QUESTIONS

PRACTICE MBE—A.M. EXAM

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.
**QUESTIONS**

**PRACTICE MBE — A.M. EXAM**

**Question 1**
The owner of a three-acre tract of land with a small residence rented it to a tenant at a monthly rental of $200. After the tenant had been in possession of the tract for several years, the tenant and the owner orally agreed that the tenant would purchase the tract from the owner for the sum of $24,000, payable at the rate of $200 a month for ten years and also would pay the real estate taxes and the expenses of insuring and maintaining the tract. The owner agreed to give the tenant a deed to the tract after five years had passed and $12,000 had been paid on account and to accept from the tenant a note secured by a mortgage for the balance. The tenant continued in possession of the tract and performed his obligations as orally agreed. The tenant, without consulting the owner, made improvements for which he paid $1,000. When the tenant had paid $12,000, he tendered a proper note and mortgage to the owner and demanded delivery of the deed as agreed. The owner did not deny the oral agreement but told the tenant that she had changed her mind and refused to complete the transaction. The tenant then brought an action for specific performance. The owner pleaded the Statute of Frauds as her defense. If the owner wins, it will be because

(A) nothing the tenant could have done would have overcome the original absence of a written agreement
(B) the actions and payments of the tenant are as consistent with his being a tenant as with an oral contract
(C) the tenant did not secure the owner’s approval for the improvements that he made
(D) the owner has not received any unconscionable benefit, and, therefore, the tenant is not entitled to equitable relief

**Question 2**
During 2010 a series of arsons occurred in a city. In early 2011 the city council adopted this resolution:

The city will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2010 arsons committed here.

The foregoing was telecast by the city’s sole television station once daily for one week.

In which of the following ways could the city’s reward offer be effectively accepted?

(A) Only by an offeree’s return promise to make a reasonable effort to bring about the arrest and conviction of an arsonist within the scope of the offer.
(B) Only by an offeree’s making the arrest and assisting in the successful conviction of an arsonist within the scope of the offer.
(C) By an offeree’s supplying information leading to arrest and conviction of an arsonist within the scope of the offer.
(D) By an offeree’s communication of assent through the same medium (television) used by the city in making its offer.

**Question 3**
A cigarette maker created and published a magazine advertisement that featured a model dressed as a race-car driver standing in front of a distinctive race car. In fact, the car looked almost exactly like the very unusually marked one driven by a famous and popular driver. The driver in the ad was not identified, and his face was not shown in the advertisement. The cigarette maker published the advertisement without obtaining the famous driver’s permission. The race-car driver sued the cigarette maker for economic loss only, based on common-law misappropriation of the right of publicity. The cigarette maker moved to dismiss the complaint.

Will the cigarette maker’s motion to dismiss the complaint be granted?

(A) No, because there are sufficient indicia of the driver’s identity to support a verdict of liability.
(B) Yes, because the driver is a public figure.
(C) Yes, because there was no mention of the driver’s name in the ad.
(D) Yes, because the driver did not claim any emotional or dignitary loss.

**Question 4**
A man was the illegitimate, unacknowledged child of his father, who died intestate, leaving neither spouse nor any children other than the man. The state’s law of intestate succession provides that an unacknowledged illegitimate child may not inherit his father’s property. The spouse, all other blood relations, and the state are preferred as heirs over the unacknowledged illegitimate child. The man filed suit in an appropriate court alleging that the state statute barring an illegitimate child from sharing in a parent’s estate is invalid, and that he should be declared lawful heir to his father’s estate.

In challenging the validity of the state statute, the man’s strongest argument would be that
(A) there is no rational basis for preferring as heirs collateral relatives and even the state over unacknowledged children, and, therefore, the law violates the Equal Protection Clause
(B) he has been deprived of property without due process because his fundamental right to inherit has been compromised without a compelling state need
(C) it violates the Privileges and Immunities Clause of the Fourteenth Amendment
(D) it is a denial of procedural due process because it does not give the unacknowledged illegitimate child an opportunity to prove paternity

Question 5
In which of the following situations is the defendant most likely to be **not guilty** of the charge made?

(A) The police arrested a thief and recovered goods he had stolen. At the direction of the police, the thief took the goods to the defendant. The defendant, believing the goods to be stolen, purchased them. The defendant is charged with attempting to receive stolen property.
(B) The defendant misrepresented his identity to secure a loan from a bank. The banker was not deceived and refused to grant the loan. The defendant is charged with attempting to obtain property by false pretenses.
(C) Believing that state law made it a crime to purchase codeine without a prescription, the defendant purchased, without a prescription, cough syrup containing codeine. Unknown to the defendant, the statute had been repealed and codeine could be legally purchased without a prescription. The defendant is charged with attempting to purchase codeine without a prescription.
(D) The defendant, intending to kill a woman, shot at the woman. Unknown to the defendant, the woman had died of a heart attack minutes before the defendant shot at her. The defendant is charged with attempted murder.

Question 6
A farm was conveyed to a man and a woman by a deed that, in the jurisdiction in which the farm is situated, created a cotenancy in equal shares and with the right of survivorship. The jurisdiction has no statute directly applicable to any of the problems posed.

The woman, by deed, conveyed “my undivided one-half interest” in the farm to a purchaser. The woman has since died. In an appropriate action between the purchaser and the man in which title to the farm is at issue, the man will

(A) prevail, because he is the sole owner of the farm
(B) prevail if, but only if, the cotenancy created in the man and the woman was a tenancy by the entirety
(C) not prevail if he had knowledge of the conveyance prior to the woman’s death

(D) not prevail, because the purchaser and the man own the farm as tenants in common

Question 7
A storekeeper of a large hardware store sells power saws for both personal and commercial use. He often takes old power saws as trade-ins on new ones. The old power saws are then completely disassembled and rebuilt with new bearings by the storekeeper’s employees and sold by the storekeeper as “reconditioned saws.” A purchaser, the owner and operator of a cabinetmaking shop, informed the storekeeper that he wanted to buy a reconditioned circular saw for use in his cabinetmaking business. However, the blade that was on the saw he picked out had very coarse teeth for cutting rough lumber. The purchaser told the storekeeper that he wanted a saw blade that would cut plywood. The storekeeper exchanged the coarse blade for a new one with finer teeth that would cut plywood smoothly. The new blade was manufactured by a saw-blade company and contained defects. The reconditioned saw had been manufactured by a power-saw company.

The week after the saw was purchased, the employee, who works for the purchaser in the purchaser’s cabinet-making shop, was injured while using the saw. The employee’s arm was severely cut. As a result, the cabinetmaking shop was shut down for a week until a replacement for the employee could be found. The jurisdiction has adopted a pure comparative fault rule in strict liability cases.

If the employee was injured while cutting plywood when the shaft holding the saw blade came loose when a bearing gave way and the shaft and blade flew off the saw, and if the employee asserts a claim based on strict liability in tort against the power saw company, the employee will probably

(A) recover if the shaft that came loose was a part of the saw when it was new
(B) recover, because the power saw company was in the business of manufacturing dangerous machines
(C) not recover, because the employee was not the buyer of the power saw
(D) not recover, because the saw had been rebuilt by the storekeeper

Question 8
A landowner and a contractor entered into a written contract under which the contractor agreed to build a building and pave an adjacent sidewalk for the landowner at a price of $200,000. Later, while construction was proceeding, the landowner and the contractor entered into an oral modification under which the contractor was not obligated to pave the sidewalk, but still would be entitled to $200,000 upon
Completion. The contractor completed the building. The landowner, after discussions with his landscaper, demanded that the contractor pave the adjacent sidewalk. The contractor refused.

Has the contractor breached the contract?
(A) No, because the oral modification was in good faith and therefore enforceable.
(B) Yes, because a discharge of a contractual obligation must be in writing.
(C) Yes, because the parol evidence rule bars proof of the oral modification.
(D) Yes, because there was no consideration for the discharge of the contractor's duty to pave the sidewalk.

Question 9
At a civil trial for slander, the plaintiff showed that the defendant had called the plaintiff a thief. In defense, the defendant called a witness to testify, "I have been the plaintiff's neighbor for many years, and people in our community generally have said that he is a thief."

Is the testimony concerning the plaintiff's reputation in the community admissible?
(A) No, because character is an essential element of the defense, and proof must be made by specific instances of conduct.
(B) Yes, to prove that the plaintiff is a thief, and to reduce or refute the damages claimed.
(C) Yes, to prove that the plaintiff is a thief, but not on the issue of damages.
(D) Yes, to reduce or refute the damages claimed, but not to prove that the plaintiff is a thief.

Question 10
As a shopper was leaving a supermarket, an automatic door that should have opened outward opened inward, striking and breaking the shopper's nose. The owner of the building had installed the automatic door. The lease, pursuant to which the supermarket leased the building, provided that the supermarket was responsible for all maintenance of the premises.

The shopper sued the supermarket. At trial, neither the shopper nor the supermarket offered any testimony, expert or otherwise, as to why the door had opened inward. At the conclusion of the proofs, both the shopper and the supermarket moved for judgment.

How should the trial judge rule?
(A) Grant judgment for the shopper, because it is undisputed that the door malfunctioned.
(B) Grant judgment for the supermarket, because the shopper failed to join the owner of the building as a defendant.
(C) Grant judgment for the supermarket, because the shopper failed to offer proof of the supermarket's negligence.
(D) Submit the case to the jury, because on these facts negligence may be inferred.

