Constitutional Law

Question 1

St. Minny, a town with a population of 30,000, was located on the west bank of a small river. Immediately across the river, on the east bank, was Paulopolis, a city of 60,000. Over the years, many civic improvement groups urged that the two municipalities be merged into "Minnypaulos," a single city of 90,000 souls. The arguments in favor of merger stressed savings to taxpayers accruing from the elimination of duplicate services. Proposals to merge the two places had appeared as referenda on the ballot on two separate occasions. Although the voters of Paulopolis approved each proposal by heavy margins, the voters of St. Minny, fearing that control of the government would be in the hands of more populous Paulopolis, rejected the referendum proposals by more than two to one.

To avoid the failure of yet another such referendum, a new proposal was made for the governance of the proposed combined city. For a period of 20 years, beginning at the date of the merger, the city council of the merged city would consist of six persons. The former Paulopolis would be divided into three council districts, as would the former city of St. Minny. Thus, each St. Minny council representative would be elected from a district with a population of 10,000, while the Paulopolis districts would contain 20,000 persons each. A mayor would be elected at large. The proposal was placed on the ballot and was carried by large majorities in both St. Minny and Paulopolis. Representatives from Paulopolis and St. Minny carved each former city into three council electoral districts. Three Paulopolis taxpayers filed suit to enjoin the holding of an election with council districts of such disparate proportions.

Which of the following represents the plaintiffs' best constitutional argument?

(A) The government of the merged cities is not a republican form of government.

(B) The plaintiffs and other Paulopolitans have been denied equal protection of the law.

(C) The plaintiffs and other Paulopolitans have been denied the privileges and immunities of citizenship as guaranteed by Article IV of the federal Constitution.

(D) The plaintiffs and other Paulopolitans have been denied due process of law.

Questions 2-3 are based on the following fact situation:

An act of Congress provides for the payment of Social Security benefits to the disabled children of deceased workers. A complex set of regulations carefully defines the meaning of the term "disabled." The benefits are payable even after the child reaches his or her age of majority, but terminate automatically when the recipient marries, unless the recipient marries a person who is also disabled, in which case the Social Security payments continue.

Dorit has been disabled since birth, and her father died in a coal mine cave-in when Dorit was 14 years of age. She has received Social Security benefits since her father's death. However, at age 25, Dorit married Jack, who is not disabled, and her Social Security benefits were summarily terminated. She files suit in federal district court, seeking to compel the government to restore her benefits. She asserts, among other things, that there is no logical reason why she should be deprived of benefits when unmarried disabled persons and disabled persons who marry other disabled persons continue to receive them.

2. Which of the following provides the strongest constitutional basis for Dorit's suit?

   (A) The privileges and immunities of national citizenship protected by the Fourteenth Amendment.

   (B) The Equal Protection Clause of the Fourteenth Amendment.

   (C) The Due Process Clause of the Fifth Amendment.

   (D) The prohibitions against bills of attainder.

3. Which of the following is the strongest ground to defend the constitutionality of the federal statute in question?

   (A) Congress's power over federal expenditures is plenary, and Congress has discretion to spend money from the Federal Treasury in whatever way it wishes.

   (B) Because there is no constitutional entitlement to Social Security payments, Congress is free to condition them as it sees fit.

   (C) The classification imposed by this statute is reasonable, inasmuch as it will save the national government a substantial amount of money.

   (D) Congress could rationally conclude that a disabled child of a deceased worker who is unmarried or who marries another disabled person is more likely to be needy than a disabled person who is married to a person who is not disabled.

Question 4

To help alleviate the burdens of poverty and perhaps to help cut the welfare rolls, the state legislature of Margate passed legislation establishing State Family Counseling Centers throughout the state. The legislature recognized that much of the "welfare and poverty problem" was centered on poor single-parent households headed by a woman. Therefore, it decreed in the legislation that all counseling would be free for single mothers with an income of less than $20,000 per year. Others would have to pay fees for the counseling on a sliding scale depending upon income. The counseling services available at the State Family Counseling Centers included classes on parenting, anti-substance abuse programs, and financial counseling. The counseling centers were popular and other states considered copying the Margate model.

Peter's wife had died recently of a drug overdose, and he was left to care for their two children (ages two and four) on an income of approximately $7,000 per year. Peter had no idea how he could manage to care for the two children and himself on his small paychecks. He heard about the State Family Counseling Centers and went to the closest one for financial counseling. Peter was told that he would have to pay a $50 fee for the counseling. Peter had $10 in his pocket, which he needed for bus fare home and to feed his children until his check, due in five days, arrived. Peter became very angry when he learned that single mothers in his situation were entitled to free counseling while single fathers were not. A public-interest law firm agreed to take Peter's case and filed suit in federal court, asking that Peter be allowed to take advantage of the free counseling services because the law establishing them discriminated against males.

To win the case:

(A) Peter must show that the law is not rationally related to a legitimate state interest favoring mothers over fathers.

(B) Peter must show that the state has no compelling interest in favoring mothers over fathers.

(C) Margate must show that favoring mothers over fathers is substantially related to an important governmental interest.

(D) Margate must show that the law is rationally related to a legitimate state interest favoring mothers over fathers.

Question 5

In 2000, Rogan Josh, then age 15, emigrated with his family from Dopyaza, an Asian country. Although Josh maintained Dopyazan citizenship, he held resident alien status and complied with all federal laws and regulations regarding maintenance of resident alien status. Upon arrival in the United States, Josh, his parents, and his siblings took up residence in the state of New Jingo. In 2003, Rogan Josh began a course of studies in petroleum engineering at New Jingo University, a state institution. Because he was a resident of New Jingo, Josh qualified for the "in-state" tuition rate. The "nonresident" tuition rate was 10 times the in-state rate, and it would be impossible for Josh to attend New Jingo University if he were required to pay the nonresident tuition.

In 2005, the legislature of New Jingo passed a statute denying in-state tuition rates at any state-supported college or university for any resident aliens who were citizens of "any country which, during the previous five-year period, has held citizens of the United States as hostages." Due to an international dispute between the United States and the government of Dopyaza, the Dopyazan government had held six American citizens as hostages for a four-month period in 2002. The registrar of New Jingo University, where Josh has successfully completed two years of study, informed Josh that he would have to pay the nonresident tuition rate in order to begin his junior year. Josh cannot afford to pay the tuition.

If Josh files an appropriate suit asking the federal courts to strike down the New Jingo statute, which of the following is his best argument?

(A) Because higher education is now so important for earning a livelihood, it has become a fundamental right protected by the Privileges and Immunities Clause of the Fourteenth Amendment.

(B) Resident aliens cannot be blamed in retrospect for actions of their governments and, therefore, the New Jingo statute violates the constitutional prohibition of ex post facto laws.

(C) Alienage is a suspect category under the Equal Protection Clause of the Fourteenth Amendment, and New Jingo has not met the appropriate standard to burden Josh.

(D) Attending a state-supported university in a state where one is a legal resident is a property right that may not be taken away without due process of law.

Question 6

The Classical School is a private school located in the state of Romanova. Under an aid-to-education statute passed by the state legislature a few years ago, The Classical School and certain other private schools receive state benefits. Among those received by The Classical School are: (i) free textbooks from the state, (ii) an exemption from state taxes, and (iii) 20% of its operating budget in the form of state grants. The remaining 80% of The Classical School's budget is covered by tuition fees and by donations from alumni and others. The Classical School is licensed by the state, but the state has no requirement for certification and licensure of teachers in private schools.

Timon was hired to teach history at The Classical School and was given the standard three-year contract given to teachers in their first stint at the school. Timon, who had been a student activist in college, was annoyed every day when he faced classes wearing the uniform required by The Classical School. Timon kept his mouth shut until he was chosen, in the fall term of his second year, to give the monthly "History Enrichment Lecture" to the entire school. The topic of Timon's lecture was Europe between the two world wars. Timon's lecture was factual, balanced, and nonopinionated, until, at the end of his lecture, he told the assembled students, "We've talked a lot this afternoon about the rise of fascism, but think about this: there is absolutely no qualitative difference between those uniforms you're wearing and those worn by the Hitler Youth. If you had any gumption you'd organize a protest against having to wear them." After the speech, Timon was called to the administrative office by the headmaster and fired on the spot, despite Timon's protests that he had almost two years left on his contract. Timon requested a hearing and was curtly told to leave the premises of the school immediately.

Charging that his constitutional rights had been violated, Timon filed suit in federal district court. Timon will:

(A) Succeed, because the school's action violated Timon's freedom of speech rights.

(B) Succeed, because Timon has been denied due process of law.

(C) Fail, because Timon was not in his position long enough to acquire property rights in his job.

(D) Fail, because assistance and involvement by the state did not result in the private school's action being conduct by the state.

Question 7

The state of Petrolia derived most of its income from extractive industries, especially its extensive oil and natural gas fields. However, a worldwide drop in the price of petroleum was severe enough to cause a depression in Petrolia, and the state's unemployment rate soared. To counter the effect the depression was having on Petrolia's citizens, the state legislature passed a law requiring all employers operating in the state's oil and natural gas fields to give preference in hiring to residents of Petrolia. The bill banned the hiring of nonresidents unless no other qualified person could be found to fill an oilfield or natural gas field position. Under prevailing economic conditions, the statute was tantamount to a total ban on hiring of nonresidents because so many unemployed oil and gas workers had been created by the depression and little new exploration was taking place.

"Roughnecks," as oilfield workers call themselves, tend to be an itinerant lot, moving from place to place as new fields are brought into production. Driller was a 48-year-old roughneck whose permanent residence was in Louisiana. He had worked on offshore rigs in the Gulf waters off his home state, but Driller had also worked in Texas, Oklahoma, Alaska, Kuwait, Indonesia, and Venezuela. Upon hearing that one of the few independent companies actively exploring in Petrolia had struck a new field in that state, Driller drove to the field office of Ewing Exploration Company in Petrolia and applied for a job. Looking at Driller's extensive experience as described on Driller's resume, Ewing's personnel officer sadly shook his head. He indicated that Driller's qualifications were better than anyone's working in the field, but that he had more applications from experienced Petrolia residents than he had jobs to offer. The sole reason given for not hiring Driller was the preferential hiring statute favoring state residents. Driller filed suit in federal district court challenging the statute.

The court should rule in favor of:

(A) Petrolia, because employment discrimination is only unconstitutional if it involves race, religion, alienage, or sex.

(B) Petrolia, because the state's interest in hiring local residents outweighs the interest of nonresidents.

(C) Driller, because the law denies him the privileges and immunities of state citizenship.

(D) Driller, because the preferential hiring law impairs Driller's rights under the Contract Clause of the federal Constitution.

Question 8

In response to growing concern over public health issues, Congress passed legislation permitting states to completely ban the sale of cigarettes and other tobacco products. The legislation was subsequently upheld by the United States Supreme Court. The state of Jefferson, like most states, did not enact a complete ban on tobacco products. However, it passed a compromise measure that banned all ads for cigarettes and tobacco products by any print or broadcast media located in the state.

A state tobacco distributor that wished to advertise in local newspapers brings an action in federal court to challenge the state statute. The court will probably find the statute:

(A) Unconstitutional, because by choosing not to exercise its right to impose a complete ban on the sale of tobacco products, the state can no longer claim that the regulation of advertising serves a substantial government interest.

(B) Unconstitutional, because the right to ban all truthful advertising for a product is not automatically justified by the right to ban the sale of a product entirely.

(C) Constitutional, because the state's power to ban advertising for a product is implicit in its power to ban the product altogether.

(D) Constitutional, because the ban on advertising constitutes a restriction on commercial speech that is rationally related to the legitimate state interest in reducing the use of tobacco products.

Question 9

The citizens of Tidytown prided themselves on the neatness and beauty of the town of 30,000 people. This was reflected in the tough anti-litter ordinances that had been passed by the city council. Littering offenses carried fines of up to $500 and were always very strictly enforced. Center Park was located near the downtown business area of Tidytown. Signs at each of the park entrances, and on the many trash barrels situated throughout the park, carried conspicuous warnings against littering.

On October 15, a group of students from nearby colleges chose Center Park in Tidytown as the site for their demonstration against the proliferation of weapons in space. Approximately 125 students gathered in the park with placards and banners, and several speakers addressed the group. One of the speakers, Demagoga, during the course of her speech, walked to one of the trash barrels and dumped the contents out on the ground. As she did so, she told her listeners, "This is what outer space is starting to look like, cluttered with the trash of nuclear weapons." The meeting broke up 15 minutes later. The students left the park peacefully, but no one bothered to pick up the trash or right the overturned barrel. Demagoga was arrested pursuant to the Tidytown littering ordinance. She was fined $500 after her conviction.

If Demagoga seeks to have her conviction set aside on constitutional grounds, she is likely to:

(A) Lose, because the anti-littering ordinance furthers an important governmental interest and is not aimed at communication.

(B) Lose, because Demagoga was convicted for her conduct rather than for what she said.

(C) Win, because Demagoga's conduct constituted symbolic speech.

(D) Win, unless the town can prove a compelling interest in its anti-litter laws.

Question 10

A statute in the state of Lemon forbids employers from discriminating on the basis of religion; however, an exception provides that established religions that employ persons to engage in nonprofit activities may be exempted from this rule. A new religion sprang up called the Church of the Sunrise. It espoused a number of nontraditional views, among which was the belief that the sun is really a temple that is moved across the sky by a powerful race of aliens. When the Church gained enough members to open a meeting place, it advertised for clerical and maintenance workers. Patricia applied for a position and was told that she would be hired if she converted to the Church of the Sunrise religion. Patricia refused to do so and complained to the state of Lemon human relations board. After investigating, the board concluded that the Church was not an established religion and its beliefs were not plausible. It ruled that the religious exemption would not be applicable and ordered the Church to hire Patricia. Church officials filed an action in federal district court challenging the board's refusal to apply the exemption.

How is the court likely to rule?

(A) The board may not refuse to apply the exemption unless it can prove scientifically that the Church's beliefs are false.

(B) The board may not refuse to apply the exemption because it does not have compelling grounds for favoring other religions over this one.

(C) The entire exemption scheme is unconstitutional because it does not have a secular purpose and has a primary effect of advancing religion.

(D) The board may refuse to apply the exemption because the state has the power to deny any religion the right to discriminate in its hiring.

Question 11

With an election approaching, Congress passed a statute requiring that all full-time employees, including state and municipal employees, be paid overtime for any work over 40 hours per week, or be otherwise compensated through time off or vacation time.

Patchquilt was a municipality located in a very warm climate. Many Patchquilt residents were on welfare, and the town contained no major industry or shopping district to bolster its tax base. Patchquilt employed only three refuse collectors and asserted reasonably that it could not afford to hire more. However, during the warmest times of the year, extra refuse collections were routine because of the city council's fear that rotting garbage in the hot climate could contribute to the spread of disease. During the hottest months, the three refuse collectors in Patchquilt regularly worked well beyond the 40 hours per week standard. Because of normal vacation time and the normally heavy garbage collection schedule, it would not be possible to give the refuse collectors additional time off during the cooler months, which were not always very cool, without hiring additional refuse collectors. Patchquilt brings an action in federal district court, asserting that the federal statute requiring overtime pay to municipal workers is unconstitutional.

The court should hold the statute:

(A) Constitutional, as a reasonable application of the Necessary and Proper Clause.

(B) Constitutional, because regulation of state and local employees is within the ambit of federal power over interstate commerce.

(C) Unconstitutional, because regulation of state and local employees is an issue reserved to the states.

(D) Unconstitutional, because the state police power to promote health and safety precludes federal action in this case.

Question 12

Large semi-trailer trucks ordinarily used either "Gripper" tires or "Grabber" tires. There was some difference in the design of the tires, and a number of tire manufacturers made both types of tires, which were deemed to be equally safe by independent testing labs. Most state statutes and vehicle regulations allowed the use of both types of tires on state highways. However, State Plum and State Apricot had laws on their books permitting only Grippers and banning Grabbers. State Grapefruit, on the other hand, had a statute allowing the use of Grabbers, and banning Grippers, on its state highways. The National Trucking Board, a trade association of interstate trucking firms, brought suit to have the laws of State Plum and State Apricot declared unconstitutional. The case eventually reached the United States Supreme Court, which struck down the Apricot and Plum statutes as undue burdens on interstate commerce.

