

THE
MBE[®]

MULTISTATE BAR EXAMINATION

Sample MBE III

July 1998

See Caveat Inside



PREFACE

The Multistate Bar Examination (MBE) is an objective six-hour examination developed by the National Conference of Bar Examiners (NCBE) that contains 200 questions. It was first administered in February 1972 and is currently a component of the bar examination in most U.S. jurisdictions.

CAVEAT!

The 200 questions contained in this document appeared on the **MBE administered in July 1998**, which consisted of questions in the following areas: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. This document does not contain Civil Procedure questions.

The purpose of this document is to familiarize examinees with the format and nature of MBE questions. The questions in this document should *not* be used for substantive preparation for the MBE. Because of changes in the law since the time the examination was administered, the questions and their keys may no longer be current. Also, because the MBE test specifications have changed over time, some of these questions may contain material no longer tested on the MBE or currently tested in a different subject area. The editorial style of questions and the general instructions have changed as well.

Many of these questions are currently in use, sometimes with alteration, by commercial bar review courses under a licensing agreement with NCBE. Because these questions are available in the marketplace, NCBE is choosing to make them available online.

Examinees are encouraged to use as additional study aids the MBE Online Practice Exams, which are available for purchase at the NCBE Study Aids Store at <https://store.ncbex.org>. These study aids, which include explanations for each option selected, contain questions from more recently administered MBEs that more accurately represent the current content and format of the MBE.

SAMPLE MULTISTATE BAR EXAMINATION

TABLE OF CONTENTS

AM Book	2
PM Book	50
Answer Key	98
Sample Answer Sheet	100

AM BOOK
TIME—3 h OURS

Directions: Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives. Answer all questions according to the generally accepted view, except where otherwise noted.

For the purposes of this test, you are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted. You are also to assume relevant application of Article 9 of the UCC concerning fixtures. The Federal Rules of Evidence are deemed to control. The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated to the contrary. You are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. You should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

1. On July 15, in a writing signed by both parties, Fixtures, Inc., agreed to deliver to Druggist on August 15 five storage cabinets from inventory for a total price of \$5,000 to be paid on delivery. On August 1, the two parties orally agreed to postpone the delivery date to August 20. On August 20, Fixtures tendered the cabinets to Druggist, who refused to accept or pay for them on the ground that they were not tendered on August 15, even though they otherwise met the contract specifications.

Assuming that all appropriate defenses are seasonably raised, will Fixtures succeed in an action against Druggist for breach of contract?
 - (A) Yes, because neither the July 15 agreement nor the August 1 agreement was required to be in writing.
 - (B) Yes, because the August 1 agreement operated as a waiver of the August 15 delivery term.
 - (C) No, because there was no consideration to support the August 1 agreement.
 - (D) No, because the parol evidence rule will prevent proof of the August 1 agreement.
2. Beth wanted to make some money, so she decided to sell cocaine. She asked Albert, who was reputed to have access to illegal drugs, to supply her with cocaine so she could resell it. Albert agreed and sold Beth a bag of white powder. Beth then repackaged the white powder into smaller containers and sold one to Carol, an undercover police officer, who promptly arrested Beth. Beth immediately confessed and said that Albert was her supplier. Upon examination, the white powder was found not to be cocaine or any type of illegal substance.

If Albert knew the white powder was not cocaine but Beth believed it was, which of the following is correct?
 - (A) Both Albert and Beth are guilty of attempting to sell cocaine.
 - (B) Neither Albert nor Beth is guilty of attempting to sell cocaine.
 - (C) Albert is guilty of attempting to sell cocaine, but Beth is not.
 - (D) Albert is not guilty of attempting to sell cocaine, but Beth is.

GO ON TO THE NEXT PAGE.

3. Neighbor, who lived next door to Homeowner, went into Homeowner's garage without permission and borrowed Homeowner's chain saw. Neighbor used the saw to clear broken branches from the trees on Neighbor's own property. After he had finished, Neighbor noticed several broken branches on Homeowner's trees that were in danger of falling on Homeowner's roof. While Neighbor was cutting Homeowner's branches, the saw broke.

In a suit for conversion by Homeowner against Neighbor, will Homeowner recover?

- (A) Yes, for the actual damage to the saw.
- (B) Yes, for the value of the saw before Neighbor borrowed it.
- (C) No, because when the saw broke Neighbor was using it to benefit Homeowner.
- (D) No, because Neighbor did not intend to keep the saw.

4. Homeowner hired Arsonist to set fire to Homeowner's house so that Homeowner could collect the insurance proceeds from the fire. After pouring gasoline around the house, Arsonist lit the fire with his cigarette lighter and then put the lighter in his pocket. As Arsonist was standing back admiring his work, the lighter exploded in his pocket. Arsonist suffered severe burns to his leg.

Arsonist brought an action against the manufacturer of the lighter based on strict product liability. Under applicable law, the rules of pure comparative fault apply in such actions.

Will Arsonist prevail?

- (A) Yes, if the lighter exploded because of a defect caused by a manufacturing error.
- (B) Yes, if Arsonist can establish that the lighter was the proximate cause of his injury.
- (C) No, because the lighter was not being used for an intended or reasonably foreseeable purpose.
- (D) No, because Arsonist was injured in the course of committing a felony by the device used to perpetrate the felony.

GO ON TO THE NEXT PAGE.

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

Ted entered into possession of Goldacre and distributed the net income from Goldacre to Benton at appropriate intervals.

Five years later, Ted conveyed Goldacre in fee simple to Patricia by warranty deed. Patricia paid the fair market value of Goldacre, had no knowledge of the written agreement between Susan and Ted, and entered into possession of Goldacre.

Benton made demand upon Patricia for distribution of income at the next usual time Ted would have distributed. Patricia refused. Benton brought an appropriate action against Patricia for a decree requiring her to perform the trust Ted had theretofore recognized.

In such action, judgment should be for

- (A) Benton, because a successor in title to the trustee takes title subject to the grantor's trust.
- (B) Benton, because equitable interests are not subject to the recording act.
- (C) Patricia, because, as a bona fide purchaser, she took free of the trust encumbering Ted's title.
- (D) Patricia, because no trust was ever created since Susan had no title at the time of the purported creation.

6. In a federal investigation of Defendant for tax fraud, the grand jury seeks to obtain a letter written January 15 by Defendant to her attorney in which she stated: "Please prepare a deed giving my ranch to University but, in order to get around the tax law, I want it back-dated to December 15." The attorney refuses to produce the letter on the ground of privilege.

Production of the letter should be

- (A) prohibited, because the statement is protected by the attorney-client privilege.
- (B) prohibited, because the statement is protected by the client's privilege against self-incrimination.
- (C) required, because the statement was in furtherance of crime or fraud.
- (D) required, because the attorney-client privilege belongs to the client and can be claimed only by her.

7. After being fired from his job, Mel drank almost a quart of vodka and decided to ride the bus home. While on the bus, he saw a briefcase he mistakenly thought was his own, and began struggling with the passenger carrying the briefcase. Mel knocked the passenger to the floor, took the briefcase, and fled. Mel was arrested and charged with robbery.

Mel should be

- (A) acquitted, because he used no threats and was intoxicated.
- (B) acquitted, because his mistake negated the required specific intent.
- (C) convicted, because his intoxication was voluntary.
- (D) convicted, because mistake is no defense to robbery.

GO ON TO THE NEXT PAGE.

8. A generally applicable state statute requires an autopsy by the county coroner in all cases of death that are not obviously of natural causes. The purpose of this law is to ensure the discovery and prosecution of all illegal activity resulting in death. In the 50 years since its enactment, the statute has been consistently enforced.

Mr. and Mrs. Long are sincere practicing members of a religion that maintains it is essential for a deceased person's body to be buried promptly and without any invasive procedures, including an autopsy. When the Longs' son died of mysterious causes and an autopsy was scheduled, the Longs filed an action in state court challenging the constitutionality of the state statute, and seeking an injunction prohibiting the county coroner from performing an autopsy on their son's body. In this action, the Longs claimed only that the application of this statute in the circumstances of their son's death would violate their right to the free exercise of religion as guaranteed by the First and Fourteenth Amendments. Assume that no federal statutes are applicable.

As applied to the Longs' case, the court should rule that the state's autopsy statute is

- (A) constitutional, because a dead individual is not a person protected by the due process clause of the Fourteenth Amendment.
- (B) constitutional, because it is a generally applicable statute and is rationally related to a legitimate state purpose.
- (C) unconstitutional, because it is not necessary to vindicate a compelling state interest.
- (D) unconstitutional, because it is not substantially related to an important state interest.

9. By the terms of a written contract signed by both parties on January 15, M.B. Ram, Inc., agreed to sell a specific ICB personal computer to Marilyn Materboard for \$3,000, and Materboard agreed to pick up and pay for the computer at Ram's store on February 1. Materboard unjustifiably repudiated on February 1. Without notifying Materboard, Ram subsequently sold at private sale the same specific computer to Byte, who paid the same price (\$3,000) in cash. The ICB is a popular product. Ram can buy from the manufacturer more units than it can sell at retail.

If Ram sues Materboard for breach of contract, Ram will probably recover

- (A) nothing, because it received a price on resale equal to the contract price that Materboard had agreed to pay.
- (B) nothing, because Ram failed to give Materboard proper notice of Ram's intention to resell.
- (C) Ram's anticipated profit on the sale to Materboard plus incidental damages, if any, because Ram lost that sale.
- (D) \$3,000 (the contract price), because Materboard intentionally breached the contract by repudiation.

GO ON TO THE NEXT PAGE.

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

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

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

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

- (A) the recording of the deed granting the easement prior to the foreclosure action protects Anna's rights.
- (B) the easement provides access from Blackacre to a public street.
- (C) Anna's easement is appurtenant to Blackacre and thus cannot be separated from Blackacre.
- (D) visible use of the easement by Anna put Bank on notice of the easement.

11. A little more than five years ago, Len completed construction of a single-family home located on Homeacre, a lot that Len owned. Five years ago, Len and Tina entered into a valid five-year written lease of Homeacre that included the following language: "This house is rented as is, without certain necessary or useful items. The parties agree that Tina may acquire and install such items as she wishes at her expense, and that she may remove them if she wishes at the termination of this lease."

Tina decided that the house needed, and she paid cash to have installed, standard-sized combination screen/storm windows, a freestanding refrigerator to fit a kitchen alcove built for that purpose, a built-in electric stove and oven to fit a kitchen counter opening left for that purpose, and carpeting to cover the plywood living room floor.

Last month, by legal description of the land, Len conveyed Homeacre to Pete for \$100,000. Pete knew of Tina's soon-expiring tenancy, but did not examine the written lease. As the lease expiration date approached, Pete learned that Tina planned to vacate on schedule, and learned for the first time that Tina claimed and planned to remove all of the above-listed items that she had installed.

Pete promptly brought an appropriate action to enjoin Tina from removing those items.

The court should decide that Tina may remove

- (A) none of the items.
- (B) only the refrigerator.
- (C) all items except the carpet.
- (D) all of the items.

GO ON TO THE NEXT PAGE.

12. The mineral alpha is added to bodies of fresh water to prevent the spread of certain freshwater parasites. The presence of those parasites threatens the health of the organisms living in rivers and streams throughout the country and imperils the freshwater commercial fishing industry. Alpha is currently mined only in the state of Blue.

In order to raise needed revenue, Congress recently enacted a statute providing for the imposition of a \$100 tax on each ton of alpha mined in the United States. Because it will raise the cost of alpha, this tax is likely to reduce the amount of alpha added to freshwater rivers and streams and, therefore, is likely to have an adverse effect on the interstate freshwater commercial fishing industry. The alpha producers in Blue have filed a lawsuit in federal court challenging this tax solely on constitutional grounds.

Is this tax constitutional?

- (A) No, because only producers in Blue will pay the tax and, therefore, it is not uniform among the states and denies alpha producers the equal protection of the laws.
- (B) No, because it is likely to have an adverse effect on the freshwater commercial fishing industry and Congress has a responsibility under the clause to protect, foster, and advance such interstate industries.
- (C) Yes, because the tax is a necessary and proper means of exercising federal authority over the navigable waters of the United States.
- (D) Yes, because the power of Congress to impose taxes is plenary, this tax does not contain any provisions extraneous to tax needs or purposes, and it is not barred by any prohibitory language in the Constitution.

13. Plaintiff sued Defendant for breach of a commercial contract in which Defendant had agreed to sell Plaintiff all of Plaintiff's requirements for widgets. Plaintiff called Expert Witness to testify as to damages. Defendant seeks to show that Expert Witness had provided false testimony as a witness in his own divorce proceedings.

This evidence should be

- (A) admitted only if elicited from Expert Witness on cross-examination.
- (B) admitted only if the false testimony is established by clear and convincing extrinsic evidence.
- (C) excluded, because it is impeachment on a collateral issue.
- (D) excluded, because it is improper character evidence.

14. Karen was crossing Main Street at a crosswalk. John, who was on the sidewalk nearby, saw a speeding automobile heading in Karen's direction. John ran into the street and pushed Karen out of the path of the car. Karen fell to the ground and broke her leg.

In an action for battery brought by Karen against John, will Karen prevail?

- (A) Yes, because John could have shouted a warning instead of pushing Karen out of the way.
- (B) Yes, if Karen was not actually in danger and John should have realized it.
- (C) No, because the driver of the car was responsible for Karen's injury.
- (D) No, if John's intent was to save Karen, not to harm her.

GO ON TO THE NEXT PAGE.

15. Joe and Marty were coworkers. Joe admired Marty's wristwatch and frequently said how much he wished he had one like it. Marty decided to give Joe the watch for his birthday the following week.

On the weekend before Joe's birthday, Joe and Marty attended a company picnic. Marty took his watch off and left it on a blanket when he went off to join in a touch football game. Joe strolled by, saw the watch on the blanket, and decided to steal it. He bent over and picked up the watch. Before he could pocket it, however, Marty returned. When he saw Joe holding the watch, he said, "Joe, I know how much you like that watch. I was planning to give it to you for your birthday. Go ahead and take it now." Joe kept the watch.

Joe has committed

- (A) larceny.
 - (B) attempted larceny.
 - (C) embezzlement.
 - (D) no crime.
16. Olivia, owner in fee simple of Richacre, a large parcel of vacant land, executed a deed purporting to convey Richacre to her nephew, Grant. She told Grant, who was then 19, about the deed and said that she would give it to him when he reached 21 and had received his undergraduate college degree. Shortly afterward Grant searched Olivia's desk, found and removed the deed, and recorded it.

A month later, Grant executed an instrument in the proper form of a warranty deed purporting to convey Richacre to his fiancée, Bonnie. He delivered the deed to Bonnie, pointing out that the deed recited that it was given in exchange for "\$1 and other good and valuable consideration," and that to make it valid Bonnie must pay him \$1. Bonnie, impressed and grateful, did so. Together, they went to the recording office and recorded the deed. Bonnie assumed Grant had owned Richacre, and knew nothing about Grant's dealing with Olivia. Neither Olivia's deed to Grant nor Grant's deed to Bonnie said anything about any conditions.

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

Two years passed. Grant turned 21, then graduated from college. At the graduation party, Olivia was chatting with Bonnie and for the first time learned the foregoing facts.

The age of majority in the jurisdiction is 18 years.

Olivia brought an appropriate action against Bonnie to quiet title to Richacre.

The court will decide for

- (A) Olivia, because Grant's deed to Bonnie before Grant satisfied Olivia's conditions was void, as Bonnie had paid only nominal consideration.
- (B) Olivia, because her deed to Grant was not delivered.
- (C) Bonnie, because Grant has satisfied Olivia's oral conditions.
- (D) Bonnie, because the deed to her was recorded.

GO ON TO THE NEXT PAGE.

17. Perry suffered a serious injury while participating in an impromptu basketball game at a public park. The injury occurred when Perry and Dever, on opposing teams, each tried to obtain possession of the ball when it rebounded from the backboard after a missed shot at the basket. During that encounter, Perry was struck and injured by Dever's elbow. Perry now seeks compensation from Dever.

At the trial, evidence was introduced tending to prove that the game had been rough from the beginning, that elbows and knees had frequently been used to discourage interference by opposing players, and that Perry had been one of those making liberal use of such tactics.

In this action, will Perry prevail?

- (A) Yes, if Dever intended to strike Perry with his elbow.
 - (B) Yes, if Dever intended to cause a harmful or offensive contact with Perry.
 - (C) No, because Perry impliedly consented to rough play.
 - (D) No, unless Dever intentionally used force that exceeded the players' consent.
18. Water District is an independent municipal water-supply district incorporated under the applicable laws of the state of Green. The district was created solely to supply water to an entirely new community in a recently developed area of Green. That new community is racially, ethnically, and socioeconomically diverse, and the community has never engaged in any discrimination against members of minority groups.

The five-member, elected governing board of the newly created Water District contains two persons who are members of racial minority groups. At its first meeting, the governing board of Water District adopted a rule unqualifiedly setting aside 25% of all positions on the staff of the District and 25% of all contracts to be awarded by the District to members of racial minority groups. The purpose of the rule was "to help redress the historical discrimination against these groups in this country and to help them achieve economic parity with other groups in our society." Assume that no federal statute applies.

A suit by appropriate parties challenges the constitutionality of these set-asides.

In this suit, the most appropriate ruling on the basis of applicable United States Supreme Court precedent would be that the set-asides are

- (A) unconstitutional, because they would deny other potential employees or potential contractors the equal protection of the laws.
- (B) unconstitutional, because they would impermissibly impair the right to contract of other potential employees or potential contractors.
- (C) constitutional, because they would assure members of racial minority groups the equal protection of the laws.
- (D) constitutional, because the function and activities of Water District are of a proprietary nature rather than a governmental nature and, therefore, are not subject to the usual requirements of the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

Questions 19–20 are based on the following fact situation.

In a single writing, Painter contracted with Farmer to paint three identical barns on her rural estate for \$2,000 each. The contract provided for Farmer’s payment of \$6,000 upon Painter’s completion of the work on all three barns. Painter did not ask for any payment when the first barn was completely painted, but she demanded \$4,000 after painting the second barn.

19. Is Farmer obligated to make the \$4,000 payment?
- (A) No, because Farmer has no duty under the contract to pay anything to Painter until all three barns have been painted.
 - (B) No, because Painter waived her right, if any, to payment on a per-barn basis by failing to demand \$2,000 upon completion of the first barn.
 - (C) Yes, because the contract is divisible.
 - (D) Yes, because Painter has substantially performed the entire contract.

20. For this question only, assume that Farmer rightfully refused Painter’s demand for payment.

If Painter immediately terminates the contract without painting the third barn, what is Painter entitled to recover from Farmer?

- (A) Nothing, because payment was expressly conditioned on completion of all three barns.
- (B) Painter’s expenditures plus anticipated “profit” in painting the first two barns, up to a maximum recovery of \$4,000.
- (C) The reasonable value of Painter’s services in painting the two barns, less Farmer’s damages, if any, for Painter’s failure to paint the third barn.
- (D) The amount that the combined value of the two painted barns has been increased by Painter’s work.

GO ON TO THE NEXT PAGE.

21. The police in City notified local gas station attendants that a woman, known as Robber, recently had committed armed robberies at five City gas stations. The police said that Robber was approximately 75 years old, had white hair, and drove a vintage, cream-colored Ford Thunderbird. Attendants were advised to call police if they saw her, but not to attempt to apprehend her. Armed robbery is a felony under state law.

Traveler was passing through City on a cross-country journey. Traveler was a 75-year-old woman who had white hair and drove a vintage, cream-colored Ford Thunderbird. When Traveler drove into Owner's gas station, Owner thought Traveler must be the robber wanted by the police. After checking the oil at Traveler's request, Owner falsely informed Traveler that she had a broken fan belt, that her car could not be driven without a new belt, that it would take him about an hour to replace it, and that she should stay in his office for consultation about the repair. Traveler was greatly annoyed that her journey was delayed, but she stayed in Owner's office while she waited for her car. Owner telephoned the police and, within the hour, the police came and questioned Traveler. The police immediately determined that Traveler was not Robber, and Traveler resumed her journey without further delay.

In Traveler's action for false imprisonment against Owner, Traveler will

- (A) not prevail, if Owner reasonably believed that Traveler was Robber.
- (B) not prevail, because Traveler suffered no physical or mental harm.
- (C) prevail, if Traveler reasonably believed she could not leave Owner's premises.
- (D) prevail, because Owner lied to Traveler about the condition of her car.

22. In which of the following situations would Defendant's mistake most likely constitute a defense to the crime charged?

- (A) A local ordinance forbids the sale of alcoholic beverages to persons under 18 years of age. Relying on false identification, Defendant sells champagne to a 16-year-old high school student. Defendant is charged with illegal sale of alcoholic beverages.
- (B) Mistaking Defendant for a narcotics suspect, an undercover police officer attempts to arrest him. Defendant, unaware that the person who has grabbed him is an officer, hits him and knocks him unconscious. Defendant is charged with assault.
- (C) Defendant, aged 23, has sexual intercourse with a 15-year-old prostitute who tells Defendant that she is 18. Defendant is charged with the felony of statutory rape under a statute that makes sexual relations with a child under 16 a felony.
- (D) Relying on erroneous advice from his attorney that, if his wife has abandoned him for more than a year, he is free to marry, Defendant remarries and is subsequently charged with bigamy.

GO ON TO THE NEXT PAGE.

23. Powell, who was an asbestos insulation installer from 1955 to 1965, contracted asbestosis, a serious lung disorder, as a result of inhaling airborne asbestos particles on the job. The asbestos was manufactured and sold to Powell's employer by the Acme Asbestos Company. Because neither Acme nor anyone else discovered the risk to asbestos installers until 1966, Acme did not provide any warnings of the risks to installers until after that date.

Powell brought an action against Acme based on strict liability in tort for failure to warn. The case is to be tried before a jury. The jurisdiction has not adopted a comparative fault rule in strict liability cases.

In this action, an issue that is relevant to the case and is a question for the court to decide as a matter of law, rather than for the jury to decide as a question of fact, is whether

- (A) a satisfactory, safer, alternative insulation material exists under today's technology.
- (B) the defendant should be held to the standard of a prudent manufacturer who knew of the risks, regardless of whether the risks were reasonably discoverable before 1966.
- (C) the defendant should reasonably have known of the risks of asbestos insulation materials before 1966, even though no one else had discovered the risks.
- (D) the asbestos insulation materials to which the plaintiff was exposed were inherently dangerous.

24. PullCo sued Davidson, its former vice president, for return of \$230,000 that had been embezzled during the previous two years. Called by PullCo as an adverse witness, Davidson testified that his annual salary had been \$75,000, and he denied the embezzlement. PullCo calls banker Witt to show that, during the two-year period, Davidson had deposited \$250,000 in his bank account.

Witt's testimony is

- (A) admissible as circumstantial evidence of Davidson's guilt.
- (B) admissible to impeach Davidson.
- (C) inadmissible, because its prejudicial effect substantially outweighs its probative value.
- (D) inadmissible, because the deposits could have come from legitimate sources.

GO ON TO THE NEXT PAGE.

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

Recently, Betty needed money for the operation of her business and demanded that Alex join her in selling Blackacre. Alex refused.

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

Betty brought an appropriate action against Alex for partition. Alex asserted all available defenses and counterclaims.

In that action, the court should

- (A) deny partition and find that title has vested in Alex by adverse possession.
- (B) deny partition, confirm the tenancy in common, but require an accounting to determine if either Betty or Alex is indebted to the other on account of the rental payment, taxes, insurance premiums, and maintenance costs.
- (C) grant partition and require, as an adjustment, an accounting to determine if either Betty or Alex is indebted to the other on account of the rental payments, taxes, insurance premiums, and maintenance costs.
- (D) grant partition to Betty and Alex as equal owners, but without an accounting.

26. Plaintiff sued Defendant for illegal discrimination, claiming that Defendant fired him because of his race. At trial, Plaintiff called Witness, expecting him to testify that Defendant had admitted the racial motivation. Instead, Witness testified that Defendant said that he had fired Plaintiff because of his frequent absenteeism. While Witness is still on the stand, Plaintiff offers a properly authenticated secret tape recording he had made at a meeting with Witness in which Witness related Defendant's admissions of racial motivation.