Question 11
The childhood home of a former U.S. president is part of a national park located in a city. The National Park Service entered into a contract with an independent antiques collector to acquire items owned by residents of the city during the president's lifetime. According to the contract, the collector purchases items and then sells them to the Park Service at a price equal to the collector's cost plus a 10 percent commission. Purchases by antiques collectors are ordinarily subject to the sales tax of the state in which the city is located. The collector files suit in state court to enjoin collection of the tax on these purchases, claiming that the sales tax is unconstitutional as applied to them.

Should the state court issue the injunction?
(A) No, because as the purchaser of these antiques, the collector, rather than the federal government is liable for the tax.
(B) No, because the suit is within the exclusive jurisdiction of the federal courts.
(C) Yes, because the federal government is contractually obligated to pay the amount of the sales tax when it covers the collector's cost of these antiques.
(D) Yes, because under the Supremacy Clause, the federal program to acquire these antiques preempts the state sales tax on the purchase of these items.

Question 12
In a civil trial for professional malpractice, the plaintiff sought to show that the defendant, an engineer, had designed the plaintiff's flour mill with inadequate power. The plaintiff called an expert witness who based his testimony solely on his own professional experience but also asserted, when asked, that the book Smith on Milling Systems was a reliable treatise in the field and consistent with his views. On cross-examination, the defendant asked the witness whether he and Smith were ever wrong. The witness answered, "Nobody's perfect." The defendant asked no further questions. The defendant called a second expert witness and asked, "Do you accept the Smith book as reliable?" The second witness said, "It once was, but it is now badly out of date." The plaintiff requested that the jury be allowed to examine the book and judge for itself the book's reliability.

Should the court allow the jury to examine the book?
(A) No, because the jury may consider only passages read to it by counsel or witness.
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Question 13
A car owner washed her car while it was parked on a public street, in violation of a statute that prohibits the washing of vehicles on public streets during rush hours. The statute was enacted only to expedite the flow of automobile traffic. Due to a sudden and unexpected cold snap, the car owner's waste water formed a puddle that froze. A pedestrian slipped on the frozen puddle and broke her leg. The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the statute. At the conclusion of the proofs, both parties moved for a directed verdict.

How should the trial judge proceed?
(A) Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
(B) Deny both motions and submit the case to the jury, because the jury may consider the statutory violation as evidence that the car owner was negligent.
(C) Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.
(D) Grant the pedestrian's motion, because of the car owner's admitted statutory violation.

Question 14
A dentist was anesthetizing a patient's gum before pulling a tooth. Although the dentist used due care, the hypodermic needle broke off in the patient's gum, causing injury. The needle broke because of a manufacturing defect that the dentist could not have detected.

Is the patient likely to recover damages in an action against the dentist based on strict products liability and malpractice?
(A) No, on neither basis.
(B) Yes, based on malpractice, but not on strict products liability.
(C) Yes, based on strict products liability, but not on malpractice.
(D) Yes, on both bases.

Question 15
A buyer entered into a written contract to purchase from a seller 1,000 sets of specially manufactured ball bearings of a non-standard dimension for a price of $10 per set. The seller correctly calculated that it would cost $8 to manufacture each set. Delivery was scheduled for 60 days later. Fifty-five days later, after the seller had completed production of the 1,000 sets, the buyer abandoned the project requiring use of the specially manufactured ball bearings and repudiated the contract with the seller. After notifying the buyer of his intention to resell, the seller sold the 1,000 sets of ball bearings to a salvage company for $2 per set. The seller sued the buyer for damages.

What damages should the court award to the seller?
(A) $2 per set, representing the difference between the cost of production and the price the buyer agreed to pay.
(B) $6 per set, representing the difference between the cost of manufacture and the salvage price.
(C) $8 per set, representing the lost profits plus the unrecovered cost of production.
(D) Nominal damages, as the seller failed to resell the goods by public auction.

Question 16
A defendant decided to kill his neighbor. He set out for his neighbor's house. Before he got there, he saw his neighbor's brother, who resembled the defendant's neighbor. Thinking the neighbor's brother was the neighbor, the defendant shot at the neighbor's brother. The shot missed the neighbor's brother but wounded a bystander, who was some distance away. The defendant had not seen the bystander.

In a prosecution under a statute that proscribes attempt to commit murder, the district attorney should indicate that the intended victim(s) was (were)
(A) The neighbor only
(B) The neighbor's brother only
(C) The bystander only
(D) The neighbor and the neighbor's brother

Question 17
At the defendant's trial for a gang-related murder, the prosecution introduced, as former testimony, a statement by a gang member who testifies against the defendant at a preliminary hearing and has now invoked his privilege against self-incrimination.

If the defendant now seeks to impeach the credibility of the gang member, which of the following is the court most likely to admit?
(A) Evidence that the gang member had three misdemeanor convictions for assault.
(B) Testimony by a psychologist that persons with the gang member's background have a tendency to fabricate.
Question 18
While negligently driving his father’s uninsured automobile, a 25-year-old student crashed into an automobile driven by a woman. Both the student and the woman were injured. The student’s father, erroneously believing that he was liable because he owned the automobile, said to the woman: “I will see to it that you are reimbursed for any losses you incur as a result of the accident.”

In an action by the woman against the student’s father for wages lost while she was incapacitated as a result of the accident, which of the following would be the father’s best defense?
(A) Lack of consideration
(B) Mistake of fact as to basic assumption
(C) Statute of Frauds
(D) Indefiniteness of father’s promise

Question 19
A farmer borrowed $100,000 from a bank and gave the bank a promissory note secured by a mortgage on the farm that she owned. The bank promptly and properly recorded the mortgage, which contained a due-on-sale provision.

A few years later, the farmer borrowed $5,000 from a second bank and gave it a promissory note secured by a mortgage on her farm. The bank promptly and properly recorded the mortgage.

Subsequently, the farmer defaulted on her obligation to the first bank, which then validly accelerated the debt and instituted nonjudicial foreclosure proceedings as permitted by the jurisdiction. The second bank received notice of the foreclosure sale but did not send a representative to the sale. At the foreclosure sale, a buyer who was not acting in collusion with the farmer outbid all other bidders and received a deed to the farm.

Several months later, the original farmer repurchased her farm from the buyer, who executed a warranty deed transferring the farm to her. After the farmer promptly and properly recorded that deed, the second bank commenced foreclosure proceedings on the farm. The farmer denied the validity of the second bank’s mortgage.

Does the second bank continue to have a valid mortgage on the farm?
(A) Yes, because of the doctrine of estoppel by deed.
(B) Yes, because the original owner reacquired title to the farm.

(C) No, because the purchase at the foreclosure sale by the buyer under these facts eliminated the second bank’s junior mortgage lien.
(D) No, because of the due-on-sale provision in the farmer’s mortgage to the first bank.

Question 20
A woman offered to pay her friend one-third of the stolen proceeds if the friend would drive the getaway car to be used in a bank robbery. The friend agreed but made the woman promise not to hurt anyone during the robbery.

The woman then drove to a sporting goods store, where she explained to the store owner that she needed a small firearm for use in a bank robbery. The store owner responded that he would charge extra because the woman was so unwise as to confide her unlawful plans for using the weapon, and he sold her a handgun at four times the regular price.

During the robbery, the woman used the gun to threaten a bank teller into handing over the money. The gun discharged by accident and killed a bank customer.

At common law, who in addition to the woman could properly be convicted of murder in the death of the customer?
(A) Both the friend and the store owner.
(B) Neither the friend nor the store owner.
(C) Only the friend.
(D) Only the store owner.

Question 21
On May 1, an uncle mailed a letter to his adult nephew that stated: “I am thinking of selling my pickup truck, which you have seen and ridden in. I would consider taking $7,000 for it.” On May 3, the nephew mailed the following response: “I will buy your pickup for $7,000 cash.” The uncle received this letter on May 5 and on May 6 mailed a note that stated: “It’s a deal.” On May 7, before the nephew had received the letter of May 6, he phoned his uncle to report that he no longer wanted to buy the pickup truck because his driver’s license had been suspended.

Which of the following statements concerning this exchange is accurate?
(A) There is a contract as of May 3.
(B) There is a contract as of May 5.
(C) There is a contract as of May 6.
(D) There is no contract.

Question 22
In a civil action for misrepresentation in the sale of real estate, the parties contested whether the defendant was licensed by the State Board of Realtors, a public agency
The client has filed suit against both lawyers for negligence. That case is on trial with a jury in a court of general jurisdiction.

In order to establish a breach of standard of care owed to her by the two lawyers, the client
(A) must have a legal expert from the same locality testify that the defendants’ conduct was a breach
(B) must have a legal expert from the same state testify that the defendants’ conduct was a breach
(C) can rely on the application of the jurors’ common knowledge as to whether there was a breach
(D) can rely on the judge, as an expert in the law, to advise the jury whether there was a breach

Question 25
A plaintiff sued her employer, alleging that poor working conditions had caused her to develop a stomach ulcer. At trial, the plaintiff’s medical expert testified to the cause of the plaintiff’s ulcer and stated that his opinion was based in part on information in a letter the plaintiff’s personal physician had written to the plaintiff’s employer, explaining why the plaintiff had missed work.

When offered to prove the cause of the plaintiff’s condition, is the letter from the plaintiff’s doctor admissible?
(A) No, because it is hearsay not within any exception.
(B) No, because the plaintiff’s physician is not shown to be unavailable.
(C) Yes, because it was relied upon by the plaintiff’s medical expert.
(D) Yes, under the business records exception to the hearsay rule.

