from federal regulation" at all. After all, if they were, States would not have to obey federal OSHA rules, pay Social Security Taxes, or pay minimum wage. (B) is wrong because the activity at issue here, making home loans, is not a "non-governmental" activity, not a function that has been traditionally relegated to the States. [See "**Simple Constitutional Law Outline**", **federal regulation of state activities, p. 20**.] (A) is correct because the HUD regulations control parties that make home loans, and SHFC is making home loans.

5) **(B)** As is often the case, it is easiest to weed out the more obviously wrong answers first to narrow the possibilities. (C) is wrong because SHFC is a wholly owned State entity so any actions by it are effectively State acts, regardless of whether it has been incorporated or not. If States could violate due process and equal protection by simply forming subordinate corporations the 14th Amendment would be worthless. (D) is wrong because CHF is not suing the State of Calvada seeking award of a money judgment. Rather, it is seeking an injunction against SHFC. Apparently CHF's claim is based on an equal protection argument, and its members are "homeowners that lost less than $300,000". That is not a "suspect class" or "quasi-suspect class" so the burden of proof would be on CHF to prove there is no rational relationship between the $300,000 limit and any legitimate government goal. That makes (B) correct and (A) wrong because it uses the wrong standard of proof and places the burden of proof on the wrong party. [See **"Simple Constitutional Law Outline", whether disparate treatment is justified depends on situation, p. 90**.]

6) **(A)** Answer (B) is wrong because Scheming Brothers has lost money, and that creates sufficient harm for it to have standing to seek a remedy. But providing individuals with housing or funds to buy housing is clearly within the powers reserved to States by the 10th Amendment. Traditional State housing programs such as low-income housing for the poor, farm loan programs and home loans to veterans simply do not violate equal protection or due process simply because they compete against private businesses. Consequently, (C) and (D) are wrong and (A) is correct. [See **"Simple Constitutional Law Outline", extension of equal protection to all people, p. 86**.]

7) **(B)** Government acts that are facially neutral, but have a coincidentally disproportionate effect on specific groups of people in application, do not violate equal protection. In order to show a violation of equal protection Knife must show that the $300,000 limit was chosen with a specific intent to prevent the Cheyenne Sioux from being able to qualify for the re-finance program. [See "**Simple Constitutional Law Outline**", **only deliberate discrimination prohibited, p. 87**.] Consequently (B) is the correct answer. (A), (C) and (D) are wrong because none of them support a finding of intentional discrimination.

8) **(D)** Congress always has the power to investigate issues so Activity I would always be allowable and (B) is wrong since it does not include that activity. Congress also has the power to control public utility pipelines under the Commerce Clause because it has a clear effect on interstate commerce. Therefore Activities II and IV are allowable and (C) is wrong because it excludes Activity II. But under the "Appointments Clause" of Article II, Section 2 [2.], Congress does not have the power to enforce laws or appoint anyone to such a position. That makes Activity III improper, and (A) is wrong because it includes that activity. Therefore (D) is the correct answer. [See **"Simple Constitutional Law Outline", no power to appoint officers or enforce laws, p. 17**.]

9) **(B)** Answer (A) is wrong because *Crawford* only pertains to the rights of criminal defendants. (C) is wrong because there is no evidence Wendy was still acting under the stress of an "exciting event". She might have been "excited" when she "ran into the street" but nothing indicates how long she waited before stopping Orville. (B) is correct and (D) is wrong because there is nothing in these facts to indicate Wendy's statement would be "inherently trustworthy". [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

10) **(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 **revocability - token chose, p. 8**.]

11) **(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.

12) **(C)** Bevis has given Butthead a defeasible estate, but (A) is wrong because he has not retained a reversion. Reversions follow estates that naturally terminate (like a life estate). Butthead's estate will not "naturally terminate" due to a "natural" event. Bevis has given Butthead title subject to an executory interest. [See "**Simple Real Property Outline**", **types of defeasible estates and the doctrine of equitable waste, p. 6**.] But executory interests are subject to the Rule Against Perpetuities, [See "**Simple Real Property Outline**", **executory interests, p. 12**.] And since it is clearly possible for heirs of Butthead might stop using the land for agricultural purposes in the distant future, over 21 years after Bevis, Butthead and Zonker are all long dead, the gift to Zonker violates the Rule Against Perpetuities and is invalid from the beginning. Therefore, Zonker has no valid interest at all, and the conveyance would be treated as if it had only said, "To Butthead, his heirs and assigns in fee simple as long as the land is used for agricultural purposes". As a result Butthead's interest is still subject to the express condition of the conveyance, and if the condition ever fails the land would return to Bevis or his heirs. Therefore Bevis has an interest and (D) is wrong. But does Bevis had a right of reentry or a possibility of reverter? The condition, "as long as the land is never…" is a condition precedent. [See "**Simple Real Property Outline**", **conditions precedent, p. 7**.] And a possibility of reverter is the interest created by a condition precedent. Rights of reentry are created by conditions subsequent. [See "**Simple Real Property Outline**", **possibility of reverter and right of entry, p.11**] Therefore, (C) is correct and (B) is wrong. If Butthead or his heirs or assigns violate the condition it will automatically return title to Bevis or his heirs. [See "**Simple Real Property Outline**", **conditions precedent automatically terminate estates, p.7**.]

13) **(C)** Answer (A) is wrong because Pete's unavailability is not necessary for the statement to be admissible hearsay. (D) is wrong because it was not a statement about Pete's physical condition at the time the statement was made to Dr. Casey, but his condition before the accident. (B) is wrong and (C) is correct because even though it is hearsay it is admissible as a statement made for the purpose of obtaining medical diagnosis and treatment. [See "**Simple Evidence Outline**", **exception: statements for medical diagnosis and treatment, p. 58**.]