The tape recording is

- (A) admissible as evidence of Defendant's racial motivation and to impeach Witness's testimony.
- (B) admissible only to impeach Witness's testimony.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because a secret recording is an invasion of Witness's right of privacy under the U.S. Constitution.

GO ON TO THE NEXT PAGE.

Questions 27–28 are based on the following fact situation.

On December 15, Lawyer received from Stationer, Inc., a retailer of office supplies, an offer consisting of its catalog and a signed letter stating, “We will supply you with as many of the items in the enclosed catalog as you order during the next calendar year. We assure you that this offer and the prices in the catalog will remain firm throughout the coming year.”

27. For this question only, assume that no other correspondence passed between Stationer and Lawyer until the following April 15 (four months later), when Stationer received from Lawyer a faxed order for “100 reams of your paper, catalog item #101.”

Did Lawyer’s April 15 fax constitute an effective acceptance of Stationer’s offer at the prices specified in the catalog?

- (A) Yes, because Stationer had not revoked its offer before April 15.
- (B) Yes, because a one-year option contract had been created by Stationer’s offer.
- (C) No, because under applicable law the irrevocability of Stationer’s offer was limited to a period of three months.
- (D) No, because Lawyer did not accept Stationer’s offer within a reasonable time.

28. For this question only, assume that on January 15, having at that time received no reply from Lawyer, Stationer notified Lawyer that effective February 1, it was increasing the prices of certain specified items in its catalog.

Is the price increase effective with respect to catalog orders Stationer receives from Lawyer during the month of February?

- (A) No, because Stationer’s original offer, including the price term, became irrevocable under the doctrine of promissory estoppel.
- (B) No, because Stationer is a merchant with respect to office supplies; and its original offer, including the price term, was irrevocable throughout the month of February.
- (C) Yes, because Stationer received no consideration to support its assurance that it would not increase prices.
- (D) Yes, because the period for which Stationer gave assurance that it would not raise prices was longer than three months.

GO ON TO THE NEXT PAGE.

29. State X enacted a statute “to regulate administratively the conduct of motor vehicle junkyard businesses in order to deter motor vehicle theft and trafficking in stolen motor vehicles or parts thereof.” The statute requires a junkyard owner or operator “to permit representatives of the Department of Motor Vehicles or of any law enforcement agency upon request during normal business hours to take physical inventory of motor vehicles and parts thereof on the premises.” The statute also states that a failure to comply with any of its requirements constitutes a felony.

Police officers assigned to Magnolia City’s Automobile Crimes Unit periodically visited all motor vehicle junkyards in town to make the inspections permitted by the statute. Janet owned such a business in Magnolia City. One summer day, the officers asked to inspect the vehicles on her lot. Janet said, “Do I have a choice?” The officers told her she did not. The officers conducted their inspection and discovered three stolen automobiles.

Janet is charged with receiving stolen property. Janet moves pretrial to suppress the evidence relating to the three automobiles on the ground that the inspection was unconstitutional.

Her motion should be

- (A) sustained, because the statute grants unbridled discretion to law enforcement officers to make warrantless searches.
- (B) sustained, because the stated regulatory purpose of the statute is a pretext to circumvent the warrant requirement in conducting criminal investigations.
- (C) denied, because the statute deals reasonably with a highly regulated industry.
- (D) denied, because administrative searches of commercial establishments do not require warrants.

30. Current national statistics show a dramatic increase in the number of elementary and secondary school students bringing controlled substances (drugs) to school for personal use or distribution to others. In response, Congress enacted a statute requiring each state legislature to enact a state law that makes it a state crime for any person to possess, use, or distribute, within 1,000 feet of any elementary or secondary school, any controlled substance that has previously been transported in interstate commerce and that is not possessed, used, or distributed pursuant to a proper physician’s prescription.

This federal statute is

- (A) unconstitutional, because Congress has no authority to require a state legislature to enact any specified legislation.
- (B) unconstitutional, because the possession, use, or distribution, in close proximity to a school, of a controlled substance that has previously been transported in interstate commerce does not have a sufficiently close nexus to such commerce to justify its regulation by Congress.
- (C) constitutional, because it contains a jurisdictional provision that will ensure, on a case-by-case basis, that any particular controlled substance subject to the terms of this statute will, in fact, affect interstate commerce.
- (D) constitutional, because Congress possesses broad authority under both the general welfare clause and the commerce clause to regulate any activities affecting education that also have, in inseverable aggregates, a substantial effect on interstate commerce.

GO ON TO THE NEXT PAGE.

31. Janet had a season ticket for the Scorpions' hockey games at Central Arena (Section B, Row 12, Seat 16). During the intermission between the first and second periods of a game between the Scorpions and the visiting Hornets, Janet solicited signatures for a petition urging that the coach of the Scorpions be fired.

Central Arena and the Scorpions are owned by ABC, Inc., a privately owned entity. As evidenced by many prominently displayed signs, ABC prohibits all solicitations anywhere within Central Arena at any time and in any manner. ABC notified Janet to cease her solicitation of signatures.

Janet continued to seek signatures on her petition during the Scorpions' next three home games at Central Arena. Each time, ABC notified Janet to cease such solicitation. Janet announced her intention to seek signatures on her petition again during the Scorpions' next home game at Central Arena. ABC wrote a letter informing Janet that her season ticket was canceled and tendering a refund for the unused portion. Janet refused the tender and brought an appropriate action to establish the right to attend all home games.

In this action, the court will decide for

- (A) ABC, because it has a right and obligation to control activities on realty it owns and has invited the public to visit.
- (B) ABC, because Janet's ticket to hockey games created only a license.
- (C) Janet, because, having paid value for the ticket, her right to be present cannot be revoked.
- (D) Janet, because she was not committing a nuisance by her activities.

32. Company designed and built a processing plant for the manufacture of an explosive chemical. Engineer was retained by Company to design a filter system for the processing plant. She prepared an application for a permit to build the plant's filter system and submitted it to the state's Department of Environmental Protection (DEP). As required by DEP regulations, Engineer submitted a blueprint to the DEP with the application for permit. The blueprint showed the entire facility and was signed and sealed by her as a licensed professional engineer.

After the project was completed, a portion of the processing plant exploded, injuring Plaintiff. During discovery in an action by Plaintiff against Engineer, it was established that the explosion was caused by a design defect in the processing plant that was unrelated to the filter system designed by Engineer.

In that action, will Plaintiff prevail?

- (A) Yes, if Engineer signed, sealed, and submitted a blueprint that showed the design defect.
- (B) Yes, because all of the plant's designers are jointly and severally liable for the defect.
- (C) No, because Engineer owed no duty to Plaintiff to prevent the particular risk of harm.
- (D) No, if Engineer was an independent contractor.

GO ON TO THE NEXT PAGE.

33. Several years ago, Bart purchased Goldacre, financing a large part of the purchase price by a loan from Mort that was secured by a mortgage. Bart made the installment payments on the mortgage regularly until last year. Then Bart persuaded Pam to buy Goldacre, subject to the mortgage to Mort. They expressly agreed that Pam would not assume and agree to pay Bart's debt to Mort. Bart's mortgage to Mort contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable." However, without seeking Mort's consent, Bart conveyed Goldacre to Pam, the deed stating in pertinent part ". . . , subject to a mortgage to Mort [giving details and recording data]."

Pam took possession of Goldacre and made several mortgage payments, which Mort accepted. Now, however, neither Pam nor Bart has made the last three mortgage payments. Mort has brought an appropriate action against Pam for the amount of the delinquent payments.

In this action, judgment should be for

- (A) Pam, because she did not assume and agree to pay Bart's mortgage debt.
- (B) Pam, because she is not in privity of estate with Mort.
- (C) Mort, because Bart's deed to Pam violated the due-on-sale clause.
- (D) Mort, because Pam is in privity of estate with Mort.

34. Congress recently enacted a statute imposing severe criminal penalties on anyone engaged in trading in the stock market who, in the course of that trading, takes "unfair advantage" of other investors who are also trading in the stock market. The statute does not define the term "unfair advantage." There have been no prosecutions under this new statute. The members of an association of law school professors that is dedicated to increasing the clarity of the language used in criminal statutes believe that this statute is unconstitutionally vague. Neither the association nor any of its members is currently engaged in, or intends in the future to engage in, trading in the stock market. The association and its members bring suit against the Attorney General of the United States in a federal district court, seeking an injunction against the enforcement of this statute on the ground that it is unconstitutional.

May the federal court determine the merits of this suit?

- (A) Yes, because the suit involves a dispute over the constitutionality of a federal statute.
- (B) Yes, because the plaintiffs seek real relief of a conclusive nature—an injunction against enforcement of this statute.
- (C) No, because the plaintiffs do not have an interest in the invalidation of this statute that is adequate to ensure that the suit presents an Article III controversy.
- (D) No, because a suit for an injunction against enforcement of a criminal statute may not be brought in federal court at any time prior to a bona fide effort to enforce that statute.

GO ON TO THE NEXT PAGE.

35. Rachel, an antique dealer and a skilled calligrapher, crafted a letter on very old paper. She included details that would lead knowledgeable readers to believe the letter had been written by Thomas Jefferson to a friend. Rachel, who had a facsimile of Jefferson's autograph, made the signature and other writing on the letter resemble Jefferson's. She knew that the letter would attract the attention of local collectors. When it did and she was contacted about selling it, she said that it had come into her hands from a foreign collector who wished anonymity, and that she could make no promises about its authenticity. As she had hoped, a collector paid her \$5,000 for the letter. Later the collector discovered the letter was not authentic, and handwriting analysis established that Rachel had written the letter.

In a jurisdiction that follows the common-law definition of forgery, Rachel has

- (A) committed both forgery and false pretenses.
- (B) committed forgery, because she created a false document with the intent to defraud, but has not committed false pretenses, since she made no representation as to the authenticity of the document.
- (C) not committed forgery, because the document had no apparent legal significance, but has committed false pretenses, since she misrepresented the source of the document.
- (D) not committed forgery, because the document had no apparent legal significance, and has not committed false pretenses, since she made no representation as to authenticity of the document.

36. Mom rushed her eight-year-old daughter, Child, to the emergency room at Hospital after Child fell off her bicycle and hit her head on a sharp rock. The wound caused by the fall was extensive and bloody.

Mom was permitted to remain in the treatment room, and held Child's hand while the emergency room physician cleaned and sutured the wound. During the procedure, Mom said that she was feeling faint and stood up to leave the room. While leaving the room, Mom fainted and, in falling, struck her head on a metal fixture that protruded from the emergency room wall. She sustained a serious injury as a consequence.

If Mom sues Hospital to recover damages for her injury, will she prevail?

- (A) Yes, because Mom was a public invitee of Hospital's.
- (B) Yes, unless the fixture was an obvious, commonly used, and essential part of Hospital's equipment.
- (C) No, unless Hospital's personnel failed to take reasonable steps to anticipate and prevent Mom's injury.
- (D) No, because Hospital's personnel owed Mom no affirmative duty of care.

GO ON TO THE NEXT PAGE.

Questions 37–39 are based on the following fact situation.

Buyer, Inc., contracted in writing with Shareholder, who owned all of XYZ Corporation’s outstanding stock, to purchase all of her stock at a specified price per share. At the time this contract was executed, Buyer’s contracting officer said to Shareholder, “Of course, our commitment to buy is conditioned on our obtaining approval of the contract from Conglomerate, Ltd., our parent company.” Shareholder replied, “Fine. No problem.”

37. For this question only, assume that Conglomerate orally approved the contract, but that Shareholder changed her mind and refused to consummate the sale on two grounds: (1) when the agreement was made there was no consideration for her promise to sell; and (2) Conglomerate’s approval of the contract was invalid.

If Buyer sues Shareholder for breach of contract, is Buyer likely to prevail?

- (A) Yes, because Buyer’s promise to buy, bargained for and made in exchange for Shareholder’s promise to sell, was good consideration even though it was expressly conditioned on an event that was not certain to occur.
- (B) Yes, because any possible lack of consideration for Shareholder’s promise to sell was expressly waived by Shareholder when the agreement was made.
- (C) No, because mutuality of obligation between the parties was lacking when the agreement was made.
- (D) No, because the condition of Conglomerate’s approval of the contract was an essential part of the agreed exchange and was not in a signed writing.

38. For this question only, assume the following facts. Shareholder subsequently refused to consummate the sale on the ground that Buyer had neglected to request Conglomerate’s approval of the contract, which was true. Conglomerate’s chief executive officer, however, is prepared to testify that Conglomerate would have routinely approved the contract if requested to do so. Buyer can also prove that it has made a substantial sale of other assets to finance the stock purchase, although it admittedly had not anticipated any such necessity when it entered into the stock purchase agreement.

If Buyer sues Shareholder for breach of contract, is Buyer likely to prevail?

- (A) Yes, because the condition of Conglomerate’s approval of the contract, being designed to protect only Buyer and Conglomerate, can be and has been waived by those entities.
- (B) Yes, because Buyer detrimentally relied on Shareholder’s commitment by selling off other assets to finance the stock purchase.
- (C) No, because the express condition of Conglomerate’s approval had not occurred prior to the lawsuit.
- (D) No, because obtaining Conglomerate’s approval of the contract was an event within Buyer’s control and Buyer’s failure to obtain it was itself a material breach of contract.

GO ON TO THE NEXT PAGE.

39. For this question only, assume the following facts. Shareholder is willing and ready to consummate the sale of her stock to Buyer, but the latter refuses to perform on the ground (which is true) that Conglomerate has firmly refused to approve the contract.

If Shareholder sues Buyer for breach of contract and seeks to exclude any evidence of the oral condition requiring Conglomerate's approval, the court will probably

- (A) admit the evidence as proof of a collateral agreement.
 - (B) admit the evidence as proof of a condition to the existence of an enforceable obligation, and therefore not within the scope of the parol evidence rule.
 - (C) exclude the evidence on the basis of a finding that the parties' written agreement was a complete integration of their contract.
 - (D) exclude the evidence as contradicting the terms of the parties' written agreement, whether or not the writing was a complete integration of the contract.
-

40. At Dove's trial for theft, Mr. Wong, called by the prosecutor, testified to the following: 1) that from his apartment window, he saw thieves across the street break the window of a jewelry store, take jewelry, and leave in a car; 2) that Mrs. Wong telephoned the police and relayed to them the license number of the thieves' car as Mr. Wong looked out the window with binoculars and read it to her; 3) that he has no present memory of the number, but that immediately afterward he listened to a playback of the police tape recording giving the license number (which belongs to Dove's car) and verified that she had relayed the number accurately.

Playing the tape recording for the jury would be

- (A) proper, because it is recorded recollection.
- (B) proper, because it is a public record or report.
- (C) improper, because it is hearsay not within any exception.
- (D) improper, because Mrs. Wong lacked firsthand knowledge of the license number.

GO ON TO THE NEXT PAGE.

41. For ten years, Vacationer and Neighbor have owned summer vacation homes on adjoining lots. A stream flows through both lots. As a result of a childhood swimming accident, Vacationer is afraid of water and has never gone close to the stream.

Neighbor built a dam on her property that has completely stopped the flow of the stream to Vacationer's property.

In a suit by Vacationer against Neighbor, will Vacationer prevail?

- (A) Yes, if the damming unreasonably interferes with the use and enjoyment of Vacationer's property.
- (B) Yes, if Neighbor intended to affect Vacationer's property.
- (C) No, because Vacationer made no use of the stream.
- (D) No, if the dam was built in conformity with all applicable laws.

42. Corp, a corporation, owned Blackacre in fee simple, as the real estate records showed. Corp entered into a valid written contract to convey Blackacre to Barbara, an individual. At closing, Barbara paid the price in full and received an instrument in the proper form of a deed, signed by duly authorized corporate officers on behalf of Corp, purporting to convey Blackacre to Barbara. Barbara did not then record the deed or take possession of Blackacre.

Next, George (who had no knowledge of the contract or the deed) obtained a substantial money judgment against Corp. Then, Barbara recorded the deed from Corp. Thereafter, George properly filed the judgment against Corp.

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

Afterward, Barbara entered into a valid written contract to convey Blackacre to Polly. Polly objected to Barbara's title and refused to close.

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

Barbara brought an appropriate action to require Polly to complete the purchase contract.

The court should decide for

- (A) Polly, because George's judgment was obtained before Barbara recorded the deed from Corp.
- (B) Polly, because even though Corp's deed to Barbara prevented George's judgment from being a lien on Blackacre, George's filed judgment poses a threat of litigation.
- (C) Barbara, because Barbara recorded her deed before George filed his judgment.
- (D) Barbara, because Barbara received the deed from Corp before George filed his judgment.

GO ON TO THE NEXT PAGE.

43. City enacted an ordinance banning from its public sidewalks all machines dispensing publications consisting wholly of commercial advertisements. The ordinance was enacted because of a concern about the adverse aesthetic effects of litter from publications distributed on the public sidewalks and streets. However, City continued to allow machines dispensing other types of publications on the public sidewalks. As a result of the City ordinance, 30 of the 300 sidewalk machines that were dispensing publications in City were removed.

Is this City ordinance constitutional?

- (A) Yes, because regulations of commercial speech are subject only to the requirement that they be rationally related to a legitimate state goal, and that requirement is satisfied here.
- (B) Yes, because City has a compelling interest in protecting the aesthetics of its sidewalks and streets, and such a ban is necessary to vindicate this interest.
- (C) No, because it does not constitute the least restrictive means with which to protect the aesthetics of City's sidewalks and streets.
- (D) No, because there is not a reasonable fit between the legitimate interest of City in preserving the aesthetics of its sidewalks and streets and the means it chose to advance that interest.

44. Plaintiff's estate sued Defendant Stores claiming that Guard, one of Defendant's security personnel, wrongfully shot and killed Plaintiff when Plaintiff fled after being accused of shoplifting. Guard was convicted of manslaughter for killing Plaintiff. At his criminal trial Guard, who was no longer working for Defendant, testified that Defendant's security director had instructed him to stop shoplifters "at all costs." Because Guard's criminal conviction is on appeal, he refuses to testify at the civil trial. Plaintiff's estate then offers an authenticated transcript of Guard's criminal trial testimony concerning the instructions of Defendant's security director.

This evidence is

- (A) admissible as a statement of an agent of a party-opponent.
- (B) admissible, because the instruction from the security director is not hearsay.
- (C) admissible, although hearsay, as former testimony.
- (D) inadmissible, because it is hearsay not within any exception.

GO ON TO THE NEXT PAGE.

45. Mrs. Pence sued Duarte for shooting her husband from ambush. Mrs. Pence offers to testify that, the day before her husband was killed, he described to her a chance meeting with Duarte on the street in which Duarte said, "I'm going to blow your head off one of these days."

The witness's testimony concerning her husband's statement is

- (A) admissible, to show Duarte's state of mind.
 - (B) admissible, because Duarte's statement is that of a party-opponent.
 - (C) inadmissible, because it is improper evidence of a prior bad act.
 - (D) inadmissible, because it is hearsay not within any exception.
46. The state of Brunswick enacted a statute providing for the closure of the official state records of arrest and prosecution of all persons acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed. The purpose of this statute is to protect these persons from further publicity or embarrassment relating to those state proceedings. However, this statute does not prohibit the publication of such information that is in the possession of private persons.

A prominent businessman in Neosho City in Brunswick was arrested and charged with rape. Prior to trial, the prosecutor announced that new information indicated that the charges should be dropped. He then dropped the charges without further explanation, and the records relating thereto were closed to the public pursuant to the Brunswick statute.

The Neosho City *Times* conducted an investigation to determine why the businessman was not prosecuted, but was refused access to the closed official state records. In an effort to determine whether the law enforcement agencies involved were properly doing their duty, the *Times* filed suit against appropriate state officials to force opening of the records and to invalidate the statute on constitutional grounds.

Which of the following would be most helpful to the state in defending the constitutionality of this statute?

- (A) The fact that the statute treats in an identical manner the arrest and prosecution records of all persons who have been acquitted of a crime by a court or against whom criminal charges were filed and subsequently dropped or dismissed.
- (B) The argument that the rights of the press are no greater than those of citizens generally.
- (C) The fact that the statute only prohibits public access to these official state records and does not prohibit the publication of information they contain that is in the possession of private persons.
- (D) The argument that the state may seal official records owned by the state on any basis its legislature chooses.

GO ON TO THE NEXT PAGE.

47. Nora, executive director of an equal housing opportunity organization, was the leader of a sit-in at the offices of a real estate management company. The protest was designed to call attention to the company's racially discriminatory rental practices. When police demanded that Nora desist from trespassing on the company's property, she refused and was arrested. In Nora's trial for trespass, the prosecution peremptorily excused all nonwhites from the jury, arguing to the court that even though Nora was white, minority groups would automatically support Nora because of her fight against racism in housing accommodations.

If Nora is convicted of trespass by an all-white jury and appeals, claiming a violation of her constitutional rights, the court should

- (A) affirm the conviction, because Nora was not a member of the class discriminated against.
- (B) affirm the conviction, because peremptory challenge of the nonwhites did not deny Nora the right to an impartial jury.
- (C) reverse the conviction, because racially based peremptory challenges violate equal protection of the law.
- (D) reverse the conviction, because Nora was denied the right to have her case heard by a fair cross section of the community.

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

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

Charles brought an appropriate action against Marie to determine who was entitled to the net trust estate and thus to Blackacre.

If the court rules for Marie, it will be because

- (A) Alice's life estate and general power of appointment merge into complete ownership in Alice.
- (B) the Rule Against Perpetuities does not apply to general powers of appointment.
- (C) the jurisdiction deems "entire estate" to be a reference to Blackacre or to Alice's general power of appointment.
- (D) Alice intended that Charles should not benefit by reason of her death.

GO ON TO THE NEXT PAGE.

Questions 49–50 are based on the following fact situation.

Tenant rented a commercial building from Landlord, and operated a business in it. The building's large front window was smashed by vandals six months before expiration of the Tenant-Landlord lease. Tenant, who was obligated thereunder to effect and pay for repairs in such cases, promptly contracted with Glazier to replace the window for \$2,000, due 30 days after satisfactory completion of the work. Landlord was then unaware of the Tenant-Glazier contract. Glazier was aware that the building was under lease, but dealt entirely with Tenant.

Sixty days after Glazier's satisfactory completion of the window replacement, and prior to the expiration of Tenant's lease, Tenant, then insolvent, ceased doing business and vacated the building. In so doing, Tenant forfeited under the lease provisions its right to the return of a \$2,000 security deposit with Landlord. The deposit had been required, however, for the express purpose (as stated in the lease) of covering any damage to the leased property except ordinary wear and tear. The only such damage occurring during Tenant's occupancy was the smashed window. Glazier's \$2,000 bill for the window replacement is wholly unpaid.

49. Assuming that Glazier has no remedy *quasi in rem* under the relevant state mechanic's lien statute, which of the following would provide Glazier's best chance of an effective remedy *in personam* against Landlord?

- (A) An action in quasi contract for the reasonable value of a benefit unofficiously and non-gratuitously conferred on Landlord.
- (B) An action based on promissory estoppel.
- (C) An action based on an implied-in-fact contract.
- (D) An action as third-party intended beneficiary of the Tenant-Landlord lease.

50. For this question only, assume the following facts. Upon vacating the building, Tenant mailed a \$1,000 check to Glazier bearing on its face the following conspicuous notation: "This check is in full and final satisfaction of your \$2,000 window replacement bill." Without noticing this notation, Glazier cashed the check and now sues Tenant for the \$1,000 difference.

If Tenant's only defense is accord and satisfaction, is Tenant likely to prevail?

- (A) No, because Glazier failed to notice Tenant's notation on the check.
- (B) No, because the amount owed by Tenant to Glazier was liquidated and undisputed.
- (C) Yes, because by cashing the check Glazier impliedly agreed to accept the \$1,000 as full payment of its claim.
- (D) Yes, because Glazier failed to write a reservation-of-rights notation on the check before cashing it.

GO ON TO THE NEXT PAGE.