Question 24
Two lawyers are the only members of a law partnership in a small town that has only one other lawyer in it. Both attorneys do a substantial amount of personal injury work. A client was severely and permanently injured in an automobile collision when struck by an automobile driven by a motorist. The client employed the law partnership to represent her in obtaining damages for her injuries. At the time the client employed the partnership, the statute of limitations had six weeks to run on her claim. The complaint was prepared but not filed. Each lawyer thought that the other lawyer would file the complaint. The statute of limitations ran out on the client’s claim against the motorist.

The client has filed suit against both lawyers for negligence. That case is on trial with a jury in a court of general jurisdiction.

In order to establish a breach of standard of care owed to her by the two lawyers, the client
(A) must have a legal expert from the same locality testify that the defendants’ conduct was a breach
(B) must have a legal expert from the same state testify that the defendants’ conduct was a breach
(C) can rely on the application of the jurors’ common knowledge as to whether there was a breach
(D) can rely on the judge, as an expert in the law, to advise the jury whether there was a breach
If the customer's claim is based on false imprisonment, will the customer prevail?

(A) Yes, because he was confined against his will.
(B) Yes, because he was harmed as a result of his confinement.
(C) No, unless the security guard was negligent in locking the gate.
(D) No, unless the security guard knew that someone was in the lot at the time the guard locked the gate.

**Question 27**

An investor offered a landowner $200 for a 30-day option to buy the landowner's land for $10,000. As the landowner knew, the investor, if granted the option, intended to resell the land at a profit. The landowner declined, believing that she could find a desirable purchaser herself. The investor thereupon said to the landowner, "Make me a written, 30-day offer, revocable at your pleasure, to sell me your land at a sale price of $10,000, and tomorrow I will pay you $200 for so doing." The landowner agreed and gave the investor the following signed document:

> For 30 days I offer my land to the investor for $10,000, this offer to be revocable at my pleasure at any time before acceptance.

Which of the following would best describe the basis of any duty or duties created by the investor's oral promise and the landowner's writing?

(A) Firm option
(B) Precontractual liability by promissory estoppel
(C) Unilateral contract
(D) Quasi-contractual liability

**Question 28**

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

The deed to the 40-acre tract was promptly and properly recorded. It contained the following language:

> It is a term and condition of this deed, which shall be a covenant running with the land and binding on all owners, their heirs and assigns, that no use shall be made of the 40-acre tract of land except for residential purposes.

Subsequently, the developer fully developed the 40-acre tract into a residential subdivision consisting of 40 lots with a single-family residence on each lot.

Although there have been multiple transfers of ownership of each of the 40 lots within the subdivision, none of them included a reference to the quoted provision in the deed from the man to the developer, nor did any deed to a subdivision lot create any new covenants restricting use.

Last year, a major new medical center was constructed adjacent to the subdivision. A doctor who owns a house in the subdivision wishes to relocate her medical offices to her house. For the first time, the doctor learned of the restrictive covenant in the deed from the man to the developer. The applicable zoning ordinance permits the doctor's intended use. The man, as owner of the five-acre tract, however, objects to the doctor's proposed use of her property.

There are no governing statutes other than the zoning code. The common-law Rule Against Perpetuities is unmodified in the jurisdiction.

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

(A) No, because the owners of lots in the subdivision own property benefited by the original residential covenant and have the sole right to enforce it.
(B) No, because the man owns property benefited by the original restrictive covenant and has a right to enforce it.
(C) Yes, because the original restrictive covenant violates the Rule Against Perpetuities.
(D) Yes, because the zoning ordinance allows the doctor's proposed use and preempts the restrictive covenant.

**Question 29**

With the advice and consent of the Senate, the President entered into a self-executing treaty with a foreign country. The treaty provided that citizens of both nations were required to pay whatever torts damages were awarded against them by a court of either nation.

A man and a woman who were U.S. citizens and residents of the same state were traveling separately in the foreign country when their cars collided. The foreign court awarded the woman a judgment for $500,000 in damages for her injuries from the accident.

In federal district court in their home state, the woman filed suit against the man to enforce the judgment. The man filed a motion to dismiss for lack of jurisdiction.

Should the court grant the motion to dismiss?

(A) Yes, because the citizenship of the parties is not diverse.
(B) Yes, because the traffic accident was a noncommercial transaction outside interstate commerce.
(C) No, because the case falls within the federal question jurisdiction of the court.
(D) No, because the treaty power is plenary and not subject to judicial review.

**Question 30**

Section 1 of the Vehicle Code of a state makes it illegal to cross a street in a central business district other than at a...
kidnapped 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 the accomplice of the kidnapped citizen, and arrested her.

The kidnapped citizen and his accomplice 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 the kidnapped citizen and his accomplice.
(B) grant the motion of the kidnapped citizen and deny the motion of his accomplice.
(C) grant the motion of the accomplice and deny the motion of the kidnapped citizen.
(D) deny the motions of both the kidnapped citizen and his accomplice.

Question 33

An act of Congress provides that “no federal court shall order the implementation of a public school desegregation plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence.”

Which of the following is the strongest argument for the constitutionality of the act?

(A) The Fourteenth Amendment authorizes Congress to define governmental conduct that violates the Equal Protection Clause.
(B) Under Article III, Congress may restrict the jurisdiction of the federal courts.
(C) Transportation of students is subject to regulation by Congress because commerce is involved.
Congress provides partial support for public education and is therefore entitled to establish conditions upon the expenditure of federal grants.

**Question 35**

A hiker sustained a head injury when he was struck by a limb that fell from a tree. At the time of his injury, the hiker was walking through a forest on private property without the property owner's knowledge or permission. It was determined that the limb fell because the tree was infested with termites.

In an action by the hiker against the property owner to recover for his head injury, will the hiker prevail?

(A) No, because the property owner could not foresee that anyone would be injured.

(B) No, because the property owner breached no duty to the hiker, who was a trespasser.

(C) Yes, because the property owner had a duty to prevent the trees on his property from becoming dangerous.

(D) Yes, because the property owner is liable for hidden dangers on his property.

**Question 36**

A seller and a buyer have dealt with each other in hundreds of separate grain contracts over the last five years. In performing each contract, the seller delivered the grain to the buyer and, upon delivery, the buyer signed an invoice that showed an agreed-upon price for that delivery. Each invoice was silent in regard to any discount from the price in exchange for prompt payment. The custom of the grain trade is to allow a 2 percent discount from the invoice price for payment within ten days of delivery. In all of their prior transactions and without objection from the seller, the buyer took 15 days to pay and deducted 5 percent from the invoice price. The same delivery procedure and invoice were used in the present contract as had been used previously. The present contract called for a single delivery of wheat at a price of $300,000. The seller delivered the wheat and the buyer then signed the invoice. On the third day after delivery, the buyer received the following note from the seller: “Payment in full in accordance with signed invoice is due immediately. No discounts permitted.” s/Seller.

Which of the following statements concerning these facts is most accurate?

(A) The custom of the trade controls, and the buyer is entitled to take a 2 percent discount if he pays within ten days.

(B) The parties’ course of dealing controls, and the buyer is entitled to take a 5 percent discount if he pays within 15 days.

(C) The seller’s retraction of his prior waiver controls, and the buyer is entitled to no discount.

(D) The written contract controls, and the buyer is entitled to no discount because of the parol evidence rule.

**Question 37**

In which of the following situations is the defendant most likely to be guilty of common-law murder?

(A) Angered because his neighbor is having a noisy party, the defendant fires a rifle into the neighbor’s house. The bullet strikes and kills a guest at the party.

(B) During an argument, the defendant’s cousin slaps the defendant. Angered, the defendant responds by shooting and killing his cousin.

(C) The defendant drives his car through a red light and strikes and kills a pedestrian who is crossing the street.

(D) Using his fist, the defendant punches a victim in the face. As a result of the blow, the victim falls and hits his head on a concrete curb, suffers a concussion, and dies.

**Question 38**

A defendant is tried for armed robbery of a bank. The prosecution, in its case in chief, offers evidence that when the defendant was arrested one day after the crime, he had a quantity of heroin and a hypodermic needle in his possession.

This evidence should be

(A) admitted to prove the defendant’s motive to commit the crime

(B) admitted to prove the defendant’s propensity to commit crimes

(C) excluded, because its probative value is substantially outweighed by the danger of unfair prejudice

(D) excluded, because such evidence may be offered only to rebut evidence of good character offered by the defendant

**Question 39**

A man contacted his lawyer regarding his right to use a path on his neighbor’s vacant land.

Fifteen years ago, after a part of the path located on his land and connecting his cabin to the public highway washed out, the man cleared a small part of his neighbor’s land and rerouted a section of the path through the neighbor’s land.

Twelve years ago, the neighbor leased her land to some hunters. For the next 12 years, the hunters and the man who had rerouted the path used the path for access to the highway.

A month ago, the neighbor discovered that part of the path was on her land. The neighbor told the man that she had not given him permission to cross her land and that she would be closing the rerouted path after 90 days.
The man's land and the neighbor's land have never been in common ownership.

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

What should the lawyer tell the man concerning his right to use the rerouted path on the neighbor's land?
(A) The man has fee title by adverse possession of the land included in the path.
(B) The man has an easement by necessity to use the path.
(C) The man has an easement by prescription to use the path.
(D) The man has no right to use the path.

Question 40
A debtor owed a lender $1,500. The statute of limitations barred recovery on the claim. The debtor wrote to the lender, stating, "I promise to pay you $500 if you will extinguish the debt." The lender agreed.