14) **(A)** This is a typical sort of Bar question, but often you will see questions of this type written with much longer and more confused fact patterns. All those additional facts are simply thrown in to confuse you. The simple resolution of this problem is to understand that whether or not the conditions on the remainders given to Donald's children are valid or invalid, the remainders themselves are still valid because they would have to vest at Donald's death, or else at Scrooge's death if Donald predeceased Scrooge. And Donald and Scrooge would be the "lives in being" at the time the interest is created (at the death of Scrooge). That makes (C) and (D) wrong, and (A) correct. Here is why. If the Court (judge) decides the conditions that might divest the children of Donald are invalid they would be removed from the text, but the remaining language would be retained. So the effective language would be like this:

> "I give my hereditary estate, Duck Lake, to my nephew Donald Duck for life, and then to his surviving children in equal shares. I give the residual of my estate to Daisy."

(B) is wrong because the conditions do, in fact, violate the RAP. Scrooge is giving gifts to a "third generation" called "Donald's children", the members of that generation are not named in the Will, and the remainders given them are subject to a condition that might remain in effect for over 21 years after the death of Scrooge. Those facts usually cause a violation of the Rule Against Perpetuities. [See "**Simple Real Property Outline**", **common situations when the RAP is violated, p. 17**.] This violates the RAP because Donald could father more children after Scrooge dies who would not be "lives in being" at the time their interests were created – at the death of Scrooge. Those "after born" children would receive remainders that would remain defeasible for over 21 years. That violates the RAP, so (B) is wrong.

15) **(B)** This is a tricky and picky question. (A) is wrong because her statement tends to identify Pablo as the robber. (D) is wrong because if everyone in the photos looked exactly alike their use would be pointless. (C) would be the correct answer if the prosecutor had asked, "After the robbery which of these photos did you identify as the robber?" Then this would be admissible non-hearsay under FRE 801(d)(1)(C) as a statement of identification. But that was not what the prosecutor asked. (C) is correct because Juanita's statement is not responsive to the question. She was asked if any of the photos were of the person who robbed the store. Her response should have been, "This is the man who robbed the store." Instead her answer is, "This is the photo I picked out at the police station," and that is an evasive response. [See "**Simple Evidence Outline**", **non-responsive answers, p. 96**.]

16) **(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.

17) **(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".

18) **(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.]**

19) **(D)** Answer (B) is wrong because it tends to prove Scott had a motive to murder Lacy. (C) is wrong because the evidence is offered to prove the truth of Lacy's out-of-court assertion – that it was her intention to tell Scott she wanted a divorce later that day. That tends to prove she did, in fact, tell him that. And that in turn suggests he may have flown into a murderous rage. (A) is wrong and (D) is correct because this is admissible evidence of Lacy's intentions or "mental state" immediately before she disappeared. [See "**Simple Evidence Outline**", **existing mental, emotional condition and Hillmon Doctrine, p. 57.]**

20) **(B)** You should realize that Cohen is testifying as a criminal defendant so he must have voluntarily taken the stand after the prosecution finished presenting its case. This can always have a direct effect on the selection of the right answer. (A) is wrong simply because there is no such rule. Witnesses, including defendants, often make self-serving statements and it is the job of the finder of fact (i.e. jury) to decide how much weight to give them. (C) is wrong because even if Cohen's statements have been called into question by the prosecution, he still had a motive to lie when the statement in question was made. (D) is wrong and simply makes no sense because the only witness Cohen's prior statements could impeach is Cohen himself, and he is the one offering the evidence. (B) is correct because Cohen is repeating his out-of-court statement "I've never been in the bank" to prove that is true fact, and the statement that the police, "didn't believe me" is intended to accuse the prosecution of ignoring the truth of that. [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

21) **(D)** A lesson to be learned here is that when a question asks why some action would or would not violate a specific rule of law lean toward the answer(s) that reference specific legal elements of that same rule of law. Here the question asks why the Rule Against Perpetuities would not be violated, and (D) is the only answer that mentions the "measuring life", an element of the RAP. The other answers discuss testamentary intent and class closure, which are not required legal elements of the RAP. So you should "lean" toward (D) from the beginning here.

(B) is wrong because it is clearly opposite to what Jose intended. As a general rule, Courts try to give effect to the expressed intent of testators and do not "interpret" testamentary instruments to be completely opposite to what the testator clearly wanted. The MBE is not a test of your knowledge of probate law anyway. Therefore (A) is the wrong answer here. Under the Rule of Convenience (C) would have been the correct answer. But the express intentions of grantors override that rule, and Jose expressly stated that he intended for the class to remain open for all future grandchildren. Therefore (C) is wrong,. (D) is correct because Jose's grandchildren will vest when they reach the age of 21. And they would have to either be alive themselves when Jose dies or else be the later-born children of children of Jose who were alive when Jose died.. [See "**Simple Real Property Outline**", **the measuring life, p. 16**.]

22) **(B)** Answer (A) is wrong because the existence or non-existence of grandchildren at the time Jose died would have no bearing on the application of the Rule Against Perpetuities. [See "**Simple Real Property Outline**", **the rule against perpetuities, p. 16**.] (C) is wrong for the same reasons given in the immediately preceding question in which it was shown that all of the issue surviving Jose would be measuring lives. (D) is wrong because the RAP automatically extends the 21 year period by an additional gestation period to provide for children that are conceived but not born before an interest is created. (B) is the correct answer because if this were an "inter vivos" transfer, the interest of the "grandchildren" would be created at the time of recordation. Then Jose could have a child afterward that would not be a measuring life. And that child could have grandchildren that reach the age of 21 more than 21 years after the death of Jose and everyone else that was alive at the time Jose recorded the Deed.

23) **(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.

24) **(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.

25) **(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, pp. 112-113**.] So the only correct answer is (D).

26) **(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.