The National Trucking Board then brought suit in federal court to have the State Grapefruit statute banning Grippers struck down. The Grapefruit attorney general argued that the Grapefruit statute did not burden interstate commerce because Grabbers were now legal in all 50 states. The case eventually reached the United States Supreme Court.

How should the Court rule on the constitutionality of the statute?

(A) Constitutional, because there is no difference in safety between Grippers and Grabbers.

(B) Constitutional, because the states have the power to regulate safety on their highways.

(C) Unconstitutional, because it is an undue burden on interstate commerce.

(D) Unconstitutional, because it violates the Privileges and Immunities Clause of Article IV.

Question 13

The President of the United States entered into a bilateral agreement with Nerddistan, a sovereign nation, regarding the probate of estates. One part of the agreement provided that, should a citizen of Nerddistan die owning property in the United States or its Commonwealths or Territories, the executor or administrator appointed in Nerddistan should have the power to deal with such property and a separate American administrator or executor need not be appointed. Reciprocal rights were extended to United States citizens who died owning property in Nerddistan. Tadzik, a citizen of Nerddistan, died owning property in the United States state of Gulfstream. Tadzik's will appointed Elwwan, a citizen of Nerddistan, as executor. A law in the state of Gulfstream requires that all property left by will within the state of Gulfstream be probated by an executor or administrator who is a resident of Gulfstream.

If Elwwan desires to act as executor of the estate and properly distribute the Gulfstream property in accordance with Tadzik's will, should he be allowed to do so, notwithstanding the Gulfstream statute?

(A) No, because the probate of real property within the state is within the exclusive purview of the state.

(B) No, because an executive agreement is not a treaty, and state law takes precedence over executive agreements.

(C) Yes, because executive agreements supersede state laws.

(D) Yes, because executive agreements are entitled to full faith and credit.

Question 14

Congress passed a statute providing that if the President deployed more than 1,000 United States Armed Forces personnel in a foreign country where "combat conditions" existed, the President was required to return such Armed Forces to the United States within 60 days or formally seek a declaration of war from Congress. The statute further provided that, if Congress failed to declare war within 30 days of the President's request, the President was required to return the Armed Forces to the United States.

After several tense incidents, the President ordered 10,000 troops from the Army and Marine Corps to land in Culebra, a Central American republic. The American forces had been fired on and had fired back, and they had continued to receive and inflict casualties. The 60-day period passed, but the President refused to go to Congress to seek a declaration of war, and in a televised address to the nation accused Congress of an unconstitutional attempt to usurp powers denied to it by the Constitution.

What is Congress's best argument for the constitutionality of the statute?

(A) In making decisions concerning foreign affairs, the President must first obtain the advice and consent of the Senate.

(B) The statute does not limit the President's power to repel invasions.

(C) The President cannot institute military actions in foreign countries without a declaration of war, and only Congress has the right to declare war.

(D) The statute reflects the balance between the legislature and the executive branch in their shared control over the Armed Forces.

Question 15

In the wake of revelations regarding safety hazards and toxic emissions from plants processing radioactive materials, a bill was introduced into the legislature of State Green barring the processing of plutonium, a radioactive artificial element, in State Green. After extensive public hearings it was clear that the bill had strong support in both houses of the state legislature and that, if called to a vote, the bill would pass easily. Governor Luddite had also made a major speech announcing that he would sign such a bill. However, a few members of the legislature raised questions as to the bill's constitutionality. The constitution of State Green provides that the state supreme court may hand down declaratory judgments, and the question of the bill's constitutionality was brought before the state supreme court. The court ruled that the bill, in the form it was introduced into the legislature, is constitutional.

There is only one plutonium processing plant in State Green. It is owned and operated by Master Minerals Corporation. The plant operates under contract with the federal government and is highly profitable for Master Minerals. Master Minerals seeks to have the judgment of the state supreme court overturned, and its attorneys have filed appropriate papers to bring the case before the United States Supreme Court.

The Court should:

(A) Not hear the matter, because no case or controversy exists.

(B) Review the state court's opinion and reverse it.

(C) Review the state court's opinion and affirm it.

(D) Not review the state court's opinion, because it is based on an independent state ground.

Question 16

Rupert held a majority ownership interest in one of the three daily newspapers in City, as well as numerous other media outlets across the country. When a popular City radio station was put on the market, he entered into negotiations to purchase it. However, the Federal Communications Commission ("FCC") blocked the sale on the basis of a regulation forbidding ownership of a radio or television station to any entity owning a daily newspaper in the same city. The next year, however, the FCC suspended enforcement of that regulation to permit the radio station to be sold to Sumner, the owner of another daily newspaper in City. Rupert filed an action in federal district court seeking to enjoin the sale.

The court should:

(A) Decide the case on the merits, because Rupert can claim that the FCC's unequal treatment of the two transactions violated the Due Process Clause of the Fifth Amendment.

(B) Decide the case on the merits, because Rupert can claim that the FCC's refusal to allow him to own the station violated his freedom of speech rights under the First Amendment.

(C) Dismiss the action, because Rupert cannot show that enjoining the transaction will eliminate any injury that he might have suffered.

(D) Dismiss the action, because the federal government has the power to regulate ownership of the broadcast media.

Question 17

The state of Plains was the headquarters of Bushel Basket Ministries, which had been characterized by the government as a "religious cult." Seeking to broaden his influence, the leader of Bushel Basket, Reverend Bill E. Bob, decided that the state legislature would serve as an effective pulpit for his religious views by giving him a great deal of media exposure and direct mail resources. The state of Plains had no provision barring members of the clergy from serving as legislators. Bob entered a race that already had several other candidates and took advantage of the state's liberal voter registration laws by having many of his followers move into the district a month before the election. Bob's subsequent victory in the race shocked the political establishment and prompted a citizens' group to file a lawsuit in federal district court. The suit, invoking the Establishment Clause, sought to enjoin the state from seating Bob in the legislature or expending any state funds to provide him with legislative privileges. Bob moved to dismiss the lawsuit.

Should the court grant Bob's motion?

(A) Yes, because the Eleventh Amendment bars this type of action against a state by its citizens.

(B) Yes, because a political question is involved.

(C) No, because citizens have standing to challenge government expenditures that may violate the Establishment Clause.

(D) No, because the lawsuit is not seeking damages from the state.

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Contracts Workshop

Contracts

Question 1

Babe was a professional baseball player who was known both for his prowess at the plate and his perceived "heart of gold." One day, Babe was visiting a sick boy named Jimmy in the hospital. Babe was touched by Jimmy's will to live despite a very poor prognosis. In a moment of weakness, Babe told Jimmy that in consideration of Jimmy's courage, he would do anything that Jimmy asked. Jimmy's eyes momentarily gleamed as he asked Babe to "hit a homer for me in your next game." Babe replied, "Sure kid." As Babe was leaving Jimmy's hospital room, Jimmy's father, Joe, pulled Babe aside and told Babe, "It would mean a lot to Jimmy if you would hit a home run for him in your next game. The medicinal value of raising Jimmy's spirits would be priceless." Babe replied, "Hey man, we all have problems. I don't work for the Make a Wish Foundation." Undaunted, Joe repeated that it would really raise Jimmy's spirits if Babe would hit a homer, and as incentive, Joe told Babe that he would pay Babe $5,000 if Babe did hit a home run in his next game. Babe replied, "You've got a deal." To raise his chances of collecting the $5,000 from Joe, Babe took extra batting practice before his next game, and the practice paid off because in his next game, Babe hit two home runs. During a post-game interview, Babe explained, "I did it for little Jimmy, who is in the hospital." After showering, Babe went directly to Joe's house and asked Joe for $5,000. Babe's contract with his ball club does not forbid him from accepting money from fans for good performance.

If Joe refuses to pay and Babe brings an action against Joe for damages, which of the following is correct under the modern trend in contract law?

(A) Babe can recover the $5,000 because the preexisting duty rule does not apply where the duty is owed to a third person.

(B) Babe can recover the $5,000 if he can prove that the value of the home run to Jimmy is at least $5,000.

(C) Babe cannot recover from Joe because Babe had a preexisting duty to use his best efforts to hit home runs.

(D) Babe cannot recover from Joe because, even under the modern trend, moral consideration is not valid.

Question 2

On January 2, 1993, Cheap lent Deadbeat $1,000 and the parties agreed in writing that Deadbeat would repay Cheap on or before January 2, 1994. Deadbeat failed to repay Cheap, and on January 6, 1999, Cheap phoned Deadbeat and told him, "If you'll pay me $600 now, I'll forget all about that unpaid $1,000 debt." Deadbeat agreed orally and then sent Cheap a signed letter which stated, "I, Deadbeat, agree to pay Cheap $600." Deadbeat never paid Cheap the $600 and Cheap sued Deadbeat. The statute of limitations on suits for debt in the jurisdiction is five years.

Cheap is entitled to recover:

(A) $1,000, because the agreement by Deadbeat to pay Cheap $600 revived the original $1,000 obligation.

(B) $600, because Deadbeat's moral obligation to pay Cheap $1,000 became the consideration for Deadbeat's agreement to pay Cheap $600.

(C) Nothing, because the statute of limitations has run.

(D) Nothing, because no additional consideration was provided to support Deadbeat's agreement to pay Cheap $600.

Question 3

For a number of years, United Leasing has been in charge of leasing the luxury skyboxes at City Sports Stadium, home of the local professional basketball team. During this time, it annually sent to chief executives of area businesses personalized "invitations" to lease skyboxes for the season. The invitations, which were always sent out several months before each season began, contained detailed price terms and language stating that the deadline for responding was 10 weeks before the start of the season and that all leases were subject to the approval of the management of United Leasing. Executives at Multimedia Marketing had always responded to their invitation immediately by registered mail because they found it very worthwhile to lease a skybox to entertain their clients. During the five years that they had responded affirmatively to the invitation, they never received any additional communications from United Leasing regarding approval, but the tickets and an invoice would arrive about a week before the season began.

Several months before the current season, Multimedia received and immediately responded to its invitation. Two weeks before the season began, a stunning trade brought the league's most popular star to the City basketball team, prompting a dramatic increase in the demand for tickets. A few days later, Multimedia, which had already scheduled in a number of clients to attend games in its skybox, received a notice from United Leasing stating that management had not approved Multimedia's lease of the skybox for this season. In a separate announcement to all area businesses, United Leasing announced that all available skyboxes would be leased for three- or five-year terms, and that an auction of the leases would be conducted if the demand exceeded the supply.

Multimedia decided that it was not financially feasible to commit itself to anything longer than a one-year lease. It sent a letter to United Leasing, stating that a contract was created between the parties and that United Leasing will be in breach if it does not perform.

Is Multimedia correct in its assertions?

(A) Yes, because United Leasing's failure to reject Multimedia's offer within a reasonable time constituted an acceptance under the circumstances.

(B) Yes, because United Leasing's "invitation" to Multimedia was an offer, which Multimedia accepted.

(C) No, because United Leasing was entitled to reject Multimedia's offer when it did.

(D) No, but Multimedia would be able to recover reliance damages from United Leasing under a quasi-contract theory.

Question 4

Bernaise, the sole proprietor of Bernaise Distributors, a food service and food brokerage concern, entered into oral negotiations with Hollandaise, president and chief executive officer of Holsauce, a corporation that manufactured gourmet food products for restaurants and select retail outlets. Bernaise wished to secure an exclusive distributorship for Holsauce products in the six New England states. After some discussion, Bernaise and Hollandaise agreed on all salient points and shook hands on the deal. They agreed further that Hobson, Holsauce's general counsel, would reduce the agreement to writing and that the agreement would become effective after it was drawn up and initialed by Hobson and by Barker, Bernaise's counsel. Hobson duly committed the agreement to writing and sent the writing to Barker, but without initialing it first. Barker looked over the agreement, made no changes, initialed it, and mailed the agreement to Hobson on May 1. On May 2, Hollandaise decided that Bechamel would be a better distributor than Bernaise. Therefore, also on May 2, Hollandaise had Hobson telephone Barker, telling him, "The deal's off." Barker responded, "The heck it is. We have an enforceable contract." Hobson received the written agreement with Barker's initials on it on May 3. According to Hollandaise's instructions, Holsauce began to distribute its products in New England through Bechamel.

If Bernaise files suit against Hollandaise and Holsauce for breach, he is likely to:

(A) Prevail, because the mailing of the written agreement to Barker constituted an irrevocable offer.

(B) Prevail, because Bernaise and Hollandaise entered into a valid oral contract.

(C) Not prevail, because Hobson never initialed the written agreement and there was, therefore, failure of an express condition.

(D) Not prevail, because Hobson's phone call to Barker constituted a valid revocation before acceptance.

Question 5

Fat Goose Foods ("FGF") was a manufacturer of quality pates and terrines made from imported goose livers and truffles. In a written agreement between FGF and Gourmet Mart ("GM"), a retail seller of fine quality foods, FGF agreed to "sell all output of Fat Goose Foods liver pate to Gourmet Mart," and GM agreed to "sell Fat Goose Foods pates exclusively." The agreement went on to state that GM would pay $150 for each 10-loaf container of pates ordered from FGF. The agreement between GM and FGF also contained the statement, "either party may cancel this contract after two months upon giving reasonable notice to the other party." Assume that, after FGF faithfully filled GM's orders for six months, FGF determined that it was becoming too costly to operate the special oven used to roast the pate loaves. The oven had been manufactured in Belgium in 1937, but the plant that manufactured the oven was destroyed by bombing during World War II, and no more of the ovens were produced after 1940. It would be difficult and expensive to find a suitable substitute, and when the oven malfunctioned, replacement parts were extremely difficult to find and very costly as well. FGF, therefore, decided to get out of the pate business entirely and to use its supply of goose livers to make a German-style liver sausage. FGF notified GM of its decision and the reasons for it, and shortly thereafter stopped shipping pate to GM. GM sued FGF, demanding that FGF continue to ship pate to GM or pay monetary damages to GM.

Will GM prevail?

(A) Yes, because it was not impossible for FGF to perform.

(B) Yes, because FGF assumed the risk that making pate would become expensive.

(C) No, because the expense of fixing the oven provides a good faith reason for stopping production.

(D) No, because the cancellation provision made the contract illusory.

Questions 6-7 are based on the following fact situation:

Jenny, a general contractor, advertised in a trade publication that she planned to bid on the construction of a new building to be located in the Civic Mall. The advertisement welcomed bids from subcontractors to perform various functions, such as plumbing, electrical work, and masonry. The lowest electrical bid was from Ohmco, who bid $20,000. The lowest plumbing bid was from Plunger, who bid $10,000. Jenny used Ohmco's and Plunger's bids in preparing her general bid. At 2 p.m., on June 22, Jenny submitted her general bid. At 3 p.m., Plunger called her and said, "I'm sorry, Jenny, but I made a mistake on that bid I submitted to you; I can't possibly do that plumbing work for a dime less than $12,000." Jenny told him, "I can't do anything about that because I've already submitted my general bid." Jenny was awarded the contract.

6. Assume for purposes of this question only that after receiving the contract, Jenny hired Flusher to do the plumbing work on the building at a cost of $12,000. She now sues Plunger for damages. Jenny is entitled to recover:

   (A) $10,000.

   (B) $2,000, which represents the difference between Plunger's bid and the amount Jenny had to pay for plumbing work.

   (C) Nothing, because $12,000 was a reasonable amount to pay for the work performed.

   (D) Nothing, because Jenny did not accept Plunger's bid before it was withdrawn.

7. Assume for purposes of this question only that Jenny used Ohmco's $20,000 electrical bid to prepare her general bid, but, after Jenny was awarded the contract, she decided to hire subcontractor Wattco to perform the electrical work. Wattco had bid $21,500. Ohmco sues Jenny for damages. Will Ohmco prevail?

   (A) Yes, because there was an implied acceptance that Jenny would use the lowest bid for electrical contracting.

   (B) Yes, because Ohmco's bid was an offer for an option contract that was accepted upon acceptance of the general contract.

   (C) No, because Jenny never communicated an acceptance of Ohmco's offer.

   (D) No, because Jenny's advertisement for bids did not constitute an offer.