51. Defendant is on trial for robbing a bank in State A. She testified that she was in State B at the time of the robbery. Defendant calls her friend, Witness, to testify that two days before the robbery Defendant told him that she was going to spend the next three days in State B.

Witness's testimony is

- (A) admissible, because the statement falls within the present sense impression exception to the hearsay rule.
 - (B) admissible, because a statement of plans falls within the hearsay exception for then-existing state of mind.
 - (C) inadmissible, because it is offered to establish an alibi by Defendant's own statement.
 - (D) inadmissible, because it is hearsay not within any exception.
52. The legislature of State X is debating reforms in the law governing insanity. Two reforms have been proposed. Proposal A would eliminate the insanity defense altogether. Proposal B would retain the defense but place on the defendant the burden of proving insanity by a preponderance of the evidence. Opponents of the reforms argue that the proposals would be unconstitutional under the due process clause of the United States Constitution.

Which of the proposed reforms would be unconstitutional?

- (A) Both proposals.
- (B) Neither proposal.
- (C) Proposal A only.
- (D) Proposal B only.

53. A federal statute appropriated \$7 million for a nationwide essay contest on "How the United States Can Best Stop Drug Abuse." The statute indicates that its purpose is to generate new, practical ideas for eliminating drug abuse in the United States.

Contest rules set forth in the statute provide that winning essays are to be selected on the basis of the "originality, aptness, and feasibility of their ideas." The statute expressly authorizes a first prize of \$1 million, 50 second prizes of \$100,000 each, and 100 third prizes of \$10,000 each. It also states that judges for the contest are to be appointed by the President of the United States with the advice and consent of the Senate, and that all residents of the United States who are not employees of the federal government are eligible to enter and win the contest. A provision of the statute authorizes any taxpayer of the United States to challenge its constitutionality.

In a suit by a federal taxpayer to challenge the constitutionality of the statute, the court should

- (A) refuse to decide its merits, because the suit involves policy questions that are inherently political and, therefore, nonjusticiable.
- (B) hold the statute unconstitutional, because it does not provide sufficient guidelines for awarding the prize money appropriated by Congress and, therefore, unconstitutionally delegates legislative power to the contest judges.
- (C) hold the statute unconstitutional, because its relationship to legitimate purposes of the spending power of Congress is too tenuous and conjectural to satisfy the necessary and proper clause of Article I.
- (D) hold the statute constitutional, because it is reasonably related to the general welfare, it states concrete objectives, and it provides adequate criteria for conducting the essay contest and awarding the prize money.

54. Fran, who was driving at an excessive speed, applied her brakes to stop at a traffic light. Due to damp, fallen leaves, her car skidded and came to a halt perpendicular to the roadway. Sid, who was also driving at an excessive speed and was immediately behind Fran, saw Fran's car perpendicular to the roadway. Although Sid had sufficient distance to come to a slow, controlled stop, he decided not to slow down but, rather, to swerve to the left in an effort to go around Fran's car. Due to oncoming traffic, the space was insufficient and Sid's car collided with Fran's car, severely injuring Fran.

Fran filed a personal injury action against Sid in a jurisdiction in which contributory negligence is a bar to recovery.

Will Fran prevail?

- (A) Yes, if the jury finds that Sid was more than 50% at fault.
 - (B) Yes, if the jury finds that Sid had the last clear chance.
 - (C) No, if the jury finds that Fran's conduct was in any way a legal cause of the accident.
 - (D) No, if the jury finds that, in speeding, Fran assumed the risk.
55. Sal owned five adjoining rectangular lots, numbered 1 through 5 inclusive, all fronting on Main Street. All of the lots are in a zone limited to one- and two-family residences under the zoning ordinance. Two years ago, Sal conveyed Lots 1, 3, and 5. None of the three deeds contained any restrictions. Each of the new owners built a one-family residence.

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

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

Peter, joined by the owners of Lots 1, 3, and 5, brought an appropriate action against Betty to enjoin the proposed use of Lot 4, or, alternatively, damages caused by Betty's breach of covenant.

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

- (A) All plaintiffs should be awarded their requested judgment for injunction because there was a common development scheme, but award of damages should be denied to all.
- (B) Peter should be awarded appropriate remedy, but recovery by the other plaintiffs is doubtful.
- (C) Injunction should be denied, but damages should be awarded to all plaintiffs, measured by diminution of market value, if any, suffered as a result of the proximity of Betty's two-family residence.
- (D) All plaintiffs should be denied any recovery or relief because the zoning preempts any private scheme of covenants.

GO ON TO THE NEXT PAGE.

56. Kelly County, in the state of Green, is located adjacent to the border of the state of Red. The communities located in Kelly County are principally suburbs of Scarletville, a large city located in Red, and therefore there is a large volume of traffic between that city and Kelly County. While most of that traffic is by private passenger automobiles, some of it is by taxicabs and other kinds of commercial vehicles.

An ordinance of Kelly County, the stated purpose of which is to reduce traffic congestion, provides that only taxicabs registered in Kelly County may pick up or discharge passengers in the county. The ordinance also provides that only residents of Kelly County may register taxicabs in that county.

Which of the following is the proper result in a suit brought by Scarletville taxicab owners challenging the constitutionality of this Kelly County ordinance?

- (A) Judgment for Scarletville taxicab owners, because the fact that private passenger automobiles contribute more to the traffic congestion problem in Kelly County than do taxicabs indicates that the ordinance is not a reasonable means by which to solve that problem.
- (B) Judgment for Scarletville taxicab owners, because the ordinance unduly burdens interstate commerce by insulating Kelly County taxicab owners from out-of-state competition without adequate justification.
- (C) Judgment for Kelly County, because the ordinance forbids taxicabs registered in other counties of Green as well as in states other than Green to operate in Kelly County and, therefore, it does not discriminate against interstate commerce.
- (D) Judgment for Kelly County, because Scarletville taxicab owners do not constitute a suspect class and the ordinance is reasonably related to the legitimate governmental purpose of reducing traffic congestion.

57. Paul sued Donna for breach of contract. Paul's position was that Joan, whom he understood to be Donna's agent, said: "On behalf of Donna, I accept your offer." Donna asserted that Joan had no actual or apparent authority to accept the offer on Donna's behalf.

Paul's testimony concerning Joan's statement is

- (A) admissible, provided the court first finds by a preponderance of the evidence that Joan had actual or apparent authority to act for Donna.
- (B) admissible, upon or subject to introduction of evidence sufficient to support a finding by the jury that Joan had actual or apparent authority to act for Donna.
- (C) inadmissible, if Joan does not testify and her absence is not excused.
- (D) inadmissible, because it is hearsay not within any exception.

GO ON TO THE NEXT PAGE.

58. A city ordinance requires a taxicab operator's license to operate a taxicab in King City. The ordinance states that the sole criteria for the issuance of such a license are driving ability and knowledge of the geography of King City. An applicant is tested by the city for these qualifications with a detailed questionnaire, written and oral examinations, and a practical behind-the-wheel demonstration.

The ordinance does not limit the number of licenses that may be issued. It does, however, allow any citizen to file an objection to the issuance of a particular license, but only on the ground that an applicant does not possess the required qualifications. City licensing officials are also authorized by the ordinance to determine, in their discretion, whether to hold an evidentiary hearing on an objection before issuing a license.

Sandy applies for a taxicab operator's license and is found to be fully qualified after completing the usual licensing process. Her name is then posted as a prospective licensee, subject only to the objection process. John, a licensed taxicab driver, files an objection to the issuance of such a license to Sandy solely on the ground that the grant of a license to Sandy would impair the value of John's existing license. John demands a hearing before a license is issued to Sandy so that he may have an opportunity to prove his claim. City licensing officials refuse to hold such a hearing, and they issue a license to Sandy. John petitions for review of this action by city officials in an appropriate court, alleging that the Constitution requires city licensing officials to grant his request for a hearing before issuing a license to Sandy.

In this case, the court should rule for

- (A) John, because the due process clause of the Fourteenth Amendment requires all persons whose property may be adversely affected by governmental action to be given an opportunity for a hearing before such action occurs.
- (B) John, because the determination of whether to hold a hearing may not constitutionally be left to the discretion of the same officials whose action is being challenged.
- (C) city officials, because John had the benefit of the licensing ordinance and, therefore, may not now question actions taken under it.
- (D) city officials, because the licensing ordinance does not give John any property interest in being free of competition from additional licensees.

59. Homer lived on the second floor of a small convenience store/gas station that he owned. One night he refused to sell Augie a six-pack of beer after hours, saying he could not violate the state laws. Augie became enraged and deliberately drove his car into one of the gasoline pumps, severing it from its base. There was an ensuing explosion causing a ball of fire to go from the underground gasoline tank into the building. As a result, the building burned to the ground and Homer was killed.

In a common-law jurisdiction, if Augie is charged with murder and arson, he should be

- (A) convicted of both offenses.
- (B) convicted of involuntary manslaughter and acquitted of arson.
- (C) convicted of arson and involuntary manslaughter.
- (D) acquitted of both offenses.

GO ON TO THE NEXT PAGE.

60. Bye Bye telegraphed Vendor on June 1, "At what price will you sell 100 of your QT-Model garbage-disposal units for delivery around June 10?" Thereafter, the following communications were exchanged:
1. Telegram from Vendor received by Bye Bye on June 2: "You're in luck. We have only 100 QT's, all on clearance at 50% off usual wholesale of \$120 per unit, for delivery at our shipping platform on June 12."
 2. Letter from Bye Bye received in U.S. mail by Vendor on June 5: "I accept. Would prefer to pay in full 30 days after invoice."
 3. Telegram from Vendor received by Bye Bye on June 6: "You must pick up at our platform and pay C.O.D."
 4. Letter from Bye Bye received in U.S. mail by Vendor on June 9: "I don't deal with people who can't accommodate our simple requests."
 5. Telegram from Bye Bye received by Vendor on June 10, after Vendor had sold and delivered all 100 of the QT's to another buyer earlier that day: "Okay. I'm over a barrel and will pick up the goods on your terms June 12."

Bye Bye now sues Vendor for breach of contract.

Which of the following arguments will best serve Vendor's defense?

- (A) Vendor's telegram received on June 2 was merely a price quotation, not an offer.
- (B) Bye Bye's letter received on June 5 was not an acceptance because it varied the terms of Vendor's initial telegram.
- (C) Bye Bye's use of the mails in response to Vendor's initial telegram was an ineffective method of acceptance.
- (D) Bye Bye's letter received on June 9 was an unequivocal refusal to perform that excused Vendor even if the parties had previously formed a contract.

61. At a party, Diane and Victor agreed to play a game they called "spin the barrel." Victor took an unloaded revolver, placed one bullet in the barrel, and spun the barrel. Victor then pointed the gun at Diane's head and pulled the trigger once. The gun did not fire. Diane then took the gun, pointed it at Victor, spun the barrel, and pulled the trigger once. The gun fired, and Victor fell over dead.

A statute in the jurisdiction defines murder in the first degree as an intentional and premeditated killing or one occurring during the commission of a common-law felony, and murder in the second degree as all other murder at common law. Manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation or a killing caused by gross negligence.

The most serious crime for which Diane can properly be convicted is

- (A) murder in the first degree, because the killing was intentional and premeditated and, in any event, occurred during commission of the felony of assault with a deadly weapon.
- (B) murder in the second degree, because Diane's act posed a great threat of serious bodily harm.
- (C) manslaughter, because Diane's act was grossly negligent and reckless.
- (D) no crime, because Victor and Diane voluntarily agreed to play a game and each assumed the risk of death.

GO ON TO THE NEXT PAGE.

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

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

The court should rule for

- (A) Abel, because the agreements were oral and violated the statute of frauds.
- (B) Abel, subject to the return of the \$25,000, because the arrangement was still a tenancy.
- (C) Betty, because the doctrine of part performance applies.
- (D) Betty, because the statute of frauds does not apply to oral purchase and sale agreements between landlords and tenants in possession.

63. A statute of State X permits a person's name to appear on the general election ballot as a candidate for statewide public office if the person pays a \$100 filing fee and provides proof from the State Elections Board that he or she was nominated in the immediately preceding primary election by one of the state's two major political parties. It also permits the name of an independent candidate or a candidate of a smaller party to appear on the general election ballot if that person pays a filing fee of \$1,000, and submits petitions signed by at least 3% of the voters who actually cast ballots for the office of governor in the last State X election. State X maintains that these filing requirements are necessary to limit the size of the election ballot, to eliminate frivolous candidacies, and to help finance the high cost of elections.

Historically, very few of State X's voters who are members of racial minority groups have been members of either of the two major political parties. Recently, a new political party has been formed by some of these voters.

Which of the following constitutional provisions would be most helpful to the new political party as a basis for attacking the constitutionality of this statute of State X?

- (A) The First Amendment.
- (B) The Thirteenth Amendment.
- (C) The Fourteenth Amendment.
- (D) The Fifteenth Amendment.

GO ON TO THE NEXT PAGE.

64. Defendant is on trial for the murder of his father. Defendant's defense is that he shot his father accidentally. The prosecutor calls Witness, a police officer, to testify that on two occasions in the year prior to this incident, he had been called to Defendant's home because of complaints of loud arguments between Defendant and his father, and had found it necessary to stop Defendant from beating his father.

The evidence is

- (A) inadmissible, because it is improper character evidence.
- (B) inadmissible, because Witness lacks firsthand knowledge of who started the quarrels.
- (C) admissible to show that Defendant killed his father intentionally.
- (D) admissible to show that Defendant is a violent person.

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

In such action, Brenda should

- (A) lose, because Marge's title had been warranted by an express provision of the mortgage.
- (B) lose, because there was no redemption from the mortgage.
- (C) win, because Brenda is entitled to marshalling.
- (D) win, because the cotenancy of the mortgagors was in common and not joint.

GO ON TO THE NEXT PAGE.

Questions 66–68 are based on the following fact situation.

The police had, over time, accumulated reliable information that Jason operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home.

One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to Jason’s home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to Jason’s house.

The police knocked on Jason’s door and called out, “Police. Open up. We have a search warrant.” After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found Jason with a large brown suitcase with leather straps. They seized the suitcase and put handcuffs on Jason. A search of his person revealed a switchblade knife and a .45-caliber pistol. Jason cursed the police and said, “You never would have caught me with the stuff if it hadn’t been for that lousy snitch Harvey!”

The police then fanned out through the house, looking in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in Jason’s bedroom.

In addition to charges relating to the cocaine in the suitcase, Jason is charged with unlawful possession of weapons.

Jason moves pretrial to suppress the use as evidence of the weapons seized by the police and of the statement he made.

66. As to the switchblade knife and the .45-caliber pistol, Jason’s motion to suppress should be
- (A) granted, because the search and seizure were the result of illegal police conduct in executing the search warrant.
 - (B) granted, because the police did not inform Jason that he was under arrest and did not read him his Miranda rights.
 - (C) denied, because the search and seizure were incident to a lawful arrest.
 - (D) denied, because the police had reasonable grounds to believe that there were weapons in the house.
67. As to Jason’s statement, his motion to suppress should be
- (A) granted, because the entry by forcing open the door was not reasonable.
 - (B) granted, because the police failed to read Jason his Miranda rights.
 - (C) denied, because the statement was volunteered.
 - (D) denied, because the statement was the product of a lawful public safety search.
68. As to the Uzi automatic weapon, Jason’s motion to suppress should be
- (A) granted, because the search exceeded the scope needed to find out if other persons were present.
 - (B) granted, because once the object of the warrant—the brown suitcase—had been found and seized, no further search of the house is permitted.
 - (C) denied, because the police were lawfully in the bedroom and the weapon was immediately identifiable as being subject to seizure.
 - (D) denied, because the police were lawfully in the house and had probable cause to believe that weapons were in the house.

GO ON TO THE NEXT PAGE.

69. Plaintiff is suing Doctor for medical malpractice occasioned by allegedly prescribing an incorrect medication, causing Plaintiff to undergo substantial hospitalization. When Doctor learned of the medication problem, she immediately offered to pay Plaintiff's hospital expenses. At trial, Plaintiff offers evidence of Doctor's offer to pay the costs of his hospitalization.

The evidence of Doctor's offer is

- (A) admissible as a nonhearsay statement of a party.
- (B) admissible, although hearsay, as a statement against interest.
- (C) inadmissible, because it is an offer to pay medical expenses.
- (D) inadmissible, because it is an offer to compromise.

70. Sam and two of his friends were members of a teenage street gang. While they were returning from a dance late one evening, their car collided with a car driven by an elderly woman. After an argument, Sam attacked the elderly woman with his fists and beat her to death. Sam's two friends watched, and when they saw the woman fall to the ground they urged Sam to flee. Sam was eventually apprehended and tried for manslaughter, but the jury could not decide on a verdict.

If Sam's companions are subsequently tried as accomplices to manslaughter, they should be

- (A) acquitted, because Sam was not convicted of the offense.
- (B) acquitted, because they did not assist or encourage Sam to commit the crime.
- (C) convicted, because they urged him to flee.
- (D) convicted, because they made no effort to intervene.

71. Employer retained Doctor to evaluate medical records of prospective employees. Doctor informed Employer that Applicant, a prospective employee, suffered from AIDS. Employer informed Applicant of this and declined to hire her.

Applicant was shocked by this news and suffered a heart attack as a result. Subsequent tests revealed that Applicant in fact did not have AIDS. Doctor had negligently confused Applicant's file with that of another prospective employee.

If Applicant sued Doctor for damages, on which of the following causes of action would Applicant recover?

- I. Invasion of privacy.
- II. Negligent misrepresentation.
- III. Negligent infliction of emotional distress.

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

GO ON TO THE NEXT PAGE.

Questions 72–73 are based on the following fact situation.

Gourmet, a famous chef, entered into a written agreement with his friend Deligor, a well-known interior decorator respected for his unique designs, in which Deligor agreed, for a fixed fee, to design the interior of Gourmet’s new restaurant, and, upon Gourmet’s approval of the design plan, to decorate and furnish the restaurant accordingly. The agreement was silent as to assignment or delegation by either party. Before beginning the work, Deligor sold his decorating business to Newman under an agreement in which Deligor assigned to Newman, and Newman agreed to complete, the Gourmet-Deligor contract. Newman, also an experienced decorator of excellent repute, advised Gourmet of the assignment, and supplied him with information confirming both Newman’s financial responsibility and past commercial success.

72. Is Gourmet obligated to permit Newman to perform the Gourmet-Deligor agreement?
- (A) Yes, because the agreement contained no prohibition against assignment or delegation.
 - (B) Yes, because Gourmet received adequate assurances of Newman’s ability to complete the job.
 - (C) No, because Deligor’s duties were of a personal nature, involving his reputation, taste, and skill.
 - (D) No, because Deligor’s purported delegation to Newman of his obligations to Gourmet effected a novation.

73. If Gourmet allows Newman to perform and approves his design plan, but Newman fails without legal excuse to complete the decorating as agreed, against whom does Gourmet have an enforceable claim for breach of contract?
- (A) Deligor only, because Deligor’s agreement with Newman did not discharge his duty to Gourmet, and Newman made no express promise to Gourmet.
 - (B) Newman only, because Deligor’s duty to Gourmet was discharged when Deligor obtained a skilled decorator (Newman) to perform the Gourmet-Deligor contract.
 - (C) Newman only, because Gourmet was an intended beneficiary of the Deligor-Newman agreement, and Deligor’s duty to Gourmet was discharged when Gourmet permitted Newman to do the work and approved Newman’s design.
 - (D) Either Deligor, because his agreement with Newman did not discharge his duty to Gourmet; or Newman, because Gourmet was an intended beneficiary of the Deligor-Newman agreement.

-
74. Plaintiff sued Defendant Auto Manufacturing for his wife’s death, claiming that a defective steering mechanism on the family car caused it to veer off the road and hit a tree when his wife was driving. Defendant claims that the steering mechanism was damaged in the collision and offers testimony that the deceased wife was intoxicated at the time of the accident.

Testimony concerning the wife’s intoxication is

- (A) admissible to provide an alternate explanation of the accident’s cause.
- (B) admissible as proper evidence of the wife’s character.
- (C) inadmissible, because it is improper to prove character evidence by specific conduct.
- (D) inadmissible, because it is substantially more prejudicial than probative.

75. Otis owned in fee simple Lots 1 and 2 in an urban subdivision. The lots were vacant and unproductive. They were held as a speculation that their value would increase. Otis died and, by his duly probated will, devised the residue of his estate (of which Lots 1 and 2 were part) to Lena for life with remainder in fee simple to Rose. Otis's executor distributed the estate under appropriate court order, and notified Lena that future real estate taxes on Lots 1 and 2 were Lena's responsibility to pay.

Except for the statutes relating to probate and those relating to real estate taxes, there is no applicable statute.

Lena failed to pay the real estate taxes due for Lots 1 and 2. To prevent a tax sale of the fee simple, Rose paid the taxes and demanded that Lena reimburse her for same. When Lena refused, Rose brought an appropriate action against Lena to recover the amount paid.

In such action, Rose should recover

- (A) the amount paid, because a life tenant has the duty to pay current charges.
- (B) the present value of the interest that the amount paid would earn during Lena's lifetime.
- (C) nothing, because Lena's sole possession gave the right to decide whether or not taxes should be paid.
- (D) nothing, because Lena never received any income from the lots.

76. During an altercation between Oscar and Martin at a company picnic, Oscar suffered a knife wound in his abdomen and Martin was charged with assault and attempted murder. At his trial, Martin seeks to offer evidence that he had been drinking at the picnic and was highly intoxicated at the time of the altercation.

In a jurisdiction that follows the common-law rules concerning admissibility of evidence of intoxication, the evidence of Martin's intoxication should be

- (A) admitted without limitation.
- (B) admitted subject to an instruction that it pertains only to the attempted murder charge.
- (C) admitted subject to an instruction that it pertains only to the assault charge.
- (D) excluded altogether.

77. Plaintiff Construction Co. sued Defendant Development Co. for money owed on a cost-plus contract that required notice of proposed expenditures beyond original estimates. Defendant asserted that it never received the required notice. At trial Plaintiff calls its general manager, Witness, to testify that it is Plaintiff's routine practice to send cost overrun notices as required by the contract. Witness also offers a photocopy of the cost overrun notice letter to Defendant on which Plaintiff is relying, and which he has taken from Plaintiff's regular business files.

On the issue of giving notice, the letter copy is

- (A) admissible, though hearsay, under the business record exception.
- (B) admissible, because of the routine practices of the company.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because it is not the best evidence of the notice.

GO ON TO THE NEXT PAGE.

78. Plaintiff sued Defendant under an age discrimination statute, alleging that Defendant refused to hire Plaintiff because she was over age 65. Defendant's defense was that he refused to employ Plaintiff because he reasonably believed that she would be unable to perform the job. Defendant seeks to testify that Employer, Plaintiff's former employer, advised him not to hire Plaintiff because she was unable to perform productively for more than four hours a day.

The testimony of Defendant is

- (A) inadmissible, because Defendant's opinion of Plaintiff's abilities is not based on personal knowledge.
- (B) inadmissible, because Employer's statement is hearsay not within any exception.
- (C) admissible as evidence that Plaintiff would be unable to work longer than four hours per day.
- (D) admissible as evidence of Defendant's reason for refusing to hire Plaintiff.

79. A federal statute provides that the cities in which certain specified airports are located may regulate the rates and services of all limousines that serve those airports, without regard to the origin or destination of the passengers who use the limousines.

The cities of Redville and Greenville are located adjacent to each other in different states. The airport serving both of them is located in Redville and is one of those airports specified in the federal statute. The Redville City Council has adopted a rule that requires any limousines serving the airport to charge only the rates authorized by the Redville City Council.

Airline Limousine Service has a lucrative business transporting passengers between Greenville and the airport in Redville, at much lower rates than those required by the Redville City Council. It transports passengers in interstate traffic only; it does not provide local service within Redville. The new rule adopted by the Redville City Council will require Airline Limousine Service to charge the same rates as limousines operating only in Redville.

Must Airline Limousine Service comply with the new rule of the Redville City Council?