27) **(B)** Answer (A) is wrong because the opinions of witnesses as to identification of a person or thing are admissible under FRE 701 unless they are inadmissible for other reasons. (B) is correct because the sketch is evidence of Joe's out-of-court statements to the sketch artist. (C) is wrong because the best evidence rule concerns evidence offered to prove what the contents of a writing or document were, and that is not why the evidence is offered here. (D) is wrong because the sketch is not evidence of Joe identifying Wilson; rather, it is evidence of Joe saying, "This is what the robber looked like." [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

28) **(C)** Quincy holds a life estate per autre vie because it is measured by the life of Adams, not Quincy. And it is subject to a condition precedent, so it is a defeasible estate. If the condition is violated, the estate would automatically terminate. Jefferson did not say who would get the land in that event, so he retained a possibility of reverter. [See "**Simple Real Property Outline**", **possibility of reverter, p. 11**.] That suggests (D) is the right answer, but if Quincy's interest was terminated, title would return to Jefferson, and the petitioners' remainders would also terminate. The remainders of the "grandchildren" are, in effect, contingent remainders because they are subject to the same condition as Quincy's life estate. If the condition fails Quincy's life estate terminates, and their remainders also terminate. Then they have no interests and no standing either, and the Court could grant them nothing.. So (D) is a logically inconsistent answer. What is the duty of a life tenant to the remaindermen? They have a duty to avoid Equitable Waste, unreasonable acts that might reduce the value of future estates, even if the future estate holders are uncertain and unvested. [See "**Simple Real Property Outline**", **types of defeasible estates and doctrine of equitable waste, p. 6**.] The grandchildren's only possible argument must be that Quincy is committing equitable waste, and they have standing to raise that claim since they hold unvested future interests in the land. The Court would find in their favor and grant an injunction, so (A) is wrong. And (B) is wrong because the Court would award damages to prevent Quincy from gaining an unjust enrichment from his wrongful acts. (C) is the correct answer because this is a gift to the open class of "Jefferson's grandchildren". If Jefferson had any grandchildren at the time he gave Quincy the life estate the class will close when Adams dies, and if not the class will not close until Jefferson and all of his children die! [See "**Simple Real Property Outline**", **class gifts and the rule of convenience, p. 13**.]

29) **(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.

30) **(C)** Carl has a defeasible estate because it is subject to the condition subsequent that he will lose title unless Don dies within 30 years. It could also be described as "vested subject to total divestment". It is subject to a condition subsequent because it is phrased as an "afterthought" in a following clause with the words "But if…" [See "**Simple Real Property Outline**", **conditions subsequent, p. 6**.] (A) is wrong because Don is mentioned by name, and the Rule Against Perpetuities can NEVER be violated when the grantee of a future estate is mentioned by name since their life becomes the "measuring life". [See "**Simple Real Property Outline**", **the rule against perpetuities, p. 16**.] (D) is wrong for two reasons. A "reversion" is a future estate following the "natural termination" of a possessory estate that has been retained by the Grantor rather than granted to a grantee. Here Owen did not retain the future estate, but rather granted it to Don. And it is not a future estate that would follow a "natural termination" of Carl's estate either. [See "**Simple Real Property Outline**", **reversions, p. 8**.] (C) is correct and (B) is wrong because Don holds an executory interest. [See "**Simple Real Property Outline**", **executory interests, p. 12**.] And executory interests are never vested. [See "**Simple Real Property Outline**", **the simple rule for vesting of future interests, p. 14**.]

31) **(A)** Answer (B) is wrong because Bob was not being questioned by police. If he had been, then he would have a right to remain silent and his silence could not be used against him. (C) is wrong because Bob's silence was clearly not a "statement". (A) is correct and (D) is wrong because evidence of silence can only be admitted as an "adopted admission" under FRE 801(d)(2) when the circumstances are such that an innocent person would have been moved to deny guilt, and that is not the situation here. Here Joe was just making a comment in jest, and the fact Bob ignored it is simply irrelevant. [See "**Simple Evidence Outline**", **admission by silence or adopting a third-party's statement, p. 49**.]

32) **(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.]**

33) **(C)** Under Article IV Section 3 [2.] Congress has the power to enact any "needful Rules and Regulations" respecting federal lands. There is no "balance test" nor is there any requirement that the rules be for the "general welfare". There simply has to be some rational purpose. Therefore, (C) is correct and (A) and (D) are wrong. (B) is wrong because the right to travel does not include a right to travel onto federal property. [See **"Simple Constitutional Law Outline", power over District of Columbia and federal lands and buildings, p. 14**.]

34) **(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 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.

35) **(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**.]

36) **(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.

37) **(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.

38) **(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**.]

39) **(D)** The Commerce Clause of Article I, Section 8 authorizes Congress to regulate the sale, distribution and possession of marijuana because it affects interstate commerce. [See **"Simple Constitutional Law Outline", the power over commerce – the commerce clause, p. 6**.] But (A) is wrong because federal law could not supersede conflicting State law if not for the Supremacy Clause of Article VI, and that would seem to make (B) correct. [See **"Simple Constitutional Law Outline", the hierarchy of laws, p. 3**.] But (C) is also correct because Article IV, Section 3 gives Congress the power to make marijuana possession on federal lands a crime even if it does not have any effect on interstate commerce. [See **"Simple Constitutional Law Outline", power over District of Columbia and federal lands and buildings, p. 14**.] So both (B) and (C) are correct, and that makes (D), the combination of them, the best answer.

40) **(A)** Answer (B) is wrong because the weight to be given the evidence is up to the finder of fact (e.g. jury) and does not affect its admissibility. (C) is wrong because there is only a right to counsel at a corporeal (physical) "line-up" and not at a photographic lineup. (A) is the correct and (D) is wrong because evidence of a prior identification of a person after perceiving them is admissible non-hearsay under FRE 801(d)(1)(C). [See "**Simple Evidence Outline**", **prior statements of identification of a person, p. 5**1.]