Question 8

On April 1, Stan, a law student, agreed to sell his prized possession—an antique dictionary—to Betsy for $1,500, so that he could pay for his bar review course. Because Stan did not have to pay for his course until April 30, the written contract between Stan and Betsy provided that the dictionary would not be delivered to Betsy until April 20, thus giving Stan a last few extra days to peruse the dictionary's pages. Late on April 15, a terrible fire swept through Stan's apartment building and the dictionary was destroyed. Firefighters determined that the blaze started when Hugh, the tenant living below Stan, fell asleep while doing his taxes and dropped his cigarette onto his paperwork. Fortunately for Stan, he had insurance that covered all of his damages, including compensation for the destroyed dictionary. On April 20, Stan told Betsy of the fire, but still demanded payment, claiming that Betsy was the equitable owner of the dictionary when it was destroyed, and explaining that she could have obtained insurance on the dictionary had she wanted to, since she had an insurable interest in the dictionary as soon as the contract was made. Betsy refused to pay. Stan brings an action against Betsy for the $1,500.

Who will prevail?

(A) Betsy, because Stan was fully compensated for his dictionary and making Betsy pay would therefore result in unjust enrichment.

(B) Betsy, because destruction of the dictionary avoids the contract and discharges her duty to pay.

(C) Stan, because when he contracted with Betsy, the risk of loss passed to her.

(D) Stan, because of the doctrine of equitable conversion.

Questions 9-10 are based on the following fact situation:

Popeye owned a large fleet of buses. He was fortunate enough to have won the contract to bus all the schoolchildren in a large midwestern city and most of its surrounding suburbs. He purchased a number of new vehicles to expand his fleet. Popeye had farmed out the maintenance of the buses to a number of different repair shops, but he now desired the consistent results obtainable from dealing with one repair and maintenance operation. He therefore contracted in writing with Bluto that all general maintenance and extraordinary repairs required for Popeye's buses would be performed by Bluto, who owned and operated "Bluto's Bus and Truck Center." A schedule of fees for most standard repairs was included in the contract. It happened that Popeye's wife, Olive, owned and operated a small advertising agency. Popeye wanted Olive's business to succeed, and so he included a clause in his agreement with Bluto that Bluto would place all his ads for his repair shop through Olive's agency during the one-year term of the agreement.

9. Assume for purposes of this question only that for six months Bluto dutifully placed all his ads through Olive's agency and informed her of his agreement with Popeye. During that time, Olive turned down work from two prospective clients because of the time that she would have to devote to designing and disseminating ads from Bluto. Bluto then discovered that Popeye was having some of his buses repaired and maintained by other shops. Bluto immediately ceased placing ads through Olive and employed another agency. Can Olive successfully bring suit against Bluto to enforce the agreement?

(A) Yes, because she partially performed by placing ads for Bluto during the first six months of the agreement.

(B) Yes, because she detrimentally relied on Bluto's promise to place ads when she refused other clients.

(C) No, because Olive provided no consideration for the agreement between Popeye and Bluto.

(D) No, because Popeye's exclusive use of Bluto's repair shop was a condition for Bluto's duty to purchase ads through Olive, and Popeye's actions excused Bluto's duty to Olive.

10. Assume for purposes of this question only that Popeye dutifully sent all his buses to Bluto for repair and maintenance. However, six months into the agreement, Popeye divorced Olive. Although Bluto had been placing all his ads through Olive, Popeye told Bluto, "You don't have to place ads with Olive anymore." Bluto promptly began placing ads through another agency. Olive then learned of the agreement between Popeye and Bluto. Popeye continued to send all his buses to Bluto. Can Olive enforce the agreement in her favor?

    (A) Yes, because she was an intended beneficiary of the agreement between Popeye and Bluto.

    (B) Yes, because Olive had an enforceable contract with Bluto concerning the advertising.

    (C) No, because Popeye and Bluto had a right to modify their agreement without Olive's permission.

    (D) No, because Olive was a gratuitous beneficiary whose rights depended on her status as Popeye's wife.

Questions 11-12 are based on the following fact situation:

Alice entered into a written agreement with Moran, whereby Moran agreed to remodel the basement of Alice's home, and Alice agreed to pay Moran $8,000 upon completion of the job. The agreement contained a list of specifications as to the types of materials to be used in the remodeling. Among these specifications was a provision that Moran was to use an imported Brazilian hardwood for the paneling. Moran began the job, and then assigned his right to payment under the agreement to Nicholls. When the job was a little more than half completed, Alice sold the house to Bill. In a document separate from the deed of conveyance, Alice assigned her right to Moran's labor and delegated her duty to pay under the contract to Bill.

11. Assume for purposes of this question only that Moran completed the job on time but used Wyoming knotty pine instead of Brazilian hardwood for the paneling. The knotty pine is considered to be inferior to the Brazilian hardwood and is much less expensive, and Bill was very displeased when he saw the result. Who can Bill sue for breach?

    (A) Alice only.

    (B) Moran only.

    (C) Moran and Nicholls.

    (D) Alice, Moran, and Nicholls.

12. Assume for purposes of this question only that Moran completed the job on time but used Argentinian hardwood instead of Brazilian hardwood. The Argentinian hardwood is virtually identical in appearance and is considered equivalent in value to the Brazilian hardwood, and they are often used interchangeably in the construction industry. Upon learning of the substitution, Bill refused to pay Nicholls. If Nicholls files suit against Alice for payment, will the court find Alice liable to pay Nicholls?

    (A) Yes, unless there was a nonassignment clause in the contract between Alice and Moran.

    (B) Yes, but only as a surety for Bill.

    (C) No, because Alice delegated her duty to pay to Bill and Alice is no longer liable on the contract.

    (D) No, because the remodeling work was not performed according to specifications.

Question 13

With the busy summer beach season fast approaching, Trendee of Bayonne, a retail women's wear store, ordered 100 women's swimsuits at $10 each, as advertised in the catalog of Stingray, a manufacturer of swimwear. Stingray shipped Trendee 40 swimsuits, along with a letter, stating in relevant part: "We have shipped you 40 swimsuits at $10 each as per your recent order. Please remit $400 to Stingray. Be informed that we will be unable to ship the additional 60 suits you requested at this time or at any time during this year's beach season." Trendee took the 40 suits, put them on their salesracks, and began to sell them. Trendee immediately sought an alternate supplier of swimsuits. The best price it could obtain was $11 per suit from Flying Fish Industries. Trendee ordered, received, accepted, and paid for 60 suits at $11 each from Flying Fish. Trendee has refused to pay Stingray.

If Stingray sues Trendee, Stingray is entitled to:

(A) $400, the contract price for the 40 suits delivered by Stingray and accepted by Trendee.

(B) $340, the contract price for the 40 suits, less Trendee's cover damages.

(C) The fair market value of the 40 suits, less the $60 cover damages.

(D) Nothing, because it failed to fully perform the contract.

Question 14

Via a circular, WidgeCo, a manufacturer of widgets, sent an offer to Distrucorp, a major wholesaler. WidgeCo offered a standard lot (quantity well-known in the widget trade) of widgets for $8,000. This was a good price, and the president of Distrucorp personally mailed back to WidgeCo Distrucorp's standard printed acceptance form. However, the president wrote in large letters in his own hand on the form, "Our liability on this contract is limited to $200." Two days later, the WidgeCo sales manager received the communication from Distrucorp. A week later, WidgeCo had sent no additional communication to Distrucorp.

Assuming no additional facts, what is the relationship between the parties?

(A) There is no contract between WidgeCo and Distrucorp, because Distrucorp made a material alteration.

(B) There is a valid, enforceable contract between WidgeCo and Distrucorp, but it is limited to the terms of WidgeCo's offer.

(C) There is a valid, enforceable contract between WidgeCo and Distrucorp, and it contains the additional term because WidgeCo raised no objection.

(D) Distrucorp has sent a valid counteroffer to WidgeCo, which WidgeCo can accept or reject.

Question 15

Tekmart, a leading computer supply retailer, contacted Megabyte, a manufacturer of blank diskettes, on October 25 to supplement the supply of diskettes at Tekmart's area stores. In response, Megabyte offered to supply 50 cartons of boxed diskettes at $200 a carton, for a total price of $10,000, delivery one week after acceptance, and sent a letter containing those contractual terms to Tekmart on October 26. The president of Tekmart signed the letter on October 27 without making any changes to it and sent it back to Megabyte by first class mail. The next day, having not heard from Tekmart, Megabyte's sales manager contacted the president of Tekmart and informed him that, if Tekmart accepted by the end of the month, it would receive a 1% discount in the total price. When Tekmart's president responded that he had already sent the acceptance, the sales manager assured him that the discount would still apply. On October 31, Tekmart received a circular from Dataco offering comparable diskettes for 5% less than Megabyte's price. The president of Tekmart immediately faxed a rejection to Megabyte. Megabyte received the rejection immediately but took no action on it. The next day, November 1, Megabyte received the signed contract from Tekmart.

What is the status of the agreement between the parties?

(A) An enforceable contract was formed for $9,900 because Tekmart accepted before October 31 and needed no additional consideration for the oral modification.

(B) An enforceable contract was formed for $10,000 because the parol evidence rule precludes Tekmart from offering evidence of the telephone conversation.

(C) An enforceable contract was formed for $10,000 because, even though Tekmart accepted before October 31, the Statute of Frauds makes the oral modification between the parties unenforceable.

(D) An enforceable contract was not formed between the parties because Tekmart's rejection was received before its acceptance.

Question 16

Tommy was in his third year of college, and Tommy's father, Dad, often sent Tommy money to help Tommy pay for books and for living expenses. During the last winter break, Tommy brought his girlfriend Gidget home to meet his family. Dad took an instant dislike to Gidget, and has continually lectured Tommy about her, insisting that Tommy could find someone "more refined" to date.

In early March, Tommy telephoned Dad from College Village, where the university was located. Tommy asked Dad for $1,000. Dad told Tommy, "I'll send you the thousand bucks, but if you don't find a classier girlfriend than that Gidget person, this is the last subsidy you'll get from me, young man." Tommy thanked Dad, and promptly went to a jeweler with Gidget, where Tommy and Gidget selected an engagement ring priced at $5,000. Tommy, who was 21 years of age, signed a contract to purchase the ring. The contract required Tommy to make a $1,000 down payment and then to make a series of installment payments. Tommy planned to use the $1,000 check he was expecting from Dad for the down payment. Tommy and Gidget both worked at part-time, minimum wage jobs while they attended school. Through a friend who lived in College Village, Dad discovered Tommy's plan to buy Gidget an expensive engagement ring. Dad refused to send Tommy the $1,000 check. The jeweler is now demanding that Tommy make the $1,000 down payment on the ring and pay the first installment as well.

Can Tommy legally enforce Dad's promise to send Tommy $1,000?

(A) Yes, because Tommy relied on Dad's promise and the doctrine of promissory estoppel applies.

(B) Yes, because Tommy was an intended beneficiary.

(C) No, because Dad's promise was a gift unsupported by consideration.

(D) No, because Dad did not promise to send the money with the expectation of inducing Tommy to buy an engagement ring for Gidget.

Question 17

Ellen owns a high-style ladies' fashion store in Beverly Hills. Calvin is the designer and manufacturer of a world-famous line of original gowns.

On April 1, Ellen and Calvin signed a written agreement wherein Ellen was appointed the "sole and exclusive" retail distributor for Calvin's clothes in Beverly Hills. The contract provided that Calvin was to have the absolute right to cease doing business with Ellen "at any time and for any reasons Calvin chooses."

On May 1, Ellen handed Calvin a written order for $50,000 worth of his original gowns, to be delivered to Ellen on September 1. Calvin did not sign an acknowledgment of Ellen's order, but in her presence he set aside the originals designated in her order by putting her name on them.

To publicize her new line of merchandise, Ellen conducted a large advertising campaign announcing to the Beverly Hills public that she would have a wide selection of Calvin's originals on display on September 1. She also made substantial improvements to the store to display these clothes in lush and expensive settings.

On August 15, Calvin wired Ellen, "Sorry, darling, I have to invoke my right to terminate our arrangement. Your competitor in Beverly Hills, Shannon, has made an offer for the clothes you ordered that I simply couldn't pass up. I know you'll understand. Best wishes, Calvin."

Upon receipt of the message, Ellen filed suit against Calvin. Calvin defends on the ground that his April 1 agreement with Ellen is unenforceable for lack of consideration because Ellen did not obligate herself under the contract in any way.

How should the court rule on that issue?

(A) Any want of consideration at the formation stage was cured by Ellen's actual tender of a large order.

(B) The April agreement was, in effect, a "firm offer" between merchants and hence binding on both parties even though there was no consideration.

(C) There was sufficient consideration in Ellen's implied promise to exercise her best efforts to promote the sale of Calvin's gowns.

(D) Calvin set aside the gowns in Ellen's presence, and thereby apparently expressed his willingness to ship as per her order.

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Criminal Law Workshop

Criminal Law

Question 1

Dorothy's very best friend was Melissa, and Dorothy shared all of her secrets with her. Dorothy and her husband, Hank, often brought Melissa, a divorcee, along on vacations and dining engagements. One day, however, after being tipped off by a mutual friend, Dorothy went through Hank's drawer and discovered steamy love letters to him from Melissa. The tone of the letters made it obvious that Hank and Melissa had been having an affair for at least three years. Dorothy became furious, but kept repeating to herself, "Don't get mad, get even!" She purchased a handgun and waited for the right moment to use it. The moment occurred at a large outdoor barbecue celebrating Melissa's birthday. At the barbecue, Dorothy gave the gun to Melissa's 10-year-old nephew, Sammy. She told Sammy, "Why don't you go up and point this gun at your Auntie Melissa. When you pull the trigger a sign will come out saying, 'BANG! and Happy Birthday,' just like in the circus." Sammy took the gun, pointed it at Melissa, and pulled the trigger. However, Sammy's aim was faulty, and when the gun discharged the bullet struck Hank, killing him. The police quickly linked Dorothy to the crime.

Which of the following best describes the crime or crimes of which Dorothy can be properly convicted?

(A) Murder of Hank and attempted murder of Melissa.

(B) Murder of Hank, but not attempted murder of Melissa.

(C) Attempted murder of Melissa, but not murder of Hank.

(D) Attempted murder of Melissa or murder of Hank, but not both.

Question 2

Howard was supposed to be out of town on a three-day business trip. Because he completed his business more quickly than expected, he flew home on Wednesday night instead of Thursday afternoon. Howard arrived home and let himself into the house. He heard noises from the bedroom and, upon investigation, Howard was shocked to find his wife, Chastity, in bed with Nick, a good friend of Howard, who lived four blocks away. Nick dressed quickly and took off out the back door. Howard screamed a number of epithets at Chastity and then told her, "Nick's going to pay for this! Get me a drink! It will give me the steadiness to do what I have to do to avenge my honor." A frightened Chastity brought Howard a bourbon and water. Howard drank it quickly and demanded yet another drink. After consuming several more drinks, Howard unlocked the closet, pulled out a rifle, and loaded it. He then set off for Nick's house.

Howard arrived at Nick's about 10 minutes later. Nick had neglected to lock his front door, so Howard walked in. He found a trembling Nick in the living room, and Howard pointed the gun at him. Nick immediately began apologizing, blaming the affair on Chastity, and pleading for his life. Howard stood silently listening to Nick, but he kept the gun trained on his erstwhile friend. Suddenly, Nick pulled a switchblade knife from his pocket. As the metal flashed, Howard fired a single shot at Nick. The bullet struck him in the middle of the forehead and Nick died instantly. Howard set the gun down, fell to his knees, and began crying. A neighbor who heard the shot reported it to the police. They arrived a few minutes later and found a distraught Howard muttering about losing a friend and a marriage in one night.

Howard can be convicted of:

(A) Murder.

(B) Manslaughter, because Howard was still distraught over finding Nick in bed with Chastity.

(C) Manslaughter, because his intoxication prevented Howard from having the requisite intent for murder.

(D) No homicide crime, because Nick was about to attack him with a knife.

Question 3

Larry was passing by a house under construction when he noticed that the ladder being used by workers on the roof had copper braces supporting the rungs. After making sure that the workers on the roof could not see him, Larry used a pliers that he had in his pocket to remove all of the copper braces that he could reach from the ground. A short time later, Vernon climbed down the ladder and it collapsed. He fell to the ground and severely injured his back. Larry was apprehended a few hours later trying to sell the copper for scrap.