Is the debtor's promise to pay the lender $500 enforceable?
(A) No, because the debtor made no promise not to plead the statute of limitations as a defense.
(B) No, because there was no consideration for the debtor's promise.
(C) Yes, because the debtor's promise provided a benefit to the lender.
(D) Yes, because the debtor's promise to pay part of the barred antecedent debt is enforceable.

Question 41
In one state, certain kinds of advanced diagnostic medical technology were located only in hospitals, where they provided a major source of revenue. In many other states, such technology was also available at "diagnostic centers" that were not affiliated with hospitals.

A group of physicians announced its plan to immediately open in the state a diagnostic center that would not be affiliated with a hospital. The state hospital association argued to the state legislature that only hospitals could reliably handle advanced medical technologies. The legislature then enacted a law prohibiting the operation in the state of diagnostic centers that were not affiliated with hospitals.

The group of physicians filed suit challenging the constitutionality of the state law.

What action should the court take?
(A) Uphold the law, because the provision of medical services is traditionally a matter of legitimate local concern that states have unreviewable authority to regulate.
(B) Uphold the law, because the legislature could rationally believe that diagnostic centers not affiliated with hospitals would be less reliable than hospitals.
(C) Invalidate the law, because it imposes an undue burden on access to medical services in the state.
(D) Dismiss the suit without reaching the merits, because the suit is not ripe.

Question 42
Until 1954, a state required segregation in all public and private schools, but all public schools are now desegregated. Other state laws, enacted before 1954 and continuing to the present, provide for free distribution of the same textbooks on secular subjects to students in all public and private schools. In addition, the state accredits schools and certifies teachers.

A private school that offers elementary and secondary education in the state, denies admission to all non-Caucasians.

Which of the following is the strongest argument against the constitutionality of free distribution of textbooks to the students at the private school?
(A) No legitimate educational function is served by the free distribution of the textbooks.
(B) The state may not in any way aid private schools.
(C) The Constitution forbids private bias of any kind.
(D) Segregation is furthered by the distribution of textbooks to these students.

Question 43
In a civil trial for fraud arising from a real estate transaction, the defendant claimed not to have been involved in the transaction. The plaintiff called a witness to testify concerning the defendant's involvement in the fraudulent scheme, but to the plaintiff's surprise the witness testified that the defendant was not involved, and denied making any statement to the contrary. The plaintiff now calls a second witness to testify that the first witness had stated, while the two were having a dinner conversation, that the defendant was involved in the fraudulent transaction.

Is the testimony of the second witness admissible?
(A) No, because a party cannot impeach the party's own witness.
(B) No, because it is hearsay not within any exception.
(C) Yes, but only to impeach the first witness.
(D) Yes, to impeach the first witness and to prove the defendant's involvement.

Question 44
By a valid written contract, a seller agreed to sell land to a buyer. The contract stated, "The parties agree that closing
will occur on next May 1 at 10 a.m.” There was no other reference to closing. The contract was silent as to quality of title.

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

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

When the seller refused to close, the buyer sued for specific performance.

Will the buyer prevail?

(A) No, because the easement renders the seller’s title unmarketable.
(B) No, because rights of third parties are unresolved.
(C) Yes, because the decision to terminate the contract for title not being marketable belongs only to the buyer.
(D) Yes, because the seller did not give notice of the easement a reasonable time before the closing date.

**Question 45**

In a civil action, the plaintiff sued a decedent’s estate to recover damages for the injuries she suffered in a collision between her car and one driven by the decedent. At trial, the plaintiff introduced undisputed evidence that the decedent’s car swerved across the median of the highway, where it collided with an oncoming car driven by the plaintiff. The decedent’s estate introduced undisputed evidence that, prior to the car’s crossing the median, the decedent suffered a fatal heart attack, which she had no reason to foresee, and that, prior to the heart attack, the decedent had been driving at a reasonable speed and in a reasonable manner. A statute makes it a traffic offense to cross the median of a highway.

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

(A) The decedent’s estate, because its evidence is undisputed.
(B) The decedent’s estate, because the plaintiff has not established a prima facie case of liability.
(C) The plaintiff, because the accident was of a type that does not ordinarily happen in the absence of negligence on the actor’s part.
(D) The plaintiff, because the decedent crossed the median in violation of the statute.

**Question 46**

A homeowner resented the fact that joggers and walkers would sometimes come onto his property just beside the sidewalk in order to enjoy the feel of walking or running on grass. He put up a “No Trespassing” sign, but it did not stop the practice. He then put up a “Beware of Skunk” sign and bought a young skunk. He took the skunk to a vet to have its scent gland removed. Unfortunately, the vet did not perform the operation properly, and the scent gland was not removed. The homeowner was unaware that it had not been removed.

One day a walker was out for a stroll. When she came to the homeowner’s property, she walked on the grass alongside the sidewalk on the homeowner’s property. The skunk came up behind the walker and sprayed her with its scent. The smell was overpowering, and she fainted. She struck her head on the sidewalk and suffered serious injuries.

The probable result of the walker’s claim against the homeowner is that she will

(A) recover, because the skunk was a private nuisance
(B) recover, because the skunk was not a domesticated animal
(C) not recover, because the walker was a trespasser
(D) not recover, because the vet was the cause of the injury

**Question 47**

A woman told a man to go into her friend’s unlocked barn and retrieve an expensive black saddle that she said she had loaned to the friend. The man went to the friend’s barn, opened the door, found a black saddle, and took it back to the woman’s house. The friend had in fact not borrowed a saddle from the woman, and when the friend discovered her black saddle missing, she suspected that the woman was the thief. The friend used a screwdriver to break into the woman’s house to find the saddle. Upon discovering the saddle on the woman’s table, the friend took it back and called the police.

The jurisdiction follows the common law, except that burglary covers structures in addition to dwellings and the nighttime element has been eliminated.

Which, if any, of these individuals is guilty of burglary?

(A) All of them.
(B) Only the friend.
(C) Only the man.
(D) Only the woman.

**Question 48**

A mathematician was hired as an assistant professor of mathematics at a state college and is now in his third consecutive one-year contract. Under state law he cannot acquire tenure until after five consecutive annual contracts. In his third year, the mathematician was notified that
he was not being rehired for the following year. Applicable
state law and college rules did not require either a state-
ment of reasons or a hearing, and in fact neither was
offered to him.

Which of the following, if established, sets forth the
strongest constitutional argument the mathematician could
make to compel the college to furnish him a statement of
reasons for the failure to rehire him and an opportunity for
a hearing?
(A) There is no evidence that tenured teachers are any
more qualified than he is.
(B) He leased a home in reliance on an oral promise of
reemployment by the college president.
(C) He was the only teacher at the college whose contract
was not renewed that year.
(D) In the expectation of remaining at the college, he had
just moved his elderly parents to the town in which the
college is located.

Question 49

An insurance company issued an insurance policy to a
homeowner. The policy failed to contain certain coverage
terms required by a state insurance statute. When the
homeowner suffered a loss due to a theft that was within
the policy’s terms, the insurance company refused to pay,
claiming that the contract was unenforceable because it
violated the statute.

Will the homeowner succeed in an action against the
insurance company to recover for the loss?
(A) No, because the insurance policy is not a divisible
contract.
(B) No, because the insurance policy violated the statute.
(C) Yes, because the homeowner belongs to the class of
persons intended to be protected by the statute.
(D) Yes, because the insurance policy would be strictly con-
strued against the insurance company as the drafter.

Question 50

On a foggy night, a victim was clubbed from behind by a
man wielding a blackjack. The defendant was arrested in
the vicinity shortly thereafter. As they were booking the
defendant, the police took his photograph. They promptly
showed that photograph, along with the photographs of
seven people who had the same general features as the
defendant, to the victim. The victim identified the defendant
as the culprit.

At trial, the defendant objects to the introduction into
evidence of his out-of-court identification. His objection
should be
(A) sustained, because the victim did not have a good
opportunity to observe the culprit
(B) sustained, because the defendant was not represented
by counsel at the showing of the photographs to the victim
(C) sustained, because the action of the police in show-
ing the photographs to the victim was unnecessarily
suggestive
(D) denied

Question 51

On May 1, a seller and a buyer entered into a written con-
tract, signed by both parties, for the sale of a tract of land
for $100,000. Delivery of the deed and payment of the pur-
chase price were scheduled for July 1. On June 1, the buyer
received a letter from the seller repudiating the contract. On
June 5, the buyer bought a second tract of land at a higher
price as a substitute for the first tract. On June 10, the seller
communicated a retraction of the repudiation to the buyer.

The buyer did not tender the purchase price for the first
tract on July 1, but subsequently sued the seller for breach
of contract.

Will the buyer likely prevail?
(A) No, because the seller retracted the repudiation prior to
the agreed time for performance.
(B) No, because the buyer’s tender of the purchase price
on July 1 was a constructive condition to the seller’s
duty to tender a conveyance.
(C) Yes, because the seller’s repudiation was non-retract-
able after it was communicated to the buyer.
(D) Yes, because the buyer bought the second tract
as a substitute for the first tract prior to the seller’s
retraction.

Question 52

On a parcel of land immediately adjacent to a woman’s
50-acre farm, a public school district built a large consoli-
dated high school that included a 5,000-seat lighted athletic
stadium. The woman had objected to the district’s plans for
the stadium and was particularly upset about nighttime ath-
letic events that attracted large crowds and that, at times,
resulted in significant noise and light intensity levels. On
nights of athletic events, the woman and her family mem-
bbers wore earplugs and could not sleep or enjoy a quiet
evening until after 10 p.m. In addition, light from the stadium
on those nights was bright enough to allow reading a news-
paper in the woman’s yard.