41) **(B)** The gift to "Helen's children" is a class gift, and as long as Helen is still alive, the law presumes she could have more children. No presumptions of fertility are made by the law. [See "**Simple Real Property Outline**", **class gifts and the rule of convenience, p. 13.]** Therefore, at the death of Tess, assuming Helen is still alive, the class of "children" will be an open class, and Able and Baker will hold vested remainders subject to open. [See "**Simple Real Property Outline**", **vested remainders subject to open, p. 9**.] That means that Able and Baker each have a vested interest in one-half of the remainder that follows Helen's life estate. But (B) is correct and (D) is wrong because if Helen gives birth to another child their shares will be reduced to one-third each. (A) is wrong because they cannot completely lose their remainders, no matter how many more children Helen has. And (C) is wrong because the fact that the class of "children" is open is not a condition precedent or a condition subsequent that might totally terminate their interests. [See "**Simple Real Property Outline**", **conditions precedent and subsequent, p. 6.]**

42) **(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.

43) **(D)** Answer (D) is correct and (A), (B) and (C) are wrong because the conveyance of a future interest to the City of Anaheim (an executory interest) violates the Rule Against Perpetuities. That is because no time limit is stated. The "measuring lives" are George and Alice, but the house might first be used

for some purpose other than a residence long after George and Alice have been dead and gone for over 21 years. [See "**Simple Real Property Outline**", **the rule against perpetuities, p. 16**.] So the conveyance of a future interest to the City of Anaheim would be void at the moment it was made. The fact that George died later is entirely irrelevant. If the interest had not been void from the beginning, it would have been an executory interest and (A) would be correct. And if answer (D) had not been available, (A) would be a good answer. But between (A) and (D), the better answer is (D) because the City of Anaheim simply has no valid interest at any time.

44) **(A)** Answer (B) is wrong because a remainder is a future estate that follows the "natural termination" of a prior estate such as the end of a life estate at the death of the "measuring life". [See "**Simple Real Property Outline**", **the life tenant, measuring life and remaindermen, p. 4**, and **indefeasible remainders, p. 8**.] (C) is wrong because George granted this interest to the Boy Scouts, and a right of entry is a future interest that has been retained by the Grantor, rather than granted to a Grantee. [See "**Simple Real Property Outline**", **right of entry, p. 11**.] (A) is correct because an executory interest is a future estate expressly granted to a Grantee which follows the termination of a prior estate because of failure of a condition that is not a "natural termination". (D) is wrong because this grant does not violate the Rule Against Perpetuities since it must vest, if it is going to vest at all, within 21 years after George (a measuring life) created it. [See "**Simple Real Property Outline**", **rule against perpetuities, p. 16**.]

45) **(B)** Note that the facts concerning Betty, the Boy Scouts and the house on Broadway have nothing to do with the question actually asked here. The simple way to answer this question is to first see that the conveyance of a future interest to the City of Anaheim (an executory interest) violates the Rule Against Perpetuities. That is because no time limit is stated. As a result, the house might not be used as a residence at some time in the distant future, long after George and Alice have been dead for over 21 years. So the conveyance of a future interest to the City of Anaheim would be void, and (A) is wrong. BUT then what? The fact the interest of the City of Anaheim is void DOES NOT VOID THE CONDITION that the house must be used as a residence. The RAP voids interests and does NOT void conditions. It states "no interest is good unless…" and does NOT say "no condition is good unless." So if the RAP is violated the terms of conveyance would be reinterpreted as follows:

> "… to Alice, her heirs and assigns as long as she uses the house as a residence."

So the condition would still remain on the Deed creating a future estate, but it is not validly granted to any grantee and would return title back to the Grantor, George. That creates a possibility of reverter. [See "**Simple Real Property Outline**", **possibility of reverter, p. 11**.] If the condition fails title reverts back to the George's estate, and then it would go to Carla, because George's Will said he was giving Carla all of his real property. The net result of this is that (B) is correct and (C) and (D) are wrong.

46) **(B)** Answer (A) is wrong because a witness does not have to be an expert to give an opinion as to drunkenness under FRE 701. (D) is wrong because there is no evidence William was speaking while under the stress of an "exciting event". (B) is correct and (C) is wrong because even though the statement is hearsay, William made the statement at the same time he was observing the events he was describing. Therefore this hearsay is admissible as a "present sense impression". [See "**Simple Evidence Outline**", **exception: present sense impression, p. 56**.]

47) **(C)** Answer (D) is wrong because it is not illegal for States to provide aid to private schools, within limits, and they often do. (B) is wrong because this law, as written, shows no intent to advance religion. (A) is wrong because nothing about the mere loaning of text books suggests excessive entanglement between government and religion. In fact, the Supreme Court has held that State

programs for lending secular text books to private schools, including religious schools, does not violate the Establishment Clause. [See **"Simple Constitutional Law Outline", government aid to religious organizations: the Lemon test, p. 48**.] (C) is correct because if the State loans textbooks to any school that discriminates on the basis of race, it must lend them to all racially segregated schools on an equal basis. That would directly foster racial segregation and a denial of equal protection in violation of the 14th Amendment.

48) **(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**.]

49) **(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.]**

50) **(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.

51) **(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.

52) **(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.

53) **(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**.]

54) **(D)** Answers (B) and (C) are not the best answers because Jones is not being denied equal protection by the federal government or the State where the home is located. The 5th and 14th Amendments only limit government from acting in violation of equal protection. They can prevent private individuals from using government property, courts or programs to deny equal protection. But generally they do not authorize government to limit purely private acts by private individuals. (A) seems plausible except that real estate cannot be moved from State to State, and there is no clear nexus between the sale of existing homes and interstate commerce. (D) is the correct answer. In *Jones v. Mayer Co.*., 392 U.S. 409 (1968) the USSC held that the 13th Amendment authorized Congress to act as necessary to act to prevent slavery and involuntary servitude from existing in the United States, including abolishment of the "badges and incidents of slavery." This extends to prohibiting private practices that Congress deems to perpetuate racial discrimination and oppression against Black people.