- (A) Yes, because the airport is located in Redville and, therefore, its city council has exclusive regulatory authority over all transportation to and from the airport.
- (B) Yes, because Congress has authorized this form of regulation by Redville and, therefore, removed any constitutional impediments to it that may have otherwise existed.
- (C) No, because the rule would arbitrarily destroy a lucrative existing business and, therefore, would amount to a taking without just compensation.
- (D) No, because Airline Limousine Service is engaged in interstate commerce and this rule is an undue burden on that commerce.

GO ON TO THE NEXT PAGE.

80. While approaching an intersection with the red light against him, Motorist suffered a heart attack that rendered him unconscious. Motorist's car struck Child, who was crossing the street with the green light in her favor. Under the state motor vehicle code, it is an offense to drive through a red traffic light.

Child sued Motorist to recover for her injuries. At trial it was stipulated that (1) immediately prior to suffering the heart attack, Motorist had been driving within the speed limit, had seen the red light, and had begun to slow his car; (2) Motorist had no history of heart disease and no warning of this attack; (3) while Motorist was unconscious, his car ran the red light.

On cross motions for directed verdicts on the issue of liability at the conclusion of the proofs, the court should

- (A) grant Child's motion, because Motorist ran a red light in violation of the motor vehicle code.
- (B) grant Child's motion, because, in the circumstances, reasonable persons would infer that Motorist was negligent.
- (C) grant Motorist's motion, because he had no history of heart disease or warning of the heart attack.
- (D) deny both motions and submit the case to the jury, to determine whether, in the circumstances, Motorist's conduct was that of a reasonably prudent person.

81. In a jurisdiction without a Dead Man's Statute, Parker's estate sued Davidson claiming that Davidson had borrowed from Parker \$10,000, which had not been repaid as of Parker's death. Parker was run over by a truck. At the accident scene, while dying from massive injuries, Parker told Officer Smith to "make sure my estate collects the \$10,000 I loaned to Davidson."

Smith's testimony about Parker's statement is

- (A) inadmissible, because it is more unfairly prejudicial than probative.
- (B) inadmissible, because it is hearsay not within any exception.
- (C) admissible as an excited utterance.
- (D) admissible as a statement under belief of impending death.

GO ON TO THE NEXT PAGE.

Questions 82–83 are based on the following fact situation.

Landholder was land-rich by inheritance but money-poor, having suffered severe losses on bad investments, but still owned several thousand acres of unencumbered timberland. He had a large family, and his normal, fixed personal expenses were high. Pressed for cash, he advertised a proposed sale of standing timber on a choice 2,000-acre tract. The only response was an offer by Logger, the owner of a large, integrated construction enterprise, after inspection of the advertised tract.

82. For this question only, assume the following facts. Logger offered to buy, sever, and remove the standing timber from the advertised tract at a cash price 70% lower than the regionally prevailing price for comparable timber rights. Landholder, by then in desperate financial straits and knowing little about timber values, signed and delivered to Logger a letter accepting the offer.

If, before Logger commences performance, Landholder's investment fortunes suddenly improve and he wishes to get out of the timber deal with Logger, which of the following legal concepts affords his best prospect of effective cancellation?

- (A) Bad faith.
- (B) Equitable estoppel.
- (C) Unconscionability.
- (D) Duress.

83. For this question only, assume the following facts. Logger offered a fair price for the timber rights in question, and Landholder accepted the offer. The 2,000-acre tract was an abundant wild-game habitat and had been used for many years, with Landholder's permission, by area hunters. Logger's performance of the timber contract would destroy this habitat. Without legal excuse and over Landholder's strong objection, Logger repudiated the contract before commencing performance. Landholder could not afford to hire a lawyer and take legal action, and made no attempt to assign any cause of action he might have had against Logger.

If Logger is sued for breach of the contract by Landholder's next-door neighbor, whose view of a nearby lake is obscured by the standing timber, the neighbor will probably

- (A) lose, as only an incidental beneficiary, if any, of the Logger-Landholder contract.
- (B) lose, as a maintainer of nuisance litigation.
- (C) prevail, as a third-party intended beneficiary of the Logger-Landholder contract.
- (D) prevail, as a surrogate for Landholder in view of his inability to enforce the contract.

GO ON TO THE NEXT PAGE.

84. A federal statute with inseverable provisions established a new five-member National Prosperity Board with broad regulatory powers over the operation of the securities, banking, and commodities industries, including the power to issue rules with the force of law. The statute provides for three of the board members to be appointed by the President with the advice and consent of the Senate. They serve seven-year terms and are removable only for good cause. The other two members of the board were designated in the statute to be the respective general counsel of the Senate and House of Representatives Committees on Government Operations. The statute stipulated that they were to serve on the board for as long as they continued in those positions.

Following all required administrative procedures, the board issued an elaborate set of rules regulating the operations of all banks, securities dealers, and commodities brokers. The Green Light Securities Company, which was subject to the board's rules, sought a declaratory judgment that the rules were invalid because the statute establishing the board was unconstitutional.

In this case, the court should rule that the statute establishing the National Prosperity Board is

- (A) unconstitutional, because all members of federal boards having broad powers that are quasi-legislative in nature, such as rulemaking, must be appointed by Congress.
- (B) unconstitutional, because all members of federal boards exercising executive powers must be appointed by the President or in a manner otherwise consistent with the appointments clause of Article II.
- (C) constitutional, because the necessary and proper clause authorizes Congress to determine the means by which members are appointed to boards created by Congress under its power to regulate commerce among the states.
- (D) constitutional, because there is a substantial nexus between the power of Congress to legislate for the general welfare and the means specified by Congress in this statute for the appointment of board members.

GO ON TO THE NEXT PAGE.

85. By a writing, Oner leased his home, Blackacre, to Tenn for a term of three years, ending December 31 of last year, at the rent of \$1,000 per month. The lease provided that Tenn could sublet and assign.

Tenn lived in Blackacre for one year and paid the rent promptly. After one year, Tenn leased Blackacre to Agrit for one year at a rent of \$1,000 per month.

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

At the end of the lease term, Oner brought an appropriate action against both Tenn and Agrit to recover \$24,000, the unpaid rent.

In such action Oner is entitled to a judgment

- (A) against Tenn individually for \$24,000, and no judgment against Agrit.
- (B) against Tenn individually for \$18,000, and against Agrit individually for \$6,000.
- (C) against Tenn for \$12,000, and against Tenn and Agrit jointly and severally for \$12,000.
- (D) against Tenn individually for \$18,000, and against Tenn and Agrit jointly and severally for \$6,000.

86. In a trial to a jury, Owner proved that Power Company's negligent maintenance of a transformer caused a fire that destroyed his restaurant. The jury returned a verdict for Owner in the amount of \$450,000 for property loss and \$500,000 for emotional distress. The trial judge entered judgment in those amounts. Power Company appealed that part of the judgment awarding \$500,000 for emotional distress.

On appeal, the judgment should be

- (A) affirmed, because Power Company negligently caused Owner's emotional distress.
- (B) affirmed, because harm arising from emotional distress is as real as harm caused by physical impact.
- (C) reversed, because the law does not recognize a claim for emotional distress incident to negligently caused property loss.
- (D) reversed, unless the jury found that Owner suffered physical harm as a consequence of the emotional distress caused by his property loss.

GO ON TO THE NEXT PAGE.

87. Bill owned in fee simple Lot 1 in a properly approved subdivision, designed and zoned for industrial use. Gail owned the adjoining Lot 2 in the same subdivision. The plat of the subdivision was recorded as authorized by statute.

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

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

Bill brought an appropriate action against Gail to recover damages resulting from the injuries to the building on Lot 1.

In such lawsuit, judgment should be for

- (A) Bill, if, but only if, the subsidence would have occurred without the weight of the building on Lot 1.
- (B) Bill, because a right for support, appurtenant to Lot 1, had been acquired by adverse possession or prescription.
- (C) Gail, because Lots 1 and 2 are urban land, as distinguished from rural land and, therefore, under the circumstances Bill had the duty to protect any improvements on Lot 1.
- (D) Gail, because the construction and the use to be made of the building were both authorized by the applicable law.

88. Defendant is charged with murder in connection with a carjacking incident during which Defendant allegedly shot Victim while attempting to steal Victim's car. The prosecutor calls Victim's four-year-old son, whose face was horribly disfigured by the same bullet, to testify that Defendant shot his father and him.

The son's testimony should be

- (A) admitted, provided the prosecutor first provides evidence that persuades the judge that the son is competent to testify despite his tender age.
- (B) admitted, provided there is sufficient basis for believing that the son has personal knowledge and understands his obligation to testify truthfully.
- (C) excluded, because it is insufficiently probative in view of the son's tender age.
- (D) excluded, because it is more unfairly prejudicial than probative.

GO ON TO THE NEXT PAGE.

89. A federal statute provides that the United States Supreme Court has authority to review any case filed in a United States Court of Appeals, even though that case has not yet been decided by the court of appeals.

The Environmental Protection Agency (EPA), an agency in the executive branch of the federal government, issued an important environmental rule. Although the rule had not yet been enforced against them, companies that would be adversely affected by the rule filed a petition for review of the rule in a court of appeals, seeking a declaration that the rule was invalid solely because it was beyond the statutory authority of the EPA. The companies made no constitutional claim. A statute specifically provides for direct review of EPA rules by a court of appeals without any initial action in a district court.

The companies have filed a petition for a writ of certiorari in the Supreme Court requesting immediate review of this case by the Supreme Court before the court of appeals has actually decided the case. The EPA acknowledges that the case is important enough to warrant Supreme Court review and that it should be decided promptly, but it asks the Supreme Court to dismiss the petition on jurisdictional grounds.

The best constitutional argument in support of the EPA's request is that

- (A) the case is not within the original jurisdiction of the Supreme Court as defined by Article III, and it is not a proper subject of that court's appellate jurisdiction because it has not yet been decided by any lower court.
- (B) the case is appellate in nature, but it is beyond the appellate jurisdiction of the Supreme Court, because Article III states that its jurisdiction extends only to cases arising under the Constitution.
- (C) Article III precludes federal courts from reviewing the validity of any federal agency rule in any proceeding other than an action to enforce the rule.
- (D) Article III provides that all federal cases, except those within the original jurisdiction of the Supreme Court, must be initiated by an action in a federal district court.

GO ON TO THE NEXT PAGE.

90. Patron ate a spicy dinner at Restaurant on Sunday night. He enjoyed the food and noticed nothing unusual about the dinner.

Later that evening, Patron had an upset stomach. He slept well through the night, went to work the next day, and ate three meals. His stomach discomfort persisted, and by Tuesday morning he was too ill to go to work.

Eventually, Patron consulted his doctor, who found that Patron was infected with a bacterium that can be contracted from contaminated food. Food can be contaminated when those who prepare it do not adequately wash their hands.

Patron sued Restaurant for damages. He introduced testimony from a health department official that various health code violations had been found at Restaurant both before and after Patron's dinner, but that none of Restaurant's employees had signs of bacterial infection when they were tested one month after the incident.

Restaurant's best argument in response to Patron's suit would be that

- (A) no one else who ate at Restaurant on Sunday complained about stomach discomfort.
- (B) Restaurant instructs its employees to wash their hands carefully and is not responsible if any employee fails to follow these instructions.
- (C) Patron has failed to establish that Restaurant's food caused his illness.
- (D) Patron assumed the risk of an upset stomach by choosing to eat spicy food.

91. In a jurisdiction that has abolished the felony-murder rule, but otherwise follows the common law of murder, Sally and Ralph, both armed with automatic weapons, went into a bank to rob it. Ralph ordered all the persons in the bank to lie on the floor. When some were slow to obey, Sally, not intending to hit anyone, fired about 15 rounds into the air. One of these ricocheted off a stone column and struck and killed a customer in the bank.

Sally and Ralph were charged with murder of the customer.

Which of the following is correct?

- (A) Sally can be convicted of murder, because she did the act of killing, but Ralph cannot be convicted of either murder or manslaughter.
- (B) Neither can be guilty of murder, but both can be convicted of manslaughter based upon an unintentional homicide.
- (C) Sally can be convicted only of manslaughter, but Ralph cannot be convicted of murder or manslaughter.
- (D) Both can be convicted of murder.

GO ON TO THE NEXT PAGE.

92. In recent years, several large corporations incorporated and headquartered in State A have suddenly been acquired by out-of-state corporations that have moved all of their operations out of State A. Other corporations incorporated and headquartered in State A have successfully resisted such attempts at acquisition by out-of-state corporations, but they have suffered severe economic injury during those acquisition attempts.

In an effort to preserve jobs in State A and to protect its domestic corporations against their sudden acquisition by out-of-state purchasers, the legislature of State A enacts a statute governing acquisitions of shares in all corporations incorporated in State A. This statute requires that any acquisition of more than 25% of the voting shares of a corporation incorporated in State A that occurs over a period of less than one year must be approved by the holders of record of a majority of the shares of the corporation as of the day before the commencement of the acquisition of those shares. The statute expressly applies to acquisitions of State A corporations by both in-state and out-of-state entities.

Assume that no federal statute applies.

Is this statute of State A constitutional?

- (A) No, because one of the purposes of the statute is to prevent out-of-state entities from acquiring corporations incorporated and headquartered in State A.
- (B) No, because the effect of the statute will necessarily be to hinder the acquisition of State A corporations by other corporations, many of whose shareholders are not residents of State A and, therefore, it will adversely affect the interstate sale of securities.
- (C) Yes, because the statute imposes the same burden on both in-state and out-of-state entities wishing to acquire a State A corporation, it regulates only the acquisition of State A corporations, and it does not create an impermissible risk of inconsistent regulation on this subject by different states.
- (D) Yes, because corporations exist only by virtue of state law and, therefore, the negative implications of the commerce clause do not apply to state regulations governing their creation and acquisition.

GO ON TO THE NEXT PAGE.

93. A written construction contract began with the following recital: "This Agreement, between Land, Inc. (hereafter called 'Owner'), and Builder, Inc., and Boss, its President (hereafter called 'Contractor'), witnesseth:" The signatures to the contract appeared in the following format:

LAND, INC.
By /s/ Oscar Land
President

BUILDER, INC.
By /s/ George Mason
Vice President
/s/ Mary Boss, President
Mary Boss

Builder, Inc., became insolvent and defaulted. Land, Inc., sued Boss individually for the breach, and at the trial Boss proffered evidence from the pre-contract negotiations that only Builder, Inc., was to be legally responsible for performing the contract.

If the court finds the contract to be completely integrated, is Boss's proffered evidence admissible?

- (A) Yes, because the writing is ambiguous as to whether or not Boss was intended individually to be a contracting party.
- (B) Yes, because the evidence would contradict neither the recital nor the form of Boss's signature.
- (C) No, because the legal effect of Boss's signature cannot be altered by evidence of prior understandings.
- (D) No, because of the application of the "four corners" rule, under which the meaning of a completely integrated contract must be ascertained solely from its own terms.

94. When Parents were told that their child, Son, should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged \$300, determined that Son had a learning disability. Based upon the report, the school board placed Son in special classes. At an open meeting of the school board, Parents asked that the \$300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning Son by name.

In a privacy action brought by Son's legal representative against the newspaper, the plaintiff will

- (A) recover, because the story is not newsworthy.
- (B) recover, because Son is under the age of consent.
- (C) not recover, if the story is a fair and accurate report of what transpired at the meeting.
- (D) not recover, if Parents knew that the reporter was present.

GO ON TO THE NEXT PAGE.

95. On trial for murdering her husband, Defendant testified she acted in self-defense. Defendant calls Expert, a psychologist, to testify that under hypnosis Defendant had described the killing, and that in Expert's opinion Defendant had been in fear for her life at the time of the killing.

Is Expert's testimony admissible?

- (A) Yes, because Expert was able to ascertain that Defendant was speaking truthfully.
- (B) Yes, because it reports a prior consistent statement by a witness (Defendant) subject to examination concerning it.
- (C) No, because reliance on information tainted by hypnosis is unconstitutional.
- (D) No, because it expresses an opinion concerning Defendant's mental state at the time of the killing.

96. The legislature of State X enacts a statute that it believes reconciles the state's interest in the preservation of human life with a woman's right to reproductive choice. That statute permits a woman to have an abortion on demand during the first trimester of pregnancy but prohibits a woman from having an abortion after that time unless her physician determines that the abortion is necessary to protect the woman's life or health.

If challenged on constitutional grounds in an appropriate court, this statute will probably be held

- (A) constitutional, because the state has made a rational policy choice that creates an equitable balance between the compelling state interest in protecting fetal life and the fundamental right of a woman to reproductive choice.
- (B) constitutional, because recent rulings by the United States Supreme Court indicate that after the first trimester a fetus may be characterized as a person whose right to life is protected by the due process clause of the Fourteenth Amendment.
- (C) unconstitutional, because the state has, without adequate justification, placed an undue burden on the fundamental right of a woman to reproductive choice prior to fetal viability.
- (D) unconstitutional, because a statute unqualifiedly permitting abortion at one stage of pregnancy, and denying it at another with only minor exceptions, establishes an arbitrary classification in violation of the equal protection clause of the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

97. Olive owned Blackacre, a single-family residence. Fifteen years ago, Olive conveyed a life estate in Blackacre to Lois.

Fourteen years ago, Lois, who had taken possession of Blackacre, leased Blackacre to Trent for a term of 15 years at the monthly rental of \$500.

Eleven years ago, Lois died intestate leaving Ron as her sole heir.

Trent regularly paid rent to Lois and, after Lois's death, to Ron until last month.

The period in which to acquire title by adverse possession in the jurisdiction is 10 years.

In an appropriate action, Trent, Olive, and Ron each asserted ownership of Blackacre.

The court should hold that title in fee simple is in

- (A) Olive, because Olive held a reversion and Lois has died.
- (B) Ron, because Lois asserted a claim adverse to Olive when Lois executed a lease to Trent.
- (C) Ron, because Trent's occupation was attributable to Ron, and Lois died 11 years ago.
- (D) Trent, because of Trent's physical occupancy and because Trent's term ended with Lois's death.

98. While browsing in a clothing store, Alice decided to take a purse without paying for it. She placed the purse under her coat and took a couple of steps toward the exit. She then realized that a sensor tag on the purse would set off an alarm. She placed the purse near the counter from which she had removed it.

Alice has committed

- (A) no crime, because the purse was never removed from the store.
- (B) no crime, because she withdrew from her criminal enterprise.
- (C) only attempted larceny, because she intended to take the purse out of the store.
- (D) larceny, because she took the purse from its original location and concealed it with the intent to steal.

GO ON TO THE NEXT PAGE.

Questions 99–100 are based on the following fact situation.

Adam's car sustained moderate damage in a collision with a car driven by Basher. The accident was caused solely by Basher's negligence. Adam's car was still drivable after the accident. Examining the car the next morning, Adam could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

Adam then took the car to Mechanic, who owns and operates a body shop, and arranged with Mechanic to repair the damage. During their discussion Adam neglected to mention the gasoline leakage. Thereafter, while Mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. Mechanic was severely burned.

Mechanic has brought an action to recover damages against Adam and Basher. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

99. In this action, will Mechanic obtain a judgment against Basher?

- (A) No, unless there is evidence that Basher was aware of the gasoline leak.
- (B) No, if Mechanic would not have been harmed had Adam warned him about the gasoline leak.
- (C) Yes, unless Mechanic was negligent in not discovering the gasoline leak himself.
- (D) Yes, if Mechanic's injury was a proximate consequence of Basher's negligent driving.

100. In this action, will Mechanic obtain a judgment against Adam?

- (A) No, because it was Mechanic's job to inspect the vehicle and repair whatever needed repair.
- (B) No, unless Adam was aware of the risk that the gasoline leak represented.
- (C) Yes, if a reasonable person in Adam's position would have warned Mechanic about the gasoline leak.
- (D) Yes, because the car was unreasonably dangerous when Adam delivered it to Mechanic.

STOP

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

**PM BOOK
TIME—3 h OURS**

Directions: Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives. Answer all questions according to the generally accepted view, except where otherwise noted.

For the purposes of this test, you are to assume that Articles 1 and 2 of the Uniform Commercial Code have been adopted. You are also to assume relevant application of Article 9 of the UCC concerning fixtures. The Federal Rules of Evidence are deemed to control. The terms “Constitution,” “constitutional,” and “unconstitutional” refer to the federal Constitution unless indicated to the contrary. You are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. You should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

101. At 11:00 p.m., John and Marsha were accosted in the entrance to their apartment building by Dirk, who was armed as well as masked. Dirk ordered the couple to take him into their apartment. After they entered the apartment, Dirk forced Marsha to bind and gag her husband John and then to open a safe which contained a diamond necklace. Dirk then tied her up and fled with the necklace. He was apprehended by apartment building security guards. Before the guards could return to the apartment, but after Dirk was arrested, John, straining to free himself, suffered a massive heart attack and died.

Dirk is guilty of

- (A) burglary, robbery, and murder.
- (B) robbery and murder only.
- (C) burglary and robbery only.
- (D) robbery only.

102. Plaintiff sued Defendant for injuries suffered in a car accident allegedly caused by brakes that had been negligently repaired by Defendant. At a settlement conference, Plaintiff exhibited the brake shoe that caused the accident and pointed out the alleged defect to an expert, whom Defendant had brought to the conference. No settlement was reached. At trial, the brake shoe having disappeared, Plaintiff seeks to testify concerning the condition of the shoe.

Plaintiff’s testimony is

- (A) admissible, because Defendant’s expert had been able to examine the shoe carefully.
- (B) admissible, because Plaintiff had personal knowledge of the shoe’s condition.
- (C) inadmissible, because the brake shoe was produced and examined as a part of settlement negotiations.
- (D) inadmissible, unless Plaintiff establishes that the disappearance was not his fault.

GO ON TO THE NEXT PAGE.

Questions 103–104 are based on the following fact situation.

Fixtures, Inc., in a signed writing, contracted with Apartments for the sale to Apartments of 50 identical sets of specified bathroom fixtures, 25 sets to be delivered on March 1, and the remaining 25 sets on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

103. Which of the following statements is correct?

- (A) Fixtures must tender 25 sets to Apartments at Apartments' place of business on March 1, but does not have to turn them over to Apartments until Apartments pays the contract price for the 25 sets.
- (B) Fixtures has no duty to deliver the 25 sets on March 1 at Fixtures' place of business unless Apartments tenders the contract price for the 25 sets on that date.
- (C) Fixtures must deliver 25 sets on March 1, and Apartments must pay the contract price for the 25 sets within a reasonable time after their delivery.
- (D) Fixtures must deliver 25 sets on March 1, but Apartments' payment is due only upon the delivery of all 50 sets.

104. For this question only, make the following assumptions. On March 1, Fixtures tendered 24 sets to Apartments and explained, "One of the 25 sets was damaged in transit from the manufacturer to us, but we will deliver a replacement within 5 days."

Which of the following statements is correct?

- (A) Apartments is entitled to accept any number of the 24 sets, reject the rest, and cancel the contract both as to any rejected sets and the lot due on April 1.
- (B) Apartments is entitled to accept any number of the 24 sets and to reject the rest, but is not entitled to cancel the contract as to any rejected sets or the lot due on April 1.
- (C) Apartments must accept the 24 sets but is entitled to cancel the rest of the contract.
- (D) Apartments must accept the 24 sets and is not entitled to cancel the rest of the contract.

GO ON TO THE NEXT PAGE.

105. Defendant is on trial for nighttime breaking and entering of a warehouse. The warehouse owner had set up a camera to take infrared pictures of any intruders. After an expert establishes the reliability of infrared photography, the prosecutor offers the authenticated infrared picture of the intruder to show the similarities to Defendant.

The photograph is

- (A) admissible, provided an expert witness points out to the jury the similarities between the person in the photograph and Defendant.
- (B) admissible, allowing the jury to compare the person in the photograph and Defendant.
- (C) inadmissible, because there was no eyewitness to the scene available to authenticate the photograph.
- (D) inadmissible, because infrared photography deprives a defendant of the right to confront witnesses.