Which of the following doctrines would best support the
woman’s claim for damages?
(A) Constructive eviction
(B) Private nuisance
(C) Public nuisance
(D) Waste
Question 53

On March 1, an excavator entered into a contract with a contractor to perform excavation work on a large project. The contract expressly required that the excavator begin work on June 1 to enable other subcontractors to install utilities. On May 15, the excavator requested a 30-day delay in the start date for the excavation work because he was seriously behind schedule on another project. When the contractor refused to grant the delay, the excavator stated that he would try to begin the work for the contractor on June 1.

Does the contractor have valid legal grounds to cancel the contract with the excavator and hire a replacement?

(A) Yes, because the excavator committed an anticipatory repudiation of the contract by causing the contractor to feel insecure about the performance.

(B) Yes, because the excavator breached the implied covenant of good faith and fair dealing.

(C) No, because the excavator would be entitled to specific performance of the contract if he could begin by June 1.

(D) No, because the excavator did not state unequivocally that he would delay the beginning of his work.

Question 54

Ten years ago, a labor leader divorced his wife. Both he and his first wife have since married other persons. Recently, a newspaper in another city ran a feature article on improper influences it asserted had been used by labor officials to secure favorable rulings from government officials. The story said that in 1980 the labor leader's first wife, with his knowledge and concurrence, gave sexual favors to the mayor of the labor leader's hometown and then persuaded the mayor to grant concessions to the labor leader's union.

The story named the labor leader and identified his first wife by her former and current surnames. The reporter for the newspaper believed the story to be true, since it had been related to him by two very reliable sources.

The labor leader's first wife suffered emotional distress and became very depressed. If she asserts a claim based on defamation against the newspaper, she will

(A) prevail, because the story concerned her personal, private life

(B) prevail if the story was false

(C) not prevail, because the newspaper did not print the story with knowledge of its falsity or with reckless disregard for its truth or falsity

(D) not prevail if the newspaper exercised ordinary care in determining if the story was true or false

Question 55

The owner in fee simple of a small farm consisting of 30 acres of land improved with a house and several outbuildings, leased the same to a farmer for a ten-year period. After two years had expired, the government condemned 20 acres of the property and allocated the compensation award to the owner and the farmer according to their respective interest so taken. It so happened, however, that the 20 acres taken embraced all of the farm's tillable land, leaving only the house, outbuildings, and a small wooded lot. There is no applicable statute in the jurisdiction where the property is located nor any provision in the lease relating to condemnation. The farmer quit possession, and the owner brought suit against him to recover rent. The owner will

(A) lose, because there has been a frustration of purpose that excuses the farmer from further performance of his contract to pay rent

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

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

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

Question 56

Statutes in the jurisdiction define criminal assault as "an attempt to commit a criminal battery" and criminal battery as "causing an offensive touching."

As a defendant was walking down the street, a gust of wind blew off his hat. The defendant reached out, trying to grab his hat, and narrowly missed striking the plaintiff in the face with his hand.

If charged with criminal assault, the defendant should be found

(A) guilty, because he caused the plaintiff to be in apprehension of an offensive touching

(B) guilty, because he should have realized he might strike someone by reaching out

(C) not guilty, because he did not intend to hit the plaintiff

(D) not guilty, because he did not hit the plaintiff

Question 57

Residents of a city complained that brightly colored signs detracted from the character of the city's historic district and
distracted motorists trying to navigate its narrow streets. In response, the city council enacted an ordinance requiring any “sign or visual display” visible on the streets of the historic district to be black and white and to be no more than four feet long or wide.

A political party wanted to hang a six-foot-long, red, white, and blue political banner in front of a building in the historic district. The party filed suit to challenge the constitutionality of the sign ordinance as applied to the display of its banner.

Which of the following would be the most useful argument for the political party?
(A) The ordinance is not the least restrictive means of promoting a compelling government interest.
(B) The ordinance is not narrowly tailored to an important government interest, nor does it leave open alternative channels of communication.
(C) The ordinance imposes a prior restraint on political expression.
(D) The ordinance effectively favors some categories of speech over others.

Question 58
A car dealer owed a bank $10,000, due on June 1. The car dealer subsequently sold an automobile to a buyer at a price of $10,000, payable at $1,000 per month beginning on June 1. The car dealer then asked the bank whether the bank would accept payments of $1,000 per month for ten months beginning June 1, without interest, in payment of the debt. The bank agreed to that arrangement and the car dealer then directed the buyer to make the payments to the bank. When the buyer tendered the first payment to the bank, the bank refused the payment, asserting that it would accept payment only from the car dealer. On June 2, the bank demanded that the car dealer pay the debt in full immediately. The car dealer refused to pay and the bank sued the car dealer to recover the $10,000.

In this suit, which of the following arguments best supports the bank’s claim for immediate payment?
(A) The agreement to extend the time for payment was not in writing.
(B) The car dealer could not delegate its duty to pay to the buyer.
(C) The car dealer gave no consideration for the agreement to extend the time of payment.
(D) The car dealer’s conduct was an attempted novation that the bank could reject.

Question 59
A landowner owned a vacant lot. He entered into a written contract with a contractor to build a house of stated specifications on the lot and to sell the house and lot to the contractor. The contract provided for an “inside date” of April 1, 2010, and an “outside date” of May 1, 2010, for completion of the house and delivery of a deed. Neither party tendered performance on the dates stated. On May 3, 2010, the contractor notified the landowner in writing of the contractor’s election to cancel the contract because of the landowner’s failure to deliver title by May 1. On May 12, the landowner notified the contractor that some unanticipated construction difficulties had been encountered but that the landowner was entitled to a reasonable time to complete in any event. The notification also included a promise that the landowner would be ready to perform by May 29 and that he was setting that date as an adjourned closing date. The landowner obtained a certificate of occupancy and appropriate documents of title, and he tendered performance on May 29. The contractor refused. The landowner brought an action to recover damages for breach of contract. The decision in the case will most likely be determined by whether
(A) the landowner acted with due diligence in completing the house
(B) the contractor can prove actual “undue hardship” caused by the delay
(C) the expressions “inside date” and “outside date” are construed to make time of the essence
(D) there is a showing of good faith in the contractor’s efforts to terminate the contract

Question 60
A man owned a much-loved cat, worth about $25, that frequently trespassed on a neighbor’s property. The neighbor repeatedly asked the man to keep the cat on his own property, but the trespasses did not diminish. Aware of the man’s attachment to the cat, the neighbor killed the cat with a shotgun in full view of the man. As a consequence, the man suffered great emotional distress.

In an action by the man against the neighbor, which of the following claims would be likely to result in the greatest monetary recovery?
(A) Battery
(B) Intentional infliction of mental suffering
(C) Trespass to chattel
(D) Conversion

Question 61
A plaintiff sued a defendant for injuries allegedly suffered when he slipped and fell on the defendant’s business property. Without asking that the defendant’s property manager be declared a hostile witness, the plaintiff called him solely to establish that the defendant was the owner of the property where the plaintiff fell. On cross-examination of the
A carpenter contracted with a homeowner to remodel the homeowner's home for $10,000, to be paid on completion of the work. On May 29, relying on his expectation that he would finish the work and have the homeowner's payment on June 1, the carpenter contracted to buy a car for "$10,000 in cash, if payment is made on June 1; if payment is made thereafter, the price is $12,000." The carpenter completed the work according to specifications on June 1 and demanded payment from the homeowner on that date. The homeowner, without any excuse, refused to pay. Thereupon, the carpenter became very excited, suffered a minor heart attack, and, as a result, incurred medical expenses of $1,000. The reasonable value of the carpenter's services in remodeling the homeowner's home was $13,000.

In an action by the carpenter against the homeowner, which of the following should be the carpenter's measure of recovery?

(A) $10,000, the contract price.
(B) $11,000, the contract price plus $1,000 for the medical expenses incurred because the homeowner refused to pay.
(C) $12,000, the contract price plus $2,000, the bargain that was lost because the carpenter could not pay cash for the car on June 1.
(D) $13,000, the amount the homeowner was enriched by the carpenter's services.
Question 65
After a liquor store was robbed, the police received an anonymous telephone call naming a store employee as the perpetrator of the robbery. Honestly believing that their actions were permitted by the U.S. Constitution, the police talked one of the employee's neighbors into going to the employee's home with a hidden tape recorder to engage him in a conversation about the crime. During the conversation, the employee admitted committing the robbery. The employee was charged in state court with the robbery. He moved to suppress the recording on the grounds that the method of obtaining it violated his constitutional rights under both the state and federal constitutions. Assume that a clear precedent from the state supreme court holds that the conduct of the police in making the recording violated the employee's rights under the state constitution, and that the exclusionary rule is the proper remedy for this violation.

Should the court grant the employee's motion?
(A) No, because the employee's federal constitutional rights were not violated, and this circumstance overrides any state constitutional provisions.
(B) No, because the police were acting in the good-faith belief that their actions were permitted by the federal Constitution.
(C) Yes, because the making of the recording violated the state constitution.
(D) Yes, because use of the recording would violate the neighbor's federal constitutional rights.

Question 66
A man who had become very drunk left a bar and started to walk home. Another patron of the bar, who had observed the man's condition, followed him. The patron saw the man stumble and fall to the ground near an alley. The patron then began to pull out a gun but saw that the man had passed out asleep in the gutter. The patron reached into the man's pocket, grabbed his wallet, and started to walk away. When the patron heard police officers approaching, he dropped the wallet and ran off.