55) **(D)** Answer (A) is wrong because whether evidence is admissible or not depends on the rules of law (the FRE) and not simply "policy". While laws may reflect the policy considerations of legislative bodies, they are rules of law once they are enacted, and the reasons they were enacted are no longer controlling. Evidence of an offer in compromise and offers to pay medical expenses are not admissible to prove liability under FRE 408 and FRE 409, but Carl's statement that he was talking on the phone is an admission of a party opponent. Therefore (B) and (C) are wrong and (D) is correct under FRE(d)(2)(A). [See "**Simple Evidence Outline**", **admissions of a party opponent, p. 48**.]

56) **(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).

57) **(C)** Answer (A) is wrong because Orville is not a "party opponent" pursuant to FRE 801(d)(1) since Mona is only suing County. She may be suing because of Orville's acts, but she is not suing Orville himself. (B) is wrong because parties can always impeach their own witnesses (FRE 607). (C) is right and (D) is wrong because under FRE 801(d)(1)A) Orville's statement, made under oath, is non-hearsay that can be introduced to prove he sexually harassed Mona, and under FRE 613(b) it can be used to impeach his credibility. In both cases he must be afforded an opportunity to explain the inconsistency and subject to cross-examination. [See "**Simple Evidence Outline**", **former testimony, p. 53**.]

58) **(B)** Answer (D) is wrong because the federal government, the States and Indian tribes all have the "police power" to "protect public morals" within certain areas. [See "**Simple Constitutional Law Outline**", **the limits of protection of public morals, p. 72**.] (A) and (C) are wrong because the police powers of the federal government are limited to the District of Columbia (under Article II, Section 8 [17.]) and federal lands (under Article IV, Section 3 [2.]). Any other federal laws that appear to be intended to protect public morality (e.g. federal laws against marijuana use and possession) can only be justified by other enumerated powers of Congress such as the Commerce Clause. Because of the foregoing, (B) is correct. Note that (B) does not say the law could "only" be applied to Washington, D.C. because it could also be applied to national parks, military bases, in federal courthouses, etc. [See **"Simple Constitutional Law Outline", power over District of Columbia and federal lands and buildings, p. 14**.]

59) **(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**.]

60) **(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 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**.]

61) **(D)** This question is based on an actual MBE question, and it presents a deliberately confusing answer choice. Answer (A) is wrong because whether or not Dick was sufficiently clear in his offer is irrelevant to whether the need for a writing showing the existence of a contract is satisfied. (C) is wrong for the same reason – whether Harry made an error or not is irrelevant to the need for a writing showing a contract formed. (B) is wrong because the original SOF required a written contract signed by both parties, and UCC 2-201 also requires sufficient written evidence to show that a contract existed. That means written evidence of both an offer and an acceptance. The fact that Dick's offer was in writing does not establish that Harry accepted that offer. While UCC 2-206 says a shipment

can be an acceptance, UCC 2-201 does not say that acceptance by shipment eliminates the need for a writing. (D) becomes the only plausible answer because the shipment by Harry does not eliminate the need for sufficient writings to show a contract existed. However, the phrase "Harry did not sign the telegram" is deliberately odd. But suppose Harry had written "Accepted" on the telegram and signed that. Then that would be a signed writing showing acceptance, and Harry would be bound. So you have to think of this in that context. [See "**Simple Contracts & UCC Outline**", **written evidence often needed, p. 106**.]

62) **(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.

63) **(D)** Answer (A) is wrong because if the ordinance is void, it cannot be valid when applied to Homer, and (B) would have to be the correct answer. But (B) is wrong because this is, in fact, a valid "time, place, manner" ordinance. Traffic safety is clearly a legitimate government goal, the ordinance is content neutral because it applies to all people and all activities equally, and the ordinance only prevents people from activities at times and in places that create traffic hazards. That leaves plenty of alternative places for people to gather without causing dangers to others. [See **"Simple Constitutional Law Outline", content-neutral time, place and manner restrictions, p. 64.]** (C) is wrong and (D) is correct because Homer did not create a traffic hazard. He did not block the sidewalk and the accident was actually caused by Dan's negligence.

64) **(B)** Answer (A) is wrong because a photocopy is a "duplicate" and under FER 1003 duplicates are admissible unless the validity of the original is in dispute. (D) is wrong because even though this Deed affects an interest in property and might be admissible under FER 803(15) as a result, the statement in dispute is "my brother, Benny…" and that was superfluous and irrelevant to the actual purpose of the Deed. The issue appears to be that Benny is claiming to be Tom's brother, and someone else, perhaps Tom, is disputing that. Since Tom is unavailable to testify, his statement that Benny is his brother is admissible as a statement of pedigree under FRE 804(b)(4), and that makes (B) correct and (C) wrong. (B) is the better choice. [See "**Simple Evidence Outline**", **statements of pedigree, p. 53**.]

65) **(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.

66) **(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.

67) **(B)** Answer (A) is wrong because Granny's executor is claiming title to the land rather than trying to enforce an equitable servitude. (B) is correct and (C) and (D) are both wrong because the language of the Deed only states the "understanding" or agreement between the parties and does not clearly state an intention that failure of the condition would terminate City's interest. A Court would be reluctant to terminate City's possessory estate unless the document that created its interest clearly showed an intention by Granny to retain a reversionary interest. The Court would likely reason that if the intention had been to create a reverter the Deed would have said, "…as long as…" or "…if…" or "…until…" [See "**Simple Real Property Outline**", **conditions precedent, p. 7**, and **possibility of reverter, p. 11**.] And if the intention had been to create a right of entry the Deed should have said, "…but if…" [See "**Simple Real Property Outline**", **conditions subsequent, p. 6,** and **right of entry, p. 11**.] The Court would probably conclude that the Deed merely reflects the contractual agreement between the parties, and the remedy of Granny's estate, if any, would be in a contract action rather than a quiet title action.

68) **(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.

69) **(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. 5**5.] 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, p. 27** 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.