A statute in the jurisdiction makes it a felony for "maliciously causing serious physical injury to another." Larry was charged with malicious injury under the statute and was also charged with larceny. After a jury trial in which the above facts were presented, he was convicted of both charges.

If Larry appeals the conviction for the malicious injury charge on grounds of insufficient evidence, how should the court rule?

(A) Affirm the conviction, because Larry was engaged in criminal conduct at the time of the act that resulted in the injury.

(B) Affirm the conviction, because the jury could have found that Larry acted with malice.

(C) Reverse the conviction, because there was no evidence that Larry intended to injure anyone.

(D) Reverse the conviction, because there was no evidence that Larry bore any malice towards Vernon or the other workers on the roof.

Question 4

Victor was desperately ill with a particularly virulent and painful form of cancer. He was permanently hospitalized and quite helpless as the killer disease tore at his vitals. Victor's daughter, Dana, was devoted to her dad. She visited him every evening in the hospital and spent many hours with him on the weekends. For over two months, Victor pleaded with Dana, "Please kill me and put me out of my misery. I'm in such terrible pain. The pangs of Hell couldn't be any worse than this!" Every day or evening that Dana visited, Victor would renew his plea to be killed. The staff doctors and nurses had often heard Victor's plaint. One Saturday afternoon, Dana paid her usual visit to Victor. His pleading was as heartrending as ever. With a tender expression on her face, Dana pulled a small revolver from her purse. She fired a shot at Victor, killing him instantly. Dana immediately broke into tears and repeatedly kissed the face of her dead father. Hospital authorities called the police, and Dana was charged with Victor's death.

What is the most serious offense of which Dana can be convicted?

(A) First degree murder, defined by the jurisdiction as premeditated and deliberate killing of another human being.

(B) Second degree murder, defined as any murder not classified as first degree murder.

(C) Voluntary manslaughter.

(D) No crime.

Question 5

Andt lent his swim fins to his friend Gracehoper. Gracehoper promised to return the fins in a week, but two months had passed and, despite many reminders, Gracehoper still failed to return the fins. Andt decided to go to Gracehoper's cabin to retrieve them. Andt went to the cabin and knocked on the door, hoping to find Gracehoper at home. After knocking several times with no response, Andt tried the door and found it to be unlocked. Andt decided to look for the swim fins in Gracehoper's cabin and to retrieve them. Andt opened the door and entered Gracehoper's cabin. He looked around the cabin for 20 minutes, but he could not locate the swim fins. He concluded that Gracehoper was probably using them and left the cabin, taking nothing from it and closing the door behind him.

If Andt is later charged and tried for burglary, Andt's best defense to the charge is which of the following?

(A) Andt left the cabin without doing anything.

(B) Andt took nothing from the cabin.

(C) The swim fins belonged to Andt.

(D) Gracehoper's door was unlocked.

Questions 6-7 are based on the following fact situation:

Kuegler, who had a long list of petty crimes to his credit, cased the Jaymart Department Store for a week. He noticed that a display case containing very expensive watches was near one of the store's exit doors. He planned to steal the watches by setting a diversionary fire in a trash basket, hoping that this would distract the store security personnel long enough for Kuegler to break the glass covering the watch case, grab the watches, and run out the nearby exit. Kuegler knew that the store had an automatic sprinkler system that would promptly douse the fire, but his purpose was merely to create a distraction rather than to cause any damage to the building.

One afternoon at 2:30 p.m., Kuegler entered the Jaymart. He advanced to a trash barrel and poured some lighter fluid onto the trash. He threw the lighter fluid can into the barrel and tossed in a match after it. The lighter fluid immediately caused a long flame to rise. The flame quickly charred the wall next to the barrel and blistered the paint on the surrounding area. No serious damage was done to the structure, because the sprinklers operated as designed and quickly put out the fire before it could spread. Kuegler made a dash toward the case containing the watches, but just as he was breaking the glass case, one of the store's security guards apprehended Kuegler and called the police. Kuegler was read his *Miranda* rights and taken into police custody. A statute in the jurisdiction extends the crime of arson to buildings other than dwellings.

6. If Kuegler is tried for the crime of arson, the court should find him:

   (A) Not guilty, because Kuegler did not intend to burn the building.

   (B) Not guilty, because Kuegler's act was sufficient only for attempted arson.

   (C) Guilty, because Kuegler's conduct demonstrated the requisite state of mind for the crime.

   (D) Guilty, because Kuegler started the fire during the act of perpetrating another felony.

7. Which of the following best describes the crimes, if any, of which Kuegler could be properly convicted?

   (A) Larceny only.

   (B) Larceny and attempted arson.

   (C) Attempted larceny and arson.

   (D) None of the above.

Question 8

In which of the following situations is the defendant ***least*** likely to be found guilty of an attempted crime?

(A) In order to track down "fences" and other distributors of stolen goods, police officers, with permission of the owners and insurers, forward stolen jewelry they have intercepted on the way to Don, a reputed fence. Don takes the jewelry, which he believes to be stolen. Don is arrested and charged with attempted receipt of stolen goods.

(B) Dewey, a 21-year-old male, believes the "age of consent" in the state to be 18, and that sexual intercourse with a female under the age of 18 constitutes statutory rape. In fact, the statute applies only to females under the age of 16. Dewey's girlfriend, Irma, is 17 years of age. With Irma's consent, Dewey engages in sexual intercourse with Irma. Later, Dewey brags in a bar, "I just made it with some jailbait." Dewey is arrested and charged with attempted statutory rape.

(C) Doreen, a community activist, is outraged that a bill to place greater restrictions on picketing is being debated in the state legislature. Doreen asks her lawyer, Lax, if she can conduct a demonstration in the state capitol building, where the legislature sits. Lax assures her that the United States Supreme Court has recently upheld a very similar case and tells Doreen she should act freely "because the First Amendment protects you." In fact, Lax did not read the case carefully. The Court allowed demonstrations on the capitol grounds, but not in the building itself. As Doreen carries her picket sign into the state capitol building, she is arrested by security guards and is charged by state police with attempting to conduct an illegal demonstration.

(D) Hartigan, a police officer, disguises himself as an elderly homeowner as part of a police "sting" operation aimed at unscrupulous home repair operations. Drew, president and sole proprietor of Drew's Home Repairs, inspects the home that he believes belongs to Hartigan. Drew believes Hartigan is the homeowner and a senior citizen with failing mental powers. Drew's inspection of the home reveals the only plumbing problem to be a 25-cent washer that needs replacing. Drew tells Hartigan that the plumbing in the house is in terrible shape, and that city building inspectors are likely to condemn the home if plumbing repairs are not made immediately. Drew offers Hartigan a contract to perform all required plumbing repairs for $10,000. Drew emphasizes that this is a "rock bottom price with a 20% senior citizen discount." Drew is arrested and charged with attempted theft by false pretenses.

Questions 9-10 are based on the following fact situation:

Jeffries was the chief of security for The Watervliet, a large, exclusive apartment complex. Most of The Watervliet's residents were quite wealthy, and Jeffries resented the fact that he had many responsibilities and received what he considered to be a paltry salary. Therefore, Jeffries was receptive when Garth told him that he would pay Jeffries $250 if Jeffries would obtain a key to the apartment of Mrs. Wealthy and give the key to Garth. Mrs. Wealthy was an affluent and socially prominent widow who resided in The Watervliet. The next day Jeffries obtained a key to Mrs. Wealthy's apartment and gave the key to Garth. Garth handed Jeffries the $250 in cash. Jeffries believed that Garth planned to use the key to take valuables from Mrs. Wealthy's apartment. In fact, Garth planned to pretend that he was a "Good Samaritan" returning a "lost key" to Mrs. Wealthy that Garth had fortuitously found in The Watervliet lobby. Garth felt that this ploy would gain him access to Mrs. Wealthy's apartment, where he planned to sell her a "real estate limited partnership share" in nonexistent Florida property.

Garth's plan worked up to a point. He brought the key to Mrs. Wealthy, who thanked him and invited him into her apartment for afternoon tea and watercress sandwiches. Garth attempted to sell the "limited partnership share" to Mrs. Wealthy, but she quickly surmised that the limited partnership was bogus and politely asked Garth to leave. Garth, a resourceful chap, did not want his $250 investment in the key to be a total waste of money, so he surreptitiously removed a small but valuable art deco bronze statuette from Mrs. Wealthy's foyer and left the apartment with it.

9. If Jeffries is arrested and appropriately charged with theft of the key and conspiracy to commit theft of the key, of what additional crime or crimes, if any, could Jeffries be charged and convicted?

   (A) Attempted false pretenses.

   (B) Conspiracy to commit burglary.

   (C) Larceny, conspiracy to commit burglary, and conspiracy to commit false pretenses.

   (D) None of the above.

10. If Garth is arrested and appropriately charged with conspiracy to commit theft of the key and attempted false pretenses, of what additional common law crime or crimes could Garth be charged and convicted?

   (A) Larceny.

   (B) Burglary.

   (C) Larceny and burglary.

   (D) Larceny and conspiracy to commit burglary.

Question 11

Bulky was six foot four and weighed 280 pounds. One afternoon Bulky was wandering rather aimlessly and became lost in an unfamiliar part of the city. He reached into his pocket and discovered he only had 35 cents. He wanted to take a bus back to the city center, but bus fare was $1 per ride. Bulky was rather scruffily dressed and he had not had a haircut in several months. He approached Juan, a slightly built man who was standing alone at the bus stop. In a gruff voice, Bulky asked Juan, "Do you have any money?" When Juan replied, "Yes," Bulky said, "Give me five dollars!" Juan reached into his pocket and handed Bulky a five-dollar bill. Juan walked away from the bus and flagged down a passing patrol car. Juan told the police, "I've been robbed," and pointed out Bulky, who was still standing at the bus stop. Bulky was arrested and charged with robbery.

At Bulky's trial, Bulky took the stand in his own defense. Bulky testified, "I wasn't trying to rob anybody. I was just trying to beg some money to get myself back home."

If the jury believes Bulky's testimony, Bulky should be found:

(A) Not guilty of robbery, because Bulky lacked the requisite criminal intent.

(B) Guilty of robbery, because Bulky took Juan's money after intimidating him, and the effect of Bulky's size on Juan, rather than Bulky's intent, is controlling.

(C) Not guilty of robbery, but guilty of assault, because Bulky placed Juan in reasonable apprehension of bodily harm.

(D) Guilty of both robbery and assault, because assault is not a lesser included offense of robbery.

Question 12

Alert police officers noticed that a late-model "Belchfire 500" automobile was being driven at an excessive rate of speed. The car, driven by Doofus, was pulled over to the curb. As Officer Smith issued a speeding citation to Doofus, her partner, Jones, fed the license plate numbers into the police computer. It turned out that the Belchfire had been very recently reported as stolen. Doofus was unable to produce satisfactory registration papers and was arrested for car theft. At the police station, Smith gave Doofus the standard *Miranda* warnings, and Doofus agreed to answer Smith's questions regarding a local "chop-shop" network, which arranged for the theft of expensive automobiles so that they could be cut up for parts. After a while, Jones suggested, "Let's break for lunch." He and Smith escorted Doofus to a nearby cafeteria. During the course of their lunch, which lasted about an hour, Smith noticed that Doofus, who was otherwise rather shabbily dressed, was wearing an obviously expensive "Xelor" watch. Upon their return to the station, and without giving any new *Miranda* warnings, Smith resumed interrogation of Doofus. She asked Doofus about a recent home invasion in the swank "Notting Hill" neighborhood, where a quantity of valuable jewelry, including a "Xelor" watch, was taken. Doofus thereupon confessed to the home invasion, and was indicted on the home invasion charge, a felony under the jurisdiction's modern criminal code.

If Doofus files an appropriate motion to prevent the confession from being admitted at his trial, Doofus will probably:

(A) Succeed, because the police did not repeat the *Miranda* warnings before questioning Doofus about another crime.

(B) Succeed, because the police acted in a custodial setting.

(C) Fail, because Doofus was not in custody on a home invasion charge.

(D) Fail, because the original *Miranda* warnings given Doofus were sufficient under the circumstances.

Question 13

Denise, a 12-year-old girl, entered a grocery store. When she believed that no one was looking, she grabbed two packages of "Blinkies," a popular confectionery item, and concealed them under her coat. As she attempted to leave the store, Gordon, a security guard employed by the store, grabbed Denise by the arm. He told her, "You're too young to be a thief!" Denise began crying and blurted out, "I lost my lunch money on the way to school and I was really hungry!"

If Denise is charged with shoplifting, what is the State's best argument that Denise's *Miranda* rights have not been violated by Gordon?

(A) Gordon's statement was not interrogatory.

(B) It is discretionary whether to give juveniles *Miranda* warnings.

(C) Denise has not yet been arrested and formally charged with any crime.

(D) Gordon was not a government agent.

Questions 14-15 are based on the following fact situation:

Soar Airlines Flight 226 was a flight from Miami to Washington, D.C., with an hour stopover in Orlando. At the Orlando Airport, Mike and Nick, holding tickets to Washington, D.C., disembarked from the plane. Each carried a rather large piece of carry-on baggage. Mike went into a telephone booth and placed a call, while Nick stood with his back to the booth, looking around in all available directions. Sam, an officer of the Federal Drug Enforcement Administration assigned to watch for drug activities at the Orlando Airport, noticed Mike and Nick. As soon as Mike emerged from the phone booth, Sam approached the two men. Sam identified himself and asked Mike and Nick, "Do you mind if I ask you a few questions?" Both agreed. After asking about such matters as their destination, Sam asked, "Do you mind if we go into my office and inspect what's in your hand baggage?" Both Mike and Nick agreed. In the office, Sam searched both pieces of luggage and found nothing suspicious in either. He then proceeded to pat down Mike and Nick. He found nothing on Mike, but he felt a bulge around Nick's stomach. Further investigation revealed that Nick was wearing a pouch around his waist which proved to contain cocaine. Mike and Nick were charged with possession of cocaine.

14. At Nick's trial, the prosecution seeks to introduce the cocaine into evidence against Nick. Nick's attorney objects. The court should rule the cocaine:

    (A) Admissible, because of the emergency conditions arising from the growing menace of drugs to the public.

    (B) Admissible, because, in consenting to the search of his luggage, Nick impliedly consented to a body search.

    (C) Inadmissible, because Sam had neither probable cause nor reasonable suspicion to search Nick.

    (D) Inadmissible, because Sam had no right to search the luggage.

15. Assume for purposes of this question only that Nick pleaded guilty to possession of cocaine. At Mike's preliminary hearing it has been stipulated that Mike owns the cocaine, but Mike's attorney brings a motion at the hearing to suppress the introduction of the cocaine at trial. How should the court rule on the motion?

    (A) In favor, because Mike was not in possession of the cocaine.

    (B) In favor, because Mike and Nick had a reasonable expectation of privacy when Sam elected to search them.

    (C) Against, because Mike has already stipulated that he owns the cocaine.

    (D) Against, because the search of Nick did not violate Mike's reasonable expectation of privacy.

GO ON TO THE NEXT PAGE

Question 16

Simpson and two others were indicted on felony charges for electronic theft of bank accounts. Simpson protested that he was innocent and wanted to prove it at trial, but agreed to discuss a plea bargain with the district attorney. The district attorney indicated that he would also charge Simpson with additional theft by computer offenses if Simpson insisted on going to trial, but that if he pleaded guilty to the one charge and agreed to testify against his co-defendants at their trial, the prosecution would recommend probation only. Because of the risk of jail time if he was convicted of any of the additional offenses, Simpson agreed.

When Simpson appeared in court, the judge informed him of the nature of the charge and the potential punishment, and that Simpson was waiving his right to trial by pleading guilty. She asked if his plea was voluntary and he replied that it was the best deal that he could get, but that he was really innocent of the crime charged. The judge nevertheless accepted the plea, reserving sentencing until Simpson testified against his co-defendants.

Just before trial of Simpson's co-defendants, they pleaded guilty and provided additional information of Simpson's central role in the crime and in additional computer theft offenses. At Simpson's sentencing, the prosecution introduced the testimony of Simpson's co-defendants and asked the judge to impose a jail term. The judge sentenced Simpson to five years in prison for the crime to which he pleaded guilty.