The crimes below are listed in descending order of seriousness.
What is the most serious crime for which the patron properly could be convicted?
(A) Robbery
(B) Larceny
(C) Attempted Robbery
(D) Attempted Larceny

Question 67
A driver negligently ran over a pedestrian. A bystander witnessed the accident from across the street. The bystander ran to the pedestrian, whom he did not know, and administered first aid, but the pedestrian died in the bystander's arms. The bystander suffered serious emotional distress as a result of his failure to save the pedestrian's life, but he experienced no resulting physical manifestations. The bystander brought a negligence action against the driver.

Is the bystander likely to prevail?
(A) No, because the bystander assumed the risk.
(B) No, because the bystander had no familial or other pre-existing relationship with the pedestrian.
(C) Yes, because danger invites rescue.
(D) Yes, because the bystander was in the zone of danger.

Question 68
The Federal Automobile Safety Act establishes certain safety and performance standards for all automobiles manufactured in the United States. The Act creates a five-member "Automobile Commission" to investigate automobile safety, to make recommendations to Congress for new laws, to make further rules establishing safety and performance standards, and to prosecute violations of the Act. The chairman is appointed by the President, two members are selected by the president pro tempore of the Senate, and two by the speaker of the House of Representatives.

A minor U.S. car manufacturer seeks to enjoin enforcement of the Commission's rules.

The best argument that the manufacturer can make is that
(A) legislative power may not be delegated by Congress to an agency in the absence of clear guidelines
(B) the commerce power does not extend to the manufacture of automobiles not used in interstate commerce
(C) the manufacturer is denied due process of law because it is not represented on the Commission
(D) the Commission lacks authority to enforce its standards because not all of its members were appointed by the President of the United States

Question 69
An uncle was the record title holder of a vacant tract of land. He often told friends that he would leave the land to his nephew in his will. The nephew knew of these conversations. Prior to the uncle's death, the nephew conveyed the land by warranty deed to a woman for $10,000. She did not conduct a title search of the land before she accepted the deed from the nephew. She promptly and properly recorded her deed. Last month, the uncle died, leaving the land to the nephew in his duly probated will. Both the nephew and the woman now claim ownership of the land. The nephew has offered to return the $10,000 to the woman.
intent to commit a crime therein.''' Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as "the premeditated and intentional killing of another or the killing of another in the commission of committing rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to crime unless it negates an element of the offense.

The defendant was charged with the murder of the watchman and manslaughter in the death of the pedestrian. Assume that he is tried separately on each charge.

At a defendant's trial for the murder of the watchman, the court should in substance charge the jury on the issue of the defense of intoxication that

(A) intoxication is a defense to the underlying crime of burglary if the defendant, due to drunkenness, did not form an intent to commit a crime within the building, in which case there can be no conviction for murder unless the defendant intentionally and with premeditation killed the watchman.

(B) voluntary intoxication is not a defense to the crime of murder

(C) the defendant is guilty of murder despite his intoxication only if the state proves beyond a reasonable doubt that the killing of the watchman was premeditated and intentional

(D) voluntary intoxication is a defense to the crime of murder if the defendant would not have killed the watchman but for his intoxication

**Question 71**

A defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned, and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed.

Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as "the premeditated and intentional killing of another or the killing of another in the commission of committing rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to crime unless it negates an element of the offense.

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(D) voluntary intoxication is a defense to the crime of murder if the defendant would not have killed the watchman but for his intoxication

**Question 72**

A father, whose adult son was a law school graduate, contracted with a tutor to give the son a bar exam preparation course. "If my son passes the bar exam," the mother explained to the tutor, "he has been promised a job with a law firm that will pay $55,000 a year." The tutor agreed to do the work for $5,000, although the going rate is $6,000. Before the instruction was to begin, the tutor repudiated the contract. Although the mother or the son reasonably could have employed, for $6,000, an equally qualified instructor to replace the tutor, neither did so. The son failed the bar exam and the law firm refused to employ him. It can be shown that had the son received the instruction, he would have passed the bar exam.

If the mother and the son join as parties plaintiff and sue the tutor for breach of contract, how much, if anything, are they entitled to recover?

(A) $1,000, because all other damages could have been avoided by employing another equally qualified instructor.

(B) $55,000, because damages of that amount were within the contemplation of the parties at the time they contracted.

(C) Nominal damages only, because the mother was not injured by the breach and the tutor made no promise to the son.

(D) Nothing, because neither the mother nor the son took steps to avoid the consequences of the tutor's breach.

**Question 70**

A mother, whose adult son was a law school graduate, contracted with a tutor to give the son a bar exam preparation course. "If my son passes the bar exam," the mother explained to the tutor, "he has been promised a job with a law firm that will pay $55,000 a year." The tutor agreed to do the work for $5,000, although the going rate is $6,000. Before the instruction was to begin, the tutor repudiated the contract. Although the mother or the son reasonably could have employed, for $6,000, an equally qualified instructor to replace the tutor, neither did so. The son failed the bar exam and the law firm refused to employ him. It can be shown that had the son received the instruction, he would have passed the bar exam.

If the mother and the son join as parties plaintiff and sue the tutor for breach of contract, how much, if anything, are they entitled to recover?

(A) $1,000, because all other damages could have been avoided by employing another equally qualified instructor.

(B) $55,000, because damages of that amount were within the contemplation of the parties at the time they contracted.

(C) Nominal damages only, because the mother was not injured by the breach and the tutor made no promise to the son.

(D) Nothing, because neither the mother nor the son took steps to avoid the consequences of the tutor's breach.

**Question 71**

A defendant became intoxicated at a bar. He got into his car and drove away. Within a few blocks, craving another drink, he stopped his car in the middle of the street, picked up a brick, and broke the display window of a liquor store. As he was reaching for a bottle, the night watchman arrived. Startled, the defendant turned, and struck the watchman on the head with the bottle, killing him. Only vaguely aware of what was happening, the defendant returned to his car, consumed more liquor, and then drove off at a high speed.

Relevant statutes define burglary to include "breaking and entering a building not used as a dwelling with the intent to commit a crime therein." Manslaughter is defined as the "killing of a human being in a criminally reckless manner." Criminal recklessness is "consciously disregarding a substantial and unjustifiable risk resulting from the actor's conduct." Murder is defined as "the premeditated and intentional killing of another or the killing of another in the commission of committing rape, robbery, burglary, or arson." Another statute provides that intoxication is not a defense to crime unless it negates an element of the offense.

The defendant was charged with the murder of the watchman and manslaughter in the death of the pedestrian. Assume that he is tried separately on each charge.

At a defendant's trial for the murder of the watchman, the court should in substance charge the jury on the issue of the defense of intoxication that

(A) intoxication is a defense to the underlying crime of burglary if the defendant, due to drunkenness, did not form an intent to commit a crime within the building, in which case there can be no conviction for murder unless the defendant intentionally and with premeditation killed the watchman.

(B) voluntary intoxication is not a defense to the crime of murder

(C) the defendant is guilty of murder despite his intoxication only if the state proves beyond a reasonable doubt that the killing of the watchman was premeditated and intentional

(D) voluntary intoxication is a defense to the crime of murder if the defendant would not have killed the watchman but for his intoxication

**Question 72**

A mother, whose adult son was a law school graduate, contracted with a tutor to give the son a bar exam preparation course. "If my son passes the bar exam," the mother explained to the tutor, "he has been promised a job with a law firm that will pay $55,000 a year." The tutor agreed to do the work for $5,000, although the going rate is $6,000. Before the instruction was to begin, the tutor repudiated the contract. Although the mother or the son reasonably could have employed, for $6,000, an equally qualified instructor to replace the tutor, neither did so. The son failed the bar exam and the law firm refused to employ him. It can be shown that had the son received the instruction, he would have passed the bar exam.

If the mother and the son join as parties plaintiff and sue the tutor for breach of contract, how much, if anything, are they entitled to recover?

(A) $1,000, because all other damages could have been avoided by employing another equally qualified instructor.

(B) $55,000, because damages of that amount were within the contemplation of the parties at the time they contracted.

(C) Nominal damages only, because the mother was not injured by the breach and the tutor made no promise to the son.

(D) Nothing, because neither the mother nor the son took steps to avoid the consequences of the tutor's breach.
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contribute $100,000 to fund an annuity for a clerk who was a longtime employee of the business. The clerk's position would be terminated due to the dissolution, and he did not have a retirement plan. The accountant and the bookkeeper informed the clerk of their plan to fund an annuity for him. The clerk, confident about his financial future because of the promised annuity, purchased a retirement home. The accountant later contributed his $100,000 to fund the annuity, but the bookkeeper stated that he could afford to contribute only $50,000. The accountant agreed that the bookkeeper should contribute only $50,000.

Does the clerk have a valid basis for an action against the bookkeeper for the unpaid $50,000?

(A) No, because the clerk was bound by the modification of the agreement made by the accountant and the bookkeeper.

(B) No, because the clerk was only a donee beneficiary of the agreement between the accountant and the bookkeeper, and had no vested rights.

(C) Yes, because the clerk's reliance on the promised retirement fund prevented the parties from changing the terms.

(D) Yes, because the promises to establish the fund were made binding by consideration from the clerk's many years of employment.

Question 76

A report released by a Senate investigating committee named three U.S. citizens as helping to organize support for terrorist activities. All three were employed by the U.S. government as park rangers. Congress enacted a statute naming the three individuals identified in the report and providing that they could not hold any position of employment with the federal government.

Which of the following constitutional provisions provides the best means for challenging the constitutionality of the statute?