70) **(C)** Answer (B) is wrong because the declarant is Doc, and Doc is not making his statement so that he can receive medical treatment. (A) and (D) are wrong simply because (C) is correct. This is hearsay

because Doc is not making the statement in Court, and it is being offered to prove the truth of the assertion being made, that Tess was mentally incompetent. Whether the statement is an expert opinion or not, it is still hearsay and not admissible under any known exception. [See "**Simple Evidence Outline**", **hearsay, p. 43**.]

71) **(B)** This question leaves out some important facts, as many Bar questions do. And those missing facts determine which answer is best. We are not told if Debbie has taken possession, the rental value of the property, the amount of the monthly interest charges, or whether Rex has paid any of the mortgage principal. A life tenant who takes possession of a life estate has a duty to pay the property taxes and the interest portion of mortgage payments up to the rents received or otherwise the rental value of the property. And if remaindermen pay the mortgage principal, they can bring a court action to force the life tenant to either pay a portion (based on the relative values of the two estates, the life estate and the remainder) or else to quit (abandon) the life estate. [See "**Simple Real Property Outline**", **duties of life tenants to remaindermen, p. 5**.] (A) is wrong in any case because a remainderman has no clear duty to do anything. Remember that in many cases the remaindermen are not even vested, and even if they are vested the shares of the remainder they hold are uncertain. So it is wrong to say Rex must pay the mortgage. (C) is wrong because if Debbie has taken possession she has no duty to pay anything except the interest (up to the value of the rent) unless Rex first pays the principal and then brings an action against her to recoup a portion of his expenses. So (B) would be the correct answer IF Debbie has taken possession AND the interest portion of the payment is less than the rents she has received or the rental value of the property (if it is greater). But if those facts failed, then (D) would be the better answer. The Bar probably expected you to assume Debbie took possession and the rental value exceeds the interest portion of the mortgage payment. Therefore (B) is the best answer to choose.

72) **(A)** Answer (A) is correct and (B), (C) and (D) are wrong because a federal court can only hear actual cases and controversies. Atlas has not yet suffered any actual injury and is just seeking an "advisory opinion". Federal courts have no constitutional authority to issue "opinions" unless the moving party has suffered injury or is clearly going to suffer immediate injury. [See "**Simple Constitutional Law Outline**", **jurisdiction restricted to actual cases and controversies, p. 30**.]

73) **(D)** Answer (D) is correct and (A), (B) and (C) are wrong because Atlas has suffered or will suffer actual injury and the Franklin statute conflicts with the federal contract. The contact is an "enactment" by the federal government pursuant to Congress' authority under Article I, Section 8 [7.] to establish the Post Office and to enter into contracts to that end under the Necessary and Proper Clause. Therefore, the contract is constitutionally protected from State interference. Under the Supremacy Clause of Article VI [2.] courts are bound to uphold the terms of the federal contract even though it is in conflict with Franklin law. [See "**Simple Constitutional Law Outline**", **the hierarchy of laws, p. 3** and **direct federal conflict exception, p. 6**.]

74) **(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.

75) **(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, pp. 38, et seq.**] 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.

76) **(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.

77) **(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.

78) **(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 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, pp. 30-31.**]

79) **(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. [See "**Simple Constitutional Law Outline**", **defamation, interference and New York Times v. Sullivan, p. 61**.] (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.

80) **(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**.]

81) **(C)** This question is an evidence – criminal procedure crossover. (D) is wrong because Dick had been arrested, that gave him a right to remain silent, and exercise of that right cannot be used to incriminate him. But (A) is also wrong because even though Dick had a right to be silent, that fact alone does not make Tom's statement inadmissible. (B) is wrong because Tom's statement was not made in the course of, or in furtherance of their conspiracy to rob the bank. Their conspiracy ended either when the bank was robbed or else when they were arrested. After that Tom could no longer be speaking for Dick and his statement cannot be a vicarious admission by Dick. (C) is correct because the statement was hearsay, an out-of-court assertion offered to prove the truth of the assertion, and no exception applies. If Tom is available to testify, this statement does not qualify to be a statement against interest (FRE 804(b)(3)) or an inherently trustworthy statement (FRE 803(b)(5)). And, if Tom is not available to testify the statement still is not a statement against interest or inherently trustworthy because Tom is clearly trying to benefit his own interest by shifting blame to Dick by saying the robbery was all Dick's idea. [See "**Simple Evidence Outline**", **statements against interest, p. 52**.]

82) **(B)** This question leaves out some important facts, as many Bar questions do. And those missing facts determine which answer is best. We are not told if Debbie has taken possession, the rental value of the property, the amount of the monthly interest charges, or whether Rex has paid any of the mortgage principal. A life tenant who takes possession of a life estate has a duty to pay the property taxes and the interest portion of mortgage payments up to the rents received or otherwise the rental value of the property. And if remaindermen pay the mortgage principal, they can bring a court action to force the life tenant to either pay a portion (based on the relative values of the two estates, the life estate and the remainder) or else to quit (abandon) the life estate. [See "**Simple Real Property Outline**", **duties of life tenants to remaindermen, p. 5**.] (A) is wrong in any case because a remainderman has no clear duty to do anything. Remember that in many cases the remaindermen are not even vested, and even if they are vested the shares of the remainder they hold are uncertain. So it is wrong to say Rex must pay the mortgage. (C) is wrong because if Debbie has taken possession she has no duty to pay anything except the interest (up to the value of the rent) unless Rex first pays the principal and then brings an action against her to recoup a portion of his expenses. So (B) would be the correct answer IF Debbie has taken possession AND the interest portion of the payment is less than the rents she has received or the rental value of the property (if it is greater). But if those facts failed, then (D) would be the better answer. The Bar probably expected you to assume Debbie took possession and the rental value exceeds the interest portion of the mortgage payment. Therefore (B) is the best answer to choose.