Simpson appeals his sentence, raising the following arguments:

I. The prosecution threatened to bring additional charges when Simpson indicated that he was going to exercise his right to go to trial.

II. The judge accepted Simpson's guilty plea despite his claim of innocence.

III. The prosecution did not adhere to the plea bargain after Simpson's co-defendants pleaded guilty.

Which of the above arguments provide a valid basis for vacating Simpson's guilty plea and sentence?

(A) I. and III.

(B) I., II., and III.

(C) II. and III.

(D) III. only.

Question 17

Chaven was arrested in the city of Briggs, which is located in the state of Riverfront. He was charged with possession of illegal narcotics and placed on trial in the municipal court of Briggs. Chaven demanded a jury trial, which was duly granted. After the jury had been sworn, selected, and impaneled, Chaven's attorney, Fenway, filed a motion with the presiding judge praying for a dismissal based on a technical error in the bill of information drawn up by the city prosecutor. No witnesses had yet been sworn at the time Fenway filed the motion. The judge ordered an immediate recess while he considered the motion. Two days later he ruled in favor of defendant Chaven and dismissed the charges against him.

A week later a state grand jury indicted Chaven for possession of illegal narcotics with intention to distribute same. The charges arose out of the same incident and arrest described above. Chaven was ordered to appear in the superior court of the state of Riverfront to answer the charges. Fenway immediately filed a motion on Chaven's behalf asserting that it would be unconstitutional to retry Chaven in the state court.

The best argument against granting the motion is which of the following?

(A) The city of Briggs and the state of Riverfront are separate sovereigns.

(B) The state charge requires the proving of a fact not required by the municipal charge.

(C) Chaven's trial in municipal court had not yet reached the stage where jeopardy attaches.

(D) The dismissal of the case in municipal court was based on a technicality that did not go to the merits of the case.

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Evidence

Question 1

Dassent was on trial on a hit and run charge, whereby the prosecution asserts that, while driving his vehicle, Dassent struck and injured Proctor, an elderly pedestrian, and then sped away from the scene of the accident without stopping to assess Proctor's injuries or to render assistance. During the prosecution's presentation of its case, three eyewitnesses testified that the car that struck Proctor had the license plate number DASS 53. A witness from the State Department of Motor Vehicles produced records showing that a vehicle with license number DASS 53 was registered in Dassent's name and that Dassent claimed on his driver's license application that he was born in 1953.

Dassent took the stand in his own defense. He admitted that a car meeting the description of the vehicle given by the eyewitnesses and bearing a license plate with the number DASS 53 belonged to him, but Dassent denied having driven the vehicle on the day that Proctor was injured. Without releasing Dassent as a witness, his lawyer called Father White, an Episcopal priest, to the stand. White is ready to testify that he has known Dassent for 12 years, that Dassent has performed many charitable acts, and that Dassent is a highly responsible person "who would not run away from his obligations by leaving the scene of an accident."

If the prosecution objects to White's proposed testimony, should the court bar White from testifying?

(A) No, because the testimony shows that Dassent is a person of good character.

(B) No, because the testimony is habit evidence tending to show that it was unlikely that Dassent was the perpetrator.

(C) Yes, because one may not use character evidence to bolster one's own testimony.

(D) Yes, because the prosecution has not made an issue of Dassent's character.

Question 2

Devlin is being tried for murder in the bludgeoning death of Vandross. Devlin denies any involvement in the crime. He calls Westin to the stand. Westin testifies that, in his opinion, Devlin is a nonviolent, peaceable man.

Which of the following, if offered by the prosecution, would most likely be admissible?

(A) A neighbor's testimony that Westin has beaten his wife on several occasions.

(B) A police officer's testimony that Devlin has a general reputation in the community as a violent person.

(C) A neighbor's testimony that Devlin has a reputation for being untruthful.

(D) Evidence that Devlin has a conviction for aggravated battery.

Question 3

Perry sued Don for bodily injuries suffered by Perry as a result of a collision between the cars they were driving. The accident occurred on a rainy day, when Don's car skidded across the center line and struck Perry's car. A principal issue is whether Don was driving too fast for the wet conditions. At trial, Perry calls Wally to the stand. Wally is prepared to testify that he has lived next door to Don for 15 years, and that Don is notorious in the neighborhood for driving his car at excessive rates of speed. Don's attorney objects.

May Wally's testimony be allowed?

(A) Yes, because Don's character as a careless driver is in issue.

(B) Yes, because character may be proven by reputation evidence.

(C) No, because the testimony is improper character evidence.

(D) No, because the testimony is hearsay, not within any exception.

GO ON TO THE NEXT PAGE

Question 4

On an icy day, a vehicle driven by Doug struck Peter's car in the rear, smashing a taillight and denting Peter's bumper. Before Peter could say anything, Doug rushed out of his car and told Peter, "Look, if you'll take $500 for the damage, I'm sure my insurance company will pay for it." Peter refused and sued Doug for damage to his car and minor personal injuries. Peter wishes to testify as to Doug's statement at the time of the accident. Doug objects.

Should the court allow Doug's statement to be admitted?

(A) Yes, because it is an admission of a party-opponent.

(B) Yes, because it is hearsay within the statement against interest exception.

(C) No, because the statement took the form of a settlement negotiation.

(D) No, because the statement is hearsay, not within any recognized exception to the hearsay rule.

Question 5

Doobad was on trial for armed robbery. The defense placed Doobad's friend Wendt on the stand as an alibi witness. Wendt testified that at the time of the armed robbery Doobad was engaged in other activities with Wendt. On cross-examination, the prosecutor asked Wendt, "Isn't it true, Mr. Wendt, that the grand jury has indicted you for the same crime as Mr. Doobad?" Doobad's lawyer knew that Wendt had been indicted for the armed robbery and was to be tried separately in two weeks, but she vigorously objected to the prosecutor's question.

Her objection should be:

(A) Sustained, because Wendt has been indicted, but not convicted, of the armed robbery.

(B) Sustained, because prior bad acts may not be introduced to impeach a witness.

(C) Overruled, because Wendt's indictment tends to show his criminal propensities.

(D) Overruled, because Wendt's indictment tends to show bias on the part of the witness.

Question 6

Denton was on trial in a civil torts action. He was charged with driving his car negligently and, as a result of his negligence, injuring Potts. Denton's friend, Weiner, was sitting in the passenger seat of the car driven by Denton when the accident occurred. Denton put Weiner on the stand, and Weiner testified that Denton was driving safely and well below the posted 55-mile-per-hour speed limit. Shortly before the trial began, Weiner's secretary, Sarah, telephoned Potts and told him, "You might be interested in knowing that Weiner has been understating his income to the government for years." The Internal Revenue Service has never charged Weiner with tax evasion, but Sarah's information was accurate. On cross-examination, Potts's attorney asked Weiner, "Have you ever cheated on your tax returns?" Denton's attorney objects.

The objection should be:

(A) Sustained, because the question is not relevant to the facts of the case at bar.

(B) Sustained, because witnesses may not be impeached through the use of collateral material.

(C) Overruled, because Weiner's tax evasion shows a tendency to lie.

(D) Overruled, because Weiner's acts constitute a felony punishable by at least one year in prison.

Question 7

Dunbad was on trial for the murder of his wife Victa. During the course of the trial, the prosecution sought to introduce evidence that, six months before Victa's death, Dunbad had purchased a large insurance policy on her life, and two weeks prior to her death he purchased two more large policies on Victa's life from separate insurance carriers.

If the defense objects to admission of such evidence, the objection should be:

(A) Sustained, because such evidence would be more prejudicial than probative.

(B) Sustained, because evidence of insurance is inadmissible as a matter of public policy.

(C) Overruled, because the evidence tends to establish motive.

(D) Overruled, because the evidence tends to establish criminal propensity.

Question 8

Dogwood was put on trial for the robbery and aggravated battery of Birch. Despite having been seriously injured in the attack, Birch took the witness stand and identified Dogwood as his attacker. The first trial ended in a hung jury on both charges, and Birch died shortly thereafter from his injuries. The district attorney then charged Dogwood with felony murder. At the trial on that charge, the prosecution offers into evidence Birch's testimony at the first trial identifying Dogwood as his assailant. Dogwood's attorney immediately objects.

The objection should be:

(A) Sustained, because Birch's testimony was from a prosecution for a different offense than the present trial.

(B) Sustained, because the use of the former testimony of someone who has died violates the defendant's constitutional right to confront the witnesses against him in a criminal case.

(C) Overruled, because Birch's testimony is nonhearsay under the Federal Rules as a statement of prior identification.

(D) Overruled, because the requirements of the exception to the hearsay rule for former testimony have been satisfied.

Question 9

Johnson, a small business owner, filed a treble damages civil antitrust suit against Greed Industries. While Greed's director of marketing, Mimms, was on the stand, Greed's attorney produced a "synopsis of sales," a document generated by Greed's marketing division. Johnson's attorney objected that the record is hearsay. Greed's attorney responded, "Your Honor, this is a business record and, as such, can be admitted into evidence as an exception to the hearsay rule." Johnson's attorney complained, "Your Honor, this so-called 'synopsis of sales' is some self-serving writing concocted for this litigation. The hearsay exception requires that business records be made in the ordinary course of business. I demand a hearing to determine whether this qualifies as a business record."

Which of the following is the most appropriate way for the issue to be decided?

(A) The issue should be decided by the judge after hearing evidence from Greed's attorney and Johnson's attorney outside the presence of the jury.

(B) The issue should be decided by the judge after hearing evidence from Greed's attorney and Johnson's attorney and may be conducted in the presence of the jury.

(C) The issue should be decided by the jury after hearing evidence from both sides.

(D) The issue should be decided by the judge after hearing evidence from both sides outside the presence of the jury, but if the document is admitted by the judge, Johnson may present evidence challenging that finding while presenting his case, and the ultimate decision rests with the jury.

Question 10

Debra's car struck Peter, a pedestrian, and sped away from the scene of the accident. The car was linked to Debra, but she denies that she was driving the car when Peter was hit and injured. Peter sued Debra for his injuries. The only eyewitness, other than Peter, was Willie, a six-year-old child. During the trial, Peter put Willie on the stand, and Willie testified that he saw Debra driving the car that hit Peter. The defense elected not to cross-examine Willie. The plaintiff's next witness was Schrinkov, a child psychologist. Schrinkov, who had never met Willie before, was prepared to testify that, based on his observations of Willie on the witness stand, it was highly probable that Willie was telling the truth. Schrinkov was qualified as an expert witness with many years of experience dealing with children. However, the defense objected to any questions regarding the veracity of Willie.

Should Schrinkov be allowed to testify about Willie?

(A) Yes, because parties may put witnesses on the stand to reinforce or challenge the veracity of other witnesses.

(B) Yes, because an expert may be needed to explain how children testify in order to avoid confusing the jury.

(C) No, experts may not testify regarding veracity.

(D) No, because Willie's veracity has not yet been questioned.

Question 11

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

Which of the following is ***not*** a proper basis for admitting Wilson's letter?

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

(B) Lorca's testimony that the statements in the letter are responsive to a prior letter from Lorca to Wilson.

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

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

Question 12

Trent was on trial for the statutory rape of Vanessa. He denied that she was even in his company on the night of the alleged offense, when he was working as the night clerk at a convenience store. The prosecution offers to have Warren testify that, in a phone conversation on the evening in question, Vanessa said, "I have to run; Trent wants me to stop by the store tonight while he's working." The defense objects to the proposed testimony.

Should the court allow Warren's testimony?

(A) Yes, as a present sense impression of Vanessa's.

(B) Yes, as evidence that Vanessa was in Trent's company that night.

(C) No, unless Vanessa is unavailable as a witness.

(D) No, because Vanessa's state of mind is not in issue.

Question 13

Darryl is being sued under a federal statute that allows an action for damages by victims of domestic violence committed on military bases or other federal land. The lawsuit stems from the alleged longtime physical abuse of Violet, who is the eight-year-old daughter of Darryl's live-in girlfriend.

At trial in federal court, the plaintiff, Violet's legal guardian, calls Phil to the stand. Phil is a physician who treated Violet for her injuries. The plaintiff seeks to have Phil testify that, during his treatment of Violet, he told her that in order to treat her injuries properly, he needed to know how she received her injuries and the length of time that her condition had existed. Phil will testify that Violet told him that Darryl had beaten her, and that the beatings had taken place fairly regularly for several months.

The testimony of Phil is:

(A) Admissible only if Violet or her legal guardian has waived the physician-patient privilege.

(B) Admissible as a statement made to a doctor to treat a physical condition.

(C) Inadmissible, because the statement of Violet is not limited to a description of symptoms, but also includes a statement that Darryl caused her injuries.

(D) Inadmissible, unless Violet is too young to testify or is otherwise unavailable.

Question 14

Julio, a vintner, ordered two large stainless steel tanks from Metalworks, Inc. for use in his wine making business. A month after they were installed, the building in which they were housed burned to the ground. Julio brought suit against Metalworks, Inc., alleging that overheating of the tanks caused the fire. Metalworks's defense is that the fire was caused by Julio's failure to install modern electrical wiring in the rather old building.

At trial, Julio seeks to establish that the tanks overheated by testifying that, two weeks after the tanks were installed, a Metalworks, Inc. employee came to inspect the installation, and Julio said to him, "You know, sometimes these tanks get awful hot."

Should Julio be permitted to so testify?

(A) No, unless there has been no other evidence about overheating of the tanks presented by Julio.

(B) No, because Julio's testimony is inadmissible hearsay.

(C) Yes, because Julio's testimony is evidence of a fact in issue.

(D) Yes, because Julio's testimony is evidence of a verbal act.

Question 15

After a major merger and corporate reorganization, Gray, who had been an employee of Macho Corporation for 25 years and its public relations director for 10 years, was fired. The excuse given him was that the reorganization and merger required a trimming of personnel to make the corporation "lean and mean." Shortly after Gray's dismissal, Frogman, a member of the board of directors of Macho, who had always liked Gray and admired his competent work, told Gray, "I think what happened to you was rotten, and I want you to know I voted against it, but Cobb, as chairman of the board, took most of the directors with him when he made a point at the reorganization meeting to say, 'Now's our chance to get rid of old Gray, who just doesn't fit our corporate image of youthful vigor.'" Gray, who was 60 years old, filed an age discrimination suit against Macho. It was typical practice that all directors' meetings be tape recorded, and that the corporate secretary use the tape recording to type up a formal transcript of the proceedings. The meeting at which Gray's dismissal was discussed was no exception. At the trial of Gray's case, Gray wishes to have Frogman testify as to Cobb's statement at the board meeting.

If the defense objects, the court should rule that such testimony is:

(A) Admissible, because it is based on Frogman's firsthand knowledge.

(B) Inadmissible, because it is hearsay not within any recognized exception to the hearsay rule.

(C) Inadmissible, because the audiotape of the directors' meeting is the best evidence.

(D) Inadmissible, because the corporate secretary's transcription of the directors' meeting is the best evidence.

Question 16

At a products liability trial, one of the most critical issues is whether the temperature was below freezing on January 16. Akiro does drafting work at an architectural and civil engineering firm, but Akiro is also an avid amateur meteorologist. The backyard of Akiro's home is rigged with many weather detection instruments that track wind, temperature, humidity, barometric pressure, and precipitation. One of Akiro's instruments records temperature by markings from a stylus on a round barograph. Akiro's record of the day in question indicates that it was unseasonably warm and that the temperature never fell lower than 48 degrees Fahrenheit, 16 degrees above the freezing mark. The plaintiff offers into evidence Akiro's barograph record of the temperature on January 16.

The barograph record is:

(A) Admissible, as past recollection recorded.

(B) Admissible, as a record of regularly conducted activity.

(C) Inadmissible, unless foundation testimony is given as to the accuracy and good working order of Akiro's instrument on the day in question.

(D) Inadmissible, because it is hearsay not within any recognized exception to the hearsay rule.

Question 17

Don's car struck Phaedra, a pedestrian, at a busy intersection. Bob was a bystander at the scene of the accident. As soon as Phaedra was hit Bob blurted out, "My God, she was crossing on the green light!" Wilma was standing next to Bob at the time. She did not see the accident because she was facing the other direction, but she clearly heard Bob's exclamation.