106. Olivia owned Blackacre, her home. Her daughter, Dawn, lived with her and always referred to Blackacre as “my property.” Two years ago, Dawn, for a valuable consideration, executed and delivered to Bruce an instrument in the proper form of a warranty deed purporting to convey Blackacre to Bruce in fee simple, reserving to herself an estate for two years in Blackacre. Bruce promptly and properly recorded his deed.

One year ago, Olivia died and by will, duly admitted to probate, left her entire estate to Dawn.

One month ago, Dawn, for a valuable consideration, executed and delivered to Carl an instrument in the proper form of a warranty deed purporting to convey Blackacre to Carl, who promptly and properly recorded the deed. Dawn was then in possession of Blackacre and Carl had no actual knowledge of the deed to Bruce. Immediately thereafter, Dawn gave possession to Carl.

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

Last week, Dawn fled the jurisdiction. Upon learning the facts, Carl brought an appropriate action against Bruce to quiet title to Blackacre.

If Carl wins, it will be because

- (A) Dawn had nothing to convey to Bruce two years ago.
- (B) Dawn’s deed to Bruce was not to take effect until after Dawn’s deed to Carl.
- (C) Carl was first in possession.
- (D) Dawn’s deed to Bruce was not in Carl’s chain of title.

GO ON TO THE NEXT PAGE.

107. Grace, while baby-sitting one night, noticed that Sam, who lived next door, had left his house but that the door did not close completely behind him. Grace said to Roy, the 11-year-old boy she was baby-sitting with, "Let's play a game. You go next door and see if you can find my portable television set, which I lent to Sam, and bring it over here." Grace knew that Sam had a portable television set and Grace planned to keep the set for herself. Roy thought the set belonged to Grace, went next door, found the television set, and carried it out the front door. At that moment, Sam returned home and discovered Roy in his front yard with the television set. Roy explained the "game" he and Grace were playing. Sam took back his television set and called the police.

Grace is

- (A) not guilty of larceny or attempted larceny, because Roy did not commit any crime.
- (B) not guilty of larceny but guilty of attempted larceny, because she never acquired possession of the television set.
- (C) guilty of larceny as an accessory to Roy.
- (D) guilty of larceny by the use of an innocent agent.

108. The warden of State Prison prohibits the photographing of the face of any prisoner without the prisoner's consent. Photographer, a news photographer, wanted to photograph Mobster, a notorious organized crime figure incarcerated at State Prison. To circumvent the warden's prohibition, Photographer flew over the prison exercise yard and photographed Mobster. Prisoner, who was imprisoned for a technical violation of a regulatory statute, happened to be standing next to Mobster when the photograph was taken.

When the picture appeared in the press, Prisoner suffered severe emotional distress because he believed that his business associates and friends would think he was consorting with gangsters. Prisoner suffered no physical harm as the result of his emotional distress. Prisoner brought an action against Photographer for intentional or reckless infliction of emotional distress.

What is the best argument that Photographer can make in support of a motion for summary judgment?

- (A) No reasonable person could conclude that Photographer intended to photograph Prisoner.
- (B) Prisoner did not suffer any physical injury arising from the emotional distress.
- (C) As a news photographer, Photographer was privileged to take photographs that others could not.
- (D) No reasonable person could conclude that Photographer's conduct was extreme and outrageous as to Prisoner.

GO ON TO THE NEXT PAGE.

109. The vaccination of children against childhood contagious diseases (such as measles, diphtheria and whooping cough) has traditionally been a function of private doctors and local and state health departments. Because vaccination rates have declined in recent years, especially in urban areas, the President proposes to appoint a Presidential Advisory Commission on Vaccination which would be charged with conducting a national publicity campaign to encourage vaccination as a public health measure. No federal statute authorizes or prohibits this action by the President. The activities of the Presidential Advisory Commission on Vaccination would be financed entirely from funds appropriated by Congress to the Office of the President for "such other purposes as the President may think appropriate."

May the President constitutionally create such a commission for this purpose?

- (A) Yes, because the President has plenary authority to provide for the health, safety, and welfare of the people of the United States.
- (B) Yes, because this action is within the scope of executive authority vested in the President by the Constitution, and no federal statute prohibits it.
- (C) No, because the protection of children against common diseases by vaccination is a traditional state function and, therefore, is reserved to the states by the Tenth Amendment.
- (D) No, because Congress has not specifically authorized the creation and support of such a new federal agency.

110. Defendant is on trial for extorting \$10,000 from Victim. An issue is the identification of the person who made a telephone call to Victim. Victim is prepared to testify that the caller had a distinctive accent like Defendant's, but that he cannot positively identify the voice as Defendant's. Victim recorded the call but has not brought the tape to court, although its existence is known to Defendant.

Victim's testimony is

- (A) inadmissible, because Victim cannot sufficiently identify the caller.
- (B) inadmissible, because the tape recording of the conversation is the best evidence.
- (C) admissible, because Defendant waived the "best evidence" rule by failing to subpoena the tape.
- (D) admissible, because Victim's lack of certainty goes to the weight to be given Victim's testimony, not to its admissibility.

GO ON TO THE NEXT PAGE.

111. Owner owned Greenacre, a tract of land, in fee simple. Owner executed an instrument in the proper form of a deed, purporting to convey Greenacre to Purchaser in fee simple. The instrument recited that the conveyance was in consideration of "\$5 cash in hand paid and for other good and valuable consideration." Owner handed the instrument to Purchaser and Purchaser promptly and properly recorded it.

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

In such action, Owner should

- (A) lose, because any remedy Owner might have had was lost when the instrument was recorded.
- (B) lose, because the validity of conveyance of land does not depend upon consideration being paid, whether recited or not.
- (C) prevail, because the recitation of consideration paid may be contradicted by parol evidence.
- (D) prevail, because recordation does not make a void instrument effective.

112. Vintner is the owner of a large vineyard and offers balloon rides to visitors who wish to tour the grounds from the air. During one of the rides, Vintner was forced to make a crash landing on his own property. Without Vintner's knowledge or consent, Trespasser had entered the vineyard to camp for a couple of days. Trespasser was injured when he was hit by the basket of the descending balloon.

If Trespasser sues Vintner to recover damages for his injuries, will Trespasser prevail?

- (A) No, unless the crash landing was made necessary by negligence on Vintner's part.
- (B) No, unless Vintner could have prevented the injury to Trespasser after becoming aware of Trespasser's presence.
- (C) Yes, because even a trespasser may recover for injuries caused by an abnormally dangerous activity.
- (D) Yes, if the accident occurred at a place which Vintner knew was frequented by intruders.

GO ON TO THE NEXT PAGE.

113. Matt and his friend Fred were watching a football game at Matt's home when they began to argue. Fred became abusive, and Matt asked him to leave. Fred refused, walked into the kitchen, picked up a knife, and said he would cut Matt's heart out. Matt pulled a gun from under the sofa, walked to his front door, opened it, and again told Fred to leave. Fred again refused. Instead, he walked slowly toward Matt, brandishing the knife in a threatening manner. Matt, rather than running out the door himself, shot in Fred's direction, intending only to scare him. However, the bullet struck Fred, killing him instantly.

Charged with murder, Matt should be

- (A) convicted, because the use of deadly force was unreasonable under the circumstances.
 - (B) convicted, because he had a clear opportunity and duty to retreat.
 - (C) acquitted, because he did not intend to kill Fred.
 - (D) acquitted, because he was acting in self-defense and had no duty to retreat.
114. Central City in the state of Green is a center for businesses that assemble personal computers. Components for these computers are manufactured elsewhere in Green and in other states, then shipped to Central City, where the computers are assembled. An ordinance of Central City imposes a special license tax on all of the many companies engaged in the business of assembling computers in that city. The tax payable by each such company is a percentage of the company's gross receipts.

The Green statute that authorizes municipalities to impose this license tax has a "Green content" provision. To comply with this provision of state law, the Central City license tax ordinance provides that the tax paid by any assembler of computers subject to this tax ordinance will be reduced by a percentage equal to the proportion of computer components manufactured in Green.

Assembler is a company that assembles computers in Central City and sells them from its offices in Central City to buyers throughout the United States. All of the components of its computers come from outside the state of Green. Therefore, Assembler must pay the Central City license tax in full without receiving any refund. Other Central City computer assemblers use components manufactured in Green in varying proportions and, therefore, are entitled to partial reductions of their Central City license tax payments.

Following prescribed procedure, Assembler brings an action in a proper court asking to have Central City's special license tax declared unconstitutional on the ground that it is inconsistent with the negative implications of the commerce clause.

In this case, the court should rule

- (A) against Assembler, because the tax falls only on companies resident in Central City and, therefore, does not discriminate against or otherwise adversely affect interstate commerce.
- (B) against Assembler, because the commerce clause does not interfere with the right of a state to foster and support businesses located within its borders by encouraging its residents to purchase the products of those businesses.
- (C) for Assembler, because any tax on a company engaged in interstate commerce, measured in whole or in part by its gross receipts, is a per se violation of the negative implications of the commerce clause.
- (D) for Assembler, because the tax improperly discriminates against interstate commerce by treating in-state products more favorably than out-of-state products.

GO ON TO THE NEXT PAGE.

115. Hannah, who was homeless, broke into the basement of a hotel and fell asleep. She was awakened by a security guard, who demanded that she leave. As Hannah was leaving, she cursed the security guard. Angered, the guard began to beat Hannah on her head with his flashlight. After the second blow, Hannah grabbed a fire extinguisher and sprayed the guard in his face, causing him to lose his sight in one eye.

The jurisdiction defines aggravated assault as assault with intent to cause serious bodily injury.

The most serious crime for which Hannah could properly be convicted is

- (A) aggravated assault.
- (B) burglary.
- (C) assault.
- (D) trespass.

116. On March 1, Mechanic contracted to repair Textiles' knitting machine and to complete the job by March 6. On March 2, Textiles contracted to manufacture and deliver specified cloth to Knitwear on March 15. Textiles knew that it would have to use the machine then under repair to perform this contract. Because the Knitwear order was for a rush job, Knitwear and Textiles included in their contract a liquidated damages clause, providing that Textiles would pay \$5,000 for each day's delay in delivery after March 15.

Mechanic was inexcusably five days late in repairing the machine, and, as a result, Textiles was five days late in delivering the cloth to Knitwear. Textiles paid \$25,000 to Knitwear as liquidated damages and now sues Mechanic for \$25,000. Both Mechanic and Textiles knew when making their contract on March 1 that under ordinary circumstances Textiles would sustain little or no damages of any kind as a result of a five-day delay in the machine repair.

Assuming that the \$5,000 liquidated damages clause in the Knitwear-Textiles contract is valid, which of the following arguments will serve as Mechanic's best defense to Textiles' action?

- (A) Time was not of the essence in the Mechanic-Textiles contract.
- (B) Mechanic had no reason to foresee on March 1 that Knitwear would suffer consequential damages in the amount of \$25,000.
- (C) By entering into the Knitwear contract while knowing that its knitting machine was being repaired, Textiles assumed the risk of any delay loss to Knitwear.
- (D) In all probability, the liquidated damages paid by Textiles to Knitwear are not the same amount as the actual damages sustained by Knitwear in consequence of Textiles' late delivery of the cloth.

GO ON TO THE NEXT PAGE.

117. Plaintiff sued Defendant for personal injuries suffered in a train-automobile collision. Plaintiff called an eyewitness, who testified that the train was going 20 miles per hour. Defendant then offers the testimony of an experienced police accident investigator that, based on his training and experience and on his examination of the physical evidence, it is his opinion that the train was going between 5 and 10 miles per hour.

Testimony by the investigator is

- (A) improper, because there cannot be both lay and expert opinion on the same issue.
 - (B) improper, because the investigator is unable to establish the speed with a sufficient degree of scientific certainty.
 - (C) proper, because a police accident investigator has sufficient expertise to express an opinion on speed.
 - (D) proper, because Plaintiff first introduced opinion evidence as to speed.
118. Farmer owns a small farm with several head of cattle, which are kept in a fenced grazing area. One day the cattle were frightened by a thunderstorm, an occasional occurrence in the area. The cattle broke through the fence, entered onto Neighbor's property, and severely damaged Neighbor's crops. Under the law of the state, landowners are not required to erect fences to prevent the intrusion of livestock.

If Neighbor sues Farmer to recover for the damage done to his crops, will Neighbor prevail?

- (A) Yes, because Farmer's cattle caused the damage to Neighbor's crops.
- (B) Yes, if Farmer's cattle had panicked during previous thunderstorms.
- (C) No, unless the fence was negligently maintained by Farmer.
- (D) No, because the thunderstorm was a force of nature.

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

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

Addy brought an appropriate action against Ven to recover the \$50,000. In answer, Ven made no affirmative claim but asserted that he was entitled to retain the \$50,000 as liquidated damages as provided in the contract.

In such lawsuit, judgment should be for

- (A) Addy, because the provision relied upon by Ven is unenforceable.
- (B) Addy, because the death of Pur terminated the contract as a matter of law.
- (C) Ven, because the court should enforce the express agreement of the contracting parties.
- (D) Ven, because the doctrine of equitable conversion prevents termination of the contract upon the death of a party.

GO ON TO THE NEXT PAGE.

120. An ordinance of Central City requires every operator of a taxicab in the city to have a license and permits revocation of that license only for “good cause.” The Central City taxicab operator’s licensing ordinance conditions the issuance of such a license on an agreement by the licensee that the licensee “not display in or on his or her vehicle any bumper sticker or other placard or sign favoring a particular candidate for any elected municipal office.” The ordinance also states that it imposes this condition in order to prevent the possible imputation to the city council of the views of its taxicab licensees and that any licensee who violates this condition shall have his or her license revoked.

Driver, the holder of a Central City taxicab operator’s license, decorates his cab with bumper stickers and other signs favoring specified candidates in a forthcoming election for municipal offices. A proceeding is initiated against him to revoke his taxicab operator’s license on the sole basis of that admitted conduct.

In this proceeding, does Driver have a meritorious defense based on the United States Constitution?

- (A) No, because he accepted the license with knowledge of the condition and, therefore, has no standing to contest it.
- (B) No, because a taxicab operator’s license is a privilege and not a right and, therefore, is not protected by the due process clause of the Fourteenth Amendment.
- (C) Yes, because such a proceeding threatens Driver with a taking of property, his license, without just compensation.
- (D) Yes, because the condition imposed on taxicab operators’ licenses restricts political speech based wholly on its content, without any adequate governmental justification.

121. Pat had been under the care of a cardiologist for three years prior to submitting to an elective operation that was performed by Surgeon. Two days thereafter, Pat suffered a stroke, resulting in a coma, caused by a blood clot that lodged in her brain. When it appeared that she had entered a permanent vegetative state, with no hope of recovery, the artificial life-support system that had been provided was withdrawn, and she died a few hours later. The withdrawal of artificial life support had been requested by her family, and duly approved by a court. Surgeon was not involved in that decision, or in its execution.

The administrator of Pat’s estate thereafter filed a wrongful death action against Surgeon, claiming that Surgeon was negligent in having failed to consult a cardiologist prior to the operation. At the trial the plaintiff offered evidence that accepted medical practice would require examination of the patient by a cardiologist prior to the type of operation that Surgeon performed.

In this action, the plaintiff should

- (A) prevail, if Surgeon was negligent in failing to have Pat examined by a cardiologist prior to the operation.
- (B) prevail, if the blood clot that caused Pat’s death was caused by the operation which Surgeon performed.
- (C) not prevail, absent evidence that a cardiologist, had one examined Pat before the operation, would probably have provided advice that would have changed the outcome.
- (D) not prevail, because Surgeon had nothing to do with the withdrawal of artificial life support, which was the cause of Pat’s death.

GO ON TO THE NEXT PAGE.

122. At Devlin's trial for burglary, Jaron supported Devlin's alibi that they were fishing together at the time of the crime. On cross-examination, Jaron was asked whether his statement on a credit card application that he had worked for his present employer for the last five years was false. Jaron denied that the statement was false.

The prosecutor then calls Wilcox, the manager of the company for which Jaron works, to testify that although Jaron had been first employed five years earlier and is now employed by the company, there had been a three-year period during which he had not been so employed.

The testimony of Wilcox is

- (A) admissible, in the judge's discretion, because Jaron's credibility is a fact of major consequence to the case.
- (B) admissible, as a matter of right, because Jaron "opened the door" by his denial on cross-examination.
- (C) inadmissible, because whether Jaron lied in his application is a matter that cannot be proved by extrinsic evidence.
- (D) inadmissible, because the misstatement by Jaron could have been caused by misunderstanding of the application form.

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

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

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

Cred brought an appropriate action to enforce her lien against Blackacre in Bryer's hands.

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

- (A) the doctrine of equitable conversion applies.
- (B) the jurisdiction's recording act does not protect creditors.
- (C) Owen's possession gave Cred constructive notice of Bryer's interest.
- (D) Bryer was a purchaser without notice.

GO ON TO THE NEXT PAGE.

124. A written construction contract, under which Contractor agreed to build a new house for Owner at a fixed price of \$200,000, contained the following provision:

Prior to construction or during the course thereof, this contract may be modified by mutual agreement of the parties as to "extras" or other departures from the plans and specifications provided by Owner and attached hereto. Such modifications, however, may be authorized only in writing, signed by both parties.

During construction, Contractor incorporated into the structure overhanging gargoyles and other "extras" orally requested by Owner for orally agreed prices in addition to the contract price. Owner subsequently refused to pay anything for such extras, aggregating \$30,000 at the agreed prices, solely on the ground that no written, signed authorization for them was ever effected.

If Contractor sues Owner on account of the "extras," which, if any, of the following will effectively support Owner's defense?

- I. The parol evidence rule.
 - II. The preexisting duty rule.
 - III. Failure of an express condition.
 - IV. The statute of frauds.
- (A) I and III only.
 - (B) I and IV only.
 - (C) II and IV only.
 - (D) Neither I, II, III, nor IV.

125. Scott held up a drugstore at 10:30 at night, and drove away. His car broke down in an isolated area just outside the small city in which the crime occurred. Scott walked to the nearest house and asked Henry, the homeowner, if he could stay until the next morning, explaining that he had been searching for his sister's home and had run out of gas. Henry agreed to let him sleep on a couch in the basement. During the course of the night, Henry began to doubt the story Scott had told him. Early the next morning, Henry called the police and said he was suspicious and frightened of a stranger whom he had allowed to stay the night. The police went immediately to the house to assist Henry and walked through the open front door. They found Scott and Henry drinking coffee in the kitchen. When they saw Scott, they realized he matched the description of the drugstore robber. They arrested Scott and in his jacket they found drugs taken during the robbery.

Scott moves to suppress the evidence of the drugs.

If the court finds that the police did not have probable cause to believe Scott was the robber until they saw him inside Henry's house and realized he matched the description, the court should

- (A) grant the motion, because, as a guest, Scott has sufficient standing to contest the entry of the house without a warrant.
- (B) grant the motion, because, as a guest, Scott has sufficient standing to contest the lack of probable cause at the time of the entry.
- (C) deny the motion, because Scott had no ownership or other possessory interest in the premises.
- (D) deny the motion, because the police had the permission of the owner to enter the house.

GO ON TO THE NEXT PAGE.

126. Susan entered a guilty plea to a charge of embezzlement. Her attorney hired a retired probation officer as a consultant to gather information for the preparation of a sentencing plan for Susan that would avoid jail. For that purpose, the consultant interviewed Susan for three hours.

Thereafter, the prosecution undertook an investigation of Susan's possible involvement in other acts of embezzlement. The consultant was subpoenaed to testify before a grand jury. The consultant refused to answer any questions concerning her conversation with Susan. The prosecution has moved for an order requiring her to answer those questions.

The motion should be

- (A) denied, on the basis of the attorney-client privilege.
- (B) denied, in the absence of probable cause to believe the interview developed evidence relevant to the grand jury's inquiry.
- (C) granted, because the consultant is not an attorney.
- (D) granted, because exclusionary evidentiary rules do not apply in grand jury proceedings.

127. Agitator, a baseball fan, has a fierce temper and an extremely loud voice. Attending a baseball game in which a number of calls went against the home team, Agitator repeatedly stood up, brandished his fist, and angrily shouted, "Kill the umpires." The fourth time he engaged in this conduct, many other spectators followed Agitator in rising from their seats, brandishing fists, and shouting, "Kill the umpires."

The home team lost the game. Although no violence ensued, spectators crowded menacingly around the umpires after the game. As a result, the umpires were able to leave the field and stadium only with the help of a massive police escort.

For his conduct, Agitator was charged with inciting to riot and was convicted in a jury trial in state court. He appealed. The state supreme court reversed his conviction. In its opinion, the court discussed in detail decisions of the United States Supreme Court dealing with the First Amendment free speech clause as incorporated into the Fourteenth Amendment. At the end of that discussion, however, the court stated that it "need not resolve how, on the basis of these cases," the United States Supreme Court would decide Agitator's case. "Instead," the court stated, "this court has always given the free-speech guarantee of the state's constitution the broadest possible interpretation. As a result, we hold that in this case, where no riot or other violence actually occurred, the state constitution does not permit this conviction for incitement to riot to stand."

The United States Supreme Court grants a writ of certiorari to review this decision of the state supreme court.

In this case, the United States Supreme Court should

- (A) affirm the state supreme court's decision, because Agitator's ballpark shout is commonplace hyperbole that cannot, consistently with the First and Fourteenth Amendments, be punished.
- (B) remand the case to the state supreme court with directions that it resolve the First and Fourteenth Amendment free-speech issue that it discussed in such detail.
- (C) dismiss the writ as improvidently granted, because the state supreme court's decision rests on an independent and adequate state law ground.
- (D) reverse the decision of the state supreme court, because incitement to violent action is not speech protected by the First and Fourteenth Amendments.

GO ON TO THE NEXT PAGE.

128. The day after Seller completed the sale of his house and moved out, one of the slates flew off the roof during a windstorm. The slate struck Pedestrian, who was on the public sidewalk. Pedestrian was seriously injured.

The roof is old and has lost several slates in ordinary windstorms on other occasions.

If Pedestrian sues Seller to recover damages for his injuries, will Pedestrian prevail?

- (A) Yes, because the roof was defective when Seller sold the house.
- (B) Yes, if Seller should have been aware of the condition of the roof and should have realized that it was dangerous to persons outside the premises.
- (C) No, because Seller was neither the owner nor the occupier of the house when Pedestrian was injured.
- (D) No, if Pedestrian knew that in the past slates had blown off the roof during windstorms.

Questions 129–130 are based on the following fact situation.

On April 1, Owner and Buyer signed a writing in which Owner, “in consideration of \$100 to be paid to Owner by Buyer,” offered Buyer the right to purchase Greenacre for \$100,000 within 30 days. The writing further provided, “This offer will become effective as an option only if and when the \$100 consideration is in fact paid.” On April 20, Owner, having received no payment or other communication from Buyer, sold and conveyed Greenacre to Citizen for \$120,000. On April 21, Owner received a letter from Buyer enclosing a cashier’s check for \$100 payable to Owner and stating, “I am hereby exercising my option to purchase Greenacre and am prepared to close whenever you’re ready.”

129. Which of the following, if proved, best supports Buyer’s suit against Owner for breach of contract?

- (A) Buyer was unaware of the sale to Citizen when Owner received the letter and check from Buyer on April 21.
- (B) On April 15, Buyer decided to purchase Greenacre, and applied for and obtained a commitment from Bank for a \$75,000 loan to help finance the purchase.
- (C) When the April 1 writing was signed, Owner said to Buyer, “Don’t worry about the \$100; the recital of ‘\$100 to be paid’ makes this deal binding.”
- (D) Owner and Buyer are both professional dealers in real estate.

130. For this question only, assume that, for whatever reason, Buyer prevails in the suit against Owner.

Which of the following is Buyer entitled to recover?

- (A) Nominal damages only, because the remedy of specific performance was not available to Buyer.
- (B) The fair market value, if any, of an assignable option to purchase Greenacre for \$100,000.
- (C) \$20,000, plus the amount, if any, by which the fair market value of Greenacre on the date of Owner’s breach exceeded \$120,000.
- (D) The amount, if any, by which the fair market value of Greenacre on the date of Owner’s breach exceeded \$100,000.

GO ON TO THE NEXT PAGE.