83) **(D)** Answer (B) is wrong because Fred's statement that he had injured the same knee previously is relevant to determining the amount of injury for which Food Mart is liable and the amount of damage that had occurred previously. (D) is correct and (A) and (C) are wrong because any relevant statement by Fred is an admission of a party opponent, non-hearsay under FRE 801(d)(2)(A). Since it is not hearsay the issue of "excited utterance" is beside the point. [See "**Simple Evidence Outline**", **statements against interest, p. 52**.]

84) **(B)** Note that you are not told who is offering the evidence, Fred or Food Mart, but overall it would help Fred's case because it shows he is in pain, that his prior injury had completely healed before he slipped in the store, and that Doc observed recent injury. Therefore it is almost certainly being offered by Fred to prove those facts, and that makes (A) wrong since it would not be an admission of a party opponent when offered into evidence by Fred. The evidence actually is double-hearsay because it is an out of court statement by Doc, repeating out of court statements made to him by Fred. As such the statements by both declarants must be separately admissible under an exception for the evidence to be admissible at all. But that seems to be the case as Fred made the statements to Doc to get medical treatment, and Doc made his statements in his notes for the same medical purposes. (D) is wrong because even though some of the statements made by Doc in his notes might be seen as a present sense impression, the statements Fred made to Doc, that Doc repeats, clearly are not a 'present sense impression". (B) is the better answer because the purpose of the statements by both Fred to Doc and Doc in his notes is for the purpose of medical diagnosis and treatment, and that makes it admissible hearsay. [See "**Simple Evidence Outline**", **exception: statements for medical diagnosis and treatment, p. 58**.]

85) **(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".

86) **(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.

87) **(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**.]

88) **(A)** Answer (A) is correct because any action by DGS to rescind the contract would have the effect of a "State law" and the Contracts Clause of Article I, Section 10 [1.] bars States from acting to "impair the obligation of contracts". [See "**Simple Constitutional Law Outline**", **states are barred from impairing existing contracts, p. 23**.] (B) is wrong because the court would be telling DGS the contract cannot be voided, not telling the State how to spend it's funds. (C) is wrong because it would be unconstitutional for DGS to void the contract whether Southwest acted in reliance or not. (D) is wrong because the 11th Amendment does not bar individuals from seeking injunctions against State agencies. [See "**Simple Constitutional Law Outline**", **11th Amendment effectively bars monetary damage awards, not injunctive relief, p. 21** and **subdivision of state exception to 11th Amendment, p. 22**.]

89) **(B)** Answer (A) is wrong because the contract only said Southwest would carry State employees and officials who "need to travel" but did not obligate California to pay for any particular number of passenger-miles. (D) is wrong because the 11th Amendment does not bar individuals from seeking injunctions against State agencies. [See "**Simple Constitutional Law Outline**", **11th Amendment effectively bars monetary damage awards, not injunctive relief, p. 21 and subdivision of state exception to 11th Amendment, p. 22.]** (B) is correct and (C) is wrong because Southwest is asking the court to tell California how to run its operations and spend its funds. That constitutes a federal "commandeering" of State resources, and would violate State sovereignty. [See **"Simple Constitutional Law Outline", the federal government cannot commandeer State resources, p. 19**.] Given that, (C) is wrong because it would be unconstitutional for the court to issue the injunction whether Southwest acted in reliance or not.

90) **(B)** Answer (A) is wrong because the basis for Lucy's complaint is violation of a covenant that runs with the land, not an equitable servitude, and covenants are enforced at law, not equity. [See "**Simple Real Property Outline**", **restrictive covenants and servitudes, p. 86**.] (D) is wrong because just as the burden of the covenant ran with the land to bind Ethel, the benefit of the covenant ran with the land to benefit Lucy. That gives Lucy standing to enforce the covenant. [See "**Simple Real Property Outline**", **benefits of covenants affecting promisee's land always run, p. 88**.] 75% of all law students will get the above distinction between answers (A) and (D) correctly. But about 20% will make the mistake of choosing answer (C), which is wrong, Law professors talk about "damages, damages, damages" so much it can blind students to the fact that all plaintiffs in most actions, at both law and equity, can choose to receive "restitution". Sometimes in torts classes you may hear of "waive the tort and sue in restitution". But this remedy is not exclusive to torts! [See "**Simple Remedies Outline**", **legal restitution, p. 45**.] Here (B) is correct because Lucy has suffered no damages. Why would a Court award restitution instead of damages? To prevent the defendant from reaping an unjust enrichment from wrongful acts. Breaching a covenant is a wrongful act. So Lucy has a legal right to

be awarded the amount that would prevent Ethel from reaping an unjust enrichment, and (C) is wrong because she does not have to prove she has suffered any damages at all.

91) **(B)** Answer (A) is wrong because injunctive relief is always granted by a Court of equity, but Lucy has an adequate legal remedy. So the Court would not have equitable jurisdiction to grant an injunction concerning the past dues. [See "**Simple Remedies Outline**", **equitable jurisdiction and the fundamental law of remedies, p. 10**.] (B) is right and (C) and (D) are wrong simply because legal restitution is an award of a money judgment to plaintiffs only. [See "**Simple Remedies Outline**", **legal restitution, p. 45**.] Lucy is the plaintiff here. She is the one in court, she has standing, and the homeowners association and Fred are no-shows. If Lucy brings the action, she is brining it on her own behalf, she will win, and she gets to keep the restitution she would be awarded.

92) **(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. 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.]**

93) **(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.