That night Bob was talking to his friend Walter. He told Walter, "You know that accident I saw this afternoon? The driver didn't run a red light. The light was yellow."

Phaedra sued Don for her injuries. By the time the case came to trial, Bob had died of a heart attack. Phaedra called Wilma to the stand to testify as to Bob's statement that Phaedra was crossing on a green light. Although Don objected, Wilma's testimony was admitted as an excited utterance. Don now wishes to call Walter to the stand to testify as to Bob's statement that Don did not run a red light. Phaedra objects.

Should Walter's testimony be admitted?

(A) Yes, but only to challenge the credibility of Bob's earlier inconsistent statement.

(B) Yes, both for impeachment purposes and as substantive evidence.

(C) No, because Bob is not available to explain or deny the statement.

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

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Real Property Workshop

Real Property

Question 1

Orville conveyed Redacre "to my best friend, Nelson, and upon Nelson's death to my daughter, Dora." Nelson took up possession of Redacre and lived there for two years. He then conveyed "my interest in Redacre" to his longtime, and much younger, mistress, Magnolia. Although Dora was fond of her father's friend, Nelson, she could not abide Magnolia, and the thought of Magnolia taking over Redacre made Dora sick. Dora tried to get Magnolia to leave Redacre, but Magnolia told Dora, "Redacre is mine until I die, and you'd better get used to that idea." Since Magnolia took up residence on Redacre, she has been sent two county property tax bills, which she has refused to pay. The county is now threatening to bring an action to force a judicial sale of Redacre to cover the tax deficiency. Dora files an appropriate suit asking the court to evict Magnolia from Redacre and to compel her to pay the taxes for her period of occupancy.

The court will rule that:

(A) Magnolia has a life estate in Redacre for the period of her own life, and Magnolia must pay the taxes on the property.

(B) Magnolia has a life estate in Redacre for the period of Nelson's life, and Magnolia must pay the taxes on the property.

(C) Magnolia has a life estate in Redacre for the period of Nelson's life, but Magnolia does not have to pay the taxes on the property, because taxes are the responsibility of the remainder grantee.

(D) Dora owns Redacre, because Nelson could not convey his interest to Magnolia.

Question 2

Hiram owned a residence on a large parcel of land that included a tennis court and a private golf course. He wanted to be sure that members of his family would continue to enjoy the recreational facilities and have a "family home" at which all the relatives could gather, so he provided in his will that the property would pass upon his death "to Horace, my son, for life, then to my eldest grandchild living at Horace's death, for life, remainder to my great-grandchildren, share and share alike."

When Hiram died, he was survived by his wife, his son Horace, Horace's children Candace and Suzanne, Hiram's daughter Elvira, and Elvira's children Leon and Emily. Candace was the eldest of the grandchildren, followed in age by Leon, Suzanne, and Emily. After Hiram's death, Horace had another child, Chester, and Elvira had two more children, John and Nancy, born in respective order. When Horace died many years later, Candace and Leon had predeceased him, and seven great-grandchildren (of Hiram) had been born.

At Horace's death, in whom is title to the property vested?

(A) Hiram's heirs.

(B) Candace, Suzanne, Leon, and Emily.

(C) Suzanne for life, remainder to the great-grandchildren.

(D) Suzanne for life, remainder to Hiram's heirs.

Question 3

Powell owned a parcel of land in the mountains near Redwoods National Forest that had been improved by the construction of a permanent campground, consisting of wooden floors and frames for tents, a wooden mess hall with kitchen, and wooden outhouses. Each year he allowed the Boy Scouts to use the parcel, Camp Whachacallit, for their annual summer camp. The rest of the year Powell and his family and friends used the parcel for camping and other recreation.

Powell's will devised the parcel as follows: "Camp Whachacallit to my nephew Ronald, his heirs and assigns, so long as it is used for camping and recreational purposes, otherwise to the National Council of the Boy Scouts of America."

Powell died in 1996. The residuary clause of his will left all his property not devised in the remainder of the will to his daughter Erma, who was also his sole heir. Erma died intestate in 2002, her only heir being her son Harold.

The jurisdiction's decisional law follows the common law Rule Against Perpetuities, and a statute provides that future estates and interests are alienable, and may be devised or inherited, all in the same manner as possessory estates or interests.

In 2003, which of the following best describes the interests of Harold and the National Council of the Boy Scouts of America in Camp Whachacallit?

(A) Harold has a possibility of reverter and the Boy Scouts' Council has an executory interest.

(B) Harold has an executory interest and the Boy Scouts' Council has nothing.

(C) Harold has a possibility of reverter and the Boys Scouts' Council has a contingent remainder.

(D) Harold has a possibility of reverter and the Boy Scouts' Council has nothing.

Question 4

All the land and buildings comprising Miller's Mall, a small shopping center, were owned by Miller, who leased out various stores in the mall. Dwight obtained a two-year lease from Miller on one of the stores. Dwight then opened a gift and greeting card shop which he named "Happy Times Cards and Gifts." Dwight's business was quite successful, and he was making good profits from the store's operation when he underwent a religious conversion and decided that the true meaning of life was not to be found in the quest for material success. Dwight spoke with his friend, Ariel, who was anxious to go into business for herself. Ariel wished to buy Dwight's business and inventory, and Dwight wished to assign his lease on the store in Miller's Mall to Ariel. The lease still had 14 months left to run. Dwight told Miller that he wanted to assign his lease to Ariel, who would run the same kind of business. Miller took out his copy of the lease and pointed out a clause requiring consent to any assignment and providing that any attempted assignment without consent is grounds for terminating the lease. Miller refused to consent to the assignment. Dwight assigned the lease to Ariel anyway; then he went off to meditate under the direction of a famed guru who operated an ashram high in the Himalayas. Ariel operated the card store in the same manner as Dwight, the only difference being a change of the store's name to "Happier Days Cards and Gifts."

Has Miller any recourse against Dwight or Ariel?

(A) Yes, he may evict Ariel and collect damages from Dwight because nonassignment clauses are valid and enforceable.

(B) No, the nonassignment clause is invalid in this case because Miller has a duty to mitigate damages.

(C) No, because Ariel is operating the same type of business as Dwight, and Miller has suffered no damages resulting from the assignment.

(D) No, because nonassignment clauses are invalid restraints upon alienation.

Question 5

Dan, an experienced trial lawyer, traveled from his hometown, Secondville, to Capitol City, where he was hired to complete a complex antitrust case that Dan estimated would take weeks, and possibly months, to complete. During his sojourn in Capitol City, which began on a Sunday, Dan stayed at the Capitol City Ryott Hotel. The normal room charges were $150 per night. Dan made a deal with the hotel management to pay $700 per week for his room for an indefinite period. Dan never told the hotel management exactly how long he planned to stay, but each Sunday he would present the cashier with a check for $700, plus any additional taxes and room charges, to pay for the previous week's lodging. Dan was not asked to pay in this manner, but he did it as a matter of custom. Dan did this for four weeks, and then the opposing party suddenly made a generous settlement offer which Dan's client agreed to accept. On a Thursday morning, before check-out time for that day, Dan tendered the hotel cashier a check for $400 plus additional charges incurred from Sunday through Wednesday nights. The cashier promptly took the check and then told Dan, "You owe us $1,000 plus taxes for 10 more days' lodging. We expect you to pay for the rest of this week as you customarily do, and then for an additional week because you didn't give us a week's notice that you planned to vacate." Dan refused to pay the additional charges.

If the hotel sues Dan and the court determines that the parties created a tenancy, for how many additional days' lodging will he be required to pay?

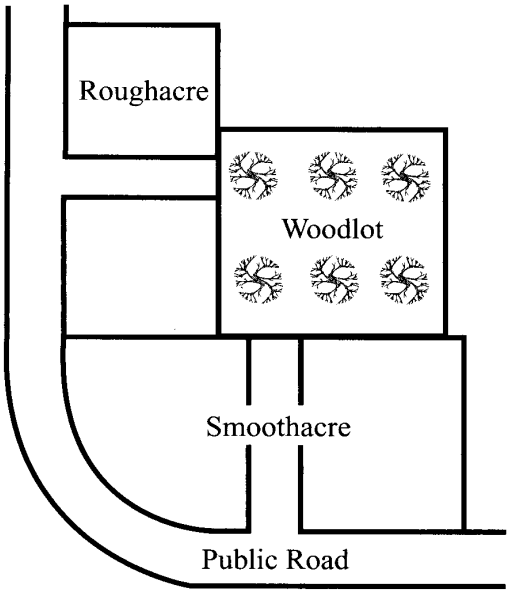
(A) None, because a tenancy at will was created.

(B) Three days, because a periodic tenancy was created.

(C) Seven days, because a periodic tenancy was created.

(D) Ten days, because a periodic tenancy was created.

Question 6



The above chart indicates the configuration of three parcels of property located in State Blue, which has a 15-year prescription and adverse possession period. Seventeen years ago, Wallace purchased Woodlot, which is adjacent to Smoothacre and Roughacre. At the time Wallace purchased Woodlot, he asked Arnold, the owner of Smoothacre, if Arnold would grant Wallace an easement to use the paved way across Smoothacre to haul logs to the public road. Arnold was an affable person and he readily granted the easement to Wallace. Wallace paid nothing for the easement, and the deed granting the easement was properly recorded in the office of the county recorder of deeds. For six months Wallace hauled logs across Smoothacre. However, Wallace decided it would be easier to haul the logs over Roughacre, because the distance to the public road was less using that route. Wallace negotiated with Brenda, the owner of Roughacre, and Brenda granted Wallace a license to haul logs on the gravel road across Roughacre to the public road. Wallace paid Brenda a modest annual fee for this privilege. In the intervening time period, Wallace never used the paved way across Smoothacre for any purpose. Six months ago, Arnold conveyed Smoothacre to Cyd, and two weeks ago, Cyd had a chain-link fence built around the perimeter of Smoothacre which, of course, blocked Wallace's access to the paved way crossing Smoothacre. One week ago, acting within her rights, Brenda revoked Wallace's license to use the gravel road crossing Roughacre. The next day, Wallace told Cyd, "Open up that chain-link fence where Smoothacre abuts Woodlot, because I have an easement to haul my logs across your paved way." Cyd replied, "Forget it, Buster. I never agreed to any easement, and I don't want you hauling logs across my property." Wallace seeks advice about his rights in the easement across Smoothacre.

Which of the following best represents Wallace's rights under the circumstances?

(A) Wallace has no right to use the easement across Smoothacre, because Wallace abandoned the easement.

(B) Wallace may compel Cyd to allow him to use the easement, because nonuse of an easement does not constitute abandonment.

(C) Wallace may use the paved way across Smoothacre, because the revocation of his license to use the gravel road crossing Roughacre means that he has an easement by necessity to cross Smoothacre.

(D) Wallace has no right to use the easement across Smoothacre, because the easement reverted to the owners of Smoothacre by prescription.

Question 7

When Uncle Izzy died, his will left Blackacre, a piece of property located in State Black, to his favorite nephew, Seymour, a resident of State White. Seymour never bothered to visit the property. Meanwhile, back in State Black, Michael noticed that Blackacre was now unoccupied. Not one to miss an opportunity, Michael leased Blackacre to Theresa. The lease was in writing and Theresa agreed to pay Michael an annual rent, which she always did promptly. Theresa had been leasing Blackacre from Michael for 15 years, when Seymour took a trip to State Black and decided to take a look at Blackacre. Upon discovering Theresa's occupancy, Seymour filed suit to quiet title, joining Michael in the action. In State Black, the statute of limitations for bringing an ejectment action for trespass to real property is set at 10 years.

Whom shall the court declare to be the owner of Blackacre?

(A) Seymour, because a lease to a third party does not constitute occupancy by Michael.

(B) Seymour, because he was unaware that another was occupying Blackacre.

(C) Michael, because Seymour abandoned Blackacre.

(D) Michael, because occupancy by a tenant is sufficient possession by Michael to invoke adverse possession.

Question 8

Homer owned Springfield, a valuable piece of property located near the state university. Homer's son, Bart, was a student at the university, and Homer allowed Bart and Bart's classmate, Newt, to live in the large house on the property rent free, in part because he felt that the studious Newt would be a good influence on the party-loving Bart. On Bart's 20th birthday, Homer handed Bart an instrument of conveyance signed by Homer. The deed included the following language: "I give Springfield to my dearly beloved son Bart on the condition precedent that he receive a college degree before he reaches the age of 30, and if he does not receive the degree by his 30th birthday to my beloved daughter, Lisa." Bart promptly recorded the deed. Shortly thereafter, Bart asked Newt to start paying him rent. An argument evolved out of Bart's request and an angry Bart told Newt to get off his property. Newt refused to leave and Bart filed suit to evict Newt.

How will the court rule?

(A) Bart wins, because he has a fee simple subject to divestment.

(B) Bart loses, because Newt is Homer's tenant and not Bart's.

(C) Newt wins, because Bart is attempting a retaliatory eviction.

(D) Newt loses, because Homer's conveyance cuts off Newt's tenancy.

Question 9

Owl contracted in writing to sell Birdacre to Partridge and Wren, as joint tenants, for $60,000. Partridge and Wren put up $6,000 as earnest money. Before the closing date, Owl died. Shortly thereafter, and also before the closing date, a garage on Birdacre burned down. The garage had a fair market value of $6,500 and was a complete loss. After the fire Partridge went to see Eagle, the executor of Owl's estate. Partridge demanded that Eagle return the $6,000, because Partridge and Wren were no longer interested in Birdacre. Eagle refused and told Partridge that he expected Partridge and Wren to tender the $54,000 due on the property when the closing date arrived. Partridge and Wren did not do so. Partridge filed suit demanding a refund of the $6,000. Eagle countersued, demanding specific performance by Partridge and Wren or, in the alternative, monetary damages.

How should the court rule?

(A) In favor of Eagle, by requiring specific performance of Partridge and Wren.

(B) In favor of Eagle, by assessing damages against Partridge and Wren.

(C) In favor of Partridge, by ordering Eagle to refund the earnest money.

(D) The court should rule that Eagle is not entitled to either damages or specific performance and that Partridge is not entitled to a refund of the earnest money.

Question 10

Oiler, an investment banker in Big City, began having cash flow problems. Seeing no other way out, he decided to sell Cattlefork, a distant ranch that had been in his family for generations, to his childhood nemesis, Astro. Not wanting to lose control of the family property forever, Oiler inserted a provision in the deed to Astro binding "Astro, his heirs, and assigns" to offer "Oiler, his heirs, and assigns" the right of first refusal to purchase Cattlefork when it was offered for sale. Astro was not happy with the provision, but Oiler refused to sell the property without the covenant included. Astro reluctantly agreed. Cattlefork was conveyed to Astro, and the deed containing the right of first refusal was duly recorded.

Astro lived on Cattlefork for 23 years. His dislike for Oiler was so great that he did not want Oiler to ever get the property back. Therefore, Astro devised a stratagem to get around the covenant. When informed that Cowboy was interested in buying the property, Astro decided to execute his plan. Astro's friend Ranger agreed to act as a "straw man" to avoid the consequences of the covenant. Astro deeded Cattlefork as a "gift" to Ranger. Ranger recorded the deed, which did not contain the right of first refusal covenant, and Ranger then sold the land to Cowboy for $200,000, giving the proceeds of the sale to Astro. Cowboy knew nothing about the right of first refusal because he inspected only Ranger's deed from Astro. When Oiler learned of what had happened, he filed suit to compel conveyance of the land to him. To back up his words, Oiler produced a $200,000 letter of credit. The jurisdiction in which the property is located has an unmodified common law Rule Against Perpetuities and the following recording statute:

> Any conveyance of an interest in land, other than a lease for less than one year, shall not be valid against any subsequent purchaser for value, without notice, whose conveyance is first recorded.

How will the court most likely rule in this case?

(A) Oiler will prevail, because a deed with the covenant granting the right of first refusal was in Cowboy's chain of title.

(B) Oiler will prevail, because Astro and Ranger acted in bad faith.

(C) Oiler will not prevail, because the covenant is void under the Rule Against Perpetuities.