131. Alpha and Beta owned Greenacre, a large farm, in fee simple as tenants in common, each owning an undivided one-half interest. For five years Alpha occupied Greenacre and conducted farming operations. Alpha never accounted to Beta for any income but Alpha did pay all real estate taxes when the taxes were due and kept the buildings located on Greenacre insured against loss from fire, storm, and flood. Beta lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price Beta wanted.

Alpha died intestate survived by Hera, Alpha's sole heir. Thereafter Hera occupied Greenacre but was inexperienced in farming operations. The result was a financial disaster. Hera failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At such sale Beta was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of Greenacre.

Thereafter Beta instituted an appropriate action against Hera to quiet title in and to recover possession of Greenacre. Hera asserted all defenses available to Hera.

Except for the statutes related to real estate taxes and tax sales, there is no applicable statute.

In this lawsuit, Beta is entitled to a decree quieting title so that Beta is the sole owner in fee simple of Greenacre

- (A) because Beta survived Alpha.
- (B) because Hera defaulted in the obligations undertaken by Alpha.
- (C) unless Hera pays Beta one-half of the reasonable market value of Greenacre.
- (D) unless Hera pays Beta one-half of the amount Beta paid for the tax deed.

132. Eighteen-year-old Kenneth and his 14-year-old girlfriend, Emma, made plans to meet in Kenneth's apartment to have sexual intercourse, and they did so. Emma later told her mother about the incident. Kenneth was charged with statutory rape and conspiracy to commit statutory rape.

In the jurisdiction, the age of consent is 15, and the law of conspiracy is the same as at common law.

Kenneth was convicted of both charges and given consecutive sentences. On appeal, he contends that his conspiracy conviction should be reversed.

That conviction should be

- (A) affirmed, because he agreed with Emma to commit the crime.
- (B) reversed, because Emma could not be a conspirator to this crime.
- (C) reversed, because the crime is one that can only be committed by agreement and thus Wharton's Rule bars conspiracy liability.
- (D) reversed, because one cannot conspire with a person too young to consent.

GO ON TO THE NEXT PAGE.

133. Sam decided to kill his boss, Anna, after she told him that he would be fired if his work did not improve. Sam knew Anna was scheduled to go on a business trip on Monday morning. On Sunday morning, Sam went to the company parking garage and put a bomb in the company car that Anna usually drove. The bomb was wired to go off when the car engine started. Sam then left town. At 5 a.m. Monday, Sam, after driving all night, was overcome with remorse and had a change of heart. He called the security officer on duty at the company and told him about the bomb. The security officer said he would take care of the matter. An hour later, the officer put a note on Anna's desk telling her of the message. He then looked at the car but could not see any signs of a bomb. He printed a sign saying "DO NOT USE THIS CAR," put it on the windshield, and went to call the police. Before the police arrived, Lois, a company vice president, got into the car and started the engine. The bomb went off, killing her.

The jurisdiction defines murder in the first degree as any homicide committed with premeditation and deliberation or any murder in the commission of a common-law felony. Second-degree murder is defined as all other murder at common law. Manslaughter is defined by the common law.

Sam is guilty of

- (A) murder in the first degree, because, with premeditation and deliberation, he killed whoever would start the car.
- (B) murder in the second degree, because he had no intention of killing Lois.
- (C) manslaughter, because at the time of the explosion, he had no intent to kill, and the death of Lois was in part the fault of the security officer.
- (D) only attempted murder of Anna, because the death of Lois was the result of the security officer's negligence.

134. The state of Green imposes a tax on the "income" of each of its residents. As defined in the taxing statute, "income" includes the fair rental value of the use of any automobile provided by the taxpayer's employer for the taxpayer's personal use. The federal government supplies automobiles to some of its employees who are resident in Green so that they may perform their jobs properly. A federal government employee supplied with an automobile for this purpose may also use it for the employee's own personal business.

Assume there is no federal legislation on this subject.

May the state of Green collect this tax on the fair rental value of the personal use of the automobiles furnished by the federal government to these employees?

- (A) No, because such a tax would be a tax on the United States.
- (B) No, because such a tax would be a tax upon activities performed on behalf of the United States, since the automobiles are primarily used by these federal employees in the discharge of their official duties.
- (C) Yes, because the tax is imposed on the employees rather than on the United States, and the tax does not discriminate against persons who are employed by the United States.
- (D) Yes, because an exemption from such state taxes for federal employees would be a denial to others of the equal protection of the laws.

GO ON TO THE NEXT PAGE.

135. Orderly, a male attendant who worked at Hospital, had sexual relations with Patient, a severely retarded person, in her room at Hospital.

In a tort action brought on Patient's behalf against Hospital, Patient will

- (A) not prevail, if Orderly's actions were outside the scope of his employment.
 - (B) not prevail, if Patient initiated the relationship with Orderly and encouraged his actions.
 - (C) prevail, if Orderly was an employee of Hospital.
 - (D) prevail, if Hospital failed to use reasonable care to protect Patient from such conduct.
136. Passenger is suing Defendant for injuries suffered in the crash of a small airplane, alleging that Defendant had owned the plane and negligently failed to have it properly maintained. Defendant has asserted in defense that he never owned the plane or had any responsibility to maintain it. At trial, Passenger calls Witness to testify that Witness had sold to Defendant a liability insurance policy on the plane.

The testimony of Witness is

- (A) inadmissible, because the policy itself is required under the original document rule.
- (B) inadmissible, because of the rule against proof of insurance where insurance is not itself at issue.
- (C) admissible to show that Defendant had little motivation to invest money in maintenance of the airplane.
- (D) admissible as some evidence of Defendant's ownership of or responsibility for the airplane.

137. Opal owned several vacant lots in ABC Subdivision. She obtained a \$50,000 loan from a lender, Bank, and executed and delivered to Bank a promissory note and mortgage describing Lots 1, 2, 3, 4, and 5. The mortgage was promptly and properly recorded.

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

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

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

The court should rule for

- (A) Eva, because Bank was negligent in failing to check the recordation of the release.
- (B) Eva, because she was entitled to rely on the recorded release.
- (C) Bank, because Eva could have discovered the alteration by reasonable inquiry.
- (D) Bank, because the alteration of the release was ineffective.

GO ON TO THE NEXT PAGE.

Questions 138–139 are based on the following fact situation.

Jones, a marijuana farmer, had been missing for several months. The sheriff's department received an anonymous tip that Miller, a rival marijuana farmer, had buried Jones in a hillside about 200 yards from Miller's farmhouse. Sheriff's deputies went to Miller's farm. They cut the barbed wire that surrounded the hillside and entered, looking for the grave. They also searched the adjacent fields on Miller's farm that were within the area enclosed by the barbed wire and discovered clothing that belonged to Jones hanging on a scarecrow. Miller observed their discovery and began shooting. The deputies returned the fire. Miller dashed to his pickup truck to escape. Unable to start the truck, he fled across a field toward the barn. A deputy tackled him just as he entered the barn.

As Miller attempted to get up, the deputy pinned his arms behind his back. Another deputy threatened, "Tell us what you did with Jones or we will shut you down and see your family on relief." Miller responded that he had killed Jones in a fight but did not report the incident because he did not want authorities to enter his land and discover his marijuana crop. Instead, he buried him behind the barn. Miller was thereafter charged with murder.

138. If Miller moves to suppress his admission about killing his neighbor, the court should
- (A) grant the motion, because Miller did not voluntarily waive his right to silence.
 - (B) grant the motion, because the statement was the product of the warrantless entry and search of Miller's farm.
 - (C) deny the motion, because the deputy was in hot pursuit when he questioned Miller.
 - (D) deny the motion, because Miller was questioned during a police emergency search.
139. If Miller moves to exclude the introduction of Jones's clothing into evidence, the court should
- (A) grant the motion, because the deputies had not obtained a warrant.
 - (B) grant the motion, because the deputies' conduct in its entirety violated Miller's right to due process of law.
 - (C) deny the motion, because Miller had no expectation of privacy in the fields around his farmhouse.
 - (D) deny the motion, because the clothing was not Miller's property.

GO ON TO THE NEXT PAGE.

140. Passenger departed on an ocean liner knowing that it would be a rough voyage due to predicted storms. The ocean liner was not equipped with the type of lifeboats required by the applicable statute.

Passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action against the operator of the ocean liner brought by Passenger's representative, will Passenger's representative prevail?

- (A) Yes, because the ocean liner was not equipped with the statutorily required lifeboats.
 - (B) Yes, because in these circumstances common carriers are strictly liable.
 - (C) No, because the storm was so severe that it would have been impossible to launch a statutorily required lifeboat.
 - (D) No, because Passenger assumed the risk by boarding the ocean liner knowing that it would be a rough voyage.
141. The King City zoning ordinance contains provisions restricting places of "adult entertainment" to two specified city blocks within the commercial center of the city. These provisions of the ordinance define "adult entertainment" as "live or filmed nudity or sexual activity, real or simulated, of an indecent nature."

Sam proposes to operate an adult entertainment establishment outside the two-block area zoned for such establishments but within the commercial center of King City. When his application for permission to do so is rejected solely because it is inconsistent with provisions of the zoning ordinance, he sues the appropriate officials of King City, seeking to enjoin them from enforcing the adult entertainment provisions of the ordinance against him. He asserts that these provisions of the ordinance violate the First Amendment as made applicable to King City by the Fourteenth Amendment.

In this case, the court hearing Sam's request for an injunction would probably hold that the adult entertainment provisions of the King City zoning ordinance are

- (A) constitutional, because they do not prohibit adult entertainment everywhere in King City, and the city has a substantial interest in keeping the major part of its commercial center free of uses it considers harmful to that area.
- (B) constitutional, because adult entertainment of the kind described in these provisions of the King City ordinance is not protected by the free speech guarantee of the First and Fourteenth Amendments.
- (C) unconstitutional, because they prohibit in the commercial area of the city adult entertainment that is not "obscene" within the meaning of the First and Fourteenth Amendments.
- (D) unconstitutional, because zoning ordinances that restrict freedom of speech may be justified only by a substantial interest in preserving the quality of a community's residential neighborhoods.

GO ON TO THE NEXT PAGE.

Questions 142–143 are based on the following fact situation.

On June 1, Seller and Buyer contracted in writing for the sale and purchase of Seller’s cattle ranch (a large single tract), and to close the transaction on December 1.

142. For this question only, assume the following facts. On October 1, Buyer told Seller, “I’m increasingly unhappy about our June 1 contract because of the current cattle market, and do not intend to buy your ranch unless I’m legally obligated to do so.”

If Seller sues Buyer on October 15 for breach of contract, Seller will probably

- (A) win, because Buyer committed a total breach by anticipatory repudiation on October 1.
- (B) win, because Buyer’s October 1 statement created reasonable grounds for Seller’s insecurity with respect to Buyer’s performance.
- (C) lose, because the parties contracted for the sale and conveyance of a single tract, and Seller cannot bring suit for breach of such a contract prior to the agreed closing date.
- (D) lose, because Buyer’s October 1 statement to Seller was neither a repudiation nor a present breach of the June 1 contract.

143. For this question only, assume the following facts. Buyer unequivocally repudiated the contract on August 1. On August 15, Seller urged Buyer to change her mind and proceed with the scheduled closing on December 1. On October 1, having heard nothing further from Buyer, Seller sold and conveyed his ranch to Rancher without notice to Buyer. On December 1, Buyer attempted to close under the June 1 contract by tendering the full purchase price to Seller. Seller rejected the tender.

If Buyer sues Seller for breach of contract, Buyer will probably

- (A) win, because Seller failed seasonably to notify Buyer of any pending sale to Rancher.
- (B) win, because Seller waived Buyer’s August 1 repudiation by urging her to retract it on August 15.
- (C) lose, because Buyer did not retract her repudiation before Seller materially changed his position in reliance thereon by selling the ranch to Rancher.
- (D) lose, because acceptance of the purchase price by Seller was a concurrent condition to Seller’s obligation to convey the ranch to Buyer on December 1.

GO ON TO THE NEXT PAGE.

144. Owner owned a hotel, subject to a mortgage securing a debt Owner owed to Lender One. Owner later acquired a nearby parking garage, financing a part of the purchase price by a loan from Lender Two, secured by a mortgage on the parking garage. Two years thereafter, Owner defaulted on the loan owed to Lender One, which caused the full amount of that loan to become immediately due and payable. Lender One decided not to foreclose the mortgage on Owner's hotel at that time, but instead brought an action, appropriate under the laws of the jurisdiction and authorized by the mortgage loan documents, for the full amount of the defaulted loan. Lender One obtained and properly filed a judgment for that amount.

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

There is no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments.

Lender One later brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. Lender Two was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted as follows:

Lender One purchased the hotel for \$100,000 less than its mortgage balance.

Lender One purchased the parking garage for an amount that is \$200,000 in excess of Lender Two's mortgage balance.

The \$200,000 surplus arising from the bid paid by Lender One for the parking garage should be paid

- (A) \$100,000 to Lender One and \$100,000 to Owner.
- (B) \$100,000 to Lender Two and \$100,000 to Owner.
- (C) \$100,000 to Lender One and \$100,000 to Lender Two.
- (D) \$200,000 to Owner.

GO ON TO THE NEXT PAGE.

145. Kontractor agreed to build a power plant for a public utility. Subbo agreed with Kontractor to lay the foundation for \$200,000. Subbo supplied goods and services worth \$150,000, for which Kontractor made progress payments aggregating \$100,000 as required by the subcontract. Subbo then breached by refusing unjustifiably to perform further. Kontractor reasonably spent \$120,000 to have the work completed by another subcontractor.

Subbo sues Kontractor for the reasonable value of benefits conferred, and Kontractor counterclaims for breach of contract.

Which of the following should be the court's decision?

- (A) Subbo recovers \$50,000, the benefit conferred on Kontractor for which Subbo has not been paid.
- (B) Subbo recovers \$30,000, the benefit Subbo conferred on Kontractor minus the \$20,000 in damages incurred by Kontractor.
- (C) Kontractor recovers \$20,000, the excess over the contract price that was paid by Kontractor for the performance it had bargained to receive from Subbo.
- (D) Neither party recovers anything, because Subbo committed a material, unexcused breach and Kontractor received a \$50,000 benefit from Subbo for which Subbo has not been paid.

146. The Rapido is a sports car manufactured by the Rapido Motor Co. The Rapido has an excellent reputation for mechanical reliability with one exception, that the motor may stall if the engine has not had an extended warm-up. Driver had just begun to drive her Rapido in city traffic without a warm-up when the engine suddenly stalled. A car driven by Troody rear-ended Driver's car. Driver suffered no external physical injuries as a result of the collision. However, the shock of the crash caused her to suffer a severe heart attack.

Driver brought an action against the Rapido Motor Co. based on strict liability in tort. During the trial, the plaintiff presented evidence of an alternative engine design of equal cost that would eliminate the stalling problem without impairing the functions of the engine in any way. The defendant moves for a directed verdict at the close of the evidence.

This motion should be

- (A) denied, because the jury could find that an unreasonably dangerous defect in the engine was a proximate cause of the collision.
- (B) denied, if the jury could find that the Rapido was not crashworthy.
- (C) granted, because Troody's failure to stop within an assured clear distance was a superseding cause of the collision.
- (D) granted, if a person of normal sensitivity would not have suffered a heart attack under these circumstances.

GO ON TO THE NEXT PAGE.

147. Pedestrian died from injuries caused when Driver's car struck him. Executor, Pedestrian's executor, sued Driver for wrongful death. At trial, Executor calls Nurse to testify that two days after the accident, Pedestrian said to Nurse, "The car that hit me ran the red light." Fifteen minutes thereafter, Pedestrian died.

As a foundation for introducing evidence of Pedestrian's statement, Executor offers to the court Doctor's affidavit that Doctor was the intern on duty the day of Pedestrian's death and that several times that day Pedestrian had said that he knew he was about to die.

Is the affidavit properly considered by the court in ruling on the admissibility of Pedestrian's statement?

- (A) No, because it is hearsay not within any exception.
 - (B) No, because it is irrelevant since dying declarations cannot be used except in prosecutions for homicide.
 - (C) Yes, because, though hearsay, it is a statement of then-existing mental condition.
 - (D) Yes, because the judge may consider hearsay in ruling on preliminary questions.
148. John is a licensed barber in State A. The State A barber licensing statute provides that the Barber Licensing Board may revoke a barber license if it finds that a licensee has used his or her business premises for an illegal purpose.

John was arrested by federal narcotics enforcement agents on a charge of selling cocaine in his barbershop in violation of federal laws. However, the local United States Attorney declined to prosecute and the charges were dropped.

Nevertheless, the Barber Licensing Board commenced a proceeding against John to revoke his license on the ground that John used his business premises for illegal sales of cocaine. At a subsequent hearing before the board, the only evidence against John was affidavits by unnamed informants, who were not present or available for cross-examination. Their affidavits stated that they purchased cocaine from John in his barbershop. Based solely on this evidence, the board found that John used his business premises for an illegal purpose and ordered his license revoked.

In a suit by John to have this revocation set aside, his best constitutional argument is that

- (A) John's inability to cross-examine his accusers denied him a fair hearing and caused him to be deprived of his barber license without due process of law.
- (B) the administrative license revocation proceeding was invalid, because it denied full faith and credit to the dismissal of the criminal charges by the United States Attorney.
- (C) Article III requires a penalty of the kind imposed on John to be imposed by a court rather than an administrative agency.
- (D) the existence of federal laws penalizing the illegal sale of cocaine preempts state action relating to drug trafficking of the kind involved in John's case.

GO ON TO THE NEXT PAGE.

149. Driver was driving his car near Owner's house when Owner's child darted into the street in front of Driver's car. As Driver swerved and braked his car to avoid hitting the child, the car skidded up into Owner's driveway and stopped just short of Owner, who was standing in the driveway and had witnessed the entire incident. Owner suffered serious emotional distress from witnessing the danger to his child and to himself. Neither Owner nor his property was physically harmed.

If Owner asserts a claim for damages against Driver, will Owner prevail?

- (A) Yes, because Driver's entry onto Owner's land was unauthorized.
- (B) Yes, because Owner suffered serious emotional distress by witnessing the danger to his child and to himself.
- (C) No, unless Driver was negligent.
- (D) No, unless Owner's child was exercising reasonable care.

150. Vendor owned Greenacre, a tract of land, in fee simple. Vendor entered into a valid written agreement with Purchaser under which Vendor agreed to sell and Purchaser agreed to buy Greenacre by installment purchase. The contract stipulated that Vendor would deliver to Purchaser, upon the payment of the last installment due, "a warranty deed sufficient to convey the fee simple." The contract contained no other provision that could be construed as referring to title.

Purchaser entered into possession of Greenacre. After making 10 of the 300 installment payments obligated under the contract, Purchaser discovered that there was outstanding a valid and enforceable mortgage on Greenacre, securing the payment of a debt in the amount of 25% of the purchase price Purchaser had agreed to pay. There was no evidence that Vendor had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of Vendor. The value of Greenacre now is four times the amount due on the debt secured by the mortgage.

Purchaser quit possession of Greenacre and demanded that Vendor repay the amounts Purchaser had paid under the contract. After Vendor refused the demand, Purchaser brought an appropriate action against Vendor to recover damages for Vendor's alleged breach of the contract.

In such action, should damages be awarded to Purchaser?

- (A) No, because the time for Vendor to deliver marketable title has not arrived.
- (B) No, because Purchaser assumed the risk by taking possession.
- (C) Yes, because in the absence of a contrary express agreement, an obligation to convey marketable title is implied.
- (D) Yes, because the risk of loss assumed by Purchaser in taking possession relates only to physical loss.

GO ON TO THE NEXT PAGE.

151. The state of Red sent three of its employees to a city located in the state of Blue to consult with a chemical laboratory there about matters of state business. While in the course of their employment, the three employees of Red negligently released into local Blue waterways some of the chemical samples they had received from the laboratory in Blue.

Persons in Blue injured by the release of the chemicals sued the three Red state employees and the state of Red in Blue state courts for the damages they suffered. After a trial in which all of the defendants admitted jurisdiction of the Blue state court and fully participated, plaintiffs received a judgment against all of the defendants for \$5 million, which became final.

Subsequently, plaintiffs sought to enforce their Blue state court judgment by commencing a proper proceeding in an appropriate court of Red. In that enforcement proceeding, the state of Red argued, as it had done unsuccessfully in the earlier action in Blue state court, that its liability is limited by a law of Red to \$100,000 in any tort case. Because the three individual employees of Red are able to pay only \$50,000 of the judgment, the only way the injured persons can fully satisfy their Blue state court judgment is from the funds of the state of Red.

Can the injured persons recover the full balance of their Blue state court judgment from the state of Red in the enforcement proceeding they filed in a court of Red?

- (A) Yes, because the final judgment of the Blue court is entitled to full faith and credit in the courts of Red.
- (B) Yes, because a limitation on damage awards against Red for tortious actions of its agents would violate the equal protection clause of the Fourteenth Amendment.
- (C) No, because the Tenth Amendment preserves the right of a state to have its courts enforce the state's public policy limiting its tort liability.
- (D) No, because the employees of Red were negligent and, therefore, their actions were not authorized by the state of Red.

152. Martha's high school teacher told her that she was going to receive a failing grade in history, which would prevent her from graduating. Furious, she reported to the principal that the teacher had fondled her, and the teacher was fired. A year later, still unable to get work because of the scandal, the teacher committed suicide. Martha, remorseful, confessed that her accusation had been false.

If Martha is charged with manslaughter, her best defense would be that she

- (A) committed no act that proximately caused the teacher's death.
- (B) did not intend to cause the teacher's death.
- (C) did not act with malice.
- (D) acted under extreme emotional distress.

153. Plaintiff sued Defendant for personal injuries arising out of an automobile accident.

Which of the following would be ERROR?

- (A) The judge allows Defendant's attorney to ask Defendant questions on cross-examination that go well beyond the scope of direct examination by Plaintiff, who has been called as an adverse witness.
- (B) The judge refuses to allow Defendant's attorney to cross-examine Defendant by leading questions.
- (C) The judge allows cross-examination about the credibility of a witness even though no question relating to credibility has been asked on direct examination.
- (D) The judge, despite Defendant's request for exclusion of witnesses, allows Plaintiff's eyewitness to remain in the courtroom after testifying, even though the eyewitness is expected to be recalled for further cross-examination.

GO ON TO THE NEXT PAGE.

154. Phil is suing Dennis for injuries suffered in an automobile collision. At trial Phil's first witness, Wanda, testified that, although she did not see the accident, she heard her friend Frank say just before the crash, "Look at the crazy way old Dennis is driving!" Dennis offers evidence to impeach Frank by asking Wanda, "Isn't it true that Frank beat up Dennis just the day before the collision?"

The question is

- (A) proper, because it tends to show the possible bias of Frank against Dennis.
 - (B) proper, because it tends to show Frank's character.
 - (C) improper, because Frank has no opportunity to explain or deny.
 - (D) improper, because impeachment cannot properly be by specific instances.
155. Thirty years ago Able, the then-record owner of Greenacre, a lot contiguous to Blueacre, in fee simple, executed and delivered to Baker an instrument in writing which was denominated "Deed of Conveyance." In pertinent part it read, "Able does grant to Baker and her heirs and assigns a right-of-way for egress and ingress to Blueacre." If the quoted provision was sufficient to create an interest in land, the instrument met all other requirements for a valid grant. Baker held record title in fee simple to Blueacre, which adjoined Greenacre.

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

Six months ago Charlie notified Dorcas that Charlie planned to develop a portion of Greenacre as a residential subdivision and that Dorcas should cease any use of the driveway. After some negotiations, Charlie offered to permit Dorcas to construct another driveway to connect with the streets of the proposed subdivision. Dorcas declined this offer on the ground that travel from Blueacre to Main Road would be more circuitous.

Dorcas brought an appropriate action against Charlie to obtain a definitive adjudication of the respective rights of Dorcas and Charlie. In such lawsuit Charlie relied upon the defense that the location of the easement created by the grant from Able to Baker was governed by reasonableness and that Charlie's proposed solution was reasonable.