(A) The Bill of Attainder Clause

(B) The Due Process Clause

(C) The Ex Post Facto Clause

(D) The Takings Clause

Question 77

Under the Federal Tort Claims Act, with certain exceptions not relevant here, the federal government is liable only for negligence. A federally owned and operated nuclear reactor emitted substantial quantities of radioactive matter that settled on a nearby dairy farm, killing the dairy herd and contaminating the soil. At the trial of an action brought against the federal government by the farm's owner, the trier of fact found that the nuclear plant had a sound design, but that a...
valve made by the Acme Engineering Company had malfunctioned and allowed the radioactive matter to escape, that Acme Engineering Company is universally regarded as a quality manufacturer of components for nuclear plants, and that there was no way the federal government could have anticipated or prevented the emission of the radioactive matter.

If there is no other applicable statute, for whom should the trial judge enter judgment?

(A) No, because improperly failing to stop on the recent occasions does not bear on the plaintiff's veracity and does not contradict his testimony in this case.

(B) No, because there is no indication that failing to stop on the recent occasions led to convictions.

(C) Yes, because improperly failing to stop on the recent occasions bears on the plaintiff's credibility, since he claims to have stopped in this case.

(D) Yes, because improperly failing to stop on the recent occasions tends to contradict the plaintiff's claim that he was driving carefully at the time he collided with the defendant.

Question 80

A developer, the owner of a large, undevolved parcel of land, prepared a development plan creating 200 house lots in the development with the necessary streets and public areas. The plan was fully approved by all necessary governmental agencies and duly recorded. However, construction of the streets, utilities, and other aspects of the development of the parcel has not yet begun, and none of the streets can be opened as public ways until they are completed in accordance with the applicable ordinances in the municipality in which the parcel is located.

One of the streets laid out as part of the development plan is a border road that abuts an adjacent one-acre parcel owned by a widower. The widower's land has no access to any public way except an old, poorly developed road, which is inconvenient and cannot be used without great expense. The buyer now seeks a building permit that will show that he intends to use the border road for access to his land. The developer objects to the granting of a building permit on the grounds that he has never granted any right to the widower or the buyer to use the border road.

The developer brings an appropriate action in which the right of the buyer to use the border road without an express grant from the developer is at issue.

The best argument for the developer in this action is that

(A) the buyer's right must await the action of appropriate public authorities to open the border road as a

Question 78

Driving down a dark road, a defendant accidentally ran over a man. The defendant stopped and found that the victim was dead. The defendant, fearing that he might be held responsible, took the victim's wallet, which contained a substantial amount of money. He removed the identification papers and put the wallet and money back into the victim's pocket. The defendant is not guilty of

(A) larceny, because he took the papers only to prevent identification and not for his own use

(B) larceny, because he did not take anything from a living victim

(C) robbery, because he did not take the papers by means of force or putting in fear

(D) robbery, because he did not take anything of monetary value

Question 79

In a civil trial arising from a car accident at an intersection, the plaintiff testified on direct examination that he came to a full stop at the intersection. On cross-examination, the defendant's lawyer asked whether the plaintiff claimed that he was exercising due care at the time, and the plaintiff replied that he was driving carefully. At a sidebar conference, the defendant's lawyer sought permission to ask the plaintiff about two prior intersection accidents in the last 12 months where he received traffic citations for failing to stop at stop signs. The plaintiff's lawyer objected.

Should the court allow defense counsel to ask the plaintiff about the two prior incidents?
A city owned and operated a municipal bus system. The city sold space on its buses for the posting of placards. Decisions on the type of placards that could be posted on the buses were left wholly to the discretion of the administrator of the bus system. Although most of the placards that appeared on city buses were commercial advertisements, the administrator had often sold space on the buses for placards promoting various political, charitable, and religious causes.

A circus bought space on the city buses for placards advertising its forthcoming performances. An animal rights organization asked the administrator to sell it space for a placard with photographs showing the mistreatment of animals in circus shows.

The administrator denied the organization’s request. She said that the display of this placard would be offensive to the circus, which had paid a substantial sum to place its placards on the buses, and that she had been told by a circus employee that none of the photographs on the organization's placard depicted an animal belonging to this particular circus. Under the relevant city ordinance, the administrator’s decision was final.

The organization sued the administrator in an appropriate court for a declaration that she could not, consistent with the First Amendment as made applicable to the states by the Fourteenth Amendment, refuse to sell the organization space for its placard for the reasons she gave.

Will the organization prevail?

(A) No, because the administrator’s denial of space to the organization was a reasonable time, manner, and place restriction of speech.

(B) No, because a public official may not allow the use of public facilities for the propagation of a message that he or she believes may create a false or misleading impression.

(C) Yes, because a public official may not refuse to permit the dissemination of a message in a public forum wholly on the basis of its content unless that denial is necessary to serve a compelling government interest.

(D) Yes, because a public official may not refuse to allow the use of any public facility to publish a message dealing with an issue of public concern.

Question 83

A homeowner and a purchaser entered into a valid, enforceable, written contract by which the homeowner agreed to sell and the purchaser agreed to purchase the homeowner’s residence. One of the contract provisions was that after closing, the homeowner had the right to remain in the residence for up to 30 days before delivering possession to the purchaser. The closing took place as scheduled. Title passed to the purchaser and the homeowner remained in possession. Within a few days after the closing, the new house next door, which was being constructed for the homeowner, burned to the ground, and at the end of the 30-day period after closing the homeowner refused to move out of his old house; instead, the homeowner proposed to pay the purchaser a monthly rental payment in excess of its fair rental value. The purchaser rejected the proposal and that day brought an appropriate action to gain immediate possession of the residence. The contract was silent as to the consequences of the homeowner’s failure to give up possession within the 30-day period, and the jurisdiction in which the property is located has no statute dealing directly with this situation, although the landlord-tenant law of the jurisdiction requires

...
a landlord to give a tenant 30 days notice before a tenant may be evicted. The purchaser did not give the homeowner any such 30-day statutory notice. The purchaser’s best legal argument in support of his action to gain immediate possession is that the homeowner is a
(A) trespasser ab initio
(B) licensee
(C) tenant at sufferance
(D) tenant from month to month

Question 84
A producer engaged an inexperienced actress to do a small role in a new Broadway play for a period of six months at a salary of $200 a week. The actress turned down another role in order to accept this engagement. On the third day of the run, the actress was hospitalized with influenza and a replacement was hired to do the part. A week later, the actress recovered, but the producer refused to accept her services for the remainder of the contract period. The actress then brought an action against the producer for breach of contract.

Which of the following is the actress’s best legal theory?
(A) Her acting contract with the producer was legally severable into weekly units.
(B) Her performance of the literal terms of the contract was physically impossible.
(C) Her reliance on the engagement with the producer by declining another acting role created an estoppel against the producer.
(D) Her failure to perform for one week was not a material failure so as to discharge the producer’s duty to perform.

Question 85
A defendant was arrested moments after a forcible rape and was prosecuted for it. The victim testified she tore the assailant’s shirt. The defendant did not testify. In jury argument, the defendant’s counsel urged that the state’s failure to offer in evidence the shirt the defendant was wearing when arrested indicated that the evidence would be unfavorable to the state’s case. In his closing argument, the prosecutor said, “If the defense had thought the clothing would show anything, they could have brought it in as evidence themselves.” The prosecutor’s argument is
(A) proper as rebuttal to the inference that the evidence would be unfavorable to the prosecution
(B) proper as a comment on the defendant’s failure to testify
(C) improper as an argument going beyond the evidence in the case
(D) improper as a comment on the defendant’s failure to testify

Question 86
A professor, in a lecture in her psychology course at a private university, described an experiment in which a group of college students in a neighboring city rushed out and washed cars stopped at traffic lights during the rush hour. She described how people reacted differently—with shock, joy, and surprise. At the conclusion of her report, she said, “You understand, of course, that you are not to undertake this or any other experiment unless you first clear it with me.” Four of the professor’s students decided to try the same experiment but did not clear it with the professor.

One motorist who was a subject of their experiment said, “I was shocked. There were two people on each side of the car. At first I thought negatively. I thought they were going to attack me and thought of driving away. Then I quieted down and decided there were too many dirty cars in the city anyway.”

Charitable immunity has been abolished in the jurisdiction. If the motorist has a valid claim against the students, will he also prevail against the university?
(A) Yes, if the students would not have performed the experiment but for the professor’s lecture.
(B) Yes, if the motorist’s claim against the students is based on negligence.
(C) No, because the students were not the professor’s employees.
(D) No, because the professor did not authorize the car washing experiment as a class project.

Question 87
Nine gang members were indicted for the murder of a tenth gang member who had become an informant. The gang leader pleaded guilty. At the trial of the other eight, the state’s evidence showed the following: The gang leader announced a party to celebrate the recent release of a gang member from jail. But the party was not what it seemed. The gang leader had learned that the recently released gang member had earned his freedom by informing the authorities about the gang’s criminal activities. The gang leader decided to use the party to let the other gang members see what happened to a snitch. He told no one about his plan. At the party, after all present had consumed large amounts of liquor, the gang leader announced that the released gang member was an informant and stabbed him with a knife in front of the others. The eight other gang members watched and did nothing while the informant slowly bled to death. The jury found the eight gang members guilty of murder and they appealed.
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(C) It is proper to impeach the defendant, but not to prove that the defendant committed the crime.

(D) It is proper to prove the defendant committed the crime, but not to impeach the defendant.