94) **(C)** Answer (D) is wrong because an interest in land cannot be "abandoned" simply by leaving the land in the possession of a co-tenant. And (B) is wrong because Shirley was not "giving away the land". Co-tenants have a fiduciary duty of good faith dealings with other co-tenants. [See "**Simple Real Property Outline**", **fiduciary duty between co-tenants, p. 25**.] And a co-tenant can, in fact, enter into a binding agreement to settle a boundary dispute in good faith without the knowledge or consent of the other tenants in common. This is not considered a "tortious" act or a transfer of an interest in land. So the real question is whether the oral agreement was binding in this situation. States vary widely on whether oral boundary agreements are legally binding. Generally, if an oral boundary agreement is caused by reasonable uncertainty or to settle a dispute over where the true boundary should be, it will be legally binding once the parties act on the agreement. Some states require a fence or boundary markers to define the agreed boundary. [See "**Simple Real Property Outline**",

boundary disputes and agreements, p. 75.] Here the parties were uncertain about where the true boundary was, so (C) is a better answer than (A).

95) **(D)** A few States have "Dead Man's Acts" that prevent a person with a financial or legal interest in the outcome of a trial from testifying about statements and acts allegedly done by deceased individuals. The purpose of those acts, where they still exist in law, is to prevent a party from wrongfully benefiting by falsely testifying about what deceased people have said and done. Those State rules are adopted in federal trials based on State law by FRE 601 which concerns the "competency" of witnesses. However, the MBE is designed to test your knowledge of "broadly adopted rules" so you should generally avoid answers that depend on weird rules that few States follow. (A) is wrong anyway because even though Vick is dead, William, the witness testifying about what he said is not an interested party in this matter. (C) is wrong because Vick's statement was not one of the type which is only admissible when the declarant is unavailable (e.g. a statement against interest, former testimony, dying declaration, etc.). (D) is correct and (B) is wrong because Vick's statement was a present sense impression, a statement made about an observation at the same time the observation is being made. It might also qualify as an excited utterance, but that is not one of the possible answers. [See "**Simple Evidence Outline**", **exception: present sense impression, p. 56** and **exception: excited utterance, p. 56.]**

96) **(A)** Answer (A) is the correct answer, as it almost always is when a question involves federal revenue sharing with State and local government. [See **"Simple Constitutional Law Outline", the tax and spend clause, p. 5**.] (B) is wrong because the "War on Drugs" is not a war at all, as that term is used in the Constitution. (C) is wrong because there is no "general welfare clause" and answers that suggest there is such a clause in the Constitution are always wrong. (D) is wrong because even though the Commerce Clause does give Congress the power to directly regulate and outlaw drugs and other "substances" (because they can be sold in interstate commerce) that is not the subject of this question. Here the question concerns whether Congress can provide funds to local government, and put conditions on how those funds are to be spent.

97) **(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 substantial 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.

98) **(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.

99) **(B)** Answers (A) and (C) are wrong because there is no evidence Moe agreed to help Sticky steal the goods. (B) is correct and (D) is wrong because the goods were no longer "stolen" once the manager found them and could have retrieved them. That made "receiving stolen property" a "legal impossibility". Therefore, Moe did not receive stolen goods, but rather attempted to receive goods believed to have been stolen. [See "**Simple Crimes Outline**", **attempted receipt and legal impossibility, p. 46**.]

100) **(A)** Answers (B) and (C) are wrong because Bill did not say anything false about Hillary that would damage her reputation in the community. If Hillary did strongly support programs for handicapped children, what Bill said was true, not false. And if Hillary did NOT support programs for handicapped children, what he said was false, but not harmful to her reputation. Further, even if what Bill said about Hillary was false, she is obviously a "public figure" so Hillary would have to prove Bill knew it was false at the time he said it. Both (A) and (D) are correct, but (A) is the better answer because what Bill did was "portray Hillary in a false light" causing her embarrassment and inconvenience. [See "**Simple Torts Outline**", **false light, p. 86.]**

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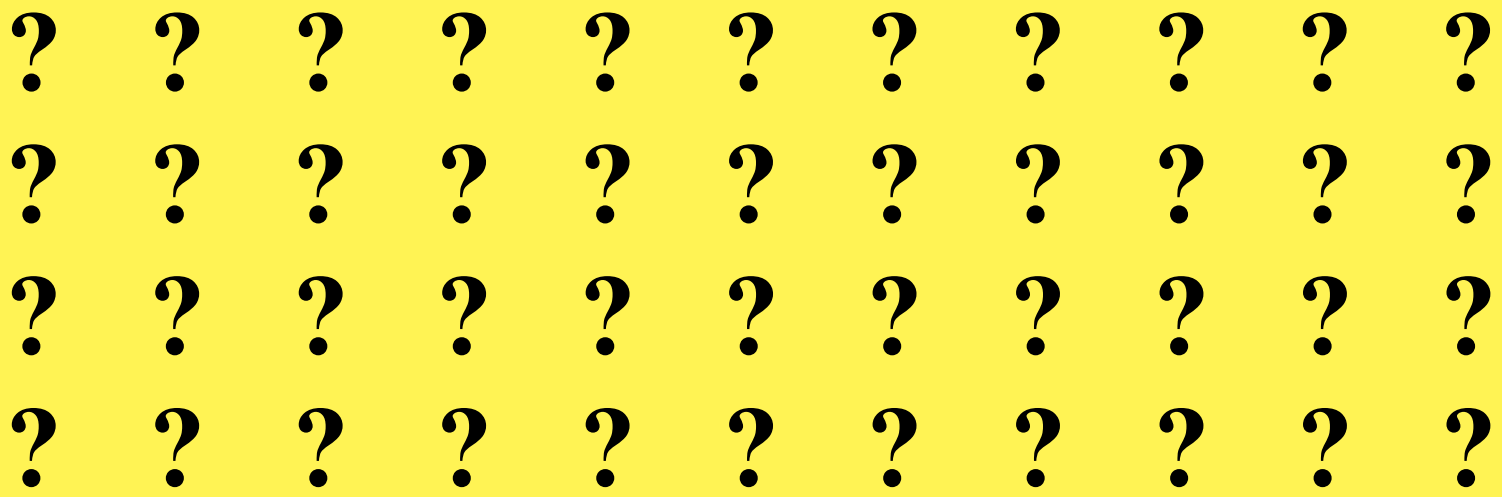

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