Charlie's defense should

- (A) fail, because the location had been established by the acts of Baker and Able.
- (B) fail, because the location of the easement had been fixed by prescription.
- (C) prevail, because the reasonableness of Charlie's proposal was established by Dorcas's refusal to suggest any alternative location.
- (D) prevail, because the servient owner is entitled to select the location of a right-of-way if the grant fails to identify its location.

GO ON TO THE NEXT PAGE.

Questions 156–157 are based on the following fact situation.

Computers, Inc., contracted in writing with Bank to sell and deliver to Bank a mainframe computer using a new type of magnetic memory, then under development but not perfected by Computers, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. Bank, on or before July 31."

156. For this question only, assume that Computers tendered the computer to Bank on August 15, and that Bank rejected it because of the delay.

If Computers sues Bank for breach of contract, which of the following facts, if proved, will best support a recovery by Computers?

- (A) The delay did not materially harm Bank.
- (B) Computers believed, on the assumption that Bank was getting a "super deal" for its money, that Bank would not reject because of the late tender of delivery.
- (C) Computers' delay in tender was caused by a truckers' strike.
- (D) A usage in the relevant trade allows computer sellers a 30-day leeway in a specified time of delivery, unless the usage is expressly negated by the contract.

157. For this question only, assume the following facts. After making the contract with Bank, Computers discovered that the new technology it intended to use was unreliable and that no computer manufacturer could yet build a reliable computer using that technology. Computers thereupon notified Bank that it was impossible for Computers or anyone else to build the contracted-for computer "in the present state of the art."

If Bank sues Computers for failure to perform its computer contract, the court will probably decide the case in favor of

- (A) Computers, because its performance of the contract was objectively impossible.
- (B) Computers, because a contract to build a machine using technology under development imposes only a duty on the builder to use its best efforts to achieve the result contracted for.
- (C) Bank, because the law of impossibility does not apply to merchants under the applicable law.
- (D) Bank, because Computers assumed the risk, in the given circumstances, that the projected new technology would not work reliably.

-
158. Defendant was charged with attempted murder of Victor in a sniping incident in which Defendant allegedly shot at Victor from ambush as Victor drove his car along an expressway. The prosecutor offers evidence that seven years earlier Defendant had fired a shotgun into a woman's home and that Defendant had once pointed a handgun at another driver while driving on the street.

This evidence should be

- (A) excluded, because such evidence can be elicited only during cross-examination.
- (B) excluded, because it is improper character evidence.
- (C) admitted as evidence of Defendant's propensity toward violence.
- (D) admitted as relevant evidence of Defendant's identity, plan, or motive.

159. Art, who owned Blackacre in fee simple, conveyed Blackacre to Bea by warranty deed. Celia, an adjoining owner, asserted title to Blackacre and brought an appropriate action against Bea to quiet title to Blackacre. Bea demanded that Art defend Bea's title under the deed's covenant of warranty, but Art refused. Bea then successfully defended at her own expense.

Bea brought an appropriate action against Art to recover Bea's expenses incurred in defending against Celia's action to quiet title to Blackacre.

In this action, the court should decide for

- (A) Bea, because in effect it was Art's title that was challenged.
 - (B) Bea, because Art's deed to her included the covenant of warranty.
 - (C) Art, because the title Art conveyed was not defective.
 - (D) Art, because Celia may elect which of Art or Bea to sue.
160. Alex contracted for expensive cable television service for a period of six months solely to view the televised trial of Clark, who was on trial for murder in a court of the state of Green.

In the midst of the trial, the judge prohibited any further televising of Clark's trial because he concluded that the presence of television cameras was disruptive.

Alex brought an action in a federal district court against the judge in Clark's case asking only for an injunction that would require the judge to resume the televising of Clark's trial. Alex alleged that the judge's order to stop the televising of Clark's trial deprived him of property—his investment in cable television service—without due process of law.

Before Alex's case came to trial, Clark's criminal trial concluded in a conviction and sentencing. There do not appear to be any obvious errors in the proceeding that led to the result in Clark's case. After Clark's conviction and sentencing, the defendant in Alex's case moved to dismiss that suit.

The most proper disposition of this motion by the federal court would be to

- (A) defer action on the motion until after any appellate proceedings in Clark's case have concluded, because Clark might appeal, his conviction might be set aside, he might be tried again, and television cameras might be barred from the new trial.
- (B) defer action on the motion until after the Green Supreme Court expresses a view on its proper disposition, because the state law of mootness governs suits in federal court when the federal case is inexorably intertwined with a state proceeding.
- (C) grant the motion, because the subject matter of the controversy between Alex and the defendant has ceased to exist and there is no strong likelihood that it will be revived.
- (D) deny the motion, because Alex has raised an important constitutional question—whether his investment in cable service solely to view Clark's trial is property protected by the due process clause of the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

161. Traveler was a passenger on a commercial aircraft owned and operated by Airline. The aircraft crashed into a mountain, killing everyone on board. The flying weather was good.

Traveler's legal representative brought a wrongful death action against Airline. At trial, the legal representative offered no expert or other testimony as to the cause of the crash.

On Airline's motion to dismiss at the conclusion of the legal representative's case, the court should

- (A) grant the motion, because the legal representative has offered no evidence as to the cause of the crash.
- (B) grant the motion, because the legal representative has failed to offer evidence negating the possibility that the crash may have been caused by mechanical failure that Airline could not have prevented.
- (C) deny the motion, because the jury may infer that the aircraft crashed due to Airline's negligence.
- (D) deny the motion, because in the circumstances common carriers are strictly liable.

162. Company wanted to expand the size of the building it owned that housed Company's supermarket by adding space for a coffeehouse. Company's building was located in the center of five acres of land owned by Company and devoted wholly to parking for its supermarket customers.

City officials refused to grant a required building permit for the coffeehouse addition unless Company established in its store a child care center that would take up space at least equal to the size of the proposed coffeehouse addition, which was to be 20% of the existing building. This action of City officials was authorized by provisions of the applicable zoning ordinance.

In a suit filed in state court against appropriate officials of City, Company challenged this child care center requirement solely on constitutional grounds. The lower court upheld the requirement even though City officials presented no evidence and made no findings to justify it other than a general assertion that there was a shortage of child care facilities in City. Company appealed.

The court hearing the appeal should hold that the requirement imposed by City on the issuance of this building permit is

- (A) constitutional, because the burden was on Company to demonstrate that there was no rational relationship between this requirement and a legitimate governmental interest, and Company could not do so because the requirement is reasonably related to improving the lives of families and children residing in City.
- (B) constitutional, because the burden was on Company to demonstrate that this requirement was not necessary to vindicate a compelling governmental interest, and Company could not do so on these facts.
- (C) unconstitutional, because the burden was on City to demonstrate that this requirement was necessary to vindicate a compelling governmental interest, and City failed to meet its burden under that standard.
- (D) unconstitutional, because the burden was on City to demonstrate a rough proportionality between this requirement and the impact of Company's proposed action on the community, and City failed to do so.

GO ON TO THE NEXT PAGE.

163. Ollie owned a large tract of land known as Peterhill. During Ollie's lifetime, Ollie conveyed the easterly half (East Peterhill), situated in the municipality of Hawthorn, to Abel, and the westerly half (West Peterhill), situated in the municipality of Sycamore, to Betty. Each of the conveyances, which were promptly and properly recorded, contained the following language:

The parties agree for themselves and their heirs and assigns that the premises herein conveyed shall be used only for residential purposes; that each lot created within the premises herein conveyed shall contain not less than five acres; and that each lot shall have not more than one single-family dwelling. This agreement shall bind all successor owners of all or any portion of Peterhill and any owner of any part of Peterhill may enforce this covenant.

After Ollie's death, Abel desired to build houses on one-half acre lots in the East Peterhill tract as authorized by current applicable zoning and building codes in Hawthorn. The area surrounding East Peterhill in Hawthorn was developed as a residential community with homes built on one-half acre lots. West Peterhill was in a residential area covered by the Sycamore zoning code, which allowed residential development only on five-acre tracts of land.

In an appropriate action brought by Betty to enjoin Abel's proposed construction on one-half acre lots, the court will find the quoted restriction to be

- (A) invalid, because of the change of circumstance in the neighborhood.
- (B) invalid, because it conflicts with the applicable zoning code.
- (C) valid, but only so long as the original grantees from Ollie own their respective tracts of Peterhill.
- (D) valid, because the provision imposed an equitable servitude.

164. At Defendant's murder trial, Defendant calls Witness as his first witness to testify that Defendant has a reputation in their community as a peaceable and truthful person. The prosecutor objects on the ground that Witness's testimony would constitute improper character evidence.

The court should

- (A) admit the testimony as to peaceableness, but exclude the testimony as to truthfulness.
- (B) admit the testimony as to truthfulness, but exclude the testimony as to peaceableness.
- (C) admit the testimony as to both character traits.
- (D) exclude the testimony as to both character traits.

GO ON TO THE NEXT PAGE.

165. The governor of the state of Green proposes to place a Christmas nativity scene, the components of which would be permanently donated to the state by private citizens, in the Green Capitol Building rotunda where the Green Legislature meets annually. The governor further proposes to display this state-owned nativity scene annually from December 1 to December 31, next to permanent displays that depict the various products manufactured in Green. The governor's proposal is supported by all members of both houses of the legislature.

If challenged in a lawsuit on establishment clause grounds, the proposed nativity scene display would be held

- (A) unconstitutional, because the components of the nativity scene would be owned by the state rather than by private persons.
- (B) unconstitutional, because the nativity scene would not be displayed in a context that appeared to depict and commemorate the Christmas season as a primarily secular holiday.
- (C) constitutional, because the components of the nativity scene would be donated to the state by private citizens rather than purchased with state funds.
- (D) constitutional, because the nativity scene would be displayed alongside an exhibit of various products manufactured in Green.

166. Two police officers in uniform were on foot patrol in a neighborhood frequented by drug sellers. They saw Sandra, who, when she saw them, turned around and started to walk quickly away. The police ran after her and shouted, "Stop and don't take another step, lady!" Sandra turned, looked at the police, and stopped. She put her arms up in the air. As the police approached, she threw a small object into nearby bushes. The police retrieved the object, which turned out to be a small bag of cocaine, and then arrested Sandra.

Sandra is charged with possession of the cocaine. She moves pretrial to suppress its use as evidence on the ground that it was obtained as the result of an illegal search and seizure.

Her motion should be

- (A) granted, because the police did not know the item was cocaine until after they had seized it.
- (B) granted, because the police acquired the cocaine as the result of an unlawful seizure.
- (C) denied, because the police had probable cause to seize the package.
- (D) denied, because Sandra voluntarily discarded the contraband.

GO ON TO THE NEXT PAGE.

167. In a federal civil trial, Plaintiff wishes to establish that, in a state court, Defendant had been convicted of fraud, a fact that Defendant denies.

Which mode of proof of the conviction is LEAST likely to be permitted?

- (A) A certified copy of the judgment of conviction, offered as a self-authenticating document.
- (B) Testimony of Plaintiff, who was present at the time of the sentence.
- (C) Testimony by a witness to whom Defendant made an oral admission that he had been convicted.
- (D) Judicial notice of the conviction, based on the court's telephone call to the clerk of the state court, whom the judge knows personally.

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

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

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

The common-law Rule Against Perpetuities is unmodified by statute.

If the court rules against Adam, it will be because

- (A) the provision quoted from the deed violates the Rule Against Perpetuities.
- (B) the Bank had no actual knowledge of, and did not consent to, the violation of the covenant.
- (C) the rights reserved by Adam were subordinated, by necessary implication, to the rights of the bank as the lender of the purchase money.
- (D) the consideration of \$1,000 was inadequate.

GO ON TO THE NEXT PAGE.

169. Loyal, aged 60, who had no plans for early retirement, had worked for Mutate, Inc., for 20 years as a managerial employee-at-will when he had a conversation with the company's president, George Mutant, about Loyal's post-retirement goal of extensive travel around the United States. A month later, Mutant handed Loyal a written, signed resolution of the company's Board of Directors stating that when and if Loyal should decide to retire, at his option, the company, in recognition of his past service, would pay him a \$2,000-per-month lifetime pension. (The company had no regularized retirement plan for at-will employees.) Shortly thereafter, Loyal retired and immediately bought a \$30,000 recreational vehicle for his planned travels. After receiving the promised \$2,000 monthly pension from Mutate, Inc., for six months, Loyal, now unemployable elsewhere, received a letter from Mutate, Inc., advising him that the pension would cease immediately because of recessionary budget constraints affecting in varying degrees all managerial salaries and retirement pensions.

In a suit against Mutate, Inc., for breach of contract, Loyal will probably

- (A) win, because he retired from the company as bargained-for consideration for the Board's promise to him of a lifetime pension.
- (B) win, because he timed his decision to retire and to buy the recreational vehicle in reasonable reliance on the Board's promise to him of a lifetime pension.
- (C) lose, because the Board's promise to him of a lifetime pension was an unenforceable gift promise.
- (D) lose, because he had been an employee-at-will throughout his active service with the company.

170. Congress wishes to enact legislation prohibiting discrimination in the sale or rental of housing on the basis of the affectional preference or sexual orientation of the potential purchaser or renter. Congress wishes this statute to apply to all public and private vendors and lessors of residential property in this country, with a few narrowly drawn exceptions.

The most credible argument for congressional authority to enact such a statute would be based upon the

- (A) general welfare clause of Article I, Section 8, because the conduct the statute prohibits could reasonably be deemed to be harmful to the national interest.
- (B) commerce clause of Article I, Section 8, because, in inseverable aggregates, the sale or rental of almost all housing in this country could reasonably be deemed to have a substantial effect on interstate commerce.
- (C) enforcement clause of the Thirteenth Amendment, because that amendment clearly prohibits discrimination against the class of persons protected by this statute.
- (D) enforcement clause of the Fourteenth Amendment, because that amendment prohibits all public and private actors from engaging in irrational discrimination.

GO ON TO THE NEXT PAGE.

171. Because of Farmer's default on his loan, the bank foreclosed on the farm and equipment that secured the loan. Among the items sold at the resulting auction was a new tractor recently delivered to Farmer by the retailer. Shortly after purchasing the tractor at the auction, Pratt was negligently operating the tractor on a hill when it rolled over due to a defect in the tractor's design. He was injured as a result. Pratt sued the auctioneer, alleging strict liability in tort. The jurisdiction has not adopted a comparative fault rule in strict liability cases.

In this suit, the result should be for the

- (A) plaintiff, because the defendant sold a defective product that injured the plaintiff.
- (B) plaintiff, if the defendant failed to inspect the tractor for defects prior to sale.
- (C) defendant, because he should not be considered a "seller" for purposes of strict liability in tort.
- (D) defendant, because the accident was caused in part by Pratt's negligence.

172. In exchange for a valid and sufficient consideration, Goodbar orally promised Walker, who had no car and wanted a minivan, "to pay to anyone from whom you buy a minivan within the next six months the full purchase-price thereof." Two months later, Walker bought a used minivan on credit from Minivanity Fair, Inc., for \$8,000. At the time, Minivanity Fair was unaware of Goodbar's earlier promise to Walker, but learned of it shortly after the sale.

Can Minivanity Fair enforce Goodbar's promise to Walker?

- (A) Yes, under the doctrine of promissory estoppel.
- (B) Yes, because Minivanity Fair is an intended beneficiary of the Goodbar-Walker contract.
- (C) No, because Goodbar's promise to Walker is unenforceable under the suretyship clause of the statute of frauds.
- (D) No, because Minivanity Fair was neither identified when Goodbar's promise was made nor aware of it when the minivan-sale was made.

GO ON TO THE NEXT PAGE.

173. Plaintiff sued Defendant for injuries sustained in an automobile collision. During Plaintiff's hospital stay, Doctor, a staff physician, examined Plaintiff's X rays and said to Plaintiff, "You have a fracture of two vertebrae, C4 and C5." Intern, who was accompanying Doctor on her rounds, immediately wrote the diagnosis on Plaintiff's hospital record. At trial, the hospital records custodian testifies that Plaintiff's hospital record was made and kept in the ordinary course of the hospital's business.

The entry reporting Doctor's diagnosis is

- (A) inadmissible, because no foundation has been laid for Doctor's competence as an expert.
- (B) inadmissible, because Doctor's opinion is based upon data that are not in evidence.
- (C) admissible as a statement of then existing physical condition.
- (D) admissible as a record of regularly conducted business activity.

174. A city owns and operates a large public auditorium. It leases the auditorium to any group that wishes to use it for a meeting, lecture, concert, or contest. Each user must post a damage deposit and pay rent, which is calculated only for the actual time the building is used by the lessee. Reservations are made on a first-come, first-served basis.

A private organization that permits only males to serve in its highest offices rented the auditorium for its national convention. The organization planned to install its new officers at that convention. It broadly publicized the event, inviting members of the general public to attend the installation ceremony at the city auditorium. No statute or administrative rule prohibits the organization from restricting its highest offices to men.

An appropriate plaintiff sues the private organization seeking to enjoin it from using the city auditorium for the installation of its new officers. The sole claim of the plaintiff is that the use of this auditorium by the organization for the installation ceremony is unconstitutional because the organization disqualifies women from serving in its highest offices.

Will the plaintiff prevail?

- (A) Yes, because the Fourteenth Amendment prohibits such an organization from discriminating against women in any of its activities to which it has invited members of the general public.
- (B) Yes, because the organization's use of the city auditorium for this purpose subjects its conduct to the provisions of the Fourteenth Amendment.
- (C) No, because the freedom of association protected by the Fourteenth Amendment prohibits the city from interfering in any way with the organization's use of city facilities.
- (D) No, because this organization is not a state actor and, therefore, its activities are not subject to the provisions of the Fourteenth Amendment.

GO ON TO THE NEXT PAGE.

175. Adam owns Townacres in fee simple, and Bess owns the adjoining Greenacres in fee simple. Adam has kept the lawns and trees on Townacres trimmed and neat. Bess “lets nature take its course” at Greenacres. The result on Greenacres is a tangle of underbrush, fallen trees, and standing trees that are in danger of losing limbs. Many of the trees on Greenacres are near Townacres. In the past, debris and large limbs have been blown from Greenacres onto Townacres. By local standards Greenacres is an eyesore that depresses market values of real property in the vicinity, but the condition of Greenacres violates no applicable laws or ordinances.

Adam demanded that Bess keep the trees near Townacres trimmed. Bess refused.

Adam brought an appropriate action against Bess to require Bess to abate what Adam alleges to be a nuisance. In the lawsuit, the only issue is whether the condition of Greenacres constitutes a nuisance.

The strongest argument that Adam can present is that the condition of Greenacres

- (A) has an adverse impact on real estate values.
- (B) poses a danger to the occupants of Townacres.
- (C) violates community aesthetic standards.
- (D) cannot otherwise be challenged under any law or ordinance.

176. Breeder bought a two-month-old registered boar at auction from Pigstyle for \$800. No express warranty was made. Fifteen months later, tests by experts proved conclusively that the boar had been born incurably sterile. If this had been known at the time of the sale, the boar would have been worth no more than \$100.

In an action by Breeder against Pigstyle to avoid the contract and recover the price paid, the parties stipulate that, as both were and had been aware, the minimum age at which the fertility of a boar can be determined is about 12 months.

Which of the following will the court probably decide?

- (A) Breeder wins, because the parties were mutually mistaken as to the boar’s fertility when they made the agreement.
- (B) Breeder wins, because Pigstyle impliedly warranted that the boar was fit for breeding.
- (C) Pigstyle wins, because Breeder assumed the risk of the boar’s sterility.
- (D) Pigstyle wins, because any mistake involved was unilateral, not mutual.

GO ON TO THE NEXT PAGE.

177. Homeowner owns a house on a lake. Neighbor owns a house across a driveway from Homeowner's property. Neighbor's house sits on a hill and Neighbor can see the lake from his living room window.

Homeowner and Neighbor got into an argument and Homeowner erected a large spotlight on his property that automatically comes on at dusk and goes off at sunrise. The only reason Homeowner installed the light was to annoy Neighbor. The glare from the light severely detracts from Neighbor's view of the lake.

In a suit by Neighbor against Homeowner, will Neighbor prevail?

- (A) Yes, because Homeowner installed the light solely to annoy Neighbor.
- (B) Yes, if, and only if, Neighbor's property value is adversely affected.
- (C) No, because Neighbor's view of the lake is not always obstructed.
- (D) No, if the spotlight provides added security to Homeowner's property.

178. On May 1, 1987, a car driven by Debra struck Peggy, a pedestrian. On July 1, 1987, with regard to this incident, Debra pleaded guilty to reckless driving (a misdemeanor) and was sentenced to 30 days in jail and a fine of \$1,000. She served the sentence and paid the fine. On April 1, 1988, Peggy died as a result of the injuries she suffered in the accident. On March 1, 1991, a grand jury indicted Debra on a charge of manslaughter of Peggy. On May 15, 1991, trial had not begun and Debra filed a motion to dismiss the indictment on the ground of double jeopardy in that her conviction of reckless driving arose out of the same incident, and on the ground that the three-year statute of limitations for manslaughter had run.

Debra's motion should be

- (A) granted only on double jeopardy grounds.
- (B) granted only on statute of limitations grounds.
- (C) granted on either double jeopardy grounds or statute of limitations grounds.
- (D) denied on both grounds.

GO ON TO THE NEXT PAGE.

179. Defendant is on trial for participating in a drug sale. The prosecution calls Witness, an undercover officer, to testify that, when Seller sold the drugs to Witness, Seller introduced Defendant to Witness as “my partner in this” and Defendant shook hands with Witness but said nothing.

Witness’s testimony is

- (A) inadmissible, because there is no evidence that Seller was authorized to speak for Defendant.
- (B) inadmissible, because the statement of Seller is hearsay not within any exception.
- (C) admissible as a statement against Defendant’s penal interest.
- (D) admissible as Defendant’s adoption of Seller’s statement.

180. State Y has a state employee grievance system that requires any state employee who wishes to file a grievance against the state to submit that grievance for final resolution to a panel of three arbitrators chosen by the parties from a statewide board of 13 arbitrators. In any given case, the grievant and the state alternate in exercising the right of each party to eliminate five members of the board, leaving a panel of three members to decide their case. At the present time, the full board is composed of seven male arbitrators and six female arbitrators.

Ellen, a female state employee, filed a sexual harassment grievance against her male supervisor and the state. Anne, the state’s attorney, exercised all of her five strikes to eliminate five of the female arbitrators. At the time she did so, Anne stated that she struck the five female arbitrators solely because she believed women, as a group, would necessarily be biased in favor of another woman who was claiming sexual harassment. Counsel for Ellen eliminated four males and one female arbitrator, all solely on grounds of specific bias or conflicts of interest. As a result, the panel was all male.

When the panel ruled against Ellen on the merits of her case, she filed an action in an appropriate state court, challenging the panel selection process as a gender-based denial of equal protection of the laws.

In this case, the court should hold that the panel selection process is

- (A) unconstitutional, because the gender classification used by the state’s attorney in this case does not satisfy the requirements of intermediate scrutiny.
- (B) unconstitutional, because the gender classification used by the state’s attorney in this case denies the grievant the right to a jury made up of her peers.
- (C) constitutional, because the gender classification used by the state’s attorney in this case satisfies the requirements of the strict scrutiny test.
- (D) constitutional, because the gender classification used by the state’s attorney in this case satisfies the requirements of the rational basis test.

GO ON TO THE NEXT PAGE.

181. Theresa owned Blueacre, a tract of land, in fee simple. Theresa wrote and executed, with the required formalities, a will that devised Blueacre to “my daughter, Della, for life with remainder to my descendants *per stirpes*.” At the time of writing the will, Theresa had a husband and no descendants living other than her two children, Della and Seth.

Theresa died and the will was duly admitted to probate. Theresa’s husband predeceased her. Theresa was survived by Della, Seth, four grandchildren, and one great-grandchild. Della and Seth were Theresa’s sole heirs at law.

Della and Seth brought an appropriate action for declaratory judgment as to title of Blueacre. Guardians *ad litem* were appointed and all other steps were taken so that the judgment would bind all persons interested whether born or unborn.