Question 90
On March 1, a mechanic contracted to repair a textile manufacturer’s knitting machine and to complete the job by March 6. On March 2, the manufacturer contracted to produce and deliver on March 15 specified cloth to a clothing designer. The manufacturer knew that it would have to use the machine then under repair to perform this contract. Because the designer’s order was for a rush job, the designer and the manufacturer included in their contract a liquidated damages clause, providing that the manufacturer would pay $5,000 for each day’s delay in delivery after March 15.

The mechanic was inexcusably five days late in repairing the machine, and, as a result, the manufacturer was five days late in delivering the cloth to the designer. The manufacturer paid $25,000 to the designer as liquidated damages and now sues the mechanic for $25,000. Both the mechanic and the manufacturer knew when making their contract on March 1 that under ordinary circumstances the manufacturer 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 designer-manufacturer contract is valid, which of the following arguments will serve as the mechanic’s best defense to the manufacturer’s action?

(A) Time was not of the essence in the mechanic-manufacturer contract.

(B) The mechanic had no reason to foresee on March 1 that the designer would suffer consequential damages in the amount of $25,000.

(C) By entering into the contract with the designer while knowing that its knitting machine was being repaired, the manufacturer assumed the risk of any delay loss to the designer.

(D) In all probability, the liquidated damages paid by the manufacturer to the designer are not the same amount as the actual damages sustained by the designer in consequence of the manufacturer’s late delivery of the cloth.

Question 91
In response to the need for additional toxic waste landfills in a state, the state’s legislature enacted a law authorizing a state agency to establish five new state-owned and state-operated toxic waste landfills. The law provided that the agency would decide the locations and sizes of the landfills after an investigation of all potential sites and a
determination that the particular sites chosen would not endanger public health and would be consistent with the public welfare.

A community in the state was scheduled for inspection by the agency as a potential toxic waste landfill site. Because the community’s residents obtained most of their drinking water from an aquifer that ran under the entire community, a citizens’ group, made up of residents of that community, sued the appropriate officials of the agency in federal court. The group sought a declaratory judgment that the selection of the community as the site of a toxic waste landfill would be unconstitutional and an injunction preventing the agency from selecting the community as a site for such a landfill. The agency officials moved to dismiss.

Which of the following is the most appropriate basis for the court to dismiss this suit?

(A) The case presents a non-justiciable political question.
(B) The interest of the state in obtaining suitable sites for toxic waste landfills is sufficiently compelling to justify the selection of the community as a location for such a facility.
(C) The Eleventh Amendment bars suits of this kind in the federal courts.
(D) The case is not ripe for a decision on the merits.

**Question 92**

The Rapido is a sports car manufactured by a car company. The Rapido has an excellent reputation for mechanical reliability with one exception: the motor may stall if the engine has not had an extended warm-up. The plaintiff had just begun to drive her Rapido in city traffic without a warm-up when the engine suddenly stalled. A car driven by a truck driver rear-ended the plaintiff’s car. The plaintiff 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.

The plaintiff brought an action against the car company 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 car company 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 the truck driver’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.

**Question 93**

Suspecting that students in a dormitory were using narcotics, the president of a private college arranged for local police to place concealed microphones in several suites of the dormitory. Using these microphones, the college security officers recorded a conversation in which a student offered to sell marijuana to a school employee. The tape was turned over to the local police, who played it for a local judge. The judge issued a warrant to search the student's room. The room was searched by police, and marijuana was discovered.

The student is charged with unlawful possession of narcotics. At trial, the student’s motion to prevent the introduction of the marijuana into evidence will most probably be

(A) denied, because the college president, in loco parentis, had the responsibility of preventing unlawful activity by students under the president’s supervision
(B) denied, because there was probable cause to make the search and police obtained a warrant before commencing the search
(C) granted, because the student's privacy was unreasonably invaded
(D) granted, because the electronic surveillance was “fundamentally unfair”

**Question 94**

A hospital patient had a heart ailment so serious that his doctors had concluded that only a heart transplant could save his life. They therefore arranged to have him flown to a bigger hospital to have the operation performed.

The patient’s nephew, who stood to inherit from him, poisoned him. The poison produced a reaction that required postponing the journey. The plane on which the patient was to have flown crashed, and all aboard were killed. By the following day, the patient’s heart was so weakened by the effects of the poison that he suffered a heart attack and died. If charged with criminal homicide, the nephew should be

(A) guilty
(B) not guilty, because his act did not hasten the deceased’s death, but instead prolonged it by one day
(C) not guilty, because the deceased was already suffering from a fatal illness
(D) not guilty, because the poison was not the sole cause of death

**Question 95**

A seller, the owner of a tract of land, entered into an enforceable written agreement with a buyer providing that the seller
would sell the tract to the buyer for an agreed price. At the place and time designated for the closing, the seller tendered an appropriate deed, but the buyer responded that he had discovered a mortgage on the tract and would not complete the transaction, because the seller's title was not free of encumbrances, as the contract required. The seller said that it was his intent to pay the mortgage from the proceeds of the sale, and he offered to put the proceeds in escrow for that purpose with any agreeable, responsible escrowee. The balance due on the mortgage was substantially less than the contract purchase price. The buyer refused the seller's proposal. The seller began an appropriate legal action against the buyer for specific performance. There is no applicable statute in the jurisdiction where the tract is located. The seller's best legal argument in support of his claim for relief is that

(A) as the seller of real estate, he had an implied right to use the contract proceeds to clear the title being conveyed
(B) the lien of the mortgage shifts from the tract to the contract proceeds
(C) under the doctrine of equitable conversion, title has already passed to the buyer and the only issue is how the purchase price is to be allocated
(D) no provision of the contract has been breached by the seller

Question 96

During negotiations to purchase a used car, a buyer asked a dealer whether the car had ever been in an accident. The dealer replied: “It is a fine car and has been thoroughly inspected and comes with a certificate of assured quality. Feel free to have the car inspected by your own mechanic.” In actuality, the car had been in an accident and the dealer had repaired and repainted the car, successfully concealing evidence of the accident. The buyer declined to have the car inspected by his own mechanic, explaining that he would rely on the dealer’s certificate of assured quality. At no time did the dealer disclose that the car had previously been in an accident. The parties then signed a contract of sale. After the car was delivered and paid for, the buyer learned about the car’s involvement in a major accident.

If the buyer sues the dealer to rescind the transaction, is the buyer likely to succeed?

(A) No, because the buyer had the opportunity to have the car inspected by his own mechanic and declined to do so.
(B) No, because the dealer did not affirmatively assert that the car had not been in an accident.
(C) Yes, because the contract was unconscionable.
(D) Yes, because the dealer’s statement was intentionally misleading and the dealer had concealed evidence of the accident.

Question 97

A manufacturing plant located near a busy highway uses and stores highly volatile explosives. The owner of the plant has imposed strict safety measures to prevent an explosion at the plant. During an unusually heavy windstorm, a large tile was blown off the roof of the plant and crashed into the windshield of a passing car, damaging it. The driver of the car brought a strict liability action against the owner of the plant to recover for the damage to the car’s windshield.

Is the driver likely to prevail?

(A) No, because the damage to the windshield did not result from the abnormally dangerous aspect of the plant’s activity.
(B) No, because the severity of the windstorm was unusual.
(C) Yes, because the plant’s activity was abnormally dangerous.
(D) Yes, because the plant’s location near a busy highway was abnormally dangerous.

Question 98

On January 5, a creditor lent $1,000 to a debtor under a contract calling for the debtor to repay the loan at the rate of $100 per month payable on the first day of each month. On February 1, at the debtor’s request, the creditor agreed to permit payment on February 5. On March 1, the debtor requested a similar time extension and the creditor replied, “Don’t bother me each month. Just change the date of payment to the fifth of the month. But you must now make the payments by cashier’s check.” The debtor said, “Okay,” and made payments on March 5 and April 5. On April 6, the creditor sold the loan contract to a bank, but did not tell the bank about the agreement permitting payments on the fifth of the month. On April 6, the bank wrote to the debtor: “Your debt to [the creditor] has been assigned to us. We hereby inform you that all payments must be made on the first day of the month.”

Can the debtor justifiably insist that the payment date for the rest of the installments is the fifth of each month?

(A) No, because a contract modification is not binding on an assignee who had no knowledge of the modification.
(B) No, because although the creditor waived the condition of payment on the first of the month, the bank reinstated it.
(C) Yes, because although the creditor waived the condition of payment on the first of the month, the creditor
could not assign to the bank his right to reinstate that condition.

(D) Yes, because the creditor could assign to the bank only those rights the creditor had in the contract at the time of the assignment.

Question 99
AI and Bill are identical twins. AI, angry at his neighbor, said, “You’d better stay out of my way. The next time I find you around here, I’ll beat you up.” Two days later, while in the neighborhood, the neighbor saw Bill coming toward him. As Bill came up to the neighbor, Bill raised his hand. Thinking Bill was AI and fearing bodily harm, the neighbor struck Bill.

If Bill asserts a claim against the neighbor and the neighbor relies on the privilege of self-defense, the neighbor will

(A) not prevail, because Bill was not an aggressor
(B) not prevail unless Bill intended his gesture as a threat
(C) prevail if the neighbor honestly believed that Bill would attack him
(D) prevail only if a reasonable person under the circumstances would have believed that Bill would attack him

Question 100
Re-direct examination of a witness must be permitted in which of the following circumstances?

(A) To reply to any matter raised in cross-examination
(B) Only to reply to significant new matter raised in cross-examination
(C) Only to reiterate the essential elements of the case
(D) Only to supply significant information inadvertently omitted on direct examination