(D) Oiler will not prevail, because the covenant, although enforceable against Astro personally, does not run with the land.

Question 11

Torrens owned Forestacre, a large tract of wooded land, in fee simple. He had always allowed hunters from the local hunting club to use his land during hunting seasons, and had often expressed the wish that they be permitted to continue to use it after he died. On his 75th birthday, he conveyed Forestacre to his two nephews, Pelt and Dash, who were members of the local hunting club. The deed was a general warranty deed stating that the property was conveyed in fee simple absolute. A few days later, Dash had a serious dispute with Pelt and the other members of the hunting club, and he quit the club. Torrens then executed a written agreement with Pelt stating that the conveyance of Forestacre to Pelt and Dash was in trust for the benefit of the local hunting club for a period of ten years, with Pelt and Dash as trustees, and then to Pelt and Dash in fee simple. Several months later, Torrens died. When the next hunting season drew near, Pelt told Dash that members of the hunting club were once again planning to hunt on the property. Dash would not even consider it, and threatened to have anyone hunting on the property other than Pelt arrested for trespassing.

Pelt did not wish to have any further confrontations with Dash, so he brought an action for appropriate legal or equitable relief to establish his rights and the rights of the hunting club.

What, if any, relief should the court provide?

(A) Deny Pelt any relief, because Dash has done nothing that would constitute an ouster of Pelt.

(B) Partition Forestacre into two separate tracts so that Pelt may permit the hunting club to use his half of Forestacre.

(C) Order Dash to permit the hunting club to hunt on Forestacre, because Torrens created an inter vivos trust with the requisite formalities for the benefit of the hunting club.

(D) Order Dash to permit the hunting club to hunt on Forestacre, because Pelt is equally entitled to possession of all of it and can allow members of the hunting club to hunt on the property as his guests.

Question 12

State Green has a statute providing as follows:

> Any judgment properly filed shall, for 10 years from the date of filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.

Oscar conveyed Birchacre, located in State Green, to Allen, who had had a judgment lien recorded against him two years earlier in the county in which Birchacre was located. One year later, Allen conveyed the property to Brenda by general warranty deed. The deed did not mention the lien, but Brenda was aware of it. Two years later, Brenda conveyed Birchacre to Carla by special warranty deed. Carla was not aware of the lien and her deed also made no mention of it. One year after that transaction, Carla conveyed Birchacre to Dave by general warranty deed. Dave's deed did not mention the lien but Dave was aware of it. The next year, Dave entered into a contract to convey Birchacre to Edgar. Edgar's title search disclosed the judgment lien against Allen, and Edgar refused to proceed with the transaction because title was not marketable. Dave brought an action against Edgar for specific performance and was denied relief. He then brought an action against Allen, Brenda, and Carla for breach of warranty.

Assume for purposes of this question that all transactions concerning Birchacre were promptly and properly recorded, and that the party holding the judgment lien has taken no action as of yet to enforce it.

Which parties, if any, will be liable to Dave?

(A) No one, because Dave had actual knowledge of the lien when he purchased Birchacre.

(B) Carla only, because the party holding the judgment lien has taken no action as of yet to enforce it.

(C) Carla and Allen, because Brenda conveyed by special warranty deed.

(D) Brenda and Allen, because they were aware of the judgment lien but did not mention it in their deeds, but not Carla, because she was not aware of the lien.

Question 13

Oralee owned Blackacre for many years. After she reached retirement age, Oralee sold the property to Amber, who financed the purchase with a note secured by a 20-year mortgage with Maritime Bank. Amber promptly recorded her deed, and for 20 years Amber promptly made every payment to the bank. During that period of time, Amber financed the purchase of three automobiles with loans from Maritime Bank, and her record of payment was exemplary. Five years after Amber had paid off the mortgage, she revisited the mortgage loan department of Maritime Bank. She told the loan officer that she wanted to borrow $30,000 to help pay for the medical school education of a favorite niece, securing the loan with a mortgage on Blackacre. After confirming Amber's continuing employment status, the bank officer quickly approved the loan based upon Amber's excellent record with the bank. On June 3, Amber executed the note and the mortgage, and the bank gave Amber a certified check for $30,000, which she immediately deposited in her account at National Bank. On June 4, Amber sold Blackacre to Brittany for $150,000. Brittany, a wealthy actress and film director, paid Amber in cash. Brittany knew nothing about the mortgage. On June 5, Brittany recorded her deed to Blackacre. Two hours after Brittany recorded, Amber closed out her account at National Bank, which included the $30,000 from the mortgage. Amber, an only child who had never married, had no "favorite niece." By nightfall, Amber was on a flight to Tahiti with the proceeds of the aforementioned transactions, plus $2 million that she had secretly embezzled from her employer.

Brittany did have a favorite niece, an aspiring actress named Christie. On the evening of June 8, which was a Saturday, Brittany presented Christie with a deed to Blackacre as a gift. At 10 a.m. on June 10, Maritime Bank recorded its mortgage. At 2 p.m. on June 10, Christie recorded her deed. After Amber missed her first mortgage payment on July 1, Maritime Bank employees were sent scurrying to the title office. They discovered the deeds to Brittany and Christie, and the facts surrounding Amber's hasty departure soon surfaced. Maritime Bank demanded that Christie satisfy the $30,000 mortgage. Brittany provided Christie with an attorney, who filed an appropriate suit to determine the various interests in Blackacre. The recording statute in the jurisdiction reads, in relevant part:

> A conveyance of an estate in land shall not be valid against any subsequent purchaser for value, without notice thereof, unless the conveyance is recorded.

The court should rule that:

(A) Christie owns Blackacre subject to Maritime Bank's mortgage, because Christie is a donee.

(B) Christie owns Blackacre subject to Maritime Bank's mortgage, because Maritime Bank recorded before Christie.

(C) Christie owns Blackacre free of Maritime Bank's mortgage, because Brittany was a bona fide purchaser for value without notice.

(D) Christie owns Blackacre free of Maritime Bank's mortgage, because the bank does not qualify as a bona fide purchaser for value.

Question 14

Owen owned Copperacre, a large tract of mineral-rich land in a sparsely populated area. He entered into a lease with Yukon, a prospector who was interested in developing the land for mining. The term of the lease was two years and gave Yukon an option to buy the property at any time after the first year. Yukon did not record the lease. Six months later, Yukon left Copperacre for a period of time to prospect in Mexico, leaving no goods on the land that would identify him. Owen then conveyed Copperacre in fee simple to Darlene, who had inspected the property while Yukon was in Mexico and was unaware of the prior transaction. Darlene did not immediately record her deed. After three months in Mexico, Yukon returned to Copperacre and encountered Darlene.

A statute in the jurisdiction provides, in part:

> No conveyance or mortgage of an interest in land, other than a lease for less than one year, is valid against any subsequent purchaser for value without notice thereof whose conveyance is first recorded.

If Darlene brings an action to quiet title to Copperacre, how should the court rule?

(A) Darlene takes title subject to Yukon's leasehold interest and his option to purchase because Yukon acquired his interest first.

(B) Darlene takes title subject to Yukon's leasehold interest but not his option to purchase because he does not yet have the power to exercise the option.

(C) Darlene takes title subject to Yukon's leasehold interest and option to purchase regardless of whether she now records, because she will have had notice of Yukon's interest before recording.

(D) Darlene takes title free of Yukon's leasehold interest and option because Yukon failed to record before Darlene purchased the property without notice of his interest.

Question 15

When Burt purchased Sweetacre, he financed the purchase through a mortgage on the property held by First Bank. The mortgage contained a "due-on-sale clause," requiring the mortgagor to pay off the mortgage at the time the property is sold. Burt made all of his mortgage payments in a timely manner. Five years after Burt purchased Sweetacre, he sold the property to Tully. Burt told Tully that there was a mortgage on the property but he did not mention the due-on-sale clause. Tully paid Burt the asking price for Sweetacre. Burt pocketed the proceeds without paying off the First Bank mortgage.

Which of the following best states the effect of the due-on-sale clause on Tully's interest in Sweetacre?

(A) First Bank can foreclose on Sweetacre.

(B) Tully must agree to assume the First Bank Mortgage on Sweetacre.

(C) The only effect of the clause is that Tully is personally liable on the mortgage.

(D) The clause has no effect, because due-on-sale clauses are generally void as contrary to public policy.

Question 16

When Able purchased Blueacre from Oswald, he took out a $160,000 mortgage on Blueacre. After being in possession of Blueacre for six months, Able concluded that his cash-flow situation would make it difficult for him to continue to make the high monthly mortgage payments. Therefore, he sold Blueacre to Brett. According to the terms of the agreement signed by the parties, Brett took Blueacre "subject to the mortgage" and agreed to "assume payment of" the mortgage. A recession struck the area, and Brett soon found himself in financial difficulties. Brett sold Blueacre to Carly. Under the terms of the agreement signed by the parties, Carly agreed to take "subject to the mortgage." All deeds and the mortgage were properly recorded. After two months on the land, Carly ceased making mortgage payments. Third National Bank ("TNB"), holder of the mortgage, unsuccessfully demanded payments from Carly, Brett, and Able. TNB properly instituted proceedings to foreclose, and Blueacre was put up for judicial sale. Because the recession had severely depressed property values, Blueacre sold for only $120,000. After the $120,000 was applied to the mortgage, $37,800 was still owing on the principal amount. TNB now seeks judgment to cover the $37,800 deficiency.

Who can be required to pay the deficiency?

(A) Able only.

(B) Able and Brett.

(C) Brett and Carly.

(D) Able, Brett, and Carly.

Question 17

Augustus received an "inside tip" from his friend Drusus, a real estate developer. Acting on the tip, Augustus purchased several acres of scrub-covered land of little apparent value. Shortly thereafter, Whizny World, an international conglomerate, announced plans to develop a theme park to be called "Romeland" on a tract immediately adjacent to Augustus's scrubland. The Whizny World plan caused real estate values in the surrounding area to skyrocket.

Augustus could have sold his land for a price many times greater than the purchase price, but Augustus decided that he would use the land to build a variety of tourist-oriented facilities. In order to finance his project, Augustus went to Brutus Bank ("Brubank") and took out a $20,000 mortgage on his land. Brubank promptly recorded the mortgage. A few days later, Augustus went to Cassius Bank ("Casbank") and took out a $15,000 mortgage on the land. Casbank had known of the Brubank mortgage, and Casbank promptly recorded its own mortgage. A few weeks after that, Augustus reviewed his plans and decided that he needed more money to make his proposed tourist facilities more "upscale." Augustus went back to Brubank and, after full disclosure of the Casbank mortgage, asked the loan officer if he could receive another advance of $15,000 from the original Brubank mortgage. The loan officer readily agreed, processed the loan, and increased the amount borrowed against the mortgage from $20,000 to $35,000. Brubank promptly recorded the change.

Augustus quickly spent most of his available funds on retainers for architects, builders, and attorneys. He was shocked to read in the paper that the County Council summarily rejected the Whizny World proposal, acceding to the arguments of community activists and environmentalists that the economic benefits from the theme park would be outweighed by the deleterious effects on the natural beauty and tranquility of the area. Augustus made no more mortgage payments to Casbank, but continued to make payments to Brubank. The value of the land plummeted, and Casbank brought a foreclosure action against Augustus and included Brubank as a party. At the foreclosure sale, the proceeds were a mere $18,000 after attorneys' fees and court costs.

How should the proceeds be divided?

(A) $18,000 to Brubank and nothing to Casbank.

(B) $9,000 to Brubank and $9,000 to Casbank.

(C) $3,000 to Brubank and $15,000 to Casbank.

(D) Nothing to Brubank, $15,000 to Casbank, and $3,000 to Augustus.

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Torts Workshop

Torts

Question 1

Dietz had recently been released from a mental institution, and was living in a halfway house in Kirbyville. Dietz had a long history of mental illness and had been in and out of institutions since he was an adolescent. Although Dietz would improve for a while, he was subject to recurrent hallucinations and delusions involving a belief that people, animals, and alien beings from another planet were about to attack him. Pansy was peacefully walking along a quiet residential street in Kirbyville. It happened to be the same street as that along which Dietz was walking. Pansy noticed that a person was walking up the street on the sidewalk towards her, but she did not know Dietz. When Dietz saw Pansy approaching him, he pulled a soft-drink bottle from his shopping bag and hurled it at Pansy, striking her in the head and causing her injury. Afterwards Pansy filed a civil battery action against Dietz.

Which of the following, if true, provides the best defense for Dietz?

(A) Dietz had no desire to harm Pansy.

(B) Because of his mental illness, Dietz did not understand that his act was wrongful.

(C) Dietz did not know he was striking a person.

(D) Dietz thought Pansy was about to attack him.

Question 2

Donnalou was the office cut-up and general practical jokester. She decided to pull a prank on Paul, a rather dour and staid co-worker. Knowing where Paul, a creature of habit, always kept his lunch box, she put a small quantity of mescaline, a synthetic hallucinogen, in Paul's thermos bottle of cranberry juice. She expected that strait-laced Paul would have a minor vision or two and act in a goofy and comical manner. However, when Paul drank his mescaline-laced juice at lunchtime he had a severe reaction to the mescaline and experienced wild hallucinations. Donnalou promptly drove Paul to the emergency room of nearby Hacksaw Hospital. Paul was put under observation for a couple of hours. The emergency room physician, Pillpush, was very busy and negligently released Paul prematurely. The next day, while driving, Paul had another powerful hallucination and drove his car into a bridge abutment. Paul suffered contusions, abrasions, a concussion, and several broken bones. After Paul recovered he sued Donnalou for his injuries.

Who will prevail?

(A) Donnalou, because the auto accident would not have occurred but for the negligence of Dr. Pillpush.

(B) Donnalou, because Donnalou did not intend to harm Paul.

(C) Paul, unless the automobile accident could not have reasonably been foreseen.

(D) Paul, because Donnalou intended that Paul should ingest the mescaline.

Question 3

Steve gave his brother-in-law, Randy, permission to use his boat for a few hours of fishing on the local lake. Randy took the boat out on the lake for a while and then decided to cruise through a system of inland waterways to a larger chain of lakes. The fishing was so good that Randy stayed overnight there and fished most of the next day. On his way back, the boat was struck and seriously damaged by a large tree that fell from the bank without warning. Randy managed to bring the boat back to his house. Just as he got in, Steve called, demanding to know why Randy had not brought it back when he was supposed to. Randy promised that he would bring it back as soon as he could, but Steve replied that he was coming over right now to pick it up. Randy did not want to be around when Steve saw the damage to the boat, so he went out to the store. It was dark when Steve arrived, and he accidently ran over a corner of Randy's garden when he backed his truck up to the boat trailer. When he saw the damage to the boat, however, he left it there and went home.

Assuming that the boat was worth $18,000 before it was damaged and sustained $9,000 worth of damage, what is the most that Steve will be entitled to recover in an action against Randy?

(A) $9,000 and damages for loss of use.

(B) $9,000 and damages for loss of use, offset by the damage to Randy's garden.

(C) $18,000 plus interest.

(D) $18,000 plus interest, offset by the damage to Randy's garden.

Question 4

Mommy's young son, Boy, accidentally swallowed a coin while playing. Boy had to be rushed to the hospital, and although Boy recovered, Mommy has suffered feelings of anxiety, worrying that her child might be injured again. Mommy's husband, Hal, talked Mommy into going to a movie to have a relaxing evening out. She agreed after her mother agreed to watch Boy for the evening. Mommy was enjoying the movie when Hal left his seat to get some popcorn from the concession stand. Hal ordered a large popcorn with extra butter. While handling change, Dizzie, the concession stand attendant, carelessly dropped a quarter into Hal's popcorn. After taking a couple of handfuls for himself, Hal returned to his seat and gave the popcorn box to Mommy. Mommy began to eat the popcorn. However, as she began to munch her third handful of popcorn, she bit the quarter that Dizzie had dropped into the box. Mommy did not swallow the quarter, nor did she bite on it hard enough to injure her teeth or gums, but the feel of the coin brought back all her anxieties about Boy's injury. That night Mommy could not sleep, and the few times that she did nod off for a second, a horrible nightmare recalling her son's injury because of the coin would occur.

If Mommy sues the movie theater for her emotional distress, she will:

(A) Win, because Dizzie was negligent.