In that action, if the court rules that Della has a life estate in the whole of Blueacre and that the remainder is contingent, it will be because the court chose one of several possible constructions and that the chosen construction

- (A) related all vesting to the time of writing of the will.
- (B) related all vesting to the death of Theresa.
- (C) implied a condition that remaindermen survive Della.
- (D) implied a gift of a life estate to Seth.

182. Driver negligently drove his car into Pedestrian, breaking her leg. Pedestrian’s leg was put in a cast, and she used crutches to get about. While shopping at Market, her local supermarket, Pedestrian nonnegligently placed one of her crutches on a banana peel that had been negligently left on the floor by the manager of Market’s produce department. Pedestrian’s crutch slipped on the peel, and she fell to the floor, breaking her arm. Had Pedestrian stepped on the banana peel at a time when she did not have to use crutches, she would have regained her balance.

Pedestrian sued Driver and Market for her injuries.

Pedestrian will be able to recover from

- (A) Driver, for her broken leg only.
- (B) Driver, for both of her injuries.
- (C) Market, for both of her injuries.
- (D) Driver, for her broken leg only, and Market, for her broken arm only.

GO ON TO THE NEXT PAGE.

183. FBI agents, without a warrant and without permission of Mexican law enforcement or judicial officers, entered Mexico, kidnapped Steven, an American citizen wanted in the United States for drug smuggling violations, and forcibly drove him back to Texas. Thereafter, the agents, again without a warrant, broke into the Texas home of Joan, wanted as a confederate of Steven, and arrested her.

Steven and Joan were both indicted for narcotics violations. Both moved to dismiss the indictment on the ground that their arrests violated the Fourth Amendment.

The court should

- (A) grant the motions of both Steven and Joan.
- (B) grant the motion of Steven and deny the motion of Joan.
- (C) grant the motion of Joan and deny the motion of Steven.
- (D) deny the motions of both Steven and Joan.

184. Gourmet purchased the front portion of the land needed for a restaurant he desired to build and operate, but the back portion was the subject of a will dispute between Hope and Faith (two sisters). Hope's attorney advised her that her claim was doubtful. Gourmet, knowing only that the unresolved dispute existed, agreed in a signed writing to pay Hope \$6,000, payable \$1,000 annually, in exchange for a quitclaim deed (a deed containing no warranties) from Hope, who promptly executed such a deed to Gourmet and received Gourmet's first annual payment. Shortly thereafter, the probate court handed down a decision in Faith's favor, ruling that Hope had no interest in the land. This decision has become final. Gourmet subsequently defaulted when his second annual installment came due.

In an action against Gourmet for breach of contract, Hope will probably

- (A) lose, because she was aware at the time of the agreement with Gourmet that her claim to the property quitclaimed was doubtful.
- (B) lose, because Hope suffered no legal detriment in executing the quitclaim deed.
- (C) win, because Gourmet bargained for and received in exchange a quitclaim deed from Hope.
- (D) win, because Gourmet, by paying the first \$1,000 installment, is estopped to deny that his agreement with Hope is an enforceable contract.

GO ON TO THE NEXT PAGE.

185. Athlete, a professional football player, signed a written consent for his team's physician, Doctor, to perform a knee operation. After Athlete was under a general anesthetic, Doctor asked Surgeon, a world famous orthopedic surgeon, to perform the operation. Surgeon's skills were superior to Doctor's, and the operation was successful.

In an action for battery by Athlete against Surgeon, Athlete will

- (A) prevail, because Athlete did not agree to allow Surgeon to perform the operation.
 - (B) prevail, because the consent form was in writing.
 - (C) not prevail, because Surgeon's skills were superior to Doctor's.
 - (D) not prevail, because the operation was successful.
186. Senator makes a speech on the floor of the United States Senate in which she asserts that William, a federal civil servant with minor responsibilities, was twice convicted of fraud by the courts of State X. In making this assertion, Senator relied wholly on research done by Frank, her chief legislative assistant. In fact, it was a different man named William and not William the civil servant, who was convicted of these crimes in the state court proceedings. This mistake was the result of carelessness on Frank's part.

No legislation affecting the appointment or discipline of civil servants or the program of the federal agency for which William works was under consideration at the time Senator made her speech about William on the floor of the Senate.

William sues Senator and Frank for defamation. Both defendants move to dismiss the complaint.

As a matter of constitutional law, the court hearing this motion should

- (A) grant it as to Frank, because he is protected by the freedom of speech guarantee against defamation actions by government officials based on his mere carelessness; but deny it as to Senator, because, as an officer of the United States, she is a constituent part of the government and, therefore, has no freedom of speech rights in that capacity.
- (B) grant it as to both defendants, because Senator is immune to suit for any speech she makes in the Senate under the speech or debate clause of Article I, Section 6, and Frank may assert Senator's immunity for his assistance to her in preparing the speech.
- (C) deny it as to both defendants, because any immunity of Senator under the speech or debate clause does not attach to a speech that is not germane to pending legislative business, and Frank is entitled to no greater immunity than the legislator he was assisting.
- (D) deny it as to Frank, because he is not a legislator protected by the speech or debate clause; but grant it as to Senator, because she is immune from suit for her speech by virtue of that clause.

GO ON TO THE NEXT PAGE.

187. Six years ago, Oscar, owner of Blackacre in fee simple, executed and delivered to Albert an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "Albert and his heirs." At that time, Albert was a widower who had one child, Donna.

Three years ago, Albert executed and delivered to Bea an instrument in the proper form of a warranty deed, purporting to convey Blackacre to "Bea." Donna did not join in the deed. Bea was and still is unmarried and childless.

The only possibly applicable statute in the jurisdiction states that any deed will be construed to convey the grantor's entire estate, unless expressly limited.

Last month, Albert died, never having remarried. Donna is his only heir.

Blackacre is now owned by

- (A) Donna, because Albert's death ended Bea's life estate *pur autre vie*.
- (B) Bea in fee simple pursuant to Albert's deed.
- (C) Donna and Bea as tenants in common of equal shares.
- (D) Donna and Bea as joint tenants, because both survived Albert.

188. Smart approached Johnson and inquired about hiring someone to kill his girlfriend's parents. Unknown to Smart, Johnson was an undercover police officer who pretended to agree to handle the job and secretly taped subsequent conversations with Smart concerning plans and payment. A few days before the payment was due, Smart changed his mind and called the plan off. Nevertheless, Smart was charged with solicitation to commit murder.

Smart should be

- (A) acquitted, because he withdrew before payment and commission of the act.
- (B) acquitted, because no substantial acts were performed.
- (C) convicted, because the offense was completed before his attempt to withdraw.
- (D) convicted, because Johnson agreed to commit the offense.

GO ON TO THE NEXT PAGE.

189. Retailer, a dry goods retailer, telephoned Manufacturer, a towel manufacturer, and offered to buy for \$5 each a minimum of 500 and a maximum of 1,000 large bath towels, to be delivered in 30 days. Manufacturer orally accepted this offer and promptly sent the following letter to Retailer, which Retailer received two days later: "This confirms our agreement today by telephone to sell you 500 large bath towels for 30-day delivery. /s/ Manufacturer." Twenty-eight days later, Manufacturer tendered to Retailer 1,000 (not 500) conforming bath towels, all of which Retailer rejected because it had found a better price term from another supplier. Because of a glut in the towel market, Manufacturer cannot resell the towels except at a loss.

In a suit by Manufacturer against Retailer, which of the following will be the probable decision?

- (A) Manufacturer can enforce a contract for 1,000 towels, because Retailer ordered and Manufacturer tendered that quantity.
- (B) Manufacturer can enforce a contract for 500 towels, because Manufacturer's letter of confirmation stated that quantity term.
- (C) There is no enforceable agreement, because Retailer never signed a writing.
- (D) There is no enforceable agreement, because Manufacturer's letter of confirmation did not state a price term.

190. Doctor, a resident of the city of Greenville in the state of Green, is a physician licensed to practice in both Green and the neighboring state of Red. Doctor finds that the most convenient place to treat her patients who need hospital care is in the publicly owned and operated Redville Municipal Hospital of the city of Redville in the state of Red, which is located just across the state line from Greenville. For many years Doctor had successfully treated her patients in that hospital. Early this year she was notified that she could no longer treat patients in the Redville hospital because she was not a resident of Red, and a newly adopted rule of Redville Municipal Hospital, which was adopted in conformance with all required procedures, stated that every physician who practices in that hospital must be a resident of Red.

Which of the following constitutional provisions would be most helpful to Doctor in an action to challenge her exclusion from the Redville hospital solely on the basis of this hospital rule?

- (A) The bill of attainder clause.
- (B) The privileges and immunities clause of Article IV.
- (C) The due process clause of the Fourteenth Amendment.
- (D) The ex post facto clause.

GO ON TO THE NEXT PAGE.

191. Martin, the owner in fee simple of Orchardacres, mortgaged Orchardacres to Marie to secure the payment of the loan she made to him. The loan was due at the end of the growing season of the year in which it was made. Martin maintained and operated an orchard on the land, which was his sole source of income. Halfway through the growing season, Martin experienced severe health and personal problems and, as a result, left the state; his whereabouts were unknown. Marie learned that no one was responsible for the cultivation and care of the orchard on Orchardacres. She undertook to provide, through employees, the care of the orchard and the harvest for the remainder of the growing season. The net profits were applied to the debt secured by the mortgage on Orchardacres.

During the course of the harvest, Paul, a business invitee, was injured by reason of a fault in the equipment used. Under applicable tort case law, the owner of the premises would be liable for Paul's injuries. Paul brought an appropriate action against Marie to recover damages for the injuries suffered, relying on this aspect of tort law.

In such lawsuit, judgment should be for

- (A) Paul, if, but only if, the state is a title theory state, because in other jurisdictions a mortgagee has no title interest but only a lien.
- (B) Paul, because Marie was a mortgagee in possession.
- (C) Marie, because she acted as agent of the owner only to preserve her security interest.
- (D) Marie, if, but only if, the mortgage expressly provided for her taking possession in the event of danger to her security interest.

192. Actor, a well-known movie star, was drinking Vineyard wine at a nightclub. A bottle of the Vineyard wine, with its label plainly showing, was on the table in front of Actor. An amateur photographer asked Actor if he could take his picture and Actor said, "Yes." Subsequently, the photographer sold the photo to Vineyard. Vineyard, without Actor's consent, used the photo in a wine advertisement in a nationally circulated magazine. The caption below the photo stated, "Actor enjoys his Vineyard wine."

If Actor sues Vineyard to recover damages as a result of Vineyard's use of the photograph, will Actor prevail?

- (A) No, because Actor consented to being photographed.
- (B) No, because Actor is a public figure.
- (C) Yes, because Vineyard made commercial use of the photograph.
- (D) Yes, unless Actor did, in fact, enjoy his Vineyard wine.

GO ON TO THE NEXT PAGE.

193. At Defendant's trial for sale of drugs, the government called Witness to testify, but Witness refused to answer any questions about Defendant and was held in contempt of court. The government then calls Officer to testify that, when Witness was arrested for possession of drugs and offered leniency if he would identify his source, Witness had named Defendant as his source.

The testimony offered concerning Witness's identification of Defendant is

- (A) admissible as a prior inconsistent statement by Witness.
- (B) admissible as an identification of Defendant by Witness after having perceived him.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because Witness was not confronted with the statement while on the stand.

194. Buyer mailed a signed order to Seller that read: "Please ship us 10,000 widgets at your current price." Seller received the order on January 7 and that same day mailed to Buyer a properly stamped, addressed, and signed letter stating that the order was accepted at Seller's current price of \$10 per widget. On January 8, before receipt of Seller's letter, Buyer telephoned Seller and said, "I hereby revoke my order." Seller protested to no avail. Buyer received Seller's letter on January 9. Because of Buyer's January 8 telephone message, Seller never shipped the goods.

Under the relevant and prevailing rules, is there a contract between Buyer and Seller as of January 10?

- (A) No, because the order was an offer that could be accepted only by shipping the goods; and the offer was effectively revoked before shipment.
- (B) No, because Buyer never effectively agreed to the \$10 price term.
- (C) Yes, because the order was, for a reasonable time, an irrevocable offer.
- (D) Yes, because the order was an offer that seller effectively accepted before Buyer attempted to revoke it.

GO ON TO THE NEXT PAGE.

195. As Seller, an encyclopedia salesman, approached the grounds on which Hermit's house was situated, he saw a sign that said, "No salesmen. Trespassers will be prosecuted. Proceed at your own risk." Although Seller had not been invited to enter, he ignored the sign and drove up the driveway toward the house. As he rounded a curve, a powerful explosive charge buried in the driveway exploded, and Seller was injured.

Can Seller recover damages from Hermit for his injuries?

- (A) Yes, if Hermit was responsible for the explosive charge under the driveway.
- (B) Yes, unless Hermit, when he planted the charge, intended only to deter, not to harm, a possible intruder.
- (C) No, because Seller ignored the sign, which warned him against proceeding further.
- (D) No, if Hermit reasonably feared that intruders would come and harm him or his family.

196. Adam owned Blackacre. Adam entered into a written three-year lease of Blackacre with Bertha. Among other provisions, the lease prohibited Bertha from "assigning this lease, in whole or in part, and from subletting Blackacre, in whole or in part." In addition to a house, a barn, and a one-car garage, Blackacre's 30 acres included several fields where first Adam, and now Bertha, grazed sheep.

During the following months, Bertha:

- I. By a written agreement allowed her neighbor Charles exclusive use of the garage for storage, under lock and key, of his antique Packard automobile for two years, charging him \$240.
- II. Told her neighbor Doris that Doris could use the fields to practice her golf as long as she did not disturb Bertha's sheep.

Which, if any, of Bertha's actions constituted a violation of the lease?

- (A) I only.
- (B) II only.
- (C) Both I and II.
- (D) Neither I nor II.

GO ON TO THE NEXT PAGE.

197. Defendant is charged with murder. The evidence shows that she pointed a gun at Victim and pulled the trigger. The gun discharged, killing Victim. The gun belonged to Victim.

Defendant testifies that Victim told her, and she believed, that the “gun” was a stage prop that could fire only blanks, and that she fired the gun as part of rehearsing a play with Victim at his house.

If the jury believes Defendant’s testimony and finds that her mistaken belief that the gun was a prop was reasonable, they should find her

- (A) guilty of murder.
- (B) guilty of manslaughter.
- (C) guilty of either murder or manslaughter.
- (D) not guilty of murder or manslaughter.

198. Del’s sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at Del’s shop did not go off because Del had negligently forgotten to activate the alarm’s motion detector.

Shortly thereafter, the inmate used the rifle and ammunition stolen from Del in a shooting spree that caused injury to several people, including Paula.

If Paula sues Del for the injury she suffered, will Paula prevail?

- (A) Yes, if Paula’s injury would have been prevented had the motion detector been activated.
- (B) Yes, because Del was negligent in failing to activate the motion detector.
- (C) No, because the storage and sale of firearms and ammunition is not an abnormally dangerous activity.
- (D) No, unless there is evidence of circumstances suggesting a high risk of theft and criminal use of firearms stocked by Del.

GO ON TO THE NEXT PAGE.

199. A statute of the state of Texona prohibits any retailer of books, magazines, pictures, or posters from “publicly displaying or selling to any person any material that may be harmful to minors because of the violent or sexually explicit nature of its pictorial content.” Violation of this statute is a misdemeanor.

Corner Store displays publicly and sells magazines containing violent and sexually explicit pictures. The owner of this store is prosecuted under the above statute for these actions.

In defending against this prosecution in a Texona trial court, the argument that would be the best defense for Corner Store is that the statute violates the

- (A) First Amendment as it is incorporated into the Fourteenth Amendment, because the statute is excessively vague and overbroad.
- (B) First Amendment as it is incorporated into the Fourteenth Amendment, because a state may not prohibit the sale of violent or sexually explicit material in the absence of proof that the material is utterly without any redeeming value in the marketplace of ideas.
- (C) equal protection of the laws clause, because the statute irrationally treats violent and sexually explicit material that is pictorial differently from such material that is composed wholly of printed words.
- (D) equal protection of the laws clause, because the statute irrationally distinguishes between violent and sexually explicit pictorial material that may harm minors and such material that may harm only adults.

200. In an arson prosecution the government seeks to rebut Defendant’s alibi that he was in a jail in another state at the time of the fire. The government calls Witness to testify that he diligently searched through all the records of the jail and found no record of Defendant’s having been incarcerated there during the time Defendant specified.

The testimony of Witness is

- (A) admissible as evidence of absence of an entry from a public record.
- (B) admissible as a summary of voluminous documents.
- (C) inadmissible, because it is hearsay not within any exception.
- (D) inadmissible, because the records themselves must be produced.

STOP

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

ANSWER KEY

Item	Answer	Subject	Item	Answer	Subject
001	B	CONTRACTS	054	B	TORTS
002	D	CRIM. LAW	055	B	REAL PROP.
003	B	TORTS	056	B	CONST. LAW
004	A	TORTS	057	B	EVIDENCE
005	C	REAL PROP.	058	D	CONST. LAW
006	C	EVIDENCE	059	A	CRIM. LAW
007	B	CRIM. LAW	060	D	CONTRACTS
008	B	CONST. LAW	061	B	CRIM. LAW
009	C	CONTRACTS	062	C	REAL PROP.
010	D	REAL PROP.	063	C	CONST. LAW
011	D	REAL PROP.	064	C	EVIDENCE
012	D	CONST. LAW	065	B	REAL PROP.
013	A	EVIDENCE	066	C	CRIM. LAW
014	B	TORTS	067	C	CRIM. LAW
015	A	CRIM. LAW	068	A	CRIM. LAW
016	B	REAL PROP.	069	C	EVIDENCE
017	D	TORTS	070	B	CRIM. LAW
018	A	CONST. LAW	071	A	TORTS
019	A	CONTRACTS	072	C	CONTRACTS
020	C	CONTRACTS	073	D	CONTRACTS
021	A	TORTS	074	A	EVIDENCE
022	B	CRIM. LAW	075	D	REAL PROP.
023	B	TORTS	076	A,B*	CRIM. LAW
024	A	EVIDENCE	077	B	EVIDENCE
025	C	REAL PROP.	078	D	EVIDENCE
026	B	EVIDENCE	079	B	CONST. LAW
027	A	CONTRACTS	080	C	TORTS
028	B	CONTRACTS	081	B	EVIDENCE
029	C	CRIM. LAW	082	C	CONTRACTS
030	A	CONST. LAW	083	A	CONTRACTS
031	B	REAL PROP.	084	B	CONST. LAW
032	C	TORTS	085	A	REAL PROP.
033	A	REAL PROP.	086	C	TORTS
034	C	CONST. LAW	087	A	REAL PROP.
035	C	CRIM. LAW	088	B	EVIDENCE
036	C	TORTS	089	A	CONST. LAW
037	A	CONTRACTS	090	C	TORTS
038	A	CONTRACTS	091	D	CRIM. LAW
039	B	CONTRACTS	092	C	CONST. LAW
040	A	EVIDENCE	093	A	CONTRACTS
041	A	TORTS	094	C	TORTS
042	D	REAL PROP.	095	D	EVIDENCE
043	D	CONST. LAW	096	C	CONST. LAW
044	D	EVIDENCE	097	C	REAL PROP.
045	D	EVIDENCE	098	D	CRIM. LAW
046	C	CONST. LAW	099	D	TORTS
047	C	CRIM. LAW	100	C	TORTS
048	C	REAL PROP.	101	A	CRIM. LAW
049	A	CONTRACTS	102	B	EVIDENCE
050	B	CONTRACTS	103	B	CONTRACTS
051	B	EVIDENCE	104	D	CONTRACTS
052	B	CRIM. LAW	105	B	EVIDENCE
053	D	CONST. LAW	106	D	REAL PROP.

Item	Answer	Subject	Item	Answer	Subject
107	D	CRIM. LAW	154	A	EVIDENCE
108	D	TORTS	155	A	REAL PROP.
109	B	CONST. LAW	156	D	CONTRACTS
110	D	EVIDENCE	157	D	CONTRACTS
111	B	REAL PROP.	158	B	EVIDENCE
112	B	TORTS	159	C	REAL PROP.
113	D	CRIM. LAW	160	C	CONST. LAW
114	D	CONST. LAW	161	C	TORTS
115	D	CRIM. LAW	162	D	CONST. LAW
116	B	CONTRACTS	163	D	REAL PROP.
117	C	EVIDENCE	164	A	EVIDENCE
118	A,C*	TORTS	165	B	CONST. LAW
119	A	REAL PROP.	166	B	CRIM. LAW
120	D	CONST. LAW	167	D	EVIDENCE
121	C	TORTS	168	A	REAL PROP.
122	C	EVIDENCE	169	B	CONTRACTS
123	B	REAL PROP.	170	B	CONST. LAW
124	D	CONTRACTS	171	C	TORTS
125	D	CRIM. LAW	172	B	CONTRACTS
126	A	CRIM. LAW	173	D	EVIDENCE
127	C	CONST. LAW	174	D	CONST. LAW
128	B	TORTS	175	B	REAL PROP.
129	A	CONTRACTS	176	C	CONTRACTS
130	D	CONTRACTS	177	A	TORTS
131	D	REAL PROP.	178	D	CRIM. LAW
132	B	CRIM. LAW	179	D	EVIDENCE
133	A	CRIM. LAW	180	A	CONST. LAW
134	C	CONST. LAW	181	C	REAL PROP.
135	D	TORTS	182	B	TORTS
136	D	EVIDENCE	183	D	CRIM. LAW
137	D	REAL PROP.	184	C	CONTRACTS
138	A	CRIM. LAW	185	A	TORTS
139	C	CRIM. LAW	186	B	CONST. LAW
140	C	TORTS	187	B	REAL PROP.
141	A	CONST. LAW	188	C	CRIM. LAW
142	D	CONTRACTS	189	B	CONTRACTS
143	C	CONTRACTS	190	B	CONST. LAW
144	A	REAL PROP.	191	B	REAL PROP.
145	C	CONTRACTS	192	C	TORTS
146	A	TORTS	193	C	EVIDENCE
147	D	EVIDENCE	194	D	CONTRACTS
148	A	CONST. LAW	195	A	TORTS
149	C	TORTS	196	A	REAL PROP.
150	A	REAL PROP.	197	D	CRIM. LAW
151	A	CONST. LAW	198	D	TORTS
152	A	CRIM. LAW	199	A	CONST. LAW
153	D	EVIDENCE	200	A	EVIDENCE

*Immediately following the administration of an MBE, preliminary scoring is conducted to identify any unanticipated item functioning or unusual response patterns. For example, an item might be flagged if a large number of applicants who did well on the test overall selected an option other than the key on that item. Flagged items are then reviewed by the MBE Drafting Committees to assure there are no ambiguities and that they have been keyed correctly. If a content problem is identified, an item may be rekeyed, double-keyed, or eliminated from scoring by having all four options keyed correct. In a typical administration of the MBE, more than one option may be scored as correct on two or three of the 200 items.

MULTISTATE BAR EXAMINATION

Time—6 hours

This test consists of two parts, one of which will be administered in the morning and one in the afternoon. You will be given three hours to work on each of the parts. Be sure that the question numbers on your answer sheet match the question numbers in your test booklet. You are not to begin work until the supervisor tells you to do so.

Your score will be based on the number of questions you answer correctly. It is therefore to your advantage to try to answer as many questions as you can. Use your time effectively. Do not hurry, but work steadily and as quickly as you can without sacrificing your accuracy. If a question seems too difficult, go on to the next one.

YOU ARE TO INDICATE YOUR ANSWERS TO ALL QUESTIONS ON THE SEPARATE ANSWER SHEET. No credit will be given for anything written in the test booklet. After you have decided which of the suggested answers you want to give for a question, blacken the corresponding space on the answer sheet.

Example:

Which of the following is the capital of the United States?

- (A) New York, NY
- (B) Houston, TX
- (C) Washington, DC
- (D) Chicago, IL

Sample Answer

(A) (B) ● (D)

Give only one answer to each question; multiple answers will not be counted. If you wish to change an answer, erase your first mark completely and mark your new choice.