(B) Win, because Mommy suffered emotional distress.

(C) Lose, unless a reasonable person would have suffered similar distress after finding a coin in the popcorn and biting on it.

(D) Lose, because Mommy suffered no actionable harm.

Question 5

Publectric Company, a utility supplying gas and electricity to West Howard, was working on some of its underground lines. Access to the underground lines was through a utility hole, which Publectric had left uncovered. Publectric installed a modern guardrail around the hole to prevent members of the public from falling into the hole. Although the rail completely surrounded the utility hole, there was an opening in one part of the railing which made it easier to pass down tools to those working below.

Hound, a dog fancier, lived in a single-family home across the street from where the Publectric utility hole was located. Hound owned "Hobson's Hotspur of Trent," a champion springer spaniel whom Hound exhibited at dog shows. The dog was also a family pet and was known affectionately to Hound's family as "Hobby." Hound's home had a large front lawn where Hound often walked Hobby without first leashing him. One such afternoon, Hobby saw a squirrel and suddenly bolted away from Hound's lawn. Hobby dashed across the street, passed through the opening of the guardrail, and fell into the utility hole, suffering broken bones and internal injuries. Although expensive and lengthy care by veterinary specialists saved Hobby's life, the dog was no longer of "show quality" after the injuries.

Assume that the jurisdiction in which West Howard is located still recognizes all the common law defenses to tort liability. Can Hound recover his economic losses resulting from the injuries to Hobby in a suit against Publectric?

(A) No, unless Publectric failed to exercise reasonable care in making the dangerous condition safe.

(B) No, if the guardrail used by Publectric meets typical industry standards.

(C) No, because the dog escaped from Hound's yard.

(D) No, unless a reasonably careful person would have been injured in the same manner.

Question 6

Martha brought her nine-year-old son, Norton, along with her on a trip to the Modern Mall shopping center. Modern Mall was, as its name describes, a modern mall development containing many different stores. The mall was entirely enclosed to provide protection from the elements. Martha had spent about half an hour at the mall without purchasing anything. In fact, her main purpose for going to the mall was "window shopping," a pastime that Martha found extremely enjoyable. At that time Norton told Martha that he needed to use the restroom and that he was going to the nearest men's room. Martha agreed to wait for him in front of Lacy's Lingerie Boutique. Norton entered the men's room. He was followed by Barry, a convicted child molester released on parole. Barry cornered Norton in the men's room and sexually molested him. Barry then quickly left the mall and has not yet been apprehended. Martha later filed suit against Modern Mall Management Associates ("MMMA"), the owner of the mall, on Norton's behalf for the injuries suffered by him.

Is MMMA likely to be found liable to Norton?

(A) Yes, because MMMA owes a strict duty to its customers.

(B) Yes, if MMMA had reason to know of the danger to Norton.

(C) No, because a criminal act is a superseding force.

(D) No, because Norton was not an invitee of MMMA.

Question 7

Penquist was exiting from a parking garage owned and operated by the city of Durham when he discovered that the exit ramp was blocked by construction barricades and a pile of broken-up concrete. No workers or detour signs were around and Penquist was in a hurry, so he backed up and drove down an entrance ramp that was clearly marked as such. As he came around a corner, his car was broadsided by a pickup truck driven by Totten. Penquist was seriously injured in the collision. A statute in the jurisdiction requires drivers to obey all traffic directional markings in both public and private parking lots and garages. The jurisdiction retains traditional contributory negligence rules and retains governmental immunity for municipalities.

If Penquist brings a lawsuit against the city to recover for his injuries, which of the following facts will be ***least*** helpful in the city's defense?

(A) Penquist was aware that another exit on the other side of the garage was open.

(B) The construction workers responsible for blocking off the exit ramp were employees of an independent contractor rather than the city.

(C) The city does not collect fees or make a profit in the operation of the garage.

(D) Totten could have avoided Penquist but recognized him as an old enemy and deliberately ran into him.

Question 8

State Green had a law on its statute books that made any teacher, guardian, therapist, school administrator, or any other person standing *in loco parentis* subject to the same rights and duties as actual parents. In effect this meant that persons standing *in loco parentis* could be charged with liability in cases where a parent would have been liable and granted immunity from liability where such would have been the case for a parent.

Dr. Zarkov had a Ph.D. in child psychology and was the director of the Verdant Institute, a residential home for disturbed minors located in Verdant City, the largest city in State Green. The Verdant Institute had no fence surrounding its premises, but regular bedchecks were conducted each night to determine that all of the disturbed children were present. A bedcheck determined that Ming, a 12-year-old resident of the Institute, was absent. In fact, Ming had climbed out a window and run away about 15 minutes before the bedcheck. The security guard who conducted the bedcheck immediately reported to Zarkov that Ming was missing. Zarkov did not report Ming's absence to the police or any other authority. Thirty-six hours after Ming ran away from the Institute, Ming savagely beat and severely injured six-year-old Gordon, a child who lived a few blocks away from the Verdant Institute. Although Gordon recovered, physicians indicated that the beating might well cause Gordon to suffer permanent hearing and vision deficiencies. Gordon's parents filed suit against Zarkov on Gordon's behalf.

Which party is likely to prevail in the lawsuit?

(A) Gordon, unless a 12-year-old would not be liable for administering the beating.

(B) Gordon, because Zarkov assumed the role of a parent and liability is, therefore, imposed under the *in loco parentis* statute.

(C) Zarkov, because he cannot be found vicariously liable for Ming's acts inasmuch as parents are not vicariously liable for the intentional torts of their children.

(D) Zarkov, unless Zarkov had reason to know that Ming had a propensity to commit violent acts.

Question 9

After several years in the planning, Jason was ready to begin building his dream house. To save money, he decided to act as the general contractor and hire all of the subcontractors himself. He hired separate contractors for the foundation, the frame, the electricity, the plumbing, and the masonry. After several months of work, the house was finally ready for occupancy. The first night that Jason stayed there, however, a fire swept through the house. Jason managed to escape with a broken ankle and some minor burns, but the house was a total loss. An investigation by the fire marshal established that the fire started from a short in some wiring behind a wall. A small section of wiring that ran to an outlet through a narrow gap between a furnace chimney and a hot water pipe had had part of its outer sheath cut off. Both the chimney and the pipe had been installed, and the walls put up, after the rough wiring had been completed.

Jason filed suit against Shortstop Electrical Service, the contractor that did the rough wiring. The parties stipulated that Shortstop had installed the wiring in compliance with the detailed blueprints that Jason had drawn up, and that the wiring had been inspected and approved by the building inspector shortly after it had been installed. At trial, Jason introduced the report of the fire marshal establishing the above facts and evidence of his medical expenses and other damages. At the end of Jason's case, Shortstop's attorney rested her case and moved for a directed verdict. Jason's attorney also moved for a directed verdict.

How should the court rule on the directed verdict motions?

(A) Deny both directed verdict motions, because Jason has presented enough evidence to submit the case to the jury.

(B) Deny Shortstop's motion and grant Jason's motion for a directed verdict, because Shortstop failed to rebut the presumption of negligence that Jason has established.

(C) Deny Jason's motion and grant Shortstop's motion for a directed verdict, because the wire could have been damaged by another contractor.

(D) Deny Shortstop's motion and grant Jason's motion for a directed verdict, because a short in the wiring caused Jason's injuries.

Questions 10-11 are based on the following fact situation:

Paul was admitted to Doctors' Hospital to undergo x-rays and a series of other tests. During the course of the x-rays, Paul was strapped to an x-ray table manufactured by Hospital Suppliers. One feature of the table allowed the table to be tilted into an upright position, so that the patient could be x-rayed while in a vertical position. There was a footrest at the bottom of the table that helped support the patient when the table was in a vertical position. During the course of Paul's x-ray procedure, the table was tilted into an upright position. As the technician began to take x-rays of Paul, the footrest fell off the x-ray table. Had Paul been securely strapped in, he would have remained on the table. However, the loss of the footrest caused sufficient additional pressure on the straps that they loosened, and Paul fell from the table onto the floor. Paul's head struck the floor, and delicate brain surgery was required to save Paul's life. Although Paul recovered, he has suffered some permanent disabilities as a result of his fall.

10. If Paul sues Hospital Suppliers on a theory of strict liability for his injuries, who will prevail?

    (A) Paul, if the x-ray table was defective.

    (B) Paul, if Hospital Suppliers could have installed a safety latch that would have prevented the footrest from falling without incurring unreasonable additional cost or unreasonably impairing the usefulness of the table.

    (C) Hospital Suppliers, if a hospital employee was negligent when he strapped Paul in.

    (D) Hospital Suppliers, because the table was not in the exclusive control of Hospital Suppliers when Paul incurred his injury.

11. If Paul sues Doctors' Hospital for his injuries:

    (A) Paul will win, if a hospital employee failed to use reasonable care in strapping Paul to the table.

    (B) Doctors' Hospital will win, unless the defective footrest could have been discovered through reasonable inspection.

    (C) Paul will lose, unless he can cite a specific hospital employee as having been negligent.

    (D) Doctors' Hospital will lose, unless the injury to Paul was caused by a defect that was present in the x-ray table at its time of purchase.

Question 12

Sandra had 30,000 miles on her car when she purchased four new "Huggums" tires from Mac's Tire and Muffler Shop. The "Huggums" tires were manufactured by Kimbo Tire and Rubber Company, a reputable tire manufacturer. It was widely known in the tire industry that purchasers of tires would, on occasion, exceed posted speed limits, and therefore tires were designed to perform at speeds higher than the maximum speed of 65 m.p.h. allowable in most states. Sandra was a safe and careful driver who never exceeded the speed limit.

When Sandra's car had 32,000 miles on it, she sold the car to Pedro. Pedro immediately took the car on a 500-mile trip to visit his sister. During the course of the journey, Pedro often drove his car 10 m.p.h. over the posted limit of 65 m.p.h. As Pedro approached his destination, he was driving 73 m.p.h. on smooth pavement. Suddenly his left front tire blew out for no apparent reason. The car went out of control, crashed into another vehicle, and Pedro was severely injured.

If Pedro sues Mac's for his injuries in a jurisdiction retaining traditional contributory negligence rules, Pedro should:

(A) Recover, because the tire blew out for no apparent reason.

(B) Recover, if the tire was defective when it left Kimbo's manufacturing plant.

(C) Not recover, if Mac's had no reason to know or anticipate that there would be any defects in "Huggums" tires.

(D) Not recover, because Pedro was contributorily negligent in exceeding the speed limit.

Question 13

Ten years ago Gasmask Chemicals, a leading chemical manufacturer, decided that it needed a safe place to store byproduct waste from its manufacturing processes. Many of these byproducts were highly toxic; thus, Gasmask took great care in selecting a dump site. A highly reputable engineering company was hired and an exhaustive survey was performed. Finally the Temblor Canyon site was selected and the chemicals were stored there underground, using state-of-the-art techniques. Although the survey and attendant geological soundings were performed with consummate skill, the surveyors failed to discover a crack in the rock of the storage area that was too small for their instruments to detect. Over a period of years the chemicals began to seep through the crack and into the water table below the surface. Scientists in nearby Canyon City discovered that the city's water supply, all of which came from local wells that tapped into the water table, contained unacceptably high levels of chemical contaminants. Canyon City was required to spend $5 million on a complex filtration system to remove the dangerous chemicals from its water.

Canyon City brought an action against Gasmask to recover the cost of building the filtration system. At the end of plaintiff's case establishing the above facts, Gasmask moved for a directed verdict.

Should the court grant Gasmask's motion?

(A) Yes, because Canyon City has not presented any evidence that Gasmask breached a duty owed to the city.

(B) Yes, if the evidence also established that Canyon City's water wells were drilled after Gasmask stored the chemicals.

(C) No, if the court determines as a matter of law that the chemicals could not be stored without risk of serious harm no matter how much care Gasmask took.

(D) No, because the trier of fact could determine that the chemicals could not be stored without risk of serious harm no matter how much care Gasmask took.

Question 14

Neither the legislature nor the courts of State Yellow have abolished the common law tort defenses of contributory negligence and assumption of the risk. However, the State Yellow legislature decided it was time to take steps against all forms of drug abuse and passed the Omnibus Anti-Drug Act ("OADA"). One of the OADA provisions forbade the selling of airplane glue to anyone under the age of 18 except in small quantities in prepackaged model kits. Violation of the statute was penalized by fines or, in cases of multiple violations, possible imprisonment. OADA also required that all elementary and secondary schools licensed by the state provide comprehensive drug education programs.

Primrose was a 14-year-old resident of State Yellow. Primrose had experienced the drug education program in his school, as mandated by OADA. One of the units in the program covered the dangers of glue sniffing. Primrose understood the anti-drug instruction, but he enjoyed the "high" he got from sniffing glue when he constructed model airplanes, and he wanted to experience more of it. He went to Daffodil's Hobby & Craft Shop to purchase a large tube of airplane glue. Daffodil, sole proprietor of the hobby shop, sold the large tube of glue to Primrose. Primrose went home, hid in the garage, and sniffed the glue. His parents found Primrose in a coma on the garage floor. Although Primrose will survive, physicians have told his parents that he suffered permanent brain damage from sniffing the glue.

On Primrose's behalf, the parents filed suit against Daffodil, which should result in a verdict:

(A) For Daffodil, because Primrose was aware of the danger when he sniffed the glue.

(B) For Daffodil, because Primrose is not a member of the class of persons meant to be protected by OADA.

(C) For Primrose, because Daffodil violated OADA when he sold the glue to Primrose.

(D) For Primrose, unless Primrose could reasonably have been mistaken for an 18-year-old by Daffodil.

Questions 15-16 are based on the following fact situation:

Pluto, Donald, and Mickey were involved in a three-car accident. Pluto was badly injured and suffered $100,000 worth of damages. The jurisdiction in which the accident took place has a "pure" comparative negligence statute. Pluto filed suit against Donald for his injuries. The trier of fact determined that Pluto was 30% at fault, Donald was 30% at fault, and Mickey was 40% at fault.

15. Assume for purposes of this question only that the laws of the jurisdiction provide for joint and several liability and that the common law rules regarding contribution have been abolished in favor of a system of contribution based on comparative fault. How much can Pluto collect from Donald?

    (A) $70,000, but Donald can compel Mickey to pay him $40,000 as contribution.

    (B) $40,000, but Donald can compel Mickey to contribute $10,000.

    (C) $30,000, because Donald was 30% at fault.

    (D) Nothing, because Donald was no more at fault than Pluto.

16. Assume for purposes of this question only that joint and several liability has been abolished in the jurisdiction, but that the jurisdiction adheres to the common law rules regarding contribution. How much can Pluto collect from Donald?

    (A) $70,000, but Donald can compel Mickey to pay him $35,000 as contribution.

    (B) $40,000, and Donald cannot compel Mickey to pay him contribution.

    (C) $30,000, because Donald was 30% at fault.

    (D) Nothing, because Donald was no more at fault than Pluto.

Question 17

A family planning group submitted a proposal to the Larchville School Board to permit its high school students to have access to contraceptives through the school health clinic. After an article on the proposal in the *Larchville Journal*, the school board offices were swamped with calls and letters on the issue, most of them against the proposal. It was decided that the school board meeting scheduled for the next week would be held in the high school gymnasium and have an expanded public comment period. At the meeting, which was covered by a reporter from the *Journal*, Carla was one of numerous parents who spoke out against the proposal. One of the few speakers in favor of the proposal was Charlene, a director of a family planning group from a nearby large city, who described having to drop out of high school when she became pregnant as a teenager. When the *Journal* article on the school board meeting came out the next day, it identified Carla by her full name but described her as in favor of the proposal because she had to drop out of high school when she became pregnant. This statement was not true and caused great distress to Carla, whose religion considered premarital sex and artificial means of contraception sinful.

If Carla brings a defamation action against the *Larchville Journal*, what will be the probable result?

(A) The *Journal* will be liable because the statement in the article was false and defamatory.

(B) The *Journal* will be liable if it was negligent as to the statement's truth or falsity.

(C) The *Journal* will not be liable unless its reporter knew of the statement's falsity or acted with reckless disregard as to the statement's truth or falsity.

(D) The *Journal* will not be liable because it was reporting on a public proceeding.

